

**INSIDE:** The Superior Court's Response ♦ From the Frontlines of Vaccination ♦ Employment Law and the Pandemic

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## HOW COVID IS CHANGING DELAWARE

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# Hospitality

# Post-COVID

Bardea Food & Drink,  
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SAGUAN STIMPSON

The pandemic is changing how we eat, drink and travel

May 21, 2021 was “VC Day” in Delaware — that is, a date to mark our victory over COVID-19. With the 28th and 29th modification to the original State of Emergency order, Gov. John Carney awakened us from our pandemic sheltering by easing social distancing requirements and removing the state’s mask mandate.<sup>1</sup>

Equally important, capacity restrictions on most businesses were eliminated, including those for restaurants and other hospitality venues. With a collective sense of relief, Delawareans spent this summer returning to the frenetic pace of lifestyles we once called routine.

After VC Day, what will the routine be for the tourism and hospitality industry in Delaware? This article examines trends and tensions in the industry, including restaurants, hotels and travel in general.

## I. Economic Impact

We cannot celebrate VC Day without remembering the pain and loss that the pandemic wrought. As of this writing, nearly 1,700 Delawareans have died due to COVID-19; thousands more have suffered from the damaging effects of the virus. From an economic standpoint, the tourism and hospitality

industry was especially hard hit. Restaurants across the state were forced to close permanently, including longtime favorites such as Cheese Chalet (44 years in business) in Pike Creek; Joe’s Crab Shack (17 years) on the Wilmington Riverfront; and Gilligan’s Bar & Grill (18 years) in Milton.<sup>2</sup> According to the Delaware Restaurant Association, local restaurants lost more than \$1.2 billion in revenues during the first full year of the pandemic due to COVID restrictions.<sup>3</sup>

## II. Home Delivery from Your Local Liquor Store

This has been a crazy summer.<sup>4</sup> With our long hibernation over, Delawareans have rushed back to their favorite haunts.<sup>5</sup> Now the question turns on whether we will simply return to our pre-pandemic schedule or nestle into newfound pleasures of staying at home.

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One of the over-arching business themes of the pandemic was home delivery.<sup>6</sup> If Delawareans could not go outside, they brought the outside world to them. Indicative of our reliance on home delivery, Amazon has posted four consecutive quarters of record profits, while recruiting over 500,000 employees to keep up with surging demand.<sup>7</sup>

In Delaware — as opposed to Pennsylvania, for example — liquor stores did not close during the pandemic. Delaware law mandates that the individual buying the alcohol must appear in person to purchase (4 Del. C. § 516(a)). As such, delivery of alcohol to one's home is generally prohibited.

The pandemic made vividly clear that a Delawarean can purchase nearly everything online and have it delivered quickly, including groceries and meals from restaurants. Apps like DoorDash and Grubhub are as desired these days as Netflix and Hulu. (For indeed, life can be abided with bread and circuses, and in particular circuses, as anyone who watched *Tiger King* can attest.)

Here then is the debate: We have a generation growing up with the expectation of ordering every possible item online and having it delivered. We have a state whose citizens have spent a pandemic year ordering every possible item online and having it delivered. So, if a Delawarean uses DoorDash for food from a neighborhood restaurant, why can't he order a six-pack of beer or a fifth of vodka for home delivery from a neighborhood liquor store? Is the societal trend strong enough to overcome a fundamental state tenet that an individual must be personally present to purchase alcohol? It is fundamental, supporters say, because the current system works and works well. For example, Delaware is extraordinarily proactive in keeping kids from liquor stores. Yet, if California is any indication, those same kids would have ready access to alcohol

via home delivery.<sup>8</sup> Ultimately, should an established (and proven) system that protects against underage drinking yield to modern commerce where a Delawarean can purchase almost everything else for home delivery?

As a postscript to this debate, the industry is already thinking beyond delivery, by designing technology that can satisfy our whims instantaneously. There are Keurig-style machines now on the market, sold with pouches of alcohol. Instead of making coffee at home, the machines generate a myriad of cocktails. It is anticipated that the next wave of devices will print (or better yet, *Star Trek* fans, replicate) pizza, quesadillas and mac-and-cheese.

### III. Takeout<sup>9</sup>

During the pandemic, restaurants (with liquor licenses) and bars were permitted to sell alcohol as part of their takeout sales. Delaware adopted this national trend as a common-sense way to boost restaurant revenues during the pandemic. Through the adoption of House Bill No. 1, alcohol takeout will continue through the end of March 2022<sup>10</sup> — and the General Assembly will surely consider extending the date or making the change permanent.

Under the law, any restaurant, brewpub or bar may sell alcoholic beverages for takeout, curbside, or drive-through service.<sup>11</sup> All alcoholic beverages must be sold in containers that are securely closed, and sales may not exceed three bottles of wine, one case of beer and one liter of spirits per customer per day.<sup>12</sup>

Alcohol takeout was the focus of House Bill No. 1, sponsored by Speaker Peter Schwartzkopf, and thereby the first legislative matter before the General Assembly this calendar year. The state budget, criminal justice and education are all vital to the workings of government. Yet, its inclusion in the first bill considered by the General Assembly signifies the importance of hospitality (and by extension, hospitality law) to

the fabric of our lives.

### IV. Hotels and Travel<sup>13</sup>

Over the past year, hotels have targeted the importance of room-cleaning and reduced breakfast fare in the fight against COVID-19. These trends will likely continue. In the early months of the pandemic, Delawareans were engaged in a big clean — wiping table-tops, groceries and just about anything else — as we were coming to understand how the virus spreads. Hotel guests were naturally leery about room cleanliness and getting coronavirus from an overnight stay. At the same time, the good people who clean hotel rooms were sheltering in place, meaning hoteliers had fewer housekeepers reporting to work. One major hotel chain created a paradigm that the industry has adopted. After a room has been cleaned, a sticker is placed over the door and the jamb. When the guest checks in and goes to the hotel room, she sees that the room has been “sealed” and no one has been in the room (spreading coronavirus) since it was last fully cleaned. When the guest opens the door, she breaks the sticker, reinforcing the notion that she is the first to enter since the last cleaning. Equally important, the room will not be cleaned again until the guest leaves (or the guest affirmatively requests a cleaning). In this way, the guest has a sense of security that she is not going to be infected from staying in the room, and at the same time, by performing fewer cleanings, hotels require fewer housekeepers.

Moreover, during the pandemic, hotels were forced to close or scale back their dining services. Before COVID-19, most hotels traditionally offered at least a continental breakfast. At present, many hotels have switched to a bagged breakfast, which might include a wrapped muffin, granola bar, piece of fruit and bottle of juice. The industry realized just how much money it was saving by not offering hot breakfast

buffet options. As such, hotels will likely continue with grab-and-go fare for the foreseeable future.

Leisure and personal travel is expected to surge for at least the next year; corporate travel will make a slow-but-steady recovery. Because of the pandemic, Delawareans were forced to cancel travel plans as well as postpone life events, such as weddings and funerals. If you haven't heard it yet, the starting gun has been fired, and we appear ready to catch up for lost time. We are slowed only because our pockets are full of money. By sheltering in place, we did not spend as much as we normally would with the day-to-day costs of commuting to work. Our beach businesses are thus expecting a record-breaking summer.

Corporate travel in Delaware — i.e., businesspeople visiting for work-related reasons — is reliant on the legal, government and banking sectors. All three sectors have been methodical in the pace of scaling back up. Corporate travel will not begin again in earnest until these sectors fully return to the workplace. It may be two or three years before corporate travel, especially in New Castle County, returns to pre-pandemic levels.

## V. Smoking and Hookah

Delawareans are interested in hookah in growing numbers. Hookah is often referred to as water-pipe tobacco smoking. Specifically, a hookah is a smoking instrument, through which the smoker imbibes tobacco that has been heated or vaporized. The interest in hookah is natural, given the overall rise in smoking during the pandemic as well as the industry trend toward vaping. Due to the prolonged sheltering in place, coupled with the stress and anxiety of the pandemic, there has been an increase in smoking.<sup>14</sup> In addition, over the past 15 years or so, many traditional smokers have gravitated toward vaping. Vaping is inhaling a vapor created by an electronic cigarette. Vaping had become

so popular among kids that in 2019, the Delaware General Assembly stepped in to tighten regulations, including raising the smoking age from 18 to 21.<sup>15</sup> As more people smoke and as more people smoke through vaping, Delawareans have been drawn to the traditional vaping method of hookah.

Due to the hookah trend, bars and restaurants want to offer a “hookah menu” so patrons can eat, drink and smoke as a simultaneous social experience. However, Delaware has its landmark Clean Indoor Air Act, dating back to 2003, which prohibits indoor smoking in public spaces.<sup>16</sup> There are exceptions, but those exceptions do not include bars and restaurants. As such, indoor hookah smoking at a bar or restaurant appears to violate the Clean Indoor Air Act. As seen with the cocktails-to-go legislation, the General Assembly is sympathetic to changing the law, at least temporarily, in order to help food establishments recover from the pandemic. As demands to offer a hookah menu increase, will the General Assembly be willing to carve out an exception to the Clean Indoor Air Act?

## VI. Conclusion

The hospitality and tourism industry rises every day on the shoulders of entrepreneurs. These men and women have more courage than most, for they understand that the odds of succeeding are against them. What will the post-pandemic environment bring? In many ways, it will bring more of the same, for in order to survive, entrepreneurs must adapt, problem-solve and overcome. Indeed, they press on, boats against the tide, believing in their dream and committed to their craft. ♦

## NOTES

1. See generally Twenty-eighth modification: Del. State of Emergency Declaration (May 12, 2021), <https://governor.delaware.gov/executive-orders/eo28>, and Twenty-ninth modification: Del. State of Emergency Declaration (May 18, 2021), <https://governor.delaware.gov/>

[executive-orders/eo29](https://governor.delaware.gov/executive-orders/eo29)

2. Patricia Talorico of the *News Journal* has maintained an updated list of restaurant closures. See, e.g., <https://www.delawareonline.com/story/life/2020/06/03/delaware-restaurants-closed-good-due-covid-19/5316706002>
3. Carrie Leishman, One Year Ago - A Defining Moment for Restaurants, Delaware Restaurant Association (March 16, 2021) <https://mailchi.mp/4234604ed0c3/oneyearlater>
4. Consider the many news stories this past May of unruly behavior by airline passengers as well as sports fans.
5. Humans are social beings, who innately enjoy eating and drinking with others. In 1930, a German painter predicted the future by painting two women, sitting in an outdoor café, drinking and smoking, with a waiter nearby. One woman converses on a portable phone with a gentleman; the phone has a video screen through which they can see each other in real time. The other woman has a similar device through which she is amusing a baby. Ninety years ago, this painter was prescient enough to predict the technology of modern-day cell-phones. More important to this discussion, the German painter also understood the human mind: Despite all the technology available in the future, people would still embrace the pleasures of sitting at a café to chat, drink and smoke.
6. The boom of delivery is not new to the American story. There was a time not long ago when everyday staples such as ice, milk and eggs were delivered regularly to one's home.
7. Jeffrey Dastin, Akanksha Rana, Amazon's sales and profit rise as retailer rides wave of pandemic shopping, Reuters (April 30, 2021), <https://www.reuters.com/technology/amazon-first-quarter-sales-beat-expectations-2021-04-29>.
8. Delivery of Alcoholic Beverages, California Department of Alcoholic Beverage Control (April 30, 2020), <https://www.abc.ca.gov/delivery-of-alcoholic-beverages>
9. The author is grateful to Paul Ruggiero, president and CEO of NKS Distributors, for his insight.
10. An Act to Amend Title 4 of the Delaware Code Relating to Alcoholic Liquors, House Bill No. 1, 151st General Assembly, 2021.
11. 4 Del. C. § 512(a)(1).
12. 4 Del. C. § 512(a)(2).
13. The author is grateful to Ben Seidel, president and CEO of Real Hospitality Group, and Sarah Willoughby, recently retired executive director of the Greater Wilmington Convention & Visitors Bureau, for their insights.
14. Cara Murez, Smoking Makes a Comeback in the Pandemic, Web-MD News from HealthDay (March 16, 2021), <https://www.webmd.com/smoking-cessation/news/20210316/smoking-makes-a-comeback-in-the-pandemic>
15. An Act to Amend Title 11, Title 16, and Title 30 of The Delaware Code Relating to Delivery and Sales of Tobacco Products, Senate Substitute 1 for Senate Bill No. 25, 150th General Assembly, 2019.
16. See generally 16 Del. C. ch. 29, Clean Indoor Air Act.