Duff on Hospitality Law

The Skinny On Menu Health Warnings In Oregon

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Two major changes are on the horizon for Oregon diners and restaurateurs-one may affect diners' waistlines while the other will force purveyors to fess up to potentially hazardous ingredients they serve.

Way back in 2009, Oregon's Legislature passed the Menu Labeling Act, one of the country's toughest menu labeling laws, requiring restaurants with 15 or more locations in the state to post the calorie count for every meal it serves. But before the laws could take effect, the federal government passed *its own* menu labeling law thereby preempting Oregon's Menu Labeling Act. Section 4205 of the Affordable Care Act, signed into law in March 2010, set new federal requirements for nutrition labeling of foods sold at certain chain restaurants and similar retail food establishments. Until the federal law takes effect (the FDA is expected to finalize the rules summer 2012) - Oregon won't know whether it has to revisit its own law or rule-making process. And diners won't know just how many calories are in that bleu cheese bacon burger.

Speaking of burgers, that medium-rare beauty will soon come with a side of warnings thanks to one of the many proposed changes to Oregon's Food Code and Food Sanitation Rules. Due to a loophole in the current Food Code, Oregon restaurants are not required to notify consumers that certain menu items may contain raw or undercooked ingredients.

This will all change when the new Code takes effect July 1, 2012.

With the new Food Code comes the requirement that **all "facilities" that serve food must give a "Consumer Advisory" regarding "raw or undercooked animal products" served to patrons**. The federal definition of "facilities"-likely to be adopted in Oregon-includes not only traditional restaurants, but also carry-outs, and quick service operations among others. (At this stage, it is unclear what effect the law will have on Portland's renowned food carts.)

Nevertheless, when these proposed changes *do* take effect, restaurants, supermarkets, and other food purveyors will face significant adjustments in their day-to-day operations and will be exposed to new liabilities.

Preparing for the new warnings under the code requires **two steps: a Disclosure and Reminder.** This is similar to the process in Washington as explained in our previous post.

The Disclosure

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The Disclosure is **a written statement that identifies the animal foods which are (or can be ordered) raw.** This takes the form of a description (Oysters on the half-shell "raw oysters") or an * with a footnote indicating that the items are served raw or undercooked or contain such ingredients (Caesar salad contains raw egg yolks, i.e.).

The Reminder

The Reminder is **a written statement that identifies the health risk associated with consuming such foods and requires an * to a footnote that has a specific warning:** (i.e. "Consuming raw or undercooked meats, poultry, seafood, shellfish or eggs may increase your risk of food borne illness.")

These writings can appear on menus, placards, table tents or "other effective written means." Importantly, the consumer advisory **must be in the same language used for the menu items and at least 11 point font** on menus or table tents.

As a business that serves food, these new regulations may initially appear to be a burden with the cost of changing menus and training staff to answer consumers' questions. But these laws also will help outline a business's liability towards its customers. Complying with these new laws makes it far more difficult for a patron to effectively sue an establishment. It's important to note the new Food Code will not cover all possible claims against food served in an establishment-restaurateurs should still consult their lawyers to decide whether additional menu warnings are prudent.

Stay tuned!

If you have any questions about Oregon's current menu labeling requirements, please feel free to contact Greg.

Posted in Food and Beverage

Tagged as Affordable Care Act, Consumer Advisory, Food Code, Food Sanitation Rules, Health Warnings, menu labeling, Menu Labeling Act

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