
The Bars' Bar: With Ongoing Pandemic and Changing Restrictions, Work Isn't Drying Up for California Alcohol Lawyers

Katherine Proctor

📅 July 29, 2021



In the world of American alcohol and beverage regulation, as of the spring of 2020, Carrie Bonnington had seen it all. The Sacramento-based partner at Pillsbury leads that law firm's wine, beer, and spirits practice, advising alcohol manufacturers, distributors, and retailers across the United States. She was appointed to the executive committee of the National Conference of State Liquor Administrators in 2019, and she's taught a class in wine law at the UC Berkeley School of Law.

But when the COVID-19 pandemic started to upend how her clients did business, something happened that she'd thought she'd never see in California.

"The idea that California ABC would allow a restaurant to sell a cocktail to go -- it was just unfathomable that could ever happen," Bonnington said.

Yet the state's Department of Alcoholic Beverage Control did just that, along with a slew of other regulatory relief measures over the course of the pandemic. And for California attorneys who specialize in alcohol law, staying on top of those changes has been, as Bonnington puts it, "a full-time job."

"When the pandemic hit, we saw unprecedented movement by state regulators and local jurisdictions to help address the needs of licensees," she said. "It was incredibly challenging for our clients, especially those who had multiple locations throughout the state, to keep up with the changing regulatory landscape. A lot of what we did at the beginning was just help clients understand what they could and could not do pursuant to temporary orders, from both state and local perspectives."

Even at just the state level, there's been plenty to keep a California alcohol lawyer's hands full. Since Gov. Gavin Newsom first declared a state of emergency related to the pandemic in March 2020, the state's Department of Alcoholic Beverage Control (ABC) has issued a total of eight notices of regulatory relief for the beverage industry -- making it easier for businesses to sell drinks to-go, for example, and serve alcohol in sidewalk parklets.

"I felt like the best service that I could bring to our clients was really staying on top of any relaxed regulations, and interpretations from the local municipalities or counties," said Jennifer Oden, a partner at Solomon Saltsman & Jamieson in Los Angeles whose practice includes ABC licensing and disciplinary actions. "There was so much information coming in so quickly from so many different entities. It was just ever-changing. It varied from almost minute to minute."

The relief from the ABC was desperately needed for California businesses whose profits rely on alcohol sales, as the pandemic spurred closures and layoffs throughout the state's accommodation and food services industry. As of May, that sector still has about 400,000 fewer jobs than it did in February 2020, according to [data](#) from the Public Policy Institute of California.

And those who do have jobs in that sector know the pandemic's health risks are far from over, as cases rise in California and nationwide with the spread of the Delta variant. On Monday, for example, a group representing more than 300 bars in San Francisco [announced](#) that they will now require customers who want indoor service to show either proof that they're vaccinated or a 72-hour negative test for

the virus. By midweek, both federal and state public health agencies had recommended that everyone wear masks indoors again, regardless of vaccination status.

ABC's [most recent notice](#), issued on June 3, announced that many of these relaxed rules will remain in place through the end of the year. Meanwhile, the state Legislature is [considering](#) making some of the emergency adjustments permanent.

It isn't quite a new Wild West for the California beverage industry. But for attorneys who specialize in that area in the Golden State -- one of the most heavily regulated in the U.S. when it comes to alcohol law -- the uptick in daily calls from clients isn't likely to slow down anytime soon.

And the economic imperative of being up-to-date on the state's ever-changing pandemic alcohol rules extends far beyond the bars, breweries, and distilleries at the core of the industry. Oden notes that alcohol sales have been crucial to the survival even of businesses like restaurants and grocery stores, where alcoholic beverages aren't the only or even main product.

"Alcohol sales can be of very minor ancillary use for my clients. But it's one that they feel is absolutely necessary because consumerism is driven by convenience a lot of the time," Oden said. "The consumer will go somewhere where they can get absolutely everything. Say I'm ordering my meal to eat at home, but I want to have a glass of wine. The retailers have felt, 'If I can't offer everything, then I'm going to lose out on the sale as a whole.'"

A flattened tier system

California's alcohol regulatory system recognizes three tiers in the industry: manufacturers, wholesalers, and retailers. Roger Clayton, an attorney at Strike Kerr & Johns in San Diego with clients in all three tiers, says the state adopted that system shortly after the passage of the 21st Amendment.

"Our whole industry is founded on the fact that there's a lot of vertical integration," he said. "The whole point of having this three-tier system is preventing the manufacturers from having too much influence over the retailers."

But what's interesting about what's happened now with all of the pandemic's regulatory changes, Clayton said, is that "there's this kind of dissonance between the tiers." For consumers stuck at home during lockdown, it didn't matter as much where their beverages came from -- it was all getting consumed in the same place.

The increase in home alcohol deliveries, and the relaxed regulations allowing to-go cocktails, opened businesses up to a host of compliance concerns. Delivery companies like Instacart, who'd already been allowed to deliver alcohol grocery stores pre-pandemic, had measures in place to ensure that their deliveries weren't ending up with underage consumers.

But when ABC allowed deliveries from on-sale licensees like restaurants and bars -- where the alcohol they sell is typically consumed on the premises -- opportunities bloomed to run afoul of the law. For example, in a delivery model like Uber Eats, where you can order a burger and a six-pack of beer from a restaurant, there was the possibility that a driver wouldn't understand that alcohol was in the order they were delivering.

"We had to help a lot of third-party providers that facilitate alcohol delivery," Clayton said. "We had to do a lot of adapting so not only can restaurants put infrastructure in place, but also so delivery companies can make sure they're operating in a compliant manner."

Zooming out on the beverage landscape, however, California alcohol attorneys see online commerce like direct-to-consumer winery sales, not on-sale deliveries, as the main sector that stands to build on its pandemic boom -- meaning the distinctions among the three industry tiers could collapse even further.

"E-commerce has been really hot for a number of years," Bonnington said. "But we moved even further into a virtual world over the last year and a half, and more and more people are seeing the value in operating more extensively in a virtual world. The e-commerce reach has just become critical for our industry."

Codifying the new liquor landscape

As the ABC has promised to continue these relaxed regulations through the end of 2021, a couple of California legislative proposals could solidify the state's shifting

alcohol industry ecosystem. [SB 389](#), which has passed the State Senate in May and is now in the Assembly, would allow restaurants to consider cocktails and other alcoholic beverages to-go. Meanwhile, [SB 314](#) -- also approved by the Senate and currently in the Assembly -- would expand retailers' "licensed footprint" by permanently allowing beverage service in parklets and other outdoor dining areas.

The proposals are in keeping with California's traditional approach to regulating alcohol, beverage attorneys say. Although the ABC certainly has a lot of power in the regulatory structure -- particularly during an ongoing and ever-changing public health crisis -- the state has historically relied on the Legislature to implement major changes in alcohol law, as opposed to other states that primarily make changes through the rulemaking process.

For the most part, Bonnington says, her clients feel enthusiastic about the possibility of a more permanent expansion of the licensed footprint. Not only does that adjustment allow consumers to safely and comfortably return to retail establishments while the pandemic continues, but making it permanent even beyond the pandemic might just be sound public health policy. "Maybe from just a general health and safety perspective, it's better to get more ventilation and space between people," she said.

Her clients' stance on codifying to-go cocktails, though, "is more of a mixed bag." "Some think it's a wonderful idea and want to keep it forever," Bonnington said. "Some say, 'We want people to stay here and eat and drink. Our margins are better.'"

Clayton notes that there's certainly debate within the industry, especially between its tiers, about which legislative measures should be prioritized. But even though California is one of the most heavily regulated states in the nation when it comes to alcohol, he says, the state is "still pro-business, generally."

"There's a lot of disagreement, but generally the ABC does take measures, as evidenced by their eight notices of regulatory relief, where they are trying to work with retailers and manufacturers and wholesalers," Clayton said. "California has tons of laws with respect to alcohol, but most of them tend to make sense."

And even though the end date of the pandemic's economic and public health ramifications continues to be elusive, many entrepreneurs see this period of flexibility as a great time to expand within -- or enter -- the alcohol and beverage industry.

"A lot of people are starting to get their restaurants going, or bars going. We are seeing a lot of start-ups," Clayton said. "It's kind of nice to see people enthusiastic about the future of alcohol."

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