

December 2015



Beyond Brewing

Business Basics Bulletin Newsletter

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2016 Craft Beer Legal Updates

By **K.Spero & S. Hostetter**

It is the New Year – time to reflect on the past, celebrate our blessings, and prepare for the future. California will be rolling out a number of new laws that have direct impact on the craft beer industry on January 1, 2016– this article will provide you with an overview of what will be happening with our industry as we move into a new year. Keep in mind, unless specifically stated, these laws will become effective on January 1, 2016.

AB 776 – The “Parking Lot Party”

This bill actually enacts several changes, though the most widely discussed is already being referred to as the “Parking Lot Bill.” That aspect of the bill makes long-standing wine privileges a reality for beer manufacturers through a “Brewery Event Permit.” The permit allows for the sale and consumption of a brewery’s own beer (though not any other brewery’s) on property that is contiguous and adjacent to the beer manu-

facturer’s licensed premises, such as a parking lot. Four such events may be held by any given beer manufacturer every year. The permit itself will cost only \$110 in 2016 and each individual event will be subject to a \$25 event authorization fee. Perhaps just as important, however, the bill also deals with non-profit events. The ABC now allows a beer or spirits manufacturer to sponsor and participate in events conducted by and for the benefit of non-profit organizations, regardless of whether a retail or nonretail licensee is involved as a sponsor or participant. This gem comes after the chaos of the Grape Escape fiasco. For those who may have missed it, the ABC placed a number of manufacturer licensees on probation for having “tweeted” their participation in a festival sponsored by a large retail chain. As the retail chain was the main sponsor of the event, its name featured prominently in posters and other media circulating for the event. ABC determined that the tweet was a thing of value given to the retail chain, in the form of free advertising.

Lot Tracking - You Can't Manage What You Don't Measure

By Mary Brettman

Lot tracking is the secret to understanding the inner workings of your inventory. It allows you to understand the age and, in some cases, the chemistry (ie. malt and hops) of the specific items. Anyone who has worked with me knows that I'm a big fan of lot tracking. You can get so much more information when you hold your inventory in your system by the lot number. Lot tracking is used all throughout the brewery; from raw materials to finished goods, (don't forget glass, boy, is it nice to know if you have a defective lot of empty bottles!)

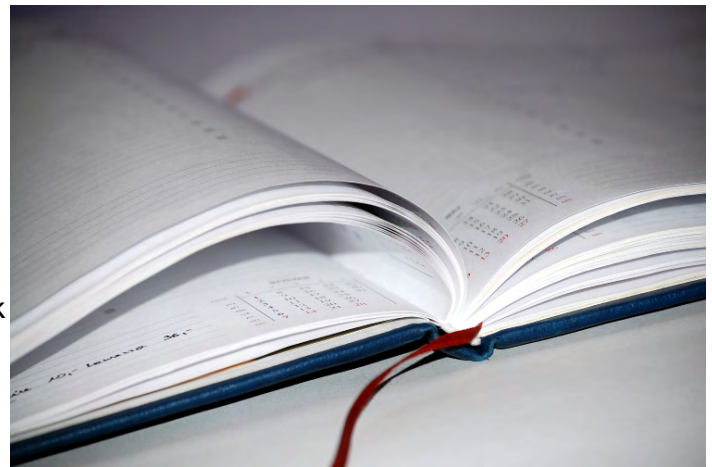
It is Required by Law

Not only is it a good idea to understand what ingredients went into what batch of beer, the law requires it. The Food Modernization Act of 2011 gives the FDA the ability to subject all breweries to Current Good Manufacturing Practices (CGMA). This means that "breweries in the United States are required to manufacture, label, document and store products in compliance with CGMP".

Start Small

Lot tracking sophistication grows as the brewery grows. In the beginning, you may just keep a paper record of the lots. But once the brewery is packaging a significant amount of beer, the cost of potential inventory track mistakes begins to add up. To properly track inventory, a brewery must track the item, quantity, and warehouse by lot number. That is a lot to keep straight, but it will provide a clear picture of what you have at any given moment. There are many systems out there that can track inventory at this level (OrchestratedBEER and QuickBooks Enterprise come to mind).

Lots need to be tracked as raw material is received (usually the supplier will mark each bag with the lot number). Then lots need to be noted on the brewsheet with each batch of beer. All brewers grumble at the extra columns on the brewsheet, but those extra few seconds that it takes to jot down the lot numbers will allow the system to tell you what raw material made which batch of beer. The brew number typically becomes the batch number and will carry through to packaging. If you are consistent with tracking batches, then you can run a BACKTRACE report. That is a fancy word for tracking any component that went into a specific batch of beer. It makes recalls really easy and fast. If you are facing a recall, you want it to be easy and fast. I've seen cases where beer needed to be recalled due to the shipment of a bad lot of malt. It is much better to pull a few kegs from stock, than to pull all of the kegs out in the marketplace.



Date Coding is Key

Marking the lots on finished goods allows you to ensure that the cooler is rotated properly. Improperly aged beer is bad for everyone. It is important to know the age of the stock in the cooler at all times. Date coding the individual finished goods allows you to remove old beer in the marketplace. If you don't want to show actual packaging dates, you can use a Julian calendar or your own calendar. The important thing is that you (and your salespeople) can read the date code.



Mary Brettmann is the President of *Beverage Business Builders*, an accounting and administrative firm dedicated to craft brewing. She has four years' experience in craft brewing administration, two of which as a CFO in a regional craft brewery. She can be reached at www.bevbizbuilders.com.



Brewery Safety: Confined Space Entry and Lockout Tag Out

By Dan Drown

In the last issue safety was discussed as more of a philosophical and ethical pursuit to protect employees and the business. This time let's look at two of the most important regulatory programs required of all breweries, large and small.

Confined Space Entry – if you are operating a brewery you need a confined space entry program. Even if your employees do not enter confined spaces you must have an awareness level program to identify, inventory, and label confined spaces and keep employees out. Even so, contractors will need to enter vessels from time to time for repairs or fabrication. Most likely, employees will need to enter the mash tun or kettle for periodic cleaning that can't be done from the outside. Things you must do:

- Train your employees and have a written program.
- Perform lockout tag out of all energy sources and eliminate all actual or potential hazards prior to allowing confined space entry. If you cannot eliminate all actual or potential hazards the space must be entered as a permit-required confined space.
- Verify with a properly calibrated instrument that the oxygen level is between 19.5% and 23.5% and that a flammable gas, vapor, or mist is below 10% of its lower flammability limit. In the case of grain silos, ensure that the combustible dust concentration is below its lower flammability limit (LFL) also referred to as minimum explosible concentration (MEC).
- Have an individual outside of the confined space to serve as an attendant to monitor the activities of the individual on the inside. This individual may not enter the confined space for rescue purposes – two thirds of fatalities in confined spaces are would-be rescuers.

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5 Tips to Grow Your Business and Increase Your Free Time

By James Merlini

The New Year usually gets associated with a “New You.” Most people take January 1st as a day to start eating better, working out, spending more time with family, or learning a new language. While this is a common practice for many people, most business owners do not have the luxury of doing so. The primary reason is that they are, more often than not, the “command center” of their business. They are selling their services, performing the work, paying and managing employees, signing checks, depositing funds, doing the bookkeeping, and handling customer service issues, among many other things.

Take some time as we near the New Year to see where you can outsource, automate, and systematize aspects of your business. Be sure to also put systems in place that reduce your liability as an employer as well as free up more of your time. Simple things such as employment posters, providing meal/rest periods at the appropriate times, and storing time and labor hours, tend to be overlooked, but expose the employer to possible penalties and/or lawsuits. Just as I wouldn't recommend taking your

sick pet to your auto mechanic, I wouldn't recommend doing your own legal work, bookkeeping, or payroll. The liability and expertise involved far exceeds the small cost associated. By working with quality service providers you are able to substantially reduce your risk, while tilting the ever difficult work/life balance in your favor.

Use the following steps as a basic guide to find extra time to grow your business and increase your free time to focus on your New Year's resolution.

1. Analyze your business from marketing your services to following up after the services are complete; spend a lot of time here, use a white board and get your team involved
2. Highlight the non-revenue generating tasks that you, the business owner, are personally performing
3. Identify whether or not you can outsource these items at a reasonable cost
4. For items that do not qualify for outsourcing, make a systematized method for getting them done, then automate those

items using your clearly defined system

5. Re-evaluate your outsourcing components and systemization on a regular basis to look for further opportunities for improvement

6. Enjoy much more time to focus on growing your revenue AND spending quality time out of the office

Make 2016 a great year. Grow your business by doing what you do best; leave the other non-revenue generating tasks to someone else.

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Upcoming Craft Beer Events/Webinars

Best Practices When Hiring Employees Webinar

Thursday January 21, 2016
Tickets on Sale 12/22/15

[Go to our website for more info!](#)

For 2015, CBA has held a webinar every month since June. The topics have varied and we would love your input on what other topics you want us to cover. Please [email us](#) with suggestions.

Still [available for purchase](#) are recordings for:

- 2015 Industrial Storm Water Permits
- Distribution Contracts, Content, Strategy and Negotiation
- How to Clean Up Your Entity to Attract Investors for the Craft Beer Industry
- Sweat Equity: Best Practices for Valuing Equity Labor in LLCs
- What's Brewing in Beer Law for 2016

CCBA Spring Meeting

April 11-12, 2016
Long Beach, CA

Craft Brewers Conference

May 3rd - 6th, 2016
Philadelphia, PA

Candace will be speaking at this event as well as we will have a special surprise for those visiting the expo floor - look out for updates in the next B5 issue!

2015 Year-End Tax Considerations

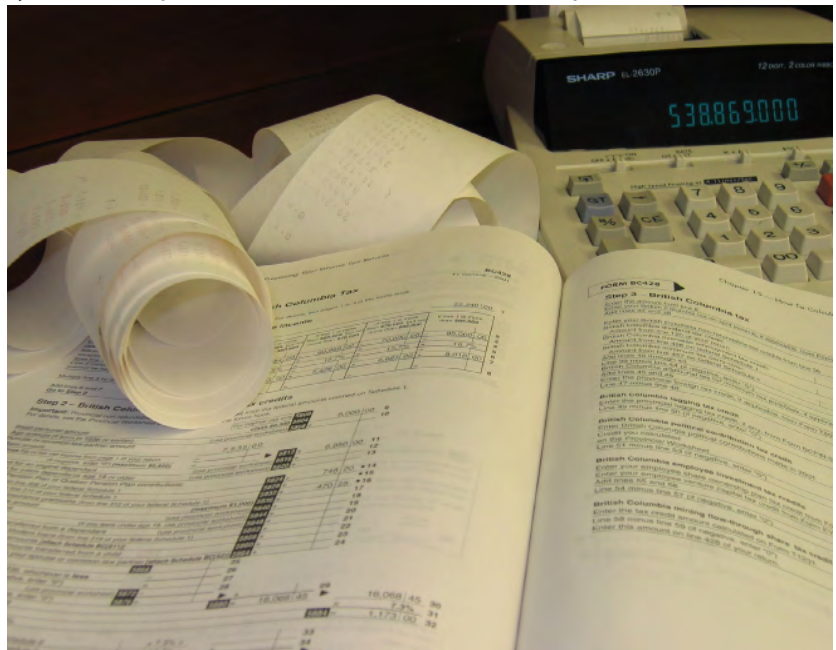
Tax strategies for your brewery should be thought of as a process that takes place throughout the year with a final review done prior to the end of the year. This is the opportune time to engage in proactive tax planning so as to help reduce tax exposure for you and your investors. Unfortunately, the year-end planning for 2015 will again be challenging due to the inaction of Congress as of the date of this writing. Congress has still yet to act on a number of tax breaks that expired at the end of 2014. It is not certain whether these tax breaks will be extended on a permanent or temporary basis and, if extended, if they would apply to the 2015 year. An extension of these tax breaks may impact your year-end decision process so please consult with your CPA.

Below are just some items that you should consider in your year-end planning process.

Meet with your tax advisor – We always suggest that you schedule a time to talk with your advisor prior to year-end. This is your last opportunity before the end of the year to discuss your finances with your tax professional so that they can provide proactive tax strategies to implement before the end of the year based on the most recent tax laws.

Organization and Start-Up Costs - The code limits the deductibility of both organizational costs and start-up costs to \$5,000 each (phased out for each dollar that the costs exceed \$50,000) in the year in which the business begins its "active trade or business" the remaining costs must be amortized or expensed over 15 years. Please note these costs cannot be deducted or expensed until the "business begins" which is a separate and distinct date from when the business is formed.

Please keep in mind that even if you spent money in 2015 you may not be able to deduct those costs if the brewery is not open. To the extent possible, try to delay expenses until such time that the brewery is open so that you can expense those items in full when paid.



Equipment Purchases – At the beginning of 2014 the then current 179 provisions expired and a brewery was only allowed to expense up to \$25,000 for the cost of new equipment. The remaining cost then had to be "capitalized" and expensed over the useful life of the equipment. It was not until December 16, 2014 Congress extended the 179 deduction limits

[Continued on page 11](#)

Legal Updates Cont'd

Perhaps just as importantly, however, the bill also deals with non-profit events. The ABC now allows a beer or spirits manufacturer to sponsor and participate in events conducted by and for the benefit of non-profit organizations, regardless of whether a retail or nonretail licensee is involved as a sponsor or participant. This gem comes after the chaos of the Grape Escape fiasco. For those who may have missed it, the ABC placed a number of manufacturer licensees on probation for having "tweeted" their participation in a festival sponsored by a large retail chain. As the retail chain was the main sponsor of the event, its name featured prominently in posters and other media circulating for the event. ABC determined that the tweet was a thing of value given to the retail chain, in the form of free advertising.

As a result of AB 776, now non-profit events may have as many sponsors as they wish, and such sponsors and participants may be manufacturing licensees, retail licensees, or any combination thereof. Furthermore, sponsors and participants may advertise and promote their involvement with the event even if such promotion takes the form of sharing, retweeting, or otherwise reposting social media affiliated with another house in the three-tier system, so long as the advertisement does not include the retail price of any alcoholic beverage and the retail licensee is not promoted in a manner beyond referencing its sponsorship or participation in the event.

Notably, there are provisions incorporated into AB 776 aimed at maintaining the spirit of tied-house restrictions. Any payments or other consideration provided by a manufacturer must go directly to the non-profit conducting the event; as always, no thing of value may be given to a retail licensee; and alcoholic beverages may only be donated to the non-profit in accordance with existing laws.

A separate provision of the bill clarifies the illegality of a retail licensee purchasing beer from a manufacturer at prices other than those posted with the ABC; in a county where prices have not been posted at all; or where the beer is marked "Not Packaged for Resale."

Lastly, the bill also clarifies that the ABC does not prohibit the purchase of advertising in a publication circulated by a nonretail licensee, even if that publication or advertising takes place on a website or social media. The law specifically defines "publication" to include websites and social media feeds so long as such are operated and maintained by a nonretail licensee.

AB 527 and AB 1320 – County Specific Event Privileges

Currently, there is an exception to the restrictive tied-house regulations that allows beer manufacturers and other license types in Los Angeles County to sponsor events and purchase advertising directly from or on behalf of "live entertainment marketing companies." AB 527 and AB 1320 respectively create a similar exception for events associated with live entertainment marketing companies in Napa and San Diego Counties.

AB 527 was enacted in an effort to boost the economy in Napa County following a damaging earthquake in August 2014. The law will expire on January 1, 2019 though, unless of course additional legislation steps in before that time.

The terms of AB 527 require the live entertainment marketing company to be a wholly owned subsidiary of a live entertainment company, and not publicly traded. Also, the entertainment company must have its principal place of business in Napa County. Notably however, it is of no importance if the company also owns interests in a retail or winegrowers license, whether directly or indirectly. Rather, the only limits applied are that the event not take place at, and the purchased advertising cannot be placed in, any premises licensed as a retailer or winegrower that shares such ownership interests.



Breweries and Zoning - Know Your Location

By T. Dustin Hauck

Understanding your city's zoning code is critical to identifying what neighborhood your brewery will reside in. Every city has different zoning designations for what uses are allowed in that zone. Talking to your zoning officials early can ease the process.

Most cities contain industrial zones that allow breweries as light manufacturing. A small brewery might also be allowed in some commercial zones depending on how that city treats brewery operations. Brewing is much like a neighborhood bakery or cheese maker. If those are allowed, perhaps a small brewery could be allowed as well.

Some jurisdictions may allow

breweries in other zones through a special permit such as a Conditional Use Permit (CUP). It is important to understand the cost and time necessary for a CUP, as well as the possibility that it may not be approved. Use permits are discretionary and subject to public approval. Understanding these risks is critical.

While a production brewery may be allowed in an industrial zone, a tasting room open to the public may also require a CUP. If approved, a CUP could have restrictions such as the size and/or hours of operation of the tasting room.

The best way to understand your city's zoning regulations is to meet with your local planning and zoning department. Talk to them about what zones are

ideal for a brewery, what zones could allow a brewery through a special use permit, and what impact a retail tasting room could have on your zoning approval.

Knowing what zones to look in will also help your real estate broker narrow your property search. Once a few potential properties have been identified, the next step is a due diligence evaluation of each site. Next issue's article will tackle what to look for in your perfect space.

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INSIGHT

for the
Craft Brewer



Craft Beer Distribution: Laying the Groundwork (Part III)

Preparing for distribution is critical to maximizing a successful distribution partnership.

In previous B5 issues we covered the importance of creating a compelling identity – or brand – for your brewery. In the last issue we started working through financing the business expansion necessary for distribution, beginning with scaling up production and package design. Once you have your arms around these internal expenses, prepare to reach outside of the brewery to the new territory.

How will you get your beer to other areas? Taking the time at this point to look at transportation will allow you to speak knowledgably with your potential distributors about cost efficiency. Review trucking, and reach out beyond to possible coordination using other methods of transportation, such as railroad. Look to see if there are transportation hubs in your area, and perhaps talk to fellow local brewers to find out if there are already coordinated transportation efforts going on that you could join.

Move your thoughts to your future initial territory. How are you going to support this area from a personnel standpoint? There are two basic ways to provide support: a new sales position based in the new territory, and assigning this coverage to an existing staff member. Either approach requires additional expenses with regard to travel, training, and time. Both a new employee and an

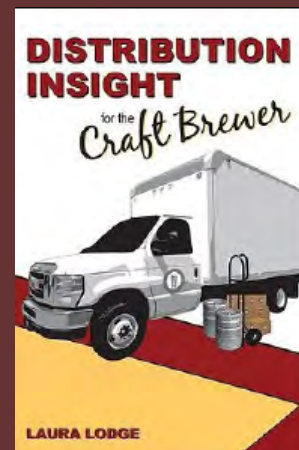
existing staff member with an additional territory will need time to train. A new position requires advertising, interviewing, hiring, and brewery/brand immersion. For someone already on your team, these steps can be bypassed in favor of learning their way around the new territory and doing a lot of research. Both will need to travel back and forth to the brewery in the process, and both require time to be comfortable and ready. Marketing in the new territory will require a fresh look at your packaging and your supply of POS (point of sale). Think about how distributors, retailers, and the end consumer will be looking at your packaging.

The distributor will almost always be looking at the case box – outside packaging – for the beer, as will the retailer until it goes on the shelf. Ensure that your packaging identifies the brewery name and brand (specific product) name at every level on all sides of the packaging; keg, case, 12pk, 6pk, 4pk, bottle. You must be able to identify the brewery & the beer from a box that is stored 3 levels up on pallet racking in the warehouse and in deep stacks in the retailer's cooler.

If you have approved warm storage, you will also want your case boxes to be appealing for floor displays within the liquor store, which will often include closed cases as well as 6pks and 12pks as part of the presentation. POS is essential to both a territory roll out and to consistently supporting your distributor and

brewery sales team members. POS helps to sell your beer in different ways: informational sell-sheets, shelf-talkers, and posters educate the distribution staff, the retailer, and the end consumer, while brewery logo items including stickers, banners, bottle openers, t-shirts, golf-shirts, tin tappers, hats, neons, camping chairs, and other larger items simply provide branding visibility and increase awareness of your brewery in all locations. When thinking about POS, also think about which items you will provide to the distributor at no charge, and which you will share the cost with them. In the next newsletter, look for "Craft Beer Distribution: Laying the Groundwork (Part IV)" with more expansion considerations on the individual bottle and keg level.

Laura Lodge - Distribution Insight
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Legal Updates Cont'd

The event itself must be located within Napa County, at a venue providing “artistic, musical, sports, food, beverage, culinary, lifestyle, or other cultural entertainment.” The venue must also expect a daily attendance of at least 5,000 people, and must somehow be connected to one of the forms of the cultural entertainment listed earlier. Furthermore, the event must not be held more than three times in a year. The company hosting the event is required to warrant as much, in writing, to any retail licensee participating in the event. Importantly, the event must also serve other, competing brands than those manufactured by the sponsors of the event.

The agreement to sponsor or purchase of advertising space must be in writing, and cannot be conditioned directly or indirectly on the purchase, sale, or distribution of alcohol. Additionally, the law specifies that it does not authorize a beer manufacturer to purchase advertising space or time directly from or on behalf of an on-sale retail licensee. Lastly, any solicitation or coercion by a retail licensee, to purchase advertising or sponsor an event is a criminal offense, whether directly aimed at the beer manufacturer or indirectly aimed through a wholesaler – and that is on top of pecuniary penalties and possible license revocation!

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AB 1320 accomplishes a comparable feat for San Diego County, although it is limited to events organized and conducted at the San Diego Fairgrounds in Del Mar. While the law was clearly drafted to cover one specific event, it takes effect immediately and covers events that will promote artistic, musical, sports, or cultural entertainment. The event must not span more than four consecutive days in which approximately 100 acts will perform before approximately 20,000 patrons. Specifically, the marketing company must be a Delaware limited liability company, but allows up to 25% common interest with a winery. That winery must not be the only brand of beer, wine, or spirits served, however. The same rules about coercion and solicitation apply of course, and while the advertising and sponsorship are allowed, the general ban on giving things of value to retailers remains in place.

SB 796 – Maximum Retail Locations, Qualified Investors, Contest Prizes, and Autographs

SB 796 accomplishes a variety of things, with the most notable for craft breweries being the cap placed on retail locations.

The new provision loosens the tied-house restrictions in some aspects by allowing an individual already in possession of an on-sale license to also own a beer manufacturing license, so long as that individual owns no more than six such licenses. That same individual can invest, serve on the board of directors, or be employed at the brewery.

On the other hand, the law simultaneously limits the number of retail locations that a brewery may operate, whether directly through its own license, or indirectly through common ownership (including these new-fangled investors), to a maximum of six. Any alcoholic beverages purchased for the on-sale licensees associated with that new investor must be purchased either through an independent wholesaler or from a licensed beer manufacturer that is adjacent and contiguous to the on-sale licensee.

On a similar note, individuals with less than 10% interest in a private equity fund that also holds an interest in another license are now eligible investors for another licensed entity. The private equity fund's interest in the other ABC license must be a passive investment and its advisors must be compliant with the federal Investment Advisors Act for the arrangement to pass muster. The potential investor must not have any control

Brewery Safety Cont'd

- Have an established rescue plan. Calling 911 is not a rescue plan. Having the individual inside of the confined space in a 4 point harness with an available lifeline may be useful to assist if the employee has to self-rescue. Confined spaces where the entry point is more than 5 feet above the bottom of the space requires availability of a mechanical retraction device.

Lockout Tag Out – all breweries have hazardous energy sources which must be isolated prior to employees or contractors cleaning, repairing, servicing, setting-up, or adjusting of machines and equipment in which unexpected energization or start up or release of stored energy could cause injury. Tens of thousands of injuries and fatalities occur each year in the US due to improper hazardous energy isolation. The types of energy to be considered include: heat, chemical, mechanical, electrical, pneumatic, hydraulic, and energy stored in suspended weights, compressed springs or capacitors. Disconnection of piping carrying hot liquids is, unfortunately, a common cause of serious thermal burns in the brewing industry and falls into the category of lockout. Your program must include:

- A written procedure and employee training. Contractors must comply as well.
- Equipment-specific procedures (sequential steps) to follow to perform lockout or energy isolation.
- Identification of energy isolation devices and availability of lockout devices, “Danger Do Not Operate” tags, and distinctly identifiable locks that are to be used only for lockout.
- Each worker involved in a lockout must have their own lock with a single key. No master keys or supervisor keys are allowed.
- Employees must know how to identify hazards, notify affected coworkers, isolate and lockout energy, remove or bleed off stored and potential energy, verify the effectiveness of the lockout, and bring lockout equipment back into service.

This brief review of confined space entry and lockout tag out is not all-inclusive but if you are unfamiliar or unaware of any of the requirements listed then your program needs some attention. All brewery operations employees should be thoroughly familiar with both of these programs – no exceptions.

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Legal Updates Cont'd

over the investment decisions of the equity fund, as attested by the fund's manager.

Another update provided by this bill relates to acceptable prizes when conducting contests and sweepstakes. The current law allows prizes to be awarded to the winners of consumer contests and sweepstakes, so long as the prize is not alcohol or redeemable for alcohol. Strictly speaking, that language remains in place, but now there is a newly added caveat that the inclusion of alcoholic beverages as an incidental part of a prize package is acceptable.

Lastly, SB 796 extends indefinitely the existing law that allows for autograph events under certain conditions. This law was set to expire next year but, pursuant to SB 796, the current arrangement is extended indefinitely.

AB 780 – Advertising of Retailers

This bill updates advertising rules in regards to retailers. Currently, a manufacturer may list the contact information of on-sale retailers that carry its beer so long as (1) it is done in response to a direct consumer inquiry and (2) the response includes more than two unaffiliated retailers. This bill has eliminated the need for a direct consumer inquiry and broadened the rights to include off-sale retailers as well. Any such listing must still avoid any laudatory statements, and must be limited only to the retailer's name, address, phone number, email, web address, or other electronic media. The listing also cannot reference the retail price of the beer.

Marketing Makes Beer Taste Better

Before they were acquired, Saint Archer was selling \$15,000 a month in shirts from their brewery according to an article published on [Shop-Eat-Surf](#). How is your brewery doing in apparel sales?

This is not a plug for the guys at www.shirtsonatp.com. This is a wakeup call and reminder that as more breweries come into your space, you're going to need to do more to differentiate yourselves and keep customers thinking about, talking about and promoting your brand when they're not enjoying your liquid assets.

Saint Archer was not overly unique, their path was only slightly different than the traditional craft breweries. It's one that's prevalent in action sports, where they're from, but easily replicated elsewhere. Regardless of whether you're looking to be acquired, seeking investors or simply want more people to buy your beer so you don't go out of business, there's a lot you can learn from Saint Archer's marketing.

- **PR and Marketing:** Saint Archer was regularly making news. Not just through unique [collaborations](#), but through their events, new beer launches, team hires, etc.

Continued on page 12

Year-End Tax Cont'd

limits that allowed Breweries to immediately deduct up to \$500,000 of the cost of new equipment in the year purchased.

Unfortunately, congress only extended the 179 deduction for the 2014 year. As of the date of this publication we are still waiting to see if congress will again extend the 179 limits. What this means to you is that the current law will only allow you to immediately expense up to \$25,000 for the cost of new equipment. . Any action or (inaction) by congress related to this year may impact your decision process and tax planning with regard to the purchase of new equipment.

Lastly, please keep in mind that many states will not conform to IRS rules related to the immediate deduction of equipment under the 179 rules. For example, despite the fact that for federal purposes a brewery could expense up to \$500,000 for the cost of new equipment, California only allowed for an immediate deduction of \$25,000. FICA tip credit – microbreweries and brewpubs with taprooms will most likely qualify for a FICA tip credit. Brewery owners should understand that reported tips are subject to the FICA taxes. The brewery (as the employer) is then responsible for paying in a "matching" amount of FICA taxes. In most cases the brewery should receive a credit equal to the amount of matching FICA taxes you paid. The credit can be reduced if the tipped employees are paid less than the minimum wage designated for the tax credit. Please make sure you are tracking this adequately so your tax preparer can calculate your tip credit.

Accelerating Expenses – If your brewery is already open consider accelerating expenses into the 2015 year to take immediate deduction of the expense. The typical rule is that a 12 month pre-payment for non-goods and service items can be expensed in the period they are paid for tax purposes. This means you can pre-pay items such as property taxes, insurance, dues, etc. If given the opportunity pay the expenses now to help reduce current year income.

Buy an SUV for business purposes – Normally when you buy a new vehicle and use it for business your deduction for depreciation is limited to the "luxury car" rules. However, this rule does not apply to vehicles that have a Gross Vehicle Weight in excess of 6,000 pounds. If the vehicle qualifies, you are eligible for an immediate \$25,000 section 179 deduction if the vehicle is purchased (not leased) in the current year.

Have questions, need help, and just want to get back to brewing? Call or email us. We are here to help.



Earning Your Trust Since 1946

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Certified Public accountants
 Phone: 619.231.1977

Marketing Cont'd

- **Branding:** Look at some of the more notable and popular brands in the craft beer world today. Their logos aren't by accident and in many instances, they paid big bucks to make them happen. They're clean and appealing and aren't necessarily just about beer. Keep that in mind when it comes time to refresh yours.

- **Make Better Shirts:** This goes back somewhat to the point above. How many people wear shirts with cool logos, just because of the logo? A lot. The biggest brands in the surf industry don't actually make surfboards... they sell t-shirts. They sell the image.

If I like your beer and you have a cool logo, I may wear it on a shirt or hat... if the quality of your apparel is there. I wrote about this in a [previous B5 newsletter](#) before. Awful twill hats, high crown truckers and 50-50 blend shirts won't cut it any longer.

- **Create An Ambassador Team:** Saint Archer took a page right outside of the action sports playbook, but endorsement deals are nothing new. You could do something very similar, even if your team of endorsers aren't financially invested in the brand. The Saint Archer team talked about the brand in the real world and through social media. They lived it. You may not have known who P-Rod (who happens to be the son of comedian Paul Rodriguez) or Atiba were before, and you still may not, but enough people did that mattered.

- **Take The 'Me' Out Of Social Media:** Engage with your audience. Repost, share, like and talk about things other than your brand. Social media is marketing, NOT advertising. It's supposed to be social. Do you really want to talk to the guy at the party who only talks about himself?



You've invested an incredible amount of work into your product, but history shows that simply having the best product won't guarantee your success. As the craft beer world continues to grow, simply making great beer may not be all that's needed to help you survive.

Bill Byrne is a director at [Remedy Communications](#), a full-service public relations and social media agency in San Diego with associates in key markets across the country.

Remedy offers complimentary, one hour PR and social media audits for clients of [The Craft Brew Attorney](#), in addition to its more comprehensive PR and social media training programs. Audits can take place via phone, online or face-to-face in the greater San Diego area. Interested? Email info@remedypr.com to learn more.

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AB 893 – Labeling Requirements

This bill dramatically streamlines the label approval process in California. It removes the previously used and time-consuming approval process and allows breweries to sell beer as soon as a label registration is filed, without the need for any further action or rubber-stamping by the ABC. The registration paperwork requires: (1) the actual name and address of the manufacturer; (2) any applicable fictional names; (3) the type of beer and any brand names it will be sold under; and (4) any applicable contract brewer or joint venture involved in making the beer. Lastly, California has opted to match the federal label requirements and thus the label itself is only required to include: (1) the brand and type of beer; (2) manufacturer information; (3) bottler information if different from that of the manufacturer; and (4) the ABV if in excess of 5.7 percent.

AB 774 – Farmers' Markets Tastings and Non-Profit Privileges

The newly passed farmers' market permit for beer manufacturers is getting an early renovation. While wine growers were already allowed to offer instructional tastings at farmers' market, beer manufacturers were previously denied the privilege. This bill rectifies the disparity and enables a beer manufacturer with a farmers' market permit to not only sell packaged beer but also to conduct instructional tastings, so long as the area used is separated from the remainder of the market by a permanent or temporary barrier of some form. Such tastings will obviously be subject to the managerial control of the organization operating the farmers' market,



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and only one beer manufacturer may host such a tasting event at any given farmers' market.

This same bill also updates the privileges associated with non-profit organizations. Much like the farmers' market tastings, wineries have long been able to donate wine to specific types of non-profit organizations, so long as the non-profit had applied for the appropriate license. Once the non-profit obtains the license, it can sell any donated or purchased wine. Now, beer manufacturers will enjoy those same privileges. A brewery may donate or sell beer to a non-profit organization if it has applied for the special temporary on-sale or off-sale license. Note, however, that if the non-profit is going to use that license for a period of two or more days, any bottles of beer (or wine) donated or sold to it must be used at an "identifiable fundraising event" sponsored or conducted by the non-profit organization, and the labels of that beer and wine must "prominently identify the event."

AB 1295 – Craft Distiller's License

AB 1295 creates a new license for "craft distilleries." The license is available to spirits manufacturers that make no more than 100,000 gallons of distilled spirits per fiscal year (excluding brandy).

This license allows a craft distillery to offer tastings to the public under one of two structures. Under both approaches, a distillery may offer tastings of its own manufactured spirits, limited to no more than 1.5 ounces of spirits per person, per day. It should also go without saying that tastings should not be served to any person under the age of 21.

The first type of tasting is one conducted off the premises for an event sponsored by a non-profit organization. This provision allows the craft distillery to participate in the type of festivals that, much like craft beer festivals, have become so popular in recent years. Keep in mind though, only events sponsored by a non-profit organization that is in possession of its own ABC license will qualify. Additionally, no sales of spirits may be performed or solicited at

such an event.

The second type of tasting is one conducted on the premises, and may be offered either free of charge or at a price set by the craft distillery. Moreover, a craft distillery may sell the equivalent of 2.25 liters of its spirits, in any combination of prepackaged containers, per day per customer as part of such a tasting. Strictly speaking, however, the sales of such prepackaged spirits must be part of a tasting and cannot be had in isolation. Lastly, the tasting may take the form of a cocktail or mixed drink, if desired.

The tied-house restrictions applicable to alcohol manufacturers also have some tweaks contained in AB 1295. Individuals with more than 51% ownership in the craft distillery may also hold ownership in and serve as an officer/director of an on-sale license, under certain conditions. The first condition deals with how the on-sale licensee acquires spirits. For the exception to be applicable, either the on-sale licensee must purchase all of its spirits from a wholesaler or,

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If the on-sale licensee purchases the spirits directly from the craft distillery, those two licensed entities must be the only parties involved with the transaction. So be wary of investors that have a spread portfolio as this rule looks at ownership interests both individually and in the aggregate. Additionally, in either case, the craft spirits manufactured by the craft distillery must not represent more than 15% of the spirits in any given brand category offered for sale by the on-sale licensee to the public. At least nine other options must be listed and offered for sale by the on-sale licensee for any given brand of spirits.

Craft distilleries will be eligible for bona fide eating places on their premises. Should a licensee decide to open such an establishment, alcoholic beverages – including beer, wine, and spirits – manufactured by other companies may be sold for on-premises consumption in the contiguous space so designated as the bona fide eating place. Keep in mind, however, all alcoholic beverages manufactured by another licensee must be purchased through a wholesaler. Private events that are not open to the general public, on the other hand, are entitled to serve and sell alcoholic beverages from other manufacturers whether or not it was purchased through a wholesaler if it was brought to the event by the attendees or organizers. But, if the craft distillery is the entity purchasing such outside alcohol, even for the private event, it must still be purchased through a wholesaler.

The rights and privileges granted to a craft distillery under this new law also carry a grandfather clause

allowing ownership interests and other privileges to remain in place should the distillery lose its “craft” status at some point in the future due to an increase in the amount of spirits manufactured that rises above the 100,000 gallon per year limit.

Increase in the Minimum Wage

As of January 1, 2016, the required minimum wage for most of California will increase to \$10.00 per hour. If you are in a city or county that has approved a higher minimum wage rate, you are required to compensate employees at that higher rate.

This wage increase will affect not only non-exempt, hourly employees, but will also affect the compensation for exempt, salaried employees and for exempt, commissioned inside sales employees.

- Exempt employees in California generally must earn a minimum monthly salary of no less than two times the state minimum wage for full time employment. As of January 1, 2016, this means that an exempt employee will need to earn at least \$41,600 per year to meet the minimum salary test for exempt status. In cities that have a higher minimum wage than \$10.00 per hour, the baseline salary for exempt classification is set by the state's minimum wage (not each city's).

- Commissioned inside sales employees in California generally must earn more than 1.5 times the minimum wage per hour, with more than half of their income coming from commissions. As of January 1, 2016, this means that a commissioned inside sales employee will need to earn at least \$15.00 per hour, in combination of straight pay and commissions, to

meet the minimum salary test for exempt status.

If exempt employees in either category do not make the minimum salary thresholds, they will become non-exempt and entitled to overtime payments and meal/rest breaks.

SB 579 – Sick Leave and Child-Related Activities Leave

SB 579 makes significant modifications to the current laws regarding Kin Care Leave and Child-Related Activities Leave.

Under the existing Kin Care law, California employees who provide paid sick leave or paid time off (PTO) to employees are required to let those employees take up to ½ of the annual accrual of that leave to attend to the illness of a “family member,” defined as a parent, child, spouse, or registered domestic partner. This definition of a “family member” is more restrictive than the definition used in California's Paid Sick Leave law, which became effective on July 1, 2015. Because of the difference in the definitions, employers were left confused about what type of sick leave use was protected and for what family members.

SB 579 harmonizes the two different definitions of family member into a single definition, and takes the further step of applying the protections of Kin Care Leave to any sick leave taken for the reasons provided under the Paid Sick Law leave. In other words, Kin Care Leave will no longer be used solely for caring for an employee's family members, but will apply to almost any use of covered sick leave by an employee. Employers will now no longer need to track whether an employee is taking sick time for their own illness or for the illness of a family member, but will apply to almost

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any use of covered sick leave by an employee. Employers will now no longer need to track whether an employee is taking sick time for their own illness or for the illness of a family member.

Additionally, any paid sick leave taken by an employee will now count towards both the required 3 days or 24 hours of Paid Sick Law leave and ½ of the annual accrual of sick leave/PTO for Kin Care Leave. In either instance, you cannot subject an employee to disciplinary action or other adverse employment action based on their use of this protected sick leave, either for themselves or for a family member.

SB 579 also creates additional leave for child-related activities. All employers in California are required to give unpaid time off to a parent or guardian of a pupil enrolled in a California school, if that appearance is required by the school. That law remains unchanged by SB 579. SB 579 applies only to the Child-Related Leave that is required for employers with 25 or more employees.

Under the existing law for Child-Related Leave, California employers with 25 or more employees must give up to 8 hours of unpaid leave per month (capped at 40 hours per school year) to parents, guardians, and grandparents with custody of one or more children enrolled in K-12 education to attend voluntary school activities and conferences. As of January 1, 2016, the list of eligible categories of employees will expand to include stepparents, foster parents, or those in loco parentis (i.e., an adult who has responsibility for children, such as an adult sibling, aunt, uncle, etc.) SB 579 also expands the permitted reasons for the leave to include unpaid time off to address an emergency with a school or childcare provider, including a request that the child be immediately picked up, or to address an unexpected closure of the school or childcare provider or a natural disaster. Unpaid time off is also available to find, enroll, or re-enroll a child in school or with a licensed childcare provider.

AB 1506 – Amendment to California's Private Attorney General Act

AB 1506 affects one of California's strangest and most peculiar laws – the Private Attorney General Act, or PAGA. AB 1506 became effective on the date that Governor Jerry Brown signed the bill into law, which was October 2, 2015.

PAGA was enacted in 2004 as a way to make enforcement of existing labor code violations in California easier, given the limited resources of the Labor and Workforce Development Agency. In California, an employee can challenge any labor code violations as an individual matter, covering only the harm suffered either by the employee, or as a collective matter under PAGA on behalf of all employees who suffered identical labor violations by the same employer. If the claim is initiated under PAGA, the penalties are distributed 75% to the state and 25% to the employees.

AB 1506 is a pro-employer law, which gives the employer a limited opportunity to correct certain wage statement violations before a PAGA claim can be submitted on wage statement violations. California requires up to nine items to appear on a wage statement, and employees can bring either individual or PAGA claims if their wage statements do not comply with the law.

AB 1506 allows an employer to correct the dates of the pay period and the address of the employer, and prevent a costly PAGA claim based on those two errors.

AB 1506 is only limited to corrections of these two areas, and the employer can only use this provision once for the same violation within a 12-month period.

SB 358 – California Fair Pay Act

California enacted one of the most comprehensive fair pay acts in the country, which seeks to remedy the wage gap between male and female employees. California law already requires employers to pay men and women

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working in the same location equal pay for the same job. The California Fair Pay Act eliminates the same location requirement, and states that men and women who are engaged in “substantially similar” work must receive equal pay, regardless of the work location.

The California Fair Pay Act does permit employers to pay individuals working in the same job at different pay rates, so long as the factors behind the pay discrepancies are legitimate, non-sex related factors (for example, education, training, merit, and production). SB 358 preserves these factors, but places a greater burden on the employer to (1) document the specific factors that go into establishing compensation and (2) showing that those factors are equally regardless of gender. If all the women in a certain job are making less than all the men in that same job, you are going to run into issues, likely a discrimination lawsuit.

SB 358 also restated and emphasized that employees in California cannot be prevented from discussing their compensation. This has always been the law, but SB 358 reinforces this mandate.

SB 600 – Additional Protected Classes in Unruh Civil Rights Act

The Unruh Civil Rights Act is already existing law in California, and is aimed at preventing discrimination. Originally passed in 1959, the provisions of the law have been expanded over time to prevent discrimination based on sex, race, color, religion, ancestry, national origin, age, disability, medical condition, marital status, or sexual orientation. The Unruh Civil Rights Act applies to all businesses, including retail establishments and restaurants. SB 600 adds three new protected categories to the list, and specifically prohibits discrimination based on citizenship, primary language, and immigration status.



This law does not prevent employers from verifying the legal immigration and work authorization status of employees – that continue to be mandated by federal law. The law also does not require a business to provide service or documents in multiple languages. However, SB 600 does prevent an employer from adopting or enforcing an English-only policy in the workplace (unless justified by business necessity), and prevents businesses from refusing to serve individuals solely on the basis that the customer or vendor is not a U.S. citizen, is not an English speaker, and/or is not in the country legally.

AB 987 – Reasonable Accommodation

AB 987 states that an employee’s request for an accommodation for a disability or for religious reasons is considered a “protected activity” for a retaliation claim under the California Fair Employment and Housing Act (FEHA). The FEHA applies to all California employer with five or more employees.

Existing law requires an employer covered by the FEHA to provide a reasonable accommodation to an employee based on, among other things, a person’s disability or a person’s religion. This can include things like allowing for a chair on an assembly line due to a disability, or allowing a woman to wear a religious head covering in lieu of the standard uniform. The FEHA also prevents discrimination against an employee if the employee files a complaint.

AB 987 amends the existing FEHA law to now prohibit an employer from retaliation or discrimination on the basis that the employee requested an accommodation due to disability or religion, regardless of whether the accommodation request was granted or denied. This makes it easier for a terminated employee who has made a request for an accommodation, even if the request was granted, to sue for employment discrimination upon termination.

Employers should always be documenting and recording the specific, non-discriminatory reasons behind employment termination or any other adverse employment decision. With AB 987, this is even more important.