

## **New Jersey Division of Alcoholic Beverage Control Releases New Regulations Governing Craft Breweries**

May 31, 2019

Following the rescission of a profoundly controversial prior Special Ruling in 2018 after significant outcry from microbreweries and aficionados of local craft beer, as you may be aware, the Division of Alcoholic Beverage Control (“ABC”) has recently issued a new Special Ruling on May 28, 2019. While many of the most contentious provisions of the prior 2018 Special Ruling have been modified and removed from this new Special Ruling, there remain a number of new requirements that have the potential to skunk a microbrewery’s license compliance efforts. Additionally, some of these new requirements must be complied with in less time than it takes to brew a new batch of beer. Pursuant to the Special Ruling, compliance with new food and tour requirements will be enforced immediately, and new event notification requirements begin as of June 3, 2019. Certain other new requirements are considered not to be enforcement items, but are now the ABC’s official interpretation of the universe of activities permitted under the limited brewery license. In particular, here are some of the highlights of the new Special Ruling:

- One of the most controversial restrictions in the 2018 Special Ruling was the limitation of a microbrewery to 25 "on-premises special events" per year. These “special events” included yoga, animal adoption events, educational seminars; trivia night; “viewing parties”; and art events (including paint-and-sip), which were a core part of many microbreweries’ business operations. The new 2019 Special Ruling expressly states that under certain circumstances, these types of events may not count towards the limit of 25 "on-premises special events." However, if such an event “is promoted or advertised by a Limited Brewery licensee or by any vendor acting on behalf of a Limited Brewery licensee, by way of any type of media, including social media,” it appears that event may count towards the limit of 25 “special events” and may require online notification of the ABC via the POSSE system **beginning June 3, 2019**. As a result, microbreweries should be mindful of content posted on social media sites, both by the microbrewery itself and by business partners that may participate in developing events held at the microbrewery. While social media may be a large component of a microbrewery’s marketing strategy, license compliance must now be considered as part of a unified marketing plan.

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In addition, tour requirements have also been modified. Breweries must continue to provide tours to their guests who are drinking beer at the premises (rather than purchasing six-packs or filling crows/growlers to go), and the new tour requirements mandate “a material interaction between a patron and brewery staff.” The Special Ruling emphasizes that there must be “engagement between brewery staff and a patron” even when a tour is provided via video or is self-guided. While the Special Ruling allows a repeat visitor to

take an tour only once a year, the microbrewery must have a formal system documenting each visitor's receipt of a tour (even in connection with an "on-premises special event"), which documentation must be provided to the ABC on request. As a result, in order to waive the requirement that each visitor take a tour on every visit, a microbrewery must develop and maintain a written record system. Further, tours now require "engagement" between staff and a patron.

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Other than serving small snacks, such as chips, pretzels, and nuts, microbreweries are prohibited from making and selling food as a condition of the limited brewery license. **The new Special Ruling now prohibits collaboration with food trucks or similar vendors on the licensed brewery premises.** Breweries may, however, provide menus from restaurants as long as there is no exclusive relationship between the brewery and restaurant. Guests are permitted to bring outside food or have food delivered to the brewery.

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New limitations are placed on the development of outdoor spaces on the licensed premises.

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Limited breweries are limited to 52 "private events" per year, such as weddings, birthdays, anniversaries, and reunions, among other events (including up to 25 "social affair" events).

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Limited breweries may now participate in up to 12 "off-premises events" per year. Off-premises events may include civic or community events (sponsored by a municipality or county, for example), athletic events, or holiday celebrations. However, limited breweries must submit applications via POSSE in advance of such events. The application form will become available June 3, 2019.

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Under the Special Ruling, limited breweries may not "crowd fund" or provide membership programs/clubs that involve serving free or discounted beer to members.

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Limited breweries are limited to 2 television screens at the premises, which cannot be greater than 65 inches in size.

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Limited breweries cannot permit happy-hours or other specially-priced malt alcoholic beverages to be sold on the licensed premises.

The new Special Ruling comes during an important time for craft breweries in New Jersey. As the Special Ruling notes, New Jersey is tied for first place in terms of growth in the American

craft beer market, and many highly-regarded craft breweries call New Jersey home. All limited brewery license holders will ultimately need to comply with the new Special Ruling. Microbreweries may wish to consult with a lawyer in order to “hop” into compliance. Should you have any questions concerning complying with these new regulations, please contact Nino A. Coviello, Lauren M. Limauro, or Justin Calta of Saiber LLC’s business services practice.