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Keeping food deliveries safe

By Karen Kroll

As much of the U.S. shelters in place to help slow the spread of COVID-19, more consumers are using delivery services to get grocery and restaurant orders. Meal delivery services grew by 24% for the year ending March 2020, according to Second Measure, a technology company that analyzes consumer behavior.[1]

The services' popularity highlights questions about the responsibilities of all parties—restaurant or grocer and delivery company—to ensure orders are safely transported. However, no easy answer exists. One reason is that guidance and regulations continue to change. An example is the recent addition of several provisions to the Los Angeles Municipal Code, including one requiring food delivery platforms to offer their workers the option of a "no-contact" delivery method.[2]

In addition, many drivers are considered independent contractors rather than employees.[3] The companies that engage them generally exert less control than would be the case if they were employees. For example, Uber Eats advertises that drivers have "no boss."[4]

Complicating things further, even delivery drivers who otherwise are independent contractors can be considered employees in specific cases. Take the recent ordinance change in Los Angeles. It considers delivery drivers employees for several specific purposes, including the right to predictable schedules and to a contact-free delivery method, said Bruce Sarchet, a shareholder with employment law firm Littler. "If you're doing business in Los Angeles, you should be aware of this," he added.

While these issues have always been "below the surface" of the food delivery business, they hadn't emerged as major concerns until the pandemic, said Shawn Stevens, food industry attorney with Food Industry Counsel LLC. Although there's currently no evidence of COVID-19 being transmitted through food, it can sometimes be transferred between infected people and on objects such as delivery bags. "We're in the infancy of this new market, and the rules are still being made," he said.

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