



# Beyond Brewing– Business Basics Bulletin

NOVEMBER 2014 EDITION



I-9 Myths

Page 2

Distribution

Page 3

Industry Updates

Page 4

Exporting

Page 6



# 5 MYTHS:

## *I-9 EMPLOYMENT VERIFICATION REQUIREMENTS*

By Sharon R. Mehlman, Esq.  
Mehlman Barnes LLP

The Employment Verification Form (Form I-9) has been required for over 20 years. The purpose of Form I-9 is to confirm the identity and work authorization of employees. However, many employers are not aware of the requirements or that it applies to them. As a result, many smaller employers are subject to fines and other penalties for failure to have properly completed I-9 forms on file. The following are the top five myths about the I-9 requirements:

MYTH 1 - We are a small employer and only have part-time staff; the I-9 requirements don't apply to us.

All employers, regardless of size, are subject to the I-9 requirements. More importantly, employers are required to have an I-9 on file for all employees hired after November 6, 1986. This includes employees who only work intermittently or part time.

MYTH 2 - We only hire US citizens and we know everyone is legal; the I-9 requirements don't apply to us.

While it is often an immigration attorney who will review and advise on I-9 requirements, the I-9 form pertains to all employees regardless of immigration status. An employer may be fined for paperwork violations or failure to have an I-9 form on file, even if the individual is work authorized. In addition, it is important that employers not limit their hiring or recruitment to only US citizens as doing so is considered discrimination unless there is a specific law requiring US citizenship (i.e. security clearances). Finally, employers may not realize that someone who has lived and worked in the US for many years may not be a citizen or even work authorized. Therefore, employers should not assume a person's status. An I-9 should be on file for all employees regardless of actual or presumed status.

MYTH 3 - We aren't in a target industry so we will never be audited.

Times have changed and now employers of all shapes and sizes, regardless of industry are a potential target. In addition, the government seems to be focused more on small employers than on larger ones. Many employers have been caught off guard by the random audits of ICE (Immigration and Customs Enforcement).

MYTH 4 - We participate in E-Verify so we are already verifying employment.

Some employers are using the E-Verify system. However, this system is used in conjunction with, not in lieu of, the Form I-9. Employers are required to have a completed Form I-9 before an employee can be run through E-Verify. Note that use of other systems including SSNVS (Social Security Number Verification System) also do not exempt an employer from its I-9 obligations.

MYTH 5 - A third party company handles our onboarding process and paperwork; they are responsible for this issue.

Note that it is the employer's responsibility to ensure that the I-9s are completed in a timely and accurate manner. While you may choose to delegate this function to a third party, the employer is ultimately responsible (not the third party) for any errors or violations. Therefore, it is essential that any third party be vetted and that the employer still review all of the I-9s to ensure compliance.

*Continued on Page 8.*

# Craft Beer Distribution Part I:

## Where to Begin

By Laura Lodge,  
Big Beers, Belgians &  
Barleywines Festival

[bigbeersfestival@hotmail.com](mailto:bigbeersfestival@hotmail.com)



In any industry showing exponential growth, it is absolutely critical that you carefully plan and execute your business strategy in order to maximize success. There is too much competition ready to capitalize on your mistakes and use your errors as their growth opportunity.

The craft beer industry is no different, and although craft brewers tend to get along quite well and support each other on the brewing level, the distribution tier is where push comes to shove. As a craft brewer, you need to learn as much as you can, plan as much as you can, and carefully execute each step to prepare for distribution in order to set yourself up for success.

First, take a good hard look at the products that you are brewing. Making one good beer is not enough. You need to have developed a product line

that is outstanding. When pitching your brewery to anyone, including a distributor, you need to lead with quality. Take the time to bring your beers to events, community functions, brewing competitions, and other places where there are knowledgeable people able to taste your product and offer feedback. Next, dial it in; eliminate any off-flavors or problems with carbonation and packaging.

Now, brew that same product many, many times. Consistency from batch to batch needs to be absolute because the end consumer wants to enjoy the *same* beer over and over again without fail. Even if you are brewing specialty products, you will need to consistently maintain high standards of quality from batch to batch. Distributors will quickly lose confidence in your products if consistency is not maintained, and distributors without confidence do not sell much beer.

Once you are sure that your quality and consistency are

*Continued on Page 5...*

## Five Easy Social Media Tips from Bill Byrne of Remedy PR

*Social media isn't "free advertising" and if you're treating it that way, you're missing out. Your social media program should make people love your brand and at the same time, make it discoverable by people who aren't following you already. Here are five, relatively easy things you can do to make the most of your social media:*

1. Hashtag #craftbeer EVERY SINGLE TIME on Instagram. You want to be found by others, don't you? If that's the case, you want to be searchable. People search for #craftbeer.

2. Make better shirts. Shirts are social media. Take pride in the media your logo is printed on. More than a few times I've driven out of town to buy a shirt from a brewery that I loved, only to change my mind when I discover it's printed on a beefy cotton t-shirt. That doesn't cut it. You take pride in your beer, take pride in your apparel too.

3. Are you a local or regional brand or having a local event? Hashtag your location and/or the nearest major city, if that's relevant. Again, you want to be discovered by people who are not already following you.

4. Do not sync your social media feeds together. Why? Seeing a Tweet that says "I posted 34 photos to Facebook" is not very interesting. And when you do it back-to-back-to-back, as a few brands I actually love in San Diego do regularly, you're giving me one more reason to unfollow your feed and potentially forget all about you.

5. Take the time each day, or every couple of days, to engage on Untapped, Instagram, Twitter, etc. And not just with fans of your product. It can be a quick conversation, or even just hitting the like button on someone's Instagram feed. Show you care. New craft breweries are opening all the time and a little affection shown by your competitors could cause your biggest fans to start cheating on you.

*More tips on Page 7.*

# Industry Updates

from Candace L. Moon, Esq.  
The Craft Beer Attorney, APC



## Prop 65: Settlement Opt-in Available

In late 2012, an enterprising lawyer found a few retail establishments without Prop 65 signs posted. This discovery led to claims against a number of companies due to California's requirement that an alcohol manufacturer must ensure that every retailer selling its products has, posts, and maintains a Prop 65 sign. *The obligation falls on the brewer*, not the wholesaler or retailer. However, the Beer Institute, Wine Institute, and DISCUS thankfully stepped in and secured a settlement last May. The Consent Judgment provides the opportunity for other alcohol producers to opt-in to the settlement if they are the subject of a Notice of Violation. There are several benefits to becoming an opt-in defendant:

1. A brewer who is a defendant still has an obligation to provide Prop 65 signage to retailers in California, but is not obligated to ensure that the retailer posts and maintains the signs.
2. The consent judgment is designed to cut off claims brought by other plaintiffs as well.
3. The consent judgment covers all of a defendant's products, not just the products purchased.

### Timeline and Requirements for Opting-In:

- An opt-in company must employ 10+ persons and manufacture alcohol in California. Note: companies with 9 or fewer employees are EXEMPT from Prop 65.
- The company must have received a notice of alleged violation *on or before November 14, 2014*.
- Opposing counsel must receive the required paperwork from the company *on or before January 14, 2015*.
- Opposing counsel will file for an amended consent judgment to include the opt-in defendants.
- Once the court approves the amended consent judgment, each company has 10 days to pay \$1,500 to the opposing counsel and a separate \$435 filing fee that goes to the Court.
- Opt-in defendants must thereafter make an annual financial contribution to the alcohol beverage industry's Prop 65 sign distribution program.
- Finally, all opt-in defendants must participate in the tri-industry group that takes care of printing and distributing signs to licensees and maintains an e-commerce site and toll-free number for licensees to order warning signs free of charge.

## New Law Limits Duplicate Licenses in California

Previously, the ABC issued a duplicate license to a beer manufacturer if the beer manufacturer applied. Effective immediately, recent changes make it so the ABC is at its discretion when duplicate licenses are issued. The bill also limits the number of retail duplicates to six (two of those may be bona fide eating places).

## Food Facility Biennial Registration Renewal

Breweries registered as food facilities required must renew their food facility registrations this year between October 1, 2014 and December 31, 2014.

*Questions? Concerns? Feel free to contact our office at:*

866-290-5553

or

[www.craftbeerattorney.com](http://www.craftbeerattorney.com)



## Craft Beer Distribution Continued...

solid, consider self-distribution if it is legally allowed in your area. Self-distributing is a good idea for many reasons, including:

- You and your staff will always be the best sales team for your brand. It is your dream, your passion, and you know your products better than anyone else ever will.
- Your community is already invested in your success. They know you personally, they work with and live with your friends and family, they understand your dream, and they are benefitting from the jobs that you have created.
- Brand recognition has to begin somewhere, having a level of

recognition and sales established *before* you search for a distributor helps to show the quality of your brand.

- You get 100% of the profit margin! Price your products at the price you would like to see on the shelf, at the price point as those brands that you respect and would like to compete with. *Never* undercut your competition. Rather, keep the quality image and build your financial strength.

- Test your products' quality and consistency in the market where you can easily fix mistakes. Test out new products. Tweak recipes. Do it all with the people who know and love you before you branch out to those who do not.

- Learn what it is like to be a distributor, even if only on a small scale. Look at the market from a distribution perspective and think about what it would be like to do this on a large scale. The more you understand about the distribution

mission, the better partner you will be when the time comes to work with a distributor.

If and when you decide to self-distribute, set yourself specific goals or situations that necessitate the transition from self-distributing to finding a distribution partner. It is wise to determine how much time, energy, expense, staffing, trucks, etc. you are willing to invest in advance. Once you hit the pre-determined level, you can consider continuing self-distribution in a specific area or getting out of it altogether.



## Exporting Craft Beer: Pleasures & Pitfalls



*By John Hoefler,  
Brewery Insurance Program  
Milestone Risk Management & Insurance Services*

A couple of decades ago, who would have imagined that American craft beer would be shaping the taste of beer in places like Belgium and Germany? Welcome to 2014: American craft beer exports are on the rise and to a surprising array of countries around the world. This is a welcome development in the craft beer industry and in the American economy, without question. But exporting craft beer does carry some risks that brewers need to know about.

### *Look Before You Leap*

In such a highly competitive and fast growing industry, enthusiastic brewers who are considering the export market should first understand that exporting beer brings about additional liability.

Just like here at home, the laws of the importing country will hold you responsible for any losses, damages or injuries caused by your product. And the product liability laws in importing countries are becoming stricter all the time. Product liability suits can be brought against exporters for three reasons: (1) Negligence; (2) Strict Liability; and (3) Breach of Warranty.

Beyond the possibility of simple product defects, exported beer is especially vulnerable to liability issues inherent in long haul shipping, transportation, handling, and storage requirements.

*Warning: There's Legal Liability In that Bottle of Beer*  
When a product liability suit is filed against

an American company in a foreign state, that company is required to pay legal fees, court costs, and any awards the judgment entails. Without an International Liability insurance policy, the costs are not covered and can destroy a small business. The cost of fighting a lawsuit – warranted or unwarranted - represents a big financial hit to your bottom-line and has led some companies to bankruptcy. Foreign jurisdictions can also seize any and all assets including inventories, deposits, and even receivable payments.

### *Covering Your Ass-ets*

Without giving it a second thought, companies obtain insurance to protect themselves domestically. But brewers who enter an overseas market need to protect their businesses with additional international product liability coverage.

An International Product Liability policy only costs about \$2,500 annually, depending on the volume of beer exported and the countries in question. This is a modest cost compared to the devastating impact you find on the other end of a lawsuit without proper coverage.

Simply put, international product liability insurance helps minimize the risk of doing business abroad. Policies are designed to cover any medical costs, court fees, lawyers' fees, compensatory damages, economic damages, and punitive damages

*Continued on Page 8...*

I've been in PR (or media relations as we're calling it now) for more than 15 years, with both startups and major brands, so I've seen how the media climate has changed and what it takes to secure editorial exposure. Years ago, I helped Primo become one of six brands to be featured in a summer beer story by Playboy, before it was available east of Las Vegas, and trust me, it didn't take a huge, high-powered PR firm, an ad buy, or a massive budget to pull it off. It took about three emails and a phone call.

So what's the secret to securing press on your brand both now and over the long haul? All it takes is a little strategy, timing, and realism.

First, I realize that my title is bull. Any one of you that has worked in PR probably thinks it's bull as well and it may have alienated you too. Apologies for that, but I use it to prove a point. Don't boast, lie, or over promise in your press releases.

Journalists aren't idiots. If you say your product is ground breaking, it better be. If it's not, you're crying wolf and alienating the reporters your dealing with. There's a lack of realism in marketing speak these days and your best bet is to be truthful, excited, and descriptive, but not boastful.

Next, who is your target audience? Press releases are meant to inform journalists and sell your story. Not all journalists are interested in the same things and you're doing your brand a disservice by mass blasting the same press releases to the same people. A local magazine, blog, or newspaper may have different people that cover different topics, such as events, beer, food, business happenings, etc. Tailor your pitch and press releases. If it's not about an event, don't send it to the event person because next time around, they may just delete your email without even opening it.

When emailing and following up with journalists, keep their own deadlines and time constraints in mind. Magazines tend to publish at least two months in advance and even some online media can take a week, or even months, to publish a feature. Also, try to pitch the media at the best time possible for them. Sending emails first thing Monday morning, after traditional working hours on a weekday, or over the weekend are not the best times possible.

Lastly, be realistic and tell the stories that separate you from the pack. What makes you different and worth the reporter's effort to share your news with their readers? Every brand has a story to tell, figuring out what yours is, as well as where and who you should tell it to, is the key to securing media attention for your brand.



## What's YOUR Story?

By Bill Byrne, Remy PR  
 bbyrne@remedypr.com



## EDITOR'S NOTE:

Here at B5 we strive to provide craft breweries with the business tools necessary to run a successful business. We bring the odds and ends to you so that your focus can stay where it belongs: with the beer. We love those hoppy brews as much as you do and we want the art of brewing to stay front and center. This quarterly newsletter comes to you from the offices of the Craft Beer Attorney, APC in San Diego, California. We hope that the information contained in these pages is helpful to you and your team. While the information provided in this newsletter is not designed to be legal advice, each and every one of our providers serve the craft beer industry and are available for your questions. Should you have more general questions about this publication or the providers listed herein please feel free to contact me at:

Stacy Allura Hostetter  
 Craft Beer Attorney, APC  
 866.290.5553  
 stacy@craftbeerattorney.com



# Updates in California's Employment Laws

From Jessica M. Hardacre-Gianas  
Of Counsel, The Craft Beer Attorney, APC

**MINIMUM WAGE:** All employees in California received a raise to \$9/hr as of July 1, 2014. For those employing staff in the Bay Area, please be aware that certain cities maintain rates above the state average. Several SoCal cities are currently under pressure to increase rates above the state average, but nothing has been made official. It is important to keep in mind that increases to minimum wage mean increases to minimum salaries as well, so all exempt employees must now be receiving annual salaries equivalent to \$37,440 to remain compliant.

**PAID SICK TIME:** While working on labor budgets for 2015, know that effective July 1, 2015, all workers in California will be entitled to accrue at least 3 paid sick days per year (no employers will be exempt based on size). Should an employer have a Paid Time Off (PTO) policy more generous than this amount, no additional time will need to be offered. However, if no sick time or paid time off is currently offered to staff, this will be a new benefit your company will have to begin offering and keeping accrual records. \*\*Note that this employee benefit has long been on the books in San Francisco – see *Paid Sick Leave Ordinance* for specific accrual rates and caps which exceed the new statewide minimum.

**HEALTH BENEFITS:** While the talk has seemed to die down about Health Care Reform (ACA), compliance requirements are still moving forward. 2015 brings the next phase of participation requiring affordable insurance coverage offerings for full-time employees at large employers (defined as 100 or more full-time equivalents). Mid-sized employers (defined as 50-99 full-time equivalents) were granted additional reprieve in penalties till 2016 to get the details worked out. However, relief in 2015 requires that mid-sized employers honor a few rules during their planning, such as no major changes in organizational structure to avoid participation requirements or substantial reduction in current benefits offerings from 2014 until required participation dates.

While companies remaining under 50 full-time equivalent employees will not have to participate in offering benefits under ACA, those who do chose to offer benefits to attract talent must be aware of a few more guidelines in how those benefits can be offered and paid for. IRS rulings related to ACA no longer allow tax-exempt employer reimbursements to employees for benefits obtained on an individual basis through the state exchange or other individual plan. Also, employers must be cautious in regards to discriminatory approaches to benefits offering. Employers who previously offered benefits to only management or select employees could find themselves afoul of updated state and federal employment laws affected by ACA.

## Exporting Continued...

accrued if a claim is made against you.

There is good reason for American craft brewers to get into the exporting business. And there is good reason to protect yourself against undue risks.

*John Hoefler*

*Founder of Brewery Insurance Program and VP of Business Development & Sales  
Milestone Risk Management & Insurance Services*

(949) 379-6955

JHoefler@milestonepromise.com

## I-9 Myths Continued...

The Form I-9 and the verification process is much more complicated than it seems at first glance. That is why many people refer to the new Form I-9 as the “most difficult two-page form in America.” Future articles will address some of the more complex issues.

Sharon may be reached at  
[sharon@mehlmanbarnes.com](mailto:sharon@mehlmanbarnes.com)  
858-546-4333.

