



It's one of the most important questions a would-be franchisee should ask a franchisor, yet one of the most likely to be overlooked: do you have a safety management system which is compliant with state legislation?

"If the answer is 'yes', that's good – but you'd still want to see it before you sign up, and to be sure the training you receive includes administration, implementation and maintenance of the system," says Philip Bendeich. "If the answer is 'no', the next question is 'are you going to implement one?' If the answer is 'no', again, I'd suggest you reconsider your purchase."

As founder of SCAX Consulting, Bendeich has extensive industry-wide experience in setting up effective systems and helping businesses of all sizes to ensure they continue to meet their legal obligations.

"This can be particularly complicated for franchises operating across more than one state," says Bendeich. "While the principles are essentially the same, every state and territory has its own laws which differ slightly in the detail. Even though there is discussion about having national safety laws, the current situation demands that your system comply with the legislation in the state where you're operating the business, which could be different from head office."

The overarching legal obligation is to identify and assess risk and do your best to control it – and that includes risk to customers, contractors and the general public as well as your employees. No laws relate specifically to food services but there are particular hazards which need to be taken into account in this sector. The list compiled by Katrina Sweatman, a lawyer with leading franchising law firm Mason Sier Turnbull, includes some which obvious, others which are less so.

- Hand injuries arising from burns, cuts and repetitive strain.
- Back injuries from carrying kegs and containers of food supplies.
- Slips, trips and falls in food preparation and service areas.
- Heat stress in kitchens.
- Bullying of young workers, apprentices and workers from a non-English speaking background.
- Occupational violence and sexual harassment arising from working around intoxicated patrons in hotels and restaurants.

Anticipation and prevention

Recently, a young worker at a franchised hamburger restaurant dropped his mobile phone into the deep fat fryer. His instinct was to put his hand in after it.

“An open deep fryer is an obvious hazard, so the optimal solution would be to remove it – to switch to oven-baked chips, for example,” says Bendeich. “However, the law would acknowledge that this isn’t a practicable solution in a restaurant of this kind. That means the hazard needs to be controlled. Once again, the most effective solutions, such as isolating workers from the fryer with a safety screen or re-engineering the fryer to avoid contact, may not be practicable. So then we come down to personal protection – for instance, gloves that resist high temperatures – and administration such as warning signs and appropriate training.”

The organisation in question acted quickly to ban mobile phones from the workplace – but, as Bendeich points out, risk management is about anticipation and prevention, not reaction.

“If the matter goes to court it will be interesting to see whether this is considered to be a hazard the employer should have foreseen.”

Vice-president of the NSW Industrial Relations Commission, Justice Michael Walton, has said that the proper test of foreseeability in these circumstances is not whether a lawyer or engineer could conceivably have foreseen the risk which existed but whether or not the ordinary jury person could have done so. At the time he was presiding over the case brought against McDonalds following the death of 19-year-old student Michael Johnston.

Johnston was electrocuted when he touched an exposed wire while cleaning a stove at a McDonald’s restaurant in Wollongong. The accident happened because the power cable to the grill had been damaged by continuing contact with the kitchen’s abrasive floor – a risk which Justice Walton found to be ‘reasonably foreseeable and avoidable by simple remedial measures’. The risk of someone being electrocuted if they failed to cut the power supply before attempting to move or clean the grill was also foreseeable.

At the time, the outcome highlighted the differences between laws in different states. McDonald’s, as a franchisor, was found to have exercised considerable control over the way its franchisees operated and was fined \$120,000. A subsidiary property company, which owned the restaurant building and had control over its design, was also prosecuted and fined \$150,000. However, in Victoria, liability still rested primarily with the franchisee.

Since then, new legislation has brought Victoria in line with New South Wales. In both states, franchisors who fail to provide a safe environment in a workplace that they manage or control face a fine of up to \$920,250. Even directors and other employees who have the capacity to make decisions affecting the franchisor’s financial status can be fined \$184,050. Clearly, it is in the best interest of the franchisor to ensure that franchisees receive the best possible OHS information and support.

Taking the risk out of the kitchen

Not surprisingly, around a third of accidents that happen in kitchens are related to handling hot oils and deep fryers. Despite the inherent dangers, fryers need to be cleaned regularly, cooking oil needs to be filtered and changed frequently and used oil needs to be disposed of in accordance with EPA regulations.

“The removal of all fine impurities extends the life of the oil, ensures it a consistently high quality of both oil and food products and controls free fatty acid growth,” says Bob Whitlock, a founding director of the Mobile Filtration Services franchise. “But filtering hot oil and cleaning fryers are considered to be onerous and unwanted tasks by kitchen staff, mainly because most kitchens are not resourced appropriately to do the job quickly, effectively and safely.”

The specialised equipment and processes Mobile Filtration Services uses on site leaves used cooking oil close to 100 per cent pure.

"In removing the onus of fryer management from the kitchen staff we allow food outlets to be more productive and also take away the work place risk," says Whitlock. "This helps restaurants, clubs, resorts, pubs – any food outlet with a deep fryer – to maximise both their food standards and their profits."

Sound OHS practices are also critical to the wellbeing of franchisees

"All of our franchisees undergo a training program which addresses every aspect of the business – everything from removing and replacing the filtration machine in the van and wheeling it in to and from the kitchen to preventing burns, avoiding oil spills and cleaning up if a spill should occur," says Whitlock. "Taking short cuts in the process is not an option; the resultant oil spill or burn is not worth the risk."

Getting it right

Eagle Boys Pizza's OHS policy meets the requirements of all relevant authorities.

"It is also easy to understand, involves minimal cost and is easy to use," says Managing Director Todd Clayton. "This removes any barriers franchisees may have to implementing proper OHS procedures."

"All franchisees are required to follow the procedures – failure to do so is in breach of their franchise agreement, could result in legal action from government and councils and could damage the reputation of not only their own store, but the entire Eagle Boys network."

As part of their initial training program, all franchisees learn about the OHS policy at the Eagle Boys College. OHS training is also provided to new managers and other staff and all training material is reviewed yearly to ensure continuing best practice.

"OHS forms part of Eagle Boys' 'Extreme Customer Service Program'," says Clayton. "This is monitored and maintained through a rigorous evaluation process using a Mystery Shopper Program and Store Evaluation and Product Service Image Evaluation. Regular franchisee performance reviews are conducted by a team of Franchise Business Managers covering the overall operational performance of the store including customer service, product quality, food safety, staff training levels and workplace health and safety."

Donut King, Michel's Patisserie, Brumby's Bakeries and bb's cafe franchise systems are all managed by retail Food Group Limited (RFG). As such, they are all subject to strict OHS policies and procedures, including regulations on food handling and preparation, workplace safety, and staff and customer interaction.

"These are clearly stated in franchisee and staff manuals and reinforced through regular training," says Tracey Catterall, RFG Acting Chief Marketing Officer.

All RFG franchisees receive thorough training on OHS policies and procedures before opening their franchise. They are also assigned a Business Development Manager who is responsible, among other things, for monitoring OHS compliance and best practice initiatives. Unannounced spot checks are also regularly carried out in each franchised outlet.

"Our franchisees take OHS very seriously," continues Catterall. "It is part of their franchise agreement that they comply with RFG's OHS policies and procedures."

"Franchisees should recognise that OHS is a large part of their businesses. They should ask how their franchisor will support them to keep in line with changes in OHS policies and procedures both internally and externally. And they should not be afraid to ask for help and extra training when they need it; they need to acknowledge that OHS policies and procedures are non-negotiable."

Katrina Sweatman adds that policies and procedures should be specific and referable to the hazards that have been identified in the franchisee's workplace.

“Beyond having effective policies and procedures in place, franchisees have a responsibility to ensure that all workers are aware of safe work practices that have been put in place and receive appropriate refresher training as and when necessary.”

This can present a particular challenge to franchisees, whose workers are often casual, part-time and young. This lack of experience can make them vulnerable and, because their work patterns tend to be irregular, it can be easier for them to slip through the net of training and information.

Where to look for help

A good franchise lawyer or OHS consultant can provide information and review the system a franchisor has in place. OHS authorities in each state also provide useful information on their websites, setting out the general obligations of an employer.

- WorkSafe Victoria - www.worksafe.vic.gov.au
- WorkCover NSW - www.workcover.nsw.gov.au
- Workplace Health & Safety Queensland - www.deir.qld.gov.au/workplace/
- ACT WorkCover www.ors.act.gov.au/workcover
- NT WorkSafe www.worksafe.nt.gov.au
- SafeWork SA www.safework.sa.gov.au
- WorkCover Tasmania workcover.tas.gov.au
- WorkSafe Western Australia www.commerce.wa.gov.au/WorkSafe/