

10 Essential Steps for Surviving a Foodborne Illness Outbreak and Recall

By Brent L. Reichert

The threat of contamination from pathogens, such as salmonella, listeria monocytogenes and E. coli O157:H7, strikes fear in the heart of every food manufacturer and retailer. While best efforts provide some protection, no safeguards fully insulate against foodborne illnesses. To contain the harm imposed by these lurking catastrophes, companies must prepare with strategic and decisive crisis management. By following this 10-step action plan, a company can not only survive contamination events, but can limit the number of consumers affected, maintain its reputation and preserve its bottom line.

1. Immediately convene crisis management team. Companies should establish a crisis management team well before disaster strikes and when an outbreak or recall occurs, the team should meet immediately to devise a comprehensive action plan. This team should consist of a regulatory affairs specialist, director of public relations/communications, director of quality assurance and food safety, sanitation manager, procurement manager, production manager, risk/insurance manager and in-house counsel, as well as appropriate outside counsel and external consultants.

2. Determine recall's scope and promptly notify the public. To minimize public harm and secure potentially tainted product, you must identify the potential magnitude of the problem. Inform the public of the recall's scope as early as possible. Include in this notice detailed identifying information about which products to avoid, as well as how to return possibly tainted food. The notice should also inform consumers how to contact the company for additional information.

3. Pinpoint the contamination's origin and cause. You must determine the source and root cause of the food contamination to stop the harm and prevent future contamination. While regulatory investigators will conduct their own inquiry, the company should carry out its own investigation. To preserve crucial work product and attorney-client privileges during the company's probe, use outside legal counsel and consultants.

4. Compile all contracts and indemnifi-

cation agreements relating to product and ingredient suppliers. Government investigators will request these documents, which the company should provide to avoid penalties under the Federal Food, Drug and Cosmetic Act. These records will play crucial roles in any future litigation stemming from the contamination. They also govern how the company should move forward once the situation resolves. The company's Hazard Analysis and Critical Control Points (HACCP) plan should already include supplier purity and quality assurance standards, as well as continuing food guaranties.

5. Alert food chain suppliers when necessary. When you cannot identify the precise cause or source of the contaminant, the company must inform all possible suppliers and transporters on the distribution chain to both protect against and preserve its future claims.

6. Collect, test and manage food samples. As part of the crisis management plan, the company must determine which ingredients and products to collect, test, analyze and save. You must keep detailed records of these protocols, which should include how long and where you will store samples, as well as when and how the company will dispose of them.

7. Alert your insurance carriers and capture evidence of the company's losses. Immediately notify the company's insurance carriers of the outbreak and recall. To maximize your ability to recoup financial losses stemming from the outbreak, immediately and thoroughly document evidence of these costs, including lost sales and all resources spent managing the incident. Be sure to include in these records all information and documents relating to time and expenses spent informing consumers and obtaining, analyzing, storing and ultimately destroying product pursuant to regulatory requirements.

8. Compile documents relating to proper food management procedures. Depending on the origin and cause of the outbreak, you may need to review the company's HACCP plan, good manufacturing practices (GMPs), standard operating practices (SOPs), standard sanitation operating practices (SSOPs) and/or supplier

audits. Often, the blame for the contamination rests with suppliers or other outside parties, not with the company. Be sure to involve outside counsel when reviewing the relevant procedures and documents to maintain critical work product and attorney-client privileges.

9. Hire appropriate outside counsel and coordinate legal actions. Hire outside counsel with experience in both food contamination and insurance matters. You will need to coordinate both the defense of the foodborne illness claims and recovery from your insurance carriers and at-fault suppliers, transporters, or other parties.

10. Reassess prevention protocols and procedures. After the recall, reexamine prevention plans and procedures to determine gaps. Look for opportunities to strengthen the company's and its suppliers' practices and procedures. Be prepared to modify product ingredients or change suppliers, if necessary.

Conclusion

Bacterial contamination and foodborne illness can ravage a company. With proper guidance, you can avoid the pandemonium. Follow this 10-step checklist with the help of competent, experienced counsel and consultants to successfully survive an outbreak and recall that limits the public's exposure, minimizes losses and preserve the company's reputation.

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