Restaurant owners in North Carolina have plenty on their plates. With so many employees and the rules associated with their responsibilities to these employees, restaurant owners have a lot to keep up with these days. Now add in a new wrinkle – liability exposure for damages sustained by an employee's fetus in utero. What is your exposure? How are you covered?

Pregnant mothers of course are protected by your workers compensation policy for injuries sustained while on the job in your restaurant. But what about the injuries that a fetus may sustain as a result of your workplace? Case law is pretty thin on this issue right now but more and more people are beginning to challenge employers for these kinds of injuries. A California case, Snyder vs Michael's Stores, Inc. addressed the question of whether or not the workers compensation policy will respond to injuries to the unborn child. In this case the court ruled that coverage applies if the child's claim is deemed collateral to or derivative from an employee's injuries. The court went further to say that this derivative injury rule applies only if the child were seeking damages for the mother's work related injuries, or if the claim necessarily depended on the mother's injuries.

This case then, leaves out of workers compensation coverage the situations where the mother's health is not put at risk but the fetus' health is. When this happens, workers compensation is not seen as the exclusive remedy and the child is allowed to sue the employer as a third party injured through the employer's negligence.

To further confuse the situation, consider the U.S. District of Columbia case, Lockhart vs. Coastal International Security Inc. In this case the courts ruled that workers compensation law expressly limits the the liability of an employer to an employee and to that employee's dependents. This case then makes the workers compensation system the exclusive remedy for these types of claims. This is in direct contrast to the California decision.

If the California rules are followed, then you, as a restaurant owner have an even larger exposure. Will your general liability policy step in here and offer you protection from the coming third party lawsuit? While the general liability insurance policy does have an exclusion for injuries to employees (as that is best handled by the workers compensation policy), this exclusion would not apply to the child as that child is not an employee of your restaurant.

While there is some uncertainty regarding who may sue you and where you may find insurance

protection, it is appalling to me that so many NC restaurants have no workers compensation insurance coverage in place. Going bare is extremely risky, and if you have 3 or more employees, also illegal in North Carolina. Still, nearly 50% of the restaurants in our state do not buy workers compensation insurance protection. The best plan of action for you is to review your workers compensation insurance and your general liability policies to make sure that both have high limits of coverage and are in force and ready to protect you. After that, there is no substitute for careful risk management for all employees. And bear in mind that with a pregnant employee you may have a non-employee third party in your restaurant that may hold the right to sue you for injuries.

At Clinard Insurance Group, we want to help you with your restaurant insurance needs. We can save you money while helping you make sure that you have the restaurant insurance protection that you want and need. Give us a call; toll free, at 877-687-7557.