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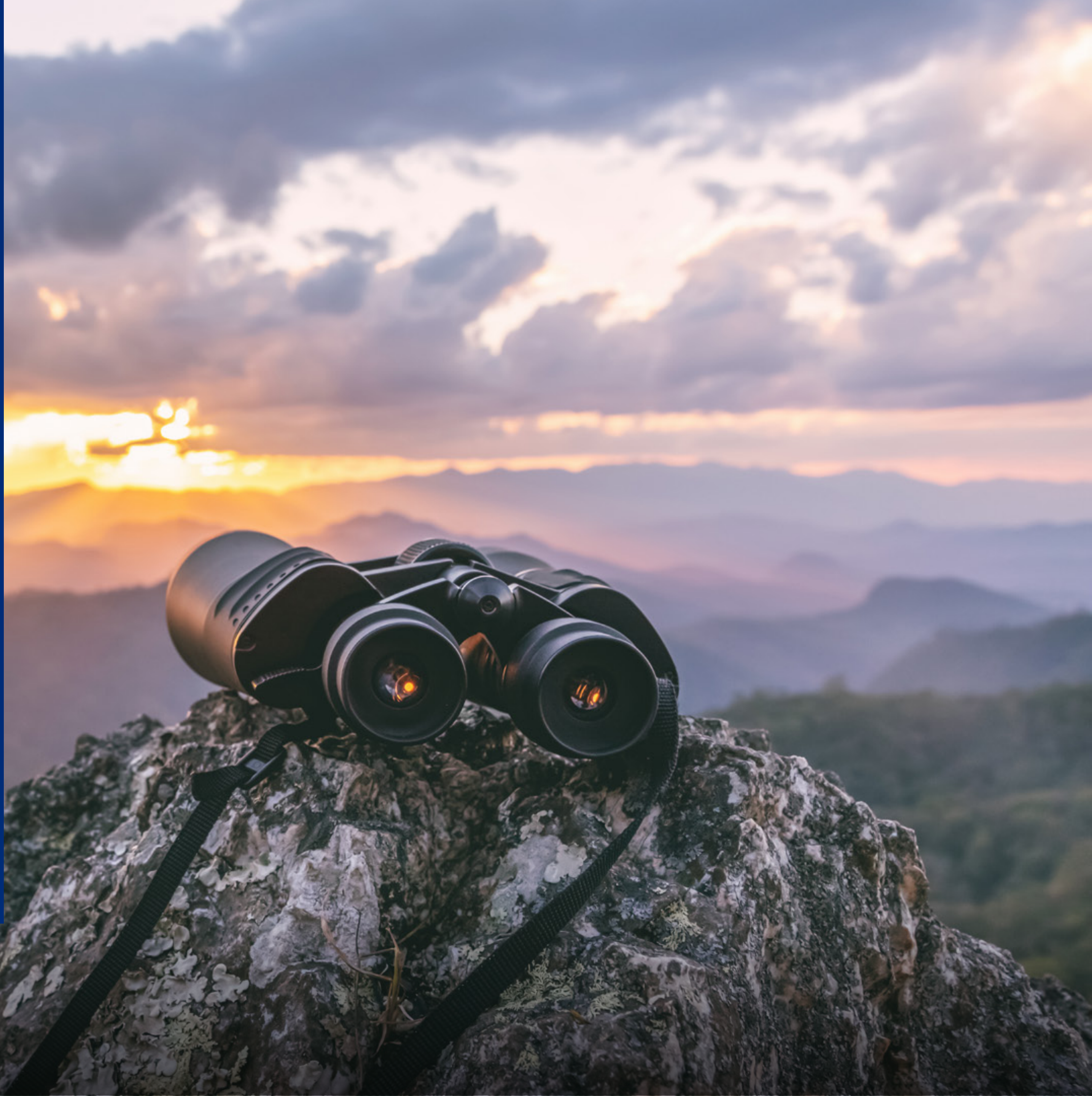
The road ahead

Key risks retail, restaurant, food, and beverage companies can anticipate in 2022



Introduction

For many retail, restaurant, food, and beverage companies, 2020 was a watershed year. The threat of infectious disease from COVID-19 and the resultant economic pressures challenged people and organizations like never before, and pushed the industry to its limits.

A number of companies did not survive the first year of the pandemic, while others suffered enormous hardships. Some companies, however, found opportunities to adapt and differentiate, and came out of the crisis stronger than they had been since the financial crisis of the last decade.

By many measures, economic conditions have improved substantially in 2021, and there are reasons for businesses to be optimistic about the outlook for the year ahead. Nevertheless, health concerns associated with COVID-19 persist. A number of broader macroeconomic and societal trends also pose threats to retail, restaurant, and food and beverage companies — but, on the other hand, may present opportunities to build resilience.

In *The road ahead: key risks retail, restaurant, food, and beverage companies can anticipate in 2022*, we highlight a number of items that should be at the top of companies' risk agendas in 2022. These include:

- Supply chain disruptions — caused by port bottlenecks, a lack of trucking capacity, container shortages, and competition for warehouse space — which are expected to continue well into the next year.
- Labor shortages as employees find more attractive work in other industries.
- Sophisticated ransomware attacks, which now routinely cost victims millions of dollars.
- Environmental, social, and governance issues, including those related to diversity, equity, and inclusion, which are close to the hearts of investors, employees, and consumers.
- Continuing fallout from COVID-19, including retaliation and discrimination claims and challenges associated with the vaccination of workforces.

These threats are varied and complex, but risk professionals and others can take steps to address them. Leading retail, restaurant, food, and beverage companies will incorporate lessons from the last two years into strategic planning for 2022 and beyond and build greater resilience as they consider future threats.

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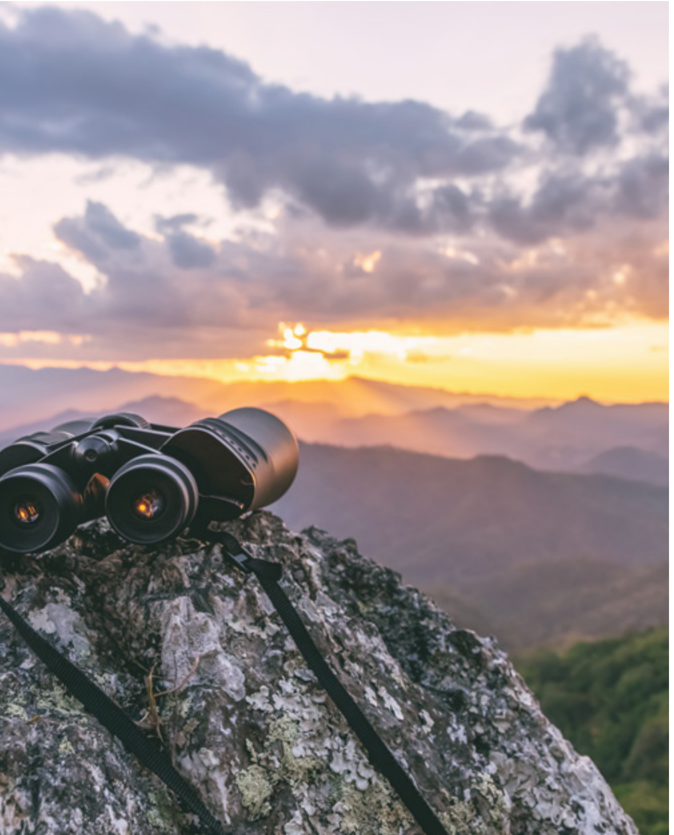
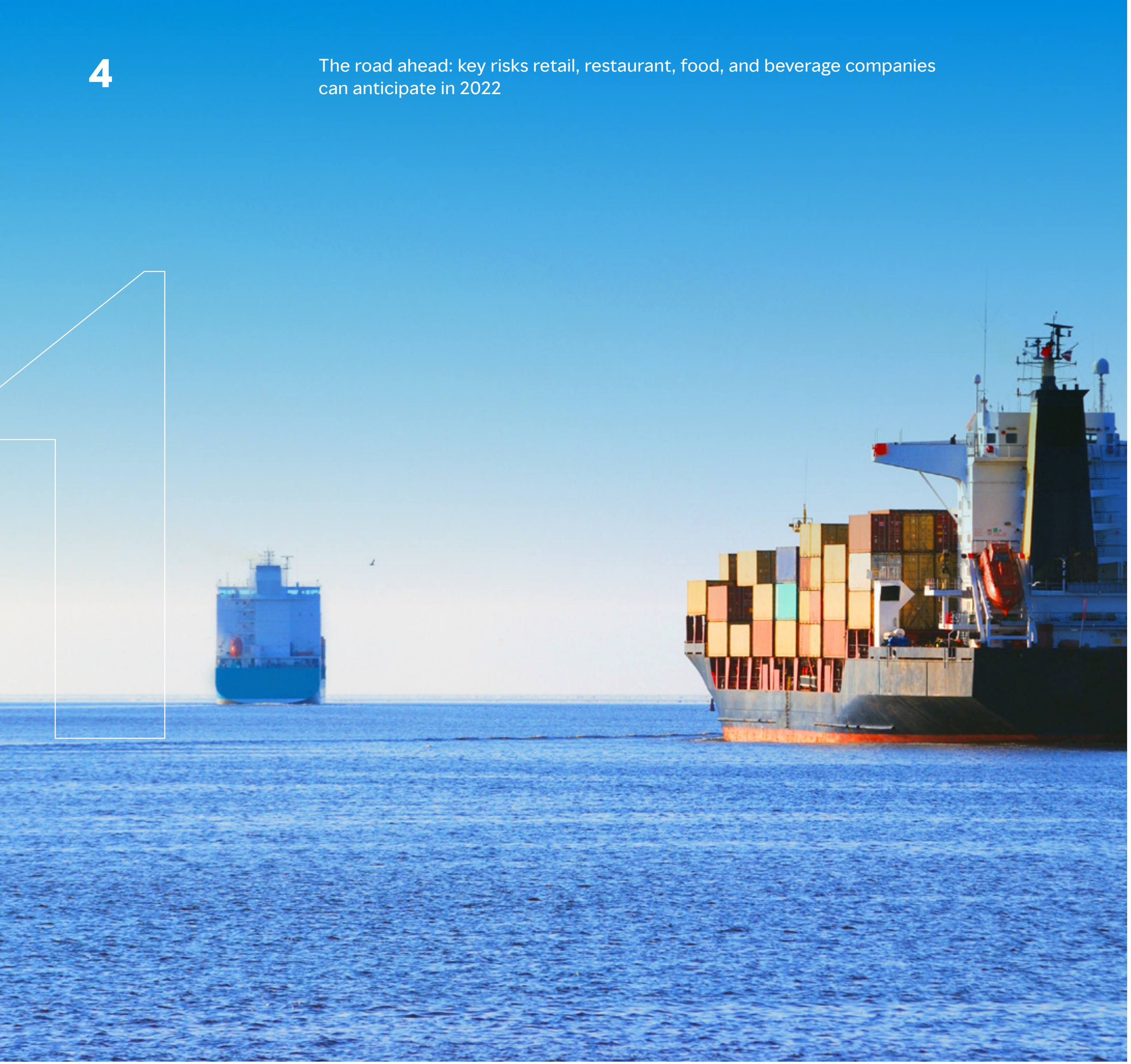




Supply chain disruptions to persist

Just as they have begun to put the worst of COVID-19's economic effects behind them, retail, restaurant, food, and beverage companies now face a range of supply chain challenges that are making it difficult to get cargo from manufacturers through ports and into the hands of consumers. And it may take the better part of the next year — or longer — for current backlogs to clear.

These disruptions have many causes, one of which is the ongoing pandemic. Although conditions are far better than they were just a year ago, COVID-19 continues to contribute to labor disruptions for shippers, truckers, and others that transport goods. The pandemic has also helped fuel massive shifts in consumer buying habits and a change in the relationship consumers have with retailers and restaurants, which has driven up demand that helped push supply chains to a breaking point.

But there are more systemic factors at play as well. A lack of truck drivers is partly to blame for the backlog of goods at ports and on ships. COVID-19 is one reason for the shortage, but trucking companies are also struggling to recruit younger drivers to replace a large number of aging drivers who are at or near retirement age.

A more fundamental challenge — highlighted by COVID-19 — is that many companies with global supply chains have, in recent decades, prioritized efficiency at the expense of resilience. In seeking to adopt lowest-cost suppliers and methodologies, many organizations have eliminated redundancies and flexibilities that can prove invaluable in weathering large-scale crises — a pandemic, for example.

These and other factors have conspired to create a supply chain backlog that is not likely to clear until well into 2022. Even as ports increasingly ramp up operations — in some cases, staying open 24 hours a day, seven days a week — goods and materials continue to stack up at ports without drivers and rail providers to transport them. And even as ships more quickly unload their cargo and depart from ports, the backlog of ships waiting to take their place continues to grow. Along the West Coast of the US alone, dozens of ships are currently anchored, waiting for berths to free up so they can dock.

In addition to the core challenge of getting goods into the hands of consumers, the backlog creates other risks for retailers, restaurants, food, and beverage companies. The accumulation of goods and materials on ports and ships creates significant exposure to natural catastrophes — a single, significant event could result in billions of dollars of product being wiped out, straining companies' bottom lines and reputations at an especially critical time. Having cargo and vessels in close quarters also increases the risk of human errors — for example, potentially dangerous materials being improperly stored near each other or an anchor damaging a pipeline or other infrastructure.

COLLABORATION, INNOVATION CRUCIAL

Because there are many causes for the supply chain crisis, it may require a combination of solutions for retail, restaurant, food, and beverage companies. And clearing supply chain backlogs and preventing future disruptions will require several parties to work together and think creatively.

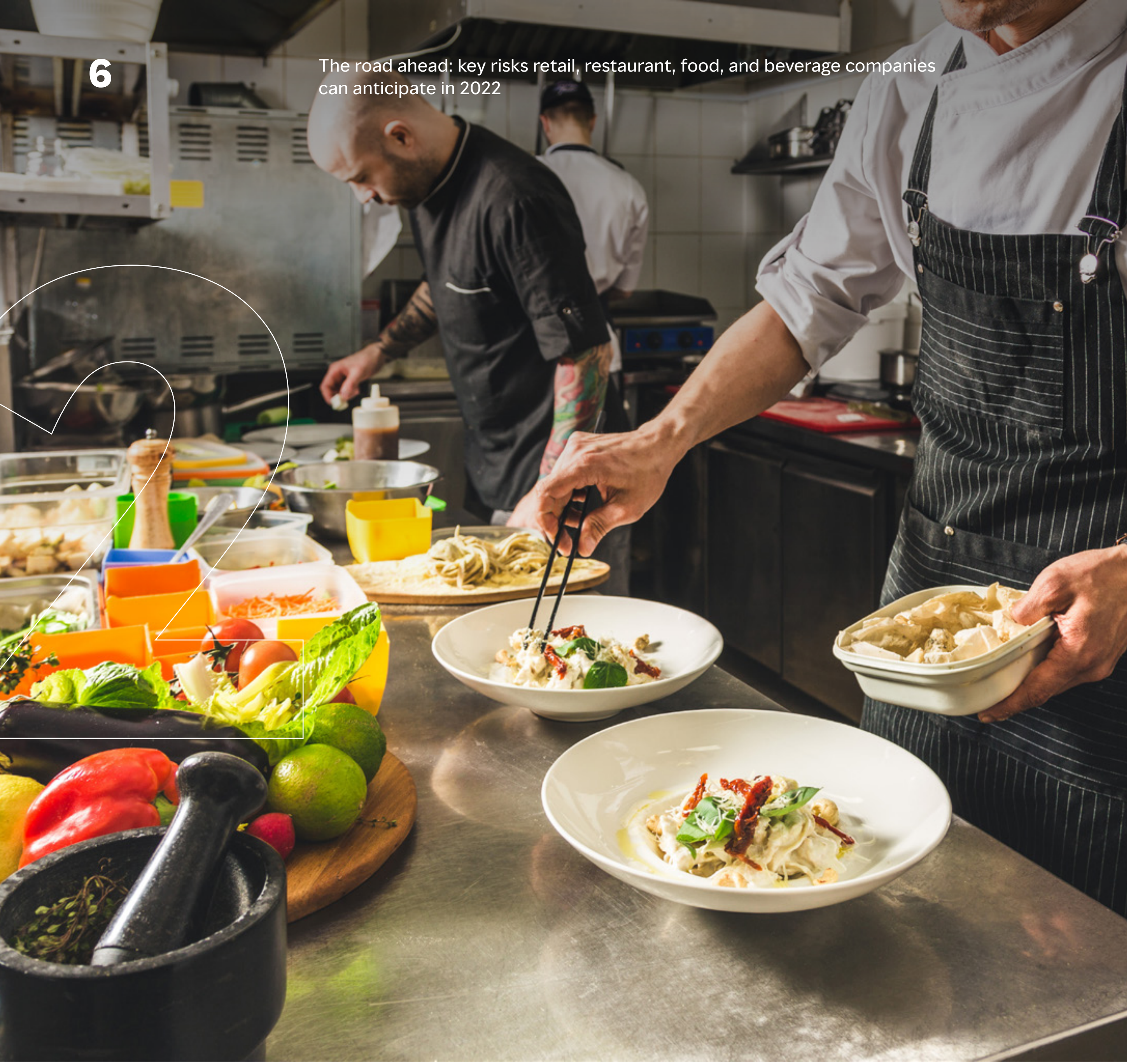
Some retailers have attempted to take greater control over their cargo by chartering their own ships to transport materials and finished goods from overseas locations to the US. Among other benefits, this can allow retailers to direct ships to ports that are less congested and potentially closer to the final destinations of their transported goods. This, however, can carry enormous costs — and it doesn't address the labor shortage.

A broader approach is thus needed. Among other actions, companies should explore ways to ease pressure on supply chains. Predictive analytics could also prove fruitful, with algorithms potentially helping companies optimize inventory levels for specific products in order to meet consumer demand.

REVIEWING INSURANCE PROGRAMS

In addition to taking steps to minimize the potential for physical supply chain disruptions, companies should also take a close look at their insurance programs. Although there is no single insurance solution for their current challenges, property, business interruption, marine cargo, and other forms of coverage can provide a measure of protection to businesses.

Organizations should take a close look at their existing policies, with an eye on the adequacy of coverage, potential impacts to self-insured retentions, and the ability of policies to adapt to potential changes in risk profiles and exposures. Among other things, these include accumulations of cargo, the use of facilities that were not originally contemplated, and increased conveyance risks.



Labor to remain scarce

The supply chain disruptions felt by companies are intrinsically linked with another long-term challenge: a persistent labor shortage. With employers in other industries offering better pay, working conditions, and resources for employees, workers are expected to continue to leave the retail, restaurant, food, and beverage sector in large numbers in 2022.

In part, the flight of labor from the industry is driven by wages and benefits, which have long been a determinant of which employers get the best talent. Skilled labor — for example, truck drivers to support retail, restaurant, food, and beverage companies' often-large fleets — is especially difficult for employers to attract and retain.

Workers also have other reasons for leaving. For some, it's limited access to resources they consider necessary to do their jobs effectively, such as childcare during working hours.

Other workers are simply burned out: With their jobs deemed "essential" and fewer opportunities to work from home than in other industries, food and beverage manufacturing workers have endured long working hours and elevated stress levels for nearly two years now. Restaurant and retail employees, meanwhile, have borne the brunt of customers' frustrations during that time, regarding masking and social distancing requirements, displeasure about products being unavailable, and more.

FOCUSING ON INDIVIDUAL NEEDS

For retail, food, and beverage companies, it costs more to attract new talent in a tight labor market than to retain existing, experienced workers. The first inclination for employers may be to try to pay their way out of the crisis, through higher salaries, spot bonuses, and retention payouts. But this can quickly become expensive, and may not be sustainable in the long run.

Just as consumers desire more targeted products and services designed around their individual needs, a one-size-fits-all approach is no longer acceptable for workforces. In the years ahead, some employers will have five generations in the workforce — each with different wants, needs, and priorities.

The most successful employers will be those that do not treat their employees as commodities and their workforces as monoliths, but instead look for ways to serve individual employees' needs. Rather than making assumptions, employers can conduct unmet needs analyses to learn what those needs are and develop strategies to fulfill them.

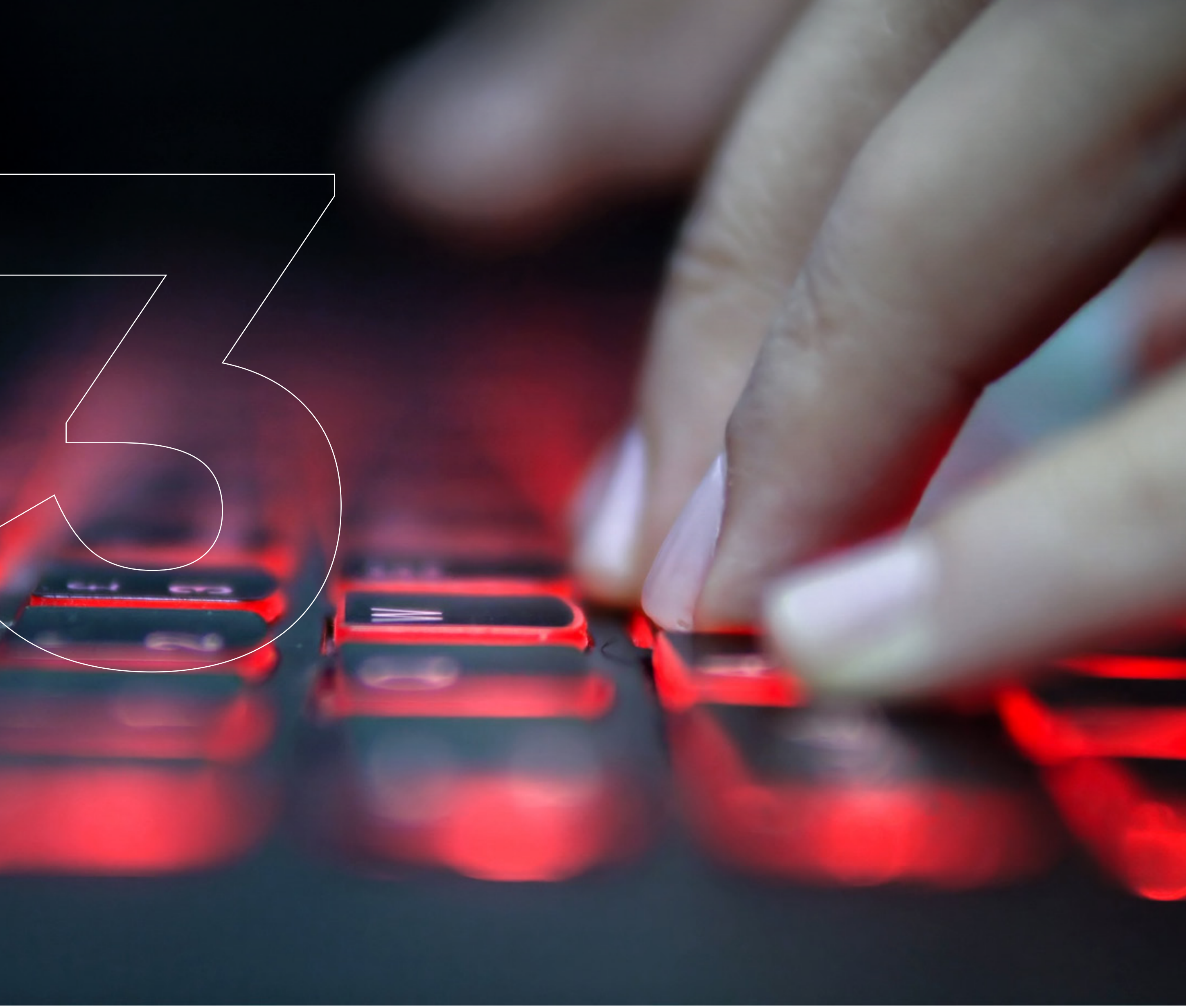
> **The most successful employers will look for ways to serve individual employees' needs.**

TRANSITIONING TO THE SKILLS-BASED ECONOMY

More forward-looking companies are exploring the notion of separating people from jobs, and instead focusing on the skills they need to more effectively compete. This is not a simple task; it involves upending traditional processes related to talent and rewards.

For many retail, restaurant, food and beverage companies, adopting this skills-based approach will require significant work. Among other steps, employers will need to redesign work, looking at where and when work gets done and the potential role of automation. They'll also need to reevaluate manager and employee mindsets about who performs specific functions today and who could be able to complete them tomorrow.

In essence, employers will need to think about the work rather than the job, and look beyond headcounts to focus on what needs to get done and how. And they need to think about the overall talent ecosystem in a different way. Does it makes sense to buy, build, or borrow necessary skills? Which tasks may be better served by automation? What are the pros and cons of joining a talent consortium — and if so, which other companies should be part of the consortium?



Ransomware to continue its rise

Ransomware represents a pervasive technological and operational threat for businesses. Any company that uses technology is at risk of an attack, which means retail, restaurant, food, and beverage companies will remain vulnerable to ransomware in 2022.

Being unable to access payment information and other customer data, employee data, and the technology behind vital systems, including e-commerce platforms, distribution and manufacturing systems, can disrupt these companies' key operations, damage their reputations, and cost them potentially millions of dollars in lost income and remedial and restoration costs.

The threat of ransomware is exacerbated by the fact that many organizations lack robust data recovery or backup procedures. That means that in the event of an attack, they are often unable to quickly get systems back up and running.

What's more, ransomware attacks continue to evolve and grow more sophisticated. For example, attackers are increasingly focusing on digital supply chains, taking advantage of software flaws to launch attacks against multiple organizations — sometimes hundreds or thousands at a time. Many attacks also now include the added element of "double extortion": In addition to holding valuable data hostage, attackers threaten to publicly release their victims' data if they don't pay often exorbitant ransoms.

> **“To protect against ransomware attacks, retail, restaurant, food, and beverage companies should focus on cyber hygiene.**

ROBUST CONTROLS AND ADVISORS KEY

To protect against ransomware attacks — and better position themselves to secure vital cyber insurance in an increasingly difficult marketplace — retail, restaurant, food, and beverage companies should focus on cyber hygiene. Companies should explore a number of potentially useful controls, including:

1. Multifactor authentication, which requires at least two pieces of evidence (factors) to prove a user's identity.
2. Endpoint detection and response software, which gathers information about employee devices, such as their location, the last time they were updated, current software versions, and any attempts to download new software.
3. Secured, encrypted, and tested backups, which can be crucial to attempts to restore data that is held hostage by ransomware attackers.
4. Privileged access management, through which users are required to use higher security login credentials to access administrator or privileged accounts.
5. Email filtering and web security, through which companies can identify and screen attachments and web pages that may contain malware or other malicious content.

Even as they adopt these controls — which may help prevent attacks — companies should think through how they would respond to a potential event. Effective response planning, including tabletop exercises involving key stakeholders, can help companies prepare and identify potential gaps in their response plans before they are victimized by ransomware.

As they build response plans, companies should be mindful of potential pitfalls associated with ransomware, including the possibility of running afoul of laws that could prevent or complicate payment to an attacker. Experienced external legal counsel and cyber forensics providers can provide valuable guidance on potential legal and compliance risks, and can help enable transactions that are in line with regulatory requirements.

Cyber insurance can provide valuable support to companies that are victimized by ransomware attacks. In addition to benefitting from coverage for losses stemming from attacks — including, potentially, ransomware payments — cyber insurance policyholders can access a variety of important services. It is important to note, however, that many insurance policies require prior consent before accessing these services — and insurers generally expect to be involved in response and recovery efforts and critical decisions.

ESG, DE&I to stay in the spotlight

In 2021, environmental, social, and governance (ESG) issues rose to the top of the agenda for boards of directors and senior corporate leaders, including for retail, restaurant, food and beverage companies. ESG and related topics will remain significant boardroom priorities in the years ahead. A growing number of investors are making decisions about which stocks to purchase based on companies’ social positions — and are demanding action.

Investors increasingly expect companies to disclose material risks related to climate change and sustainability and to report on specific actions they are taking on matters such as board diversity and pay equity. Shareholders are also waging proxy battles on matters ranging from sustainability to board

> **“Those companies that do not take action to their satisfaction risk losing customers and talent along with reputational damage.**

diversity and, in many cases, filing securities lawsuits or shareholder derivative actions against companies, boards, and senior executives.

The Securities and Exchange Commission (SEC), meanwhile, has committed to implementing new climate disclosure rules for public companies. As of this writing, however, the SEC is still collecting public comments before publishing updated guidance.

Similar pressures are also coming from consumers and employees, who now expect companies — particularly those with valuable and visible brands — to take public stances on issues that matter to them, and for their workforces to reflect the customers they serve. Consumers are increasingly factoring climate concerns into purchasing choices, and many individuals are similarly choosing where to work based on companies’ responsiveness to climate change. Those companies that do not take action to their satisfaction risk losing customers and talent along with reputational damage.

The social unrest that began in the summer of 2020 highlights the power social activism can have for the retail, restaurant, food and beverage industries, and how organizations cannot ignore the changing expectations of various stakeholders. Consumers, employees, and shareholders alike are demanding that companies be more responsive to societal issues, including social justice, diversity, and inclusion. They are also demanding that these companies maintain sustainable supply chains and provide clear proof that they are doing so.

At the same time, employers remain subject to heightened discrimination and sexual harassment claim activity. Although it has not had an outsize impact on retailers, restaurants, food and beverage companies compared to those in other industries, the #MeToo movement remains strong and has become intertwined with conversations on broader social issues that are important to consumers, employees, and others.

UNDERSTANDING COMPLIANCE REQUIREMENTS IS KEY

The days of referencing environmental and social matters as a vague, aspirational priority in financial disclosures are long gone. As investors demand action — and the SEC and other regulators require clearer disclosures on ESG-related matters — there is an increasing need for directors and officers to prioritize ESG-related issues.

Taking action on ESG can minimize the threat of proxy fights, regulatory investigations, and litigation. This can improves companies’ risk profiles in the eyes of underwriters and therefore increase the likelihood of securing effective directors and officers liability (D&O) insurance with broad terms and competitive pricing.

Moving into 2022, boards of directors should stay abreast of evolving reporting requirements on diversity and inclusion, climate and sustainability, and related matters. In August, for example, the SEC approved new listing rules proposed by the Nasdaq Stock Market that require Nasdaq-listed companies to disclose information about their board members’ gender, racial characteristics and LGBTQ+ status on an annual basis. The commission is also reevaluating its climate change disclosure guidelines, including considering whether to draw on related frameworks such as those prescribed by the Task Force on Climate-related Financial Disclosures.

Meanwhile, as underwriters more closely scrutinize ESG-related risks, risk professionals and boards should be prepared to provide them with more information. Measurable actions — for example, hiring staff with specific oversight of diversity and inclusion — can be more valuable to D&O and employment practices liability underwriters than more basic statements about an organization's commitment to maintaining diverse boards and workforces.

Companies should also consider highlighting any ESG-related work they have commissioned from in-house and outside counsel and other advisors. Among other tasks, attorneys and other advisors can conduct pay equity audits and sustainability reviews, and advise on complex and potentially conflicting reporting guidance that companies may be subject to, including helping them determine the appropriate scope of disclosure to investors and regulators. Working with outside counsel may also allow companies to secure more favorable terms and conditions from D&O underwriters at renewal.

BOARD OVERSIGHT WILL BE CRUCIAL

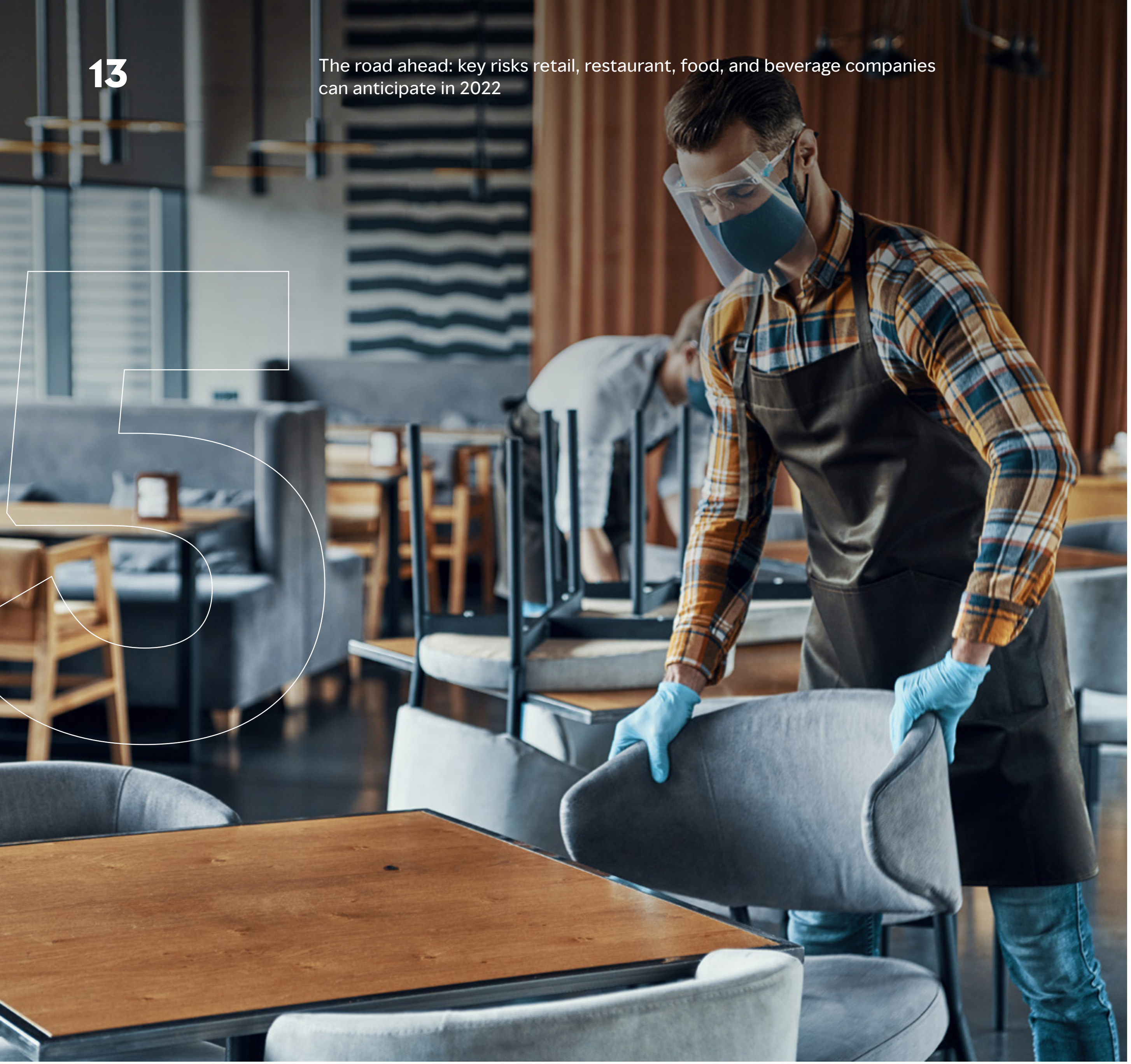
More than simply complying with reporting requirements, boards are uniquely positioned to see how various environmental, social, and governance issues can pose material risks to organizations. A common theory presented by plaintiffs in securities suits related to ESG matters is that boards have not created a mechanism for understanding and monitoring such threats — or that such mechanisms exist, but only in order to allow boards to provide lip service to investors and others that they had successfully addressed them.

Effective board oversight can help companies not only more effectively communicate and disclose information on ESG matters to investors, regulators, employees, and others, but also factor these issues into strategic decisions. Demonstrating meaningful oversight can also support a more robust defense in the event of a shareholder suit or regulatory action and increase the confidence of D&O insurers underwriting a company's risk.

FOCUS ON CULTURE

Social activism — from consumers, employees, investors, and others — will continue to challenge retail, restaurant, and food and beverage company boards and senior leaders to reexamine their messaging on corporate values. As they do so, organizations should consider taking the following actions:

- Seeking employees' input. Organizations should ensure representation by women and people of color, and engage various employee groups about how organizations can be more empathetic to the causes employees and consumers hold dear.
- Equipping managers to have in-depth discussions with direct reports about driving diversity and inclusion on a daily basis. This could include ensuring representation across teams and offering mentorship opportunities for employees, among other actions.
- Striving to better understand and counter potential systemic challenges, including diversity and inclusion at lower levels. An internal labor market flow analysis, for example, can allow employers to study who is joining and leaving at various levels, who is advancing, and who is staying. This information can be analyzed by gender and race, which can illustrate potential organizational deficiencies in hiring, retention, and advancement.



COVID-19 fallout to continue

Nearly two years into the pandemic, COVID-19-related employment practices liability risks remain significant concerns. Retail, restaurant, food, and beverage companies should expect to continue to contend with these risks in 2022. And given that they often employ large numbers of part-time and hourly wage workers — they should also continue to manage greater exposure to wage and hour claims tied to the pandemic.

Food and beverage companies are at particular risk for whistleblower and retaliation claims. Some employers have alleged that they were terminated or disciplined after reporting allegedly unsafe work conditions, including failure to provide personal protective equipment or maintain proper social distancing in accordance with evolving federal, state, and local guidelines.

An emerging risk for employers, meanwhile, are claims related to vaccine mandates. Although the stances of individual employers have varied, a number of retail, restaurant, food and beverage employers are requiring that employees be vaccinated before returning to the workplace. Because many jobs in the industry cannot be performed remotely, employees who refuse such employer mandates are being terminated, and are now filing wrongful termination suits.

Although many of these suits are not being filed by highly compensated executives, in the aggregate they could be costly for employers. Individual suits filed by similarly situated employees could also turn into complex and high-priced class-action litigation.

AVOID RETALIATION

Retaliation is the most frequently filed basis of discrimination claim with the Equal Employment Opportunity Commission. Many workplace laws, including the National Labor Relations Act and the Occupational Safety and Health Act, include specific anti-retaliation provisions, and amid the pandemic, a host of new anti-retaliation laws have been passed or proposed at the state and local level. And the Occupational Safety and Health Administration has indicated that it will pursue employers that retaliate against employees that report a failure to comply with workplace guidelines and standards intended to help prevent the spread of COVID-19.

All of this reinforces what may be an obvious point for employers, which is to not retaliate against employees for having filed a complaint or reported an alleged violation. Employers should be mindful that termination is not the only action that can be considered retaliation; reassignment to a less desirable location, denying promotion, denying overtime pay, and more could also be seen as retaliatory actions.

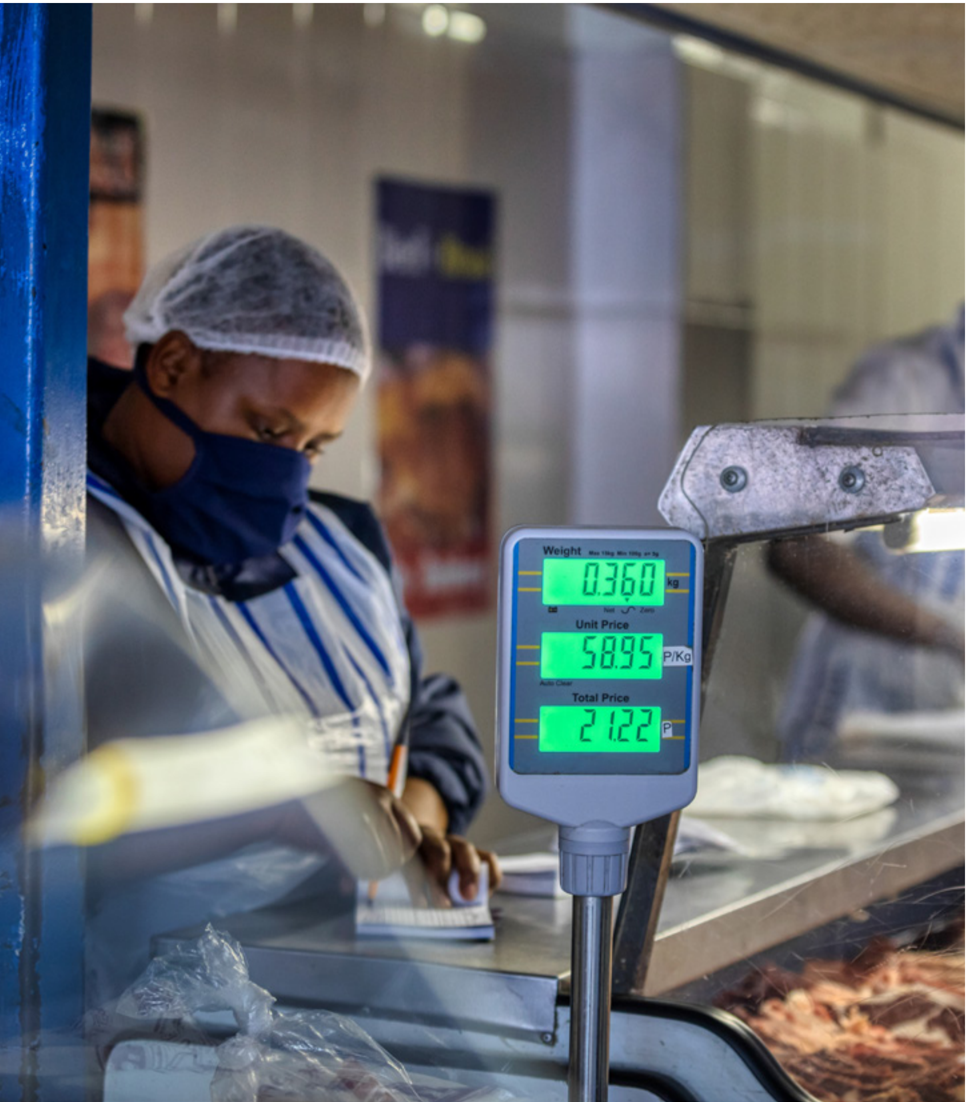
Before finalizing any disciplinary action against employees who have raised COVID-19 safety concerns, employers should first consult with in-house or external legal counsel. Employers should also make good-faith efforts to address the concerns raised by those employees.

PRIVACY CONCERNS PROJECTED TO GROW

In recent years, retail, restaurant, and food and beverage employers have increasingly used physical identifiers, including fingerprints and retina scans, to keep track of hourly employees' time. Requiring biometric information for users as they report or record their time can reduce instances of employee abuse — for example, employees clocking in and out on behalf of others.

In addition to employees, retailers are also using biometric technologies to deliver products and services to customers. Virtual try-on features, for example, can enhance the customer experience by allowing shoppers to see how makeup or clothing will look on them before making purchases, but some of the information collected for those purposes could qualify as biometric data under various laws — and it's vital that companies take steps to obtain consent before collecting such information and to protect it.

A number of companies that use such biometric tracking methods in Illinois have been targeted in litigation alleging violations of the state's Biometric Information Privacy Act (BIPA). BIPA, enacted in Illinois in 2008, contains notice and consent provisions that provide for liquidated damages of $1,000 per person for negligent violations of the law and $5,000 per person for intentional or reckless violations. Illinois is currently the only state with a biometric privacy law that provides for private rights of action — which have often been successful in court. Similar legislation, however, is pending in New York and is being explored in other states.



TAKE A SMART APPROACH TO VACCINE MANDATES

Although employers can mandate that employees and applicants receive the COVID-19 vaccine, they must be aware of some important exceptions. Under Title VII of the Civil Rights Act of 1964, for example, employers are required to provide reasonable accommodations to employees whose sincerely held religious beliefs prevent them from getting a vaccine. Similarly, the Americans with Disabilities Act (ADA) requires employers to provide reasonable accommodations to employees with underlying disabilities that prevent them from being vaccinated. And Title II of the Genetic Information Nondiscrimination Act of 2008 prohibits an employer or a doctor on behalf of an employer from asking questions about genetic information.

Employers can incentivize vaccination by providing paid time off for recovery from side effects and by offering cash or non-cash incentives to employees who get vaccinated. They must, however, be mindful of the appropriate tax treatment of these incentives, as well as ERISA compliance, reporting, HIPAA privacy, and ACA requirements, particularly if more than a de minimis incentive is being considered.

Some cash payments in exchange for vaccination may be problematic; if a proposed payment is so large that it could appear coercive, it may no longer be considered an “incentive.” It is also important to be mindful of potential discrimination claims that could arise — for example, if an employee is medically unable to be vaccinated due to a disability and is thus denied an employment advantage.

Moreover, even voluntary vaccinations could give rise to claims of discrimination, retaliation, and disparate treatment. Employers should not allow an individual to be stigmatized or harassed for not being vaccinated. Maintaining confidentiality of any information gathered from employees during the screening and vaccination process can help to minimize the risk.

Uncorrelated risks will demand attention

Beyond any one specific risk, the events of 2021 have highlighted the importance of monitoring seemingly disparate threats that can have dramatic impacts on retail, restaurant, and food and beverage companies' finances and operations. Risks as varied as water scarcity, cybersecurity, and cryptocurrency can in fact be interconnected. And many organizations are more fragile than they realize.

> **“As we move into 2022, retail, restaurant, food, and beverage companies should address these concerns by building greater resilience.**

Historically, many risk professionals and senior leaders have not focused on this fragility and the systemic risks to which their organizations could be exposed. As we move into 2022, retail, restaurant, food, and beverage companies should address these concerns by building greater resilience. To do so, we recommend organizations focus on four key steps:

1. **Transition enterprise risk management from a compliance-driven framework to an active management tool.** Boards of directors should have a better view into enterprise risks and should take a more active role in managing them. While boards often establish committees to focus on a variety of potential threats and opportunities, their discussion of risk can sometimes come down to a cursory review — characterizing the matter simply as red, yellow, or green, with little examination beyond that. Boards should look beneath the surface-level view, and incorporate those deeper dives into decision-making.
2. **Connect risk to strategy.** The most resilient organizations are those that collaborate on key processes, which can be crucial to developing well-thought-out response plans and risk anticipation. That collaboration can enable retail, restaurant, and food and beverage companies to better protect themselves against the financial, reputational, and operational implications of various risks by connecting those risks to their long-term strategy.
3. **Effectively use data and analytics.** The most resilient organizations are those that anticipate critical threats — and they often use data, analytics, and key metrics to continually look beyond the immediate. These organizations, for example, measure the aggregation of risk and various interdependencies to better articulate and quantify contingent business interruption threats. And they regularly stress test their supply and value chains in order to better plan for future crises.
4. **Avoid gaps in perception of preparedness.** Many companies suffer from what is known as the “illusion of control”; they believe they have control over random events. The result: These organizations often overestimate their preparedness — and their ability to respond to and recover from various risks — and thus a shock event can be devastating. The most resilient organizations are those that do not have a false sense of security — they are candid about their preparedness and the need to fill potential gaps. That means they can better see the path ahead and devote the right resources to managing emerging threats.

Finding opportunities

Retail, restaurant, food, and beverage companies will face a number of challenges in the year ahead, the path forward may appear daunting. But organizations have a unique opportunity to become more agile and proactive, by taking a more strategic approach to risk. By embedding what they've learned from 2020 and 2021 into their strategic planning, they can build organizations that will be more resilient to threats in 2022 and beyond.

For more information on how Marsh can help your company address these and other anticipated risks in 2022 and beyond, contact your Marsh representative or visit marsh.com.

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About this report

This report was produced by Marsh's Retail/Wholesale, Food & Beverage Practice, with contributions from Marsh's FINPRO Practice, Marsh's Marine Practice, Marsh Advisory, and Mercer.

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