

## Hot Trend or Lame Fad? Brick and Mortar Retail Locations without Sales Staff

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Practice Area: Retail Real Estate

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Caffeine seeking residents of Valley City, North Dakota can get their daily cup of joe at The Vault. Located in a renovated bank, The Vault offers an array of coffees and teas along with a selection of pastries. The Vault is like countless coffee shops across the country, save for one characteristic: it has no staff. After customers make their selections, The Vault relies on the honor system for payment. According to the owner, the till has run 15% over what customers actually owe.<sup>1</sup>

Anytime Fitness and Snap Fitness are two examples of the current trend in health clubs. Both are franchises operating, at times, in the staff-less retail arena. Both operate 24-hour gyms in strip malls. Both have limited hours when staff people are on-site with the bulk of the time being un-staffed. Members gain access to the gym with a key at any time of day and any day of the year.

In the near future, HASSLEs<sup>2</sup> will be an option for Wisconsin mattress shoppers. Reports indicate that a Wisconsin-based furniture company will be opening three HASSLEs outlets. The stores will include test mattresses and computers that offer additional information about the products and accept orders. There will not be any salespersons onsite although video cameras will be installed for security purposes.

A retailer's election to operate without staff affects numerous lease terms. The following provisions of a lease may be impacted by a staff-less operation and should be considered:

1. **Permitted Uses.** A tenant may need landlord consent to operate without staff or to install kiosks that offer additional information and accept orders.
2. **Ownership of Tenant Improvements.** Again, sales kiosks or computers may be necessary along with safety equipment such as security cameras. Upgrades to the doors may also be needed to permit automatic locking. The Lease should address this equipment and improvement issue.
3. **Hours of Operation.** Removing the expense of paying employees may make a retailer more likely to permit customers access to the premises 24 hours a day. Lease terms could restrict this approach.
4. **Impact on Other Tenants.** Tenants in the same shopping center typically shoulder costs on a proportional basis, with CAM and operating expenses generally being calculated based on square footage used by each tenant. That approach may need to be revised for certain expenses where landlord may disproportionately focus on a space that lacked employees, like security.
5. **Insurance Considerations.** Without sales people, the customary requirement that tenant maintain workers' compensation insurance becomes moot. Consideration is needed regarding what levels of insurance would be needed if sales people were not present during the hours of operation.
6. **Parking.** If there are fees associated with employee parking, a tenant should address that issue with the landlord.
7. **Continuous Operations Clauses.** Many leases require that tenants continuously operate within the leased premises. Defining "continuous operations" often involves having a full staff of employees on the premises during operating hours.

The thought of a brick and mortar retail location without salespeople is unique but it may work for certain types of products. However, if outlets like The Vault and HASSLEss keep popping up and stick around then a careful analysis of even the most mundane lease provisions will be required in order to properly address staff-less situations.

1 <http://www.nydailynews.com/life-style/eats/north-dakota-coffee-shop-operates-baristas-article-1.1842453>

2 <http://www.jsonline.com/business/chain-tests-new-concept-in-mattress-shopping-stores-with-no-employees-b99306125z1-266287831.html>

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