



# Cyber Monday And Beyond: 3 Things Employers Need To Know

Insights

11.20.18

This year's Cyber Monday—the first work day back after the Thanksgiving break—is once again expected to be the largest online shopping day in history. Last year, 81 million American consumers spent over \$6.5 billion on digital transactions on Cyber Monday, easily the busiest online shopping day of the year, and an increase of close to 17 percent from the previous year. And it's starting to even edge out Black Friday in popularity—it was reported that 71 percent of consumers said they planned on shopping on last year's Cyber Monday, while only 69 percent said they planned to do so on the day after Thanksgiving.

No doubt some of your employees (or most of your employees) will be spending part of the day (or most of the day) hunting for online deals as they realize the holiday shopping season has kicked off and they don't want to be left behind. So what should employers know about the day and the next few weeks of frenetic online shopping? Here are three things you should consider:

## Is This Really That Big Of A Deal?

Before you get too worked up over the loss of productivity, consider whether it will actually be just an average Monday. Your employees might spend a lot of time on non-work internet activities on a typical workday anyway.

Even if you think you might want to enforce your policies and crack down on internet usage for the sake of productivity, you might miss the mark. That's because many employees will just spend Cyber Monday on their smartphone or tablet outside of your prying digital eyes, looking for deals and clicking their way to purchases without using company equipment. In fact, last year's mobile device purchases topped \$2 billion—the first time sales from mobile devices cracked that mark. The National Retail Federation notes that 43 percent of participants in last year's Cyber Monday used a mobile device to conduct their purchases, while only 13 percent used a work computer.

The best practice might just be to make sure your employees are getting their appointed work done on Cyber Monday, just like every day, and enforcing your productivity and quality standards.

## Communication Is Crucial

No matter what you decide to do, make sure your handbook and policies are clear. Whatever your rules are, they should be spelled out in plain language and distributed to all workers. It almost goes without saying, but make sure you can prove that your employees received a copy of your policies

either through an electronic signature or a signed acknowledgement page safely stored in the employee file.

If you are going to completely ban the practice of online shopping using work computers, make sure your policies explicitly say that. If you want the right to be able to search the company-provided computers, smartphones, and tablets you issue to your workers, make sure you say that plain as day in your handbook. If you are going to let your workers surf the web using company equipment for personal purposes but only during breaks and lunches, make that clear. And if you give your employees the freedom to spend time online as long as they surf in moderation, avoid inappropriate content, and get all of their work done, spell that out in your handbook.

### **Consistency, Consistency, Consistency**

Like most human resources directives, consistent enforcement of your policies is the key to staying out of legal hot water. If you are going to drop the hammer on any of your workers who violate your policies, be prepared to show that you consistently enforce your policies. In other words, if the hammer drops for one employee, make sure you are ready to drop the hammer for any employee who breaks that rule.

Consider this scenario: you fire one of your workers for spending too much time on Amazon on Cyber Monday. She files a lawsuit against you, claiming that your termination was discriminatory because of her gender, or her age, or the fact she took family leave last month, or the fact she filed a workers' compensation claim in July, or any number of other reasons.

One of the first actions her attorney will take will be to seek discovery on the internet search history on all of your other employees. If it turns out that many of them also were goofing off online on Cyber Monday but not disciplined for it, she might be able to successfully argue that you were picking on her because of her protected status. So make sure that you have a valid reason for checking up on employee internet usage, you don't single anyone out for inspection unless somehow justified, and you consistently enforce your disciplinary policies.

If you have any questions about Cyber Monday or how it may affect your business, please contact your Fisher Phillips attorney.

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*This Legal Alert provides an overview of a developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*

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