

CYBER MONDAY AND ONLINE SHOPPING: 3 THINGS EMPLOYERS NEED TO KNOW

Insights

Nov 25, 2019

It's that time of the year again. Cyber Monday — the first work day following the Thanksgiving break — is expected break online shopping records. In 2018, retailers saw a 20% increase in Cyber Monday revenue as consumers spent over \$7.9 billion on online transactions. Surprisingly, Cyber Monday has begun to outpace Black Friday, which only generated \$6.2 billion in revenue.

Over two-thirds of employees plan to shop online while at work during the holiday season. This means you should have a plan to navigate the next few weeks to maintain productivity and minimize disruption. Here are three things you should consider:

IS THIS REALLY THAT BIG OF A DEAL?

As the holiday shopping season draws near, you may not need to fret over the potential loss of productivity. In reality, Cyber Monday may not be any different than an average day. Your employees might already spend time on non-work-related internet activities during their typical workday.

Additionally, simply enforcing your organization's policies and placing restrictions on internet usage may not have the desired effect. This is because many employees will use their personal smartphones and tablets — rather than company equipment — to hunt for Cyber Monday deals. In fact, mobile device purchases were up 55% from last year's Cyber Monday to reach \$2.2 billion in sales, making it the first Cyber Monday where more than half of website visits came from mobile devices.

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Under these circumstances, it may be best to simply expect that employees will be shopping during work in the upcoming weeks. However, it is important that you (1) enforce your productivity and quality standards on Cyber Monday — just as you would any other day — to ensure that online shopping does not sidetrack employees from completing their appointed work; and (2) remind employees to avoid suspicious websites or applications to prevent potential data breaches.

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COMMUNICATION IS CRUCIAL

Regardless of how you choose to proceed, make sure that your organization's handbook and policies are in order. First, make sure that your rules are provided to all your employees. Have your workers provide an electronic signature, or signed acknowledgement page for their employee file, as proof that they received a copy of your policies.

Additionally, take a moment to ensure that your rules are clear. If your organization has an outright ban against online shopping on work computers, make sure that the prohibition is explicitly stated in your policies. If you would like the ability to search all company-issued equipment, make sure that the authority to do so is contained in your handbook.

If your employees can use company-issued computers, smartphones, and tablets for personal purposes during their lunch or break, make that clear. Even if you allow your employees the freedom to browse online so long as they do so in moderation, refrain from accessing inappropriate content, and complete their work, spell that out in your handbook.

CONSISTENCY, CONSISTENCY, CONSISTENCY

As always, one of the best ways to avoid legal troubles is to be consistent with the enforcement of your organization's policies. Put another way, if you drop the hammer on one employee for breaking a specific rule, you must drop the hammer on any other employee that also breaks that same rule.

Consider the following: you terminate one of your employees for spending too much time shopping online during work hours. The employee files suit against you,

alleging that the termination was discriminatory because it was due to their gender, age, the fact they recently took protected leave, or previously filed a worker's compensation claim.

One of the first actions the former employee's attorney will take will be to seek discovery on the internet search history of your other employees. If other employees were also shopping online during working hours but not disciplined, your former employee may be able to successfully claim that their termination was due to their protected status.

So make sure that you have a valid reason to check employee internet usage, don't single out any specific employee for inspection unless justified, and consistently enforce your organization's disciplinary policies.

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

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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