

National Retail Newsletter - October 2014 Edition

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Retailers in Chicago Now Subject to Tobacco Flavoring Restriction

A city of Chicago ordinance prohibiting the sale of flavored tobacco within 500 feet of any school property line became effective July 15, 2014. "Flavored tobacco" is broadly defined as any tobacco that has a distinguishable taste or aroma other than normal tobacco. The ordinance does not grandfather in any stores currently selling flavored tobacco within 500 feet of any school. But it does provide a single exception. Retail tobacco stores that derive at least 80 percent of their gross revenue from tobacco sales are not subject to this ordinance and may sell flavored tobacco within 500 feet of any school. The ordinance also requires all tobacco to be sold over the counter and thus prohibits all self-service tobacco stations within 500 feet of any school.

Lawmakers and Plaintiffs' Attorneys Training Their Fire on Retailers' Consumer Data Security Systems

Lawmakers are moving to put more of the liability for consumer data breaches onto retailers. This includes requiring retailers to pay back all of the costs related to a breach — a trend that could culminate in retailer-specific data security requirements.

Placing more responsibility on retailers to protect against consumer data breaches could lead to actions from state attorneys general and class-action plaintiffs. If states begin to enact statutory damages, the fear that plaintiffs *may* have suffered identity theft may make it easier for class action suits to advance.

Retailers should take steps to understand how their security systems work, identify possible cyber threats and discard data that is no longer needed for business purposes. Implementing proactive measures could also provide retailers with the information necessary to limit liability for breaches not caused by their own negligence.

Witnesses Key to Quick Deliberation

Plaintiff, a 41-year-old carpenter, claimed to have slipped and fallen on a white powdery substance inside a Walgreens store and thereby sustained two herniated discs in his neck. As a result of the injury, plaintiff had to have an artificial disc placed in his neck and later underwent an anterior cervical fusion of two vertebrae. A second cervical spine surgery to address worsening hand weakness followed. Plaintiff sued Walgreens in Palm Beach County (Florida) Circuit Court. The jury returned a defense verdict after deliberating for just 20 minutes. Plaintiff relied heavily on photographs of his clothing worn on the day of the incident, which allegedly depicted white powder on his shirt and shoes. One key to the defense was the testimony of a paramedic and an emergency room nurse who corroborated the store employees' testimony that on the day of the incident plaintiff never mentioned that he slipped on powder and that he reported that his knee gave out, causing him to slip and fall.

Paul Martin Wallace v. Walgreen Co., Palm Beach County, Case No.: 50-2010-011562

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