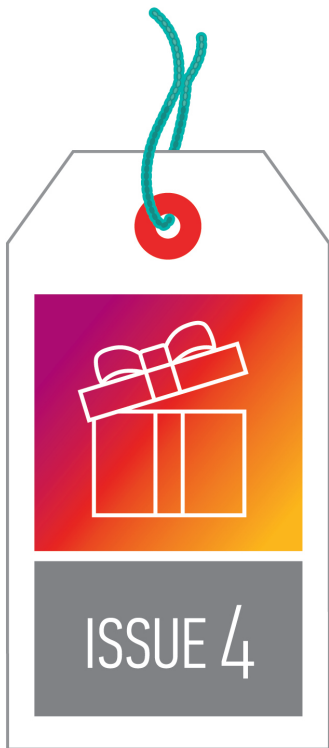


son, Don't Open Pandora's Box!



For retailers, the holiday season is indeed the "most wonderful time of the year." But

with additional stock and sales to handle, retailers also typically need to increase staffing and hours for employees, which can create risk on the employment law front. Here are a few tips to help employers avoid finding Pandora's Box under the tree this season:

1. **Don't Share Santa Suits.** This year is different. It's not just Santa hats; we are wearing masks and offering hand sanitizer. In addition to managing retail operations to track Centers for Disease Control guidelines, employers should check local requirements related to dressing room operations, in-store capacity, social distancing, and even the permissibility of cash transactions. Consider floor markings and other notice postings to help minimize community transmission of COVID-19 and other communicable seasonal diseases, and weigh whether to implement employee health screenings (and, if so, how to do so while preserving employee privacy rights).
2. **Beware of Elves in Managers' Clothing.** Store managers are often paid on a salaried basis and are not eligible for overtime because of their executive function. However, if stores are short-staffed, managers sometimes do less supervising and more "hourly" work, which can affect their exempt classification. Be sure to reinforce job duties; if managers are demonstrating tasks, that's fine, but if they are spending the majority of their time on such functions, the employer may have some risk. Remember, if it looks like an elf, it probably is one.
3. **Schedule Time for Christmas Cheer.** Increased consumer pressures and additional shipments can leave staff short on break time. Not only are breaks important from the perspective of mental health and employee morale, in many jurisdictions, they also are required by law. Scheduling employee break times can help employers better plan for coverage, and better monitor for compliance. Shift supervisors should regularly remind people of breaks and ensure coverage to enable same.

4. **Keep an Eye Out for Who's Been Too Nice.** This time of the year, everyone wants to be on the "Nice" list. Employees might "volunteer" to come in early to help unload new shipments or stay late to help tidy a store that's been picked over for hours. While this sort of initiative is well-meaning, employees should not be performing these services off-the-clock. Remember, this time is compensable even if not approved or required—just like Santa, the employer is presumed to know everything. If the employer knows about it, the employer needs to pay for it.

Like the North Pole, retail operations during the holidays work best when everyone works as a team. Keep the lines of communication open and remember to call in reinforcements when they are needed! Happy Holidays!

© 2020 Perkins Coie LLP

Authors



[Heather M. Sager](#)

Partner

HSager@perkinscoie.com [415.344.7115](tel:415.344.7115)

Explore more in

[Labor & Employment](#) [Retail & Consumer Products](#) [Apparel & Footwear](#)

Related insights

Update

[The New Administration's Impact on Retailers](#)

Update

[Securities Enforcement Forum DC 2024: Priorities in the Election's Wake](#)