AMERICAN CHAIN OF WAREHOUSES
linking you to your markets

ACWI ADVANCE

Volume 2, Issue 2 January 31, 2014

Christmas Retail Sales Meet Pre-Holiday Expectations

December retail sales (excluding automobiles, gas stations and restaurants) increased 0.4% seasonally adjusted month-to-month, and 4.6% unadjusted year-over-year, according to the National Retail Federation.

Total holiday retail sales, which include November and December sales, increased 3.8% to $601.8 billion, which was not far off the NRF pre-season forecast of 3.9% and $602.1 billion.

In addition, non-store holiday sales, which is an indicator of online and e-commerce sales, grew 9.3% to $95.7 billion, NRF said.

The International Council of Shopping Centers said that in spite of some extreme weather and a shortened holiday season, its members reported sales for the November-December holiday period increased by 3.0%.

The December same-store increase was 3.4% on a year-over-year basis, which was stronger than November's sluggish 2.1% gain, ICSC pointed out.

For the two-month holiday-selling period of 2013, U.S. chain-store sales for the industry companies reporting to ICSC outpaced 2012's increase of 1.8%. However, the association stressed that individual retailer performance was very uneven and sales were extremely promotional (deeply discounted) across a wide spectrum of retailers, causing some retailers to warn of weaker earnings for the quarter.

"While some retailers undoubtedly faced a tough holiday season with more promotional activity, bouts of adverse weather and a cautious consumer, overall industry sales met expectations and managed to outpace last year's growth rate," said ICSC Chief Economist Michael Niemira.

NRF President Matthew Shay said, "Considering that retail sales are an important barometer when measuring the overall health of our national economy, this report provides a level of true optimism that the recovery is picking up steam, and retail leads the way."

December retail sales, released Jan. 14 by the U.S. Census Bureau -- which include categories such as automobiles, gasoline stations and restaurants -- increased 0.2% seasonally adjusted month-to-month, and 4.1% adjusted year-over-year.

"Retail sales have been volatile all year and the holiday shopping season was no exception," NRF Chief Economist Jack Kleinhenz said.

"Solid job growth in the months of October and November led to a more-confident consumer and healthy holiday shopping season for many retailers," he added. "While economic and policy uncertainties remain, the economy seems set for steady growth in the New Year."

(Continued on next page)

Some of the holiday sales increase came at the expense of margins, Kleinhenz admitted. "Retailers are still stressed and a long-term promotional environment may actually hurt the bottom line. As consumer confidence grows, there will be less need for retailers to heavily promote and discount their offerings."

ICSC reported that for the full calendar year 2013, industry sales grew by 3.3% -- in line with holiday season --and was the strongest annual sales performance since 2011 when sales jumped 4.7%

Looking ahead to what will be the end of the fiscal year for most retailers in the United States, ICSC Research forecasts that January monthly comparable-store sales will increase by between 3% and 3.5% over last year, just slightly under the reported December increase.

The Winners and Losers

NRF said analysis of December retail sales showed that building materials and garden equipment and supplies dealers stores' sales decreased 0.4% seasonally-adjusted month-to-month, but increased 4.2% unadjusted year-over-year.

Clothing and clothing accessories stores' sales rose 1.8% seasonally-adjusted month-to-month and 4.7% unadjusted year-over-year.

On the other hand, electronics and appliance stores' sales decreased 2.5% seasonally-adjusted month-to-month and 1.5% unadjusted year-over-year.

Furniture and home furnishing stores' sales slid 0.4% seasonally-adjusted month-to-month, yet increased 5.0% unadjusted year-over-year, NRF noted.

General merchandise stores' sales were flat seasonally-adjusted month-to-month and flat unadjusted year-over-year.

However, NRF reported that health and personal care stores' sales were up slightly 0.6 seasonally-adjusted month-to-month, and rose 5.9% unadjusted year-over-year.

Sporting goods, hobby, book and music stores' sales decreased 0.6% seasonally-adjusted month-to-month, but increased 5.8% unadjusted year-over-year, NRF reported.

Customer Satisfaction With In-Store Sales Up Since 2008

In a survey that was conducted before news broke of Target Stores' hacking meltdown, Motorola Solutions found that overall in-store customer satisfaction has grown 23% in the last six years.

At the same time, satisfaction with the checkout process and the availability of store associates has increased 32% and 23% respectively since 2008.

Retailers need to continue to offer choice and options to shoppers across all channels – online, in-store and mobile, Motorola said. Shoppers also reported a dramatic increase in use of their smartphones for shopping-related activities including mobile couponing.

"Retailers have better equipped their stores and associates with technology in a meaningful way during the last six years, resulting in a better shopping experience and a significant leap in in-store shopper satisfaction," said Eduardo Conrado, , senior vice president, marketing and IT, Motorola Solutions

"By enabling more associates with technology and offering self-service shopping options, retailers are not only increasing sales but also driving greater customer satisfaction," he added

Sixty percent of surveyed retail associates recognize the positive effect of mobile loyalty account access on the shopper experience, Motorola found.

More than eight in 10 (81%) Gen Y shoppers and nearly three-quarters (73%) of Gen X shoppers used their personal mobile device for shopping-related activities.

Retailers can recover 68% of out-of-stock (OOS) incidents if they can offer shoppers the option to order the items before leaving the store and shipping the items to their homes, Motorola said.

The survey also found that 61% of store associates offered purchase and ship options beyond traditional in-store purchases. Approximately 35% of store associates were able to offer online or mobile ordering with in-store pick up for OOS items and 30% could ship OOS items bought in-store to shoppers' homes.

OSHA Citation Vacated For Lack of Scientific Support

A federal judge sent a message when rejecting an OSHA administrative law judge ruling that a logistics employee's injury was work-related.

"We are surprised that an ALJ would echo such a position and that the full commission would decline to intervene," appeals court Judge Frank Easterbrook wrote when he vacated an OSHA recordkeeping citation. "Judges and other lawyers must learn how to deal with scientific evidence and inference."

The Caterpillar Logistics employee worked in a packing department, taking items from containers and putting them into shipping boxes. She suffered from inflamed tendons in her elbow, called epicondylitis. OSHA cited Caterpillar for not recording her injury as work-related.

Caterpillar objected, saying a five-person expert panel had concluded her injury could not be due to work because both force and repetitive motion are required to cause epicondylitis, but her job only involved repetitive motion.

The panel, three of whom were specialists in musculoskeletal injuries, relied on guidance from the National Institute for Occupational Safety and Health and American Medical Association. It also found the employee was the only person in the packing department who ever suffered the injury.

The OSHA ALJ gave greater weight to the government's witness, a professor of medicine who said combination of moderate repetition plus pronation (turning) of the employee's wrist, hand and forearm caused her injury. He didn't explain why no other worker in her unit had the ailment.

The federal judge said the question really was whether the expert's "framework is sound, and short of new discoveries about human physiology, only statistical analysis will reveal the answer."

The law firm of Jackson Lewis said the court's decision sends a message: "You can see the court alerting all plaintiffs and the Department of Labor that they have to use that scientific evidence."

Retail War's Secret Weapon Is Omnichannel Warehousing

The omnichannel logistics models that make a seamless consumer experience possible are now built on a foundation of six new types of facilities, according to a new report by Jones Lang LaSalle.

"The distribution of goods has gone from a bulk process to an individualized delivery model, requiring the reinvention of the supporting real estate that supports moving individual packages where they need to go," explained Craig Meyer, JLL's President of Industrial Brokerage.

"We used to talk about pallet to store. Now we talk about dock to doorstep," he said. "We used to ship one massive delivery of 100 items to one location. Now those same 100 items must go to 100 different destinations—gift-wrapped, overnight, and with a personal note."

JLL asserted that ecommerce has evolved as a distinct real estate asset class, with six newly-defined primary types of facilities.

They include **Mega e-fulfillment centers** where merchandise is stocked and picked at item level, and **parcel sortation centers (hubs)** where parcels are sorted before being forwarded to local parcel delivery centers, according to JLL.

Also, **local parcel delivery centers** for 'last mile' fulfillment, these represent a new type of facility and consumer destination; and **local urban logistics depots** to ensure rapid order fulfillment particularly to service major cities, these destinations may be integrated or separate from retail store locations.

What JLL calls **return processing centers** engage in reverse logistics. Many times these are located within mega-fulfillment centers, it noted, but typically are centralized, requiring specialized inventory and materials handling needs. **Online food e-fulfillment centers**, with refrigeration and cooling, support grocery delivery and similar functions.

Omnichannel strategy will drive a brand new class of distribution real estate, Meyer said. "Customer convenience is driving an evolution in ecommerce logistics – from traditional warehouses to smaller distribution facilities in strategic locations that supports retailers' omnichannel objectives by prioritizing rapid through-put rather than storage."

NLRB Withdraws Notice Poster Rule, For Time Being

The National Labor Relations Board decided not to pursue any further attempts to revive the notice posting rule it initially proposed in 2011.

The rule would have required private sector employers to conspicuously display an 11 by 17-inch poster explaining the rights of workers to unionize and collectively bargain over wages and working conditions.

Although scheduled to take effect in 2011, it was postponed until January 31, 2012 due to significant criticism and legal challenges from national business and industry associations.

It was delayed again after a federal court ordered the NLRB postpone the effective date pending the resolution of any legal challenges.

In 2013, the D.C. Circuit Court invalidated the rule, reasoning that it effectively coerced employers to disseminate information they had a right not to disseminate under the First Amendment.

That same month, the Fourth Circuit Court of Appeals also struck down the posting rule, holding that Congress never intended to grant such rulemaking authority to the NLRB.

The board's only remaining legal recourse was to petition the Supreme Court for review. Apparently recognizing its limited chance of success, it failed to file its petition by the January 2, 2014 deadline.

"Employers can breathe a sigh of relief knowing that they will not be subjected to the NLRB's posting requirements in the near future," said Patricia J. Hill, Jeffrey P. Watson and Matthew W. Clarke of the law firm of Smith Gambrell & Russell.

"However, employers should not let down their guard just yet," it warned. "Despite the fact that unionized workers comprised just 7.3% of private-sector employees in 2012, the NLRB's decision not to seek Supreme Court review may be an attempt to focus its efforts in other areas that may significantly impact employers in the future."

In addition, the board noted that its poster remains available on its website where it can be viewed, displayed and disseminated voluntarily.

OSHA Injury Report Due Feb. 1 Even If You Had No Injuries

February 1 is the annual OSHA Injury and Illness Recordkeeping deadline for employers, unless they have only 10 or fewer employees or are in low-hazard industries such as retail, service, finance, insurance or real estate.

On that date employers are required to review their OSHA 300 Log; verify entries are complete and accurate; correct any deficiencies; use the injury data to develop a 300A Annual Summary Form; and certify the accuracy of the 300 Log and the 300A Summary Form.

The Form 300A is a summation of the workplace injuries and illnesses recorded on the OSHA 300 Log during the previous calendar year, as well as the total hours worked by all employees covered by the OSHA 300 Log that year.

The 300 Log and the 300A Annual Summary Form must be signed by a "company executive," defined as an owner of the company; a corporate officer; highest ranking company official working at the establishment; or immediate supervisor of the highest ranking company official working there.

After certifying the recordkeeping documents, OSHA requires employers to post the signed copy of the 300A Summary Form in the workplace, where it must remain until April 30.

Even if your facility had no recordable injuries or illnesses during the year, OSHA requires you to prepare and post a 300A Form.

After April 30, employers can remove the 300A Form, but must keep copies of the OSHA 300 Log, the 300A Annual Summary Form, and 301 Incident Report forms for five years.

A common mistake is to file and forget the old 300 Logs. OSHA rules also require you to update logs with newly-discovered injuries or illnesses for the recording year, along with any changes that are found during the five-year retention period.

Advice on How to Stay Union-Free in 2014

Now is the time for you to re-examine your strategy for remaining union-free. Rulings from National Labor Relations Board have reinforced the old truism that if you wait to forge a strategy until an organizing campaign has begun, you are too late.

The NLRB has stacked the deck in favor of union organizers by shortening the time for campaigns, and favoring unions over employers in every other way it can.

But James R. Redeker of the law firm of Duane Morris LLP also stresses that imminent federal "persuader rules" – requiring that you make public the identity of anyone who helps you with a campaign – mean you should develop your strategy before they go into effect this year.

"If employers act before the new persuader rules are promulgated in March, they may keep their strategic planning confidential," Redeker points out.

One thing you should do right now is neutralize the desire for third-party representation by making wages and benefits competitive with unionized companies in the area, he recommends. "The value of being union-free lies elsewhere and if you are significantly under market, you will likely fail."

Make safety and equal/fair treatment important. Besides keeping you on the right side of the law, it communicates to employees that you care, he notes.

An effective communication program also creates a sense of security for employees because they know how you and they are doing, and why things that are happening may change their lives, Redeker says.

"Communicate what you are doing to make unions unnecessary," he says. "If those connections are not made for them, employees may not appreciate it." But avoid reasons that can be twisted to appear exploitive: "We don't need a union because we need flexibility" can be heard as "we don't want a union because we want to jerk you around."

Another vital tool is a credible, legal problem-solving system for workers. "Employees with unresolved problems beg for help," Redeker notes. "If you provide protections from unfair treatment, employees do not need to find it elsewhere."

NLRB rules also now allow unions to separate workers in a single facility into smaller groups, called micro-units, for organizing unless the employer can show "an overwhelming-community-of-interest" exists for all of the facility's employees.

Find out what you need to do to show this, then adjust your operation to create evidence that micro-units are inappropriate, Redeker urges.

Collect and have easily retrievable documentary evidence to make sure you will be able to present within seven calendar days all that is necessary to meet your burden of "overwhelming" evidence.

Train supervisors in managing employees and employee performance, Redeker stresses. Supervisory failings in performance management cause employees to look outside for help.

Educate your supervisors about why employees join unions and how unions organize employees. This includes what unions are, and can and can't do, and what supervisors can and can't do in regard to protected activity. "Make sure they know how to recognize, report and respond to suspected union organizing without violating the law," he says.

You also need to ensure your supervisory positions meet the board's new definition of a supervisor. Redeker advises you to prepare job descriptions meeting that standard, along with wage, evaluation and other policies and systems that establish your supervisors are, under the law, supervisors.

Be prepared to respond effectively and quickly (within 24 hours) to credible union organizing, he adds. That includes being prepared to provide the necessary evidence at a post-petition hearing.

"Keeping your workplace union-free in 2014 will require more urgency and very specialized efforts" Redeker says. "Employers who don't change and retool their union-free strategies dramatically will find organized labor has been dealt all of the winning cards."