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Retraining Customers to Accept Capacity Reality

Nearly eight in 10 – 78.8% -- of retailers will set standard shipping deadlines for guaranteed Christmas delivery to expire at least a week before Dec. 25, compared to 73.7% who said the same thing last holiday season, a recernt survey found.

Also, only 21.2% said they will set those deadlines to expire Dec. 19 or later, compared to 26.3% who said so last year. The eHoliday survey was conducted by Prosper Insights & Analytics for Shop.org, the ecommerce division of the National Retail Federation.

"Retailers and their delivery partners this year are proactively planning to make sure they meet customer expectations for delivery and customer service," was the way that Shop.org Executive Director and NRF Senior Vice President Vicki Cantrell put it.

"In addition to ramping up their online promotions earlier to entice customers to start shopping earlier in the season, many companies this year also have invested in functionalities such as live chat, checking in-store product availability and buy online – pick up in store," she noted.

Of the 92.3% of retailers polled who plan to offer free standard shipping of some sort this holiday season, 69.1% say their guarantee for Christmas delivery will expire on or before Friday, Dec. 19. Nearly three-quarters (74.2%) of retailers polled last year had a deadline on the equivalent day (Friday, Dec. 20, 2013).

According to a separate Shop.org survey in August, 41.3% of retailers have invested significantly in live chat, and 34.5% have invested in technologies that allow shoppers to check in-store availability.

Shop.org said areas of investment include shipping deadline calendars (30.9%), "ship from store" functionalities (27.3%) and buy online – pick up in store services (25.5%),.

"Consumers now have more tools at their disposal when it comes to connecting with retailers, and as online shopping continues to grow, more shoppers this holiday season will look for specific online promotions as a way to find the perfect gift at the right price," said Prosper's Principal Analyst Pam Goodfellow.

"Possibly having learned from their procrastination last holiday season and with another shortened holiday calendar ahead of us, shoppers could start looking for those shipping offers sooner rather than later this year," she added.

For those waiting until the last minute, 20.6% of retailers that plan to offer a free or upgraded expedited shipping promotion will give customers until Tuesday, Dec. 23 to use that service.

By contrast, 14.7% of retailers polled will let their customers take advantage of that offer only through Monday, Dec. 22, and another 14.7% will end their free expedited shipping promotions on Sunday, Dec. 21.

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More than half (56.6%) of the retailers who plan to offer express two-day shipping say their deadline for guaranteed Christmas delivery will expire on or before Dec. 21, while the rest will end on Dec. 22.

When it comes to one-day express shipping, half (50%) are comfortable offering express one-day or overnight shipping as late as Tuesday, Dec. 23 for a guaranteed Christmas delivery; three in 10 (30%) have set Monday, Dec. 22 as the deadline for their one-day express delivery deadline.

Expected to take some of the pressure off is an innovation that has seen growing popularity among retailers – using bricks-and-mortar stores as warehouses for customers to pick up their online purchases (AA, 10-31-14, P. 1).

In spite of this and other innovations like mobile technology which retailers have enthusiastically embraced, just 5% believe they have the advanced omnichannel capabilities they need, according to the third annual Retail Insight industry benchmark report released by SPS Commerce in October.

Just 11% of retailers said they were prepared for cross-channel fulfillment while 18% report mobile commerce readiness, the survey found.

About 52% of retailers and suppliers said they are too distracted to focus on omnichannel strategies and 43% of retailers report their legacy systems hold them back from omnichannel progress.

Forty percent of retailers reported shipping less than 5% of online orders from stores today, but an additional 25% reported that more than 75% of their online orders are fulfilled from stores.

However, retailers don't see this continuing, SPS said. “Shipping from stores is expensive. So it's no surprise that only 18% expect to be shipping 75% or more of online orders out of stores, while only 34% also expect to continue shipping 5% or less.”

Thus retailers are grudgingly accepting the need for more drop ship relationships, SPS said. “This is an opportunity eagerly embraced by their ecosystem partners but long-resisted by retailers.”

They resist drop shipping for lack of visibility into the process, less confidence in partners delivering the right consumer experience, and the competitive threat arising from teaching manufacturers how to cut retailers out of the consumer relationship.

The Local Food Trend Alters Grocery Logistics

The movement among consumers to embrace a preference for foods sourced locally is exerting growing influence on the supply chain.

In a recent survey of U.S., food shoppers by A.T. Kearney more than 40% said they purchased local food weekly, and another 28% at least once a month. Nearly two thirds (66%) said local food helps the local economy, 60% said it brings a broader and better assortment while 45% said it supplies healthy alternatives.

“We recommend national retailers begin piloting the direct supply chain model on a region-by-region basis, initially as a complement to broker and wholesale market relationships,” Kearney said.

People from rural and small communities, closest to where food is grown, are more willing to pay more for local food than people from larger cities. High-income earners in small towns are, on average, willing to pay 10% extra for local food, compared to about 5% for residents in large cities.

There are broad regional differences when it comes to buying local food, from willingness to pay a 5% premium in the Southeast to a 7% premium in the West and in the Northeast.

The share of local food purchased as part of the typical shopping basket also is highest in those regions (especially the West Coast), compounding the regions’ attractiveness for local food retail.

The Pacific Coast region leads with 27% local food in a typical basket, followed by the Northeast at 22%. The Southeast has the lowest rate, with local food making up 16% of a typical basket.

Consumers cite freshness is far and away the most important purchasing criteria (60%), followed by price (30%), while 30% of respondents do not differentiate between fresh and local.

Kearney told grocers, “As quality and freshness emerge as differentiators in local food, direct supply models will be critical for long-term success.”

Furniture Orders, Inventories Continued to Rise in August

New furniture orders in August increased 5% over August 2013, and 3% over July, according to the Smith Leonard survey of residential furniture manufacturers and distributors issued on Oct. 30.

Year-to-date, new orders remained 5% ahead of the same period a year ago. Last year at this time, new orders were 6% ahead of the first eight months of 2012.

Approximately 69% of the participants have reported increased orders year-to-date, the same that we reported last month, Smith Leonard said.

Shipments in August 2014 were up 6% over August 2013, the same as reported last month (AA, 10-15-14, P. 3). Shipments were up for some 74% of the survey participants.

Year-to-date, shipments were up 6% over the first eight months of 2013. In 2013, shipments for the first eight months were 4% higher than the same period from 2012.

Some 69% of the companies polled reported increased shipments over 2013 for the year-to-date results. Backlogs were up 3% over August 2013.

Receivables in August were 6% higher than August 2013, in line with both the increase in shipments for August 2014 versus August 2013, as well as the increase in year-to-date shipments.

Inventories were up 6% over 2013 levels, down from 9% reported last month. Inventories fell 1% from July. “These results indicated that inventories in September were much more in line with current conditions,” Smith Leonard observed.

The number of factory and warehouse employees fell 1% from July. August 2014 levels were 4% higher than August 2013 down from a 6% increase reported last month.

Factory and warehouse payrolls were up 1% over August 2013 and up 5% year-to-date. This was down from a 6% increase reported last month, but still in line for the most part with current conditions.

EEOC Says Some Employer Wellness Programs Unfair

On Sept. 30 the EEOC filed its second lawsuit in as many months targeting employer wellness programs it says violate the Americans with Disabilities Act.

In both cases, the employer programs required their employees to submit to medical examinations, including blood work, and to disclose their medical history as part of a health risk assessment.

Wellness programs have become more widespread as employers seek out more ways to shrink their health insurance costs by encouraging their employees to adopt healthier habits and lifestyles. In addition, provisions of the Affordable Care Act encourage employer wellness programs.

EEOC appears to be focusing on penalty programs that may call into question the voluntariness of employee participation, according to attorneys Katharine H Parker and Kelly Anne Targett of the Proskauer Rose law firm.

In one case EEOC asserts that an employee who was absent on medical leave and unable to comply with a wellness program within the set time frame was improperly dropped from the company’s health insurance plan in violation of the ADA.

In the second case EEOC says an employee who objected to a wellness program was wrongfully required to pay an excessive premium compared to the employees who chose to participate, and later was improperly fired for continuing to refuse to participate.

“For years, EEOC has declined to provide guidance on acceptable parameters for such programs, leaving employers in the dark as they search for creative solutions to limit healthcare expenses,” Parker and Targett said.

“Unfortunately, it appears that EEOC is on a different path with its recent suits, choosing to litigate issues it could have helped to avoid with guidance,” they added.

College Soccer Player Cites Federal Law to Collect Pay

A former University of Houston soccer player is suing the NCAA and its Division I member schools claiming they violated federal wage law by failing to pay college athletes for the hours they worked by practicing and playing collegiate sports.

Earlier this year a regional director of the National Labor Relations Board determined that Northwestern University's scholarship football players are employees under federal labor law and can unionize, an issue currently under review by the full board.

However, this new case argues players' are employees under federal wage law, which is different from labor organizing law, and it turns on whether the athletes performed work, regardless of whether they were scholarship or walk-on players.

Cost for Successor Companies Rises

The National Labor Relations Board significantly raised the damages employees can recover from a company that purchases their business but refuses to hire them because they are union members.

The Sept. 30 decision applies to both companies that acquire a business by bidding as a replacement contractor as well as through a purchase transaction. The ruling greatly increases the potential exposure of acquirers who choose an open-hiring process without preferences for former employees.

This reverses a policy NLRB adopted in 2006 which held that if it found that the employees were entitled to back pay, that would only cover the period in which the parties were likely to have reached agreement – usually a matter of months.

Under the new ruling, back pay is calculated for the entire period from the acquisition date through the board's decision and into the future until such time as the company's management reaches a good faith impasse or agreement with the union – a period that can extend for years.

OSHA Will Lower Burden Of Proof for Whistleblowers

OSHA Administrator Dr. David Michaels announced plans to lessen the whistleblower's burden of proof in agency investigations.

Speaking Sept. 3, he noted that from 2009 through June 30 of this year OSHA has issued 3,726 merit determinations, "recovering over $119,000,000 in damages for whistleblower complainants, and reinstated 389 whistleblowers to their positions."

In fact, in the first three quarters of this year, the agency already has issued 602 merit determinations and awarded approximately $21.5 million in damages to whistleblower complainants.

Michaels said that from 2009 through June 30, OSHA more than doubled the number of complaints that it found had merit – from 450 to 934.

However, he appears to believe that not enough complaints were found to have merit by OSHA's investigators because the burden of proof in whistleblower investigations was just too high, say attorneys for the law firm of Seyfarth Shaw LLP.

OSHA is working on a memo to clarify the burden of proof, Michaels said. "The memo will change the burden of proof to be based on a 'reasonable cause' that a violation occurred, which is a lesser burden to prove than a 'preponderance of the evidence.'"

Michaels said this policy memo that OSHA and the Solicitor of Labor are currently working on should be completed "shortly," although he gave no date.

While the whistleblower burden of proof is a legal standard prescribed in the 21 statutory provisions OSHA administers, including Sarbanes-Oxley, Michaels asserted that the agency should lower the burden on its own, which means it will be able to find even more cases to have merit.

"Of course, what Michaels and OSHA cannot change is the actual burden of proof that the courts are required to apply under each statute," the Seyfarth Shaw attorneys pointed out.

"If OSHA is constantly using a lower burden of proof to screen and evaluate cases, regardless of the statute, it seems they may be headed for trouble if and when they get to court," they added.

More States Impose Mandatory Sick Leave

In a recent article we talked about California's new mandatory sick leave law and promised to explore further how such laws proliferating in cities and states across the country pose serious challenges for managing your business (AA, 10-15-14, P. 3).

Among the states that have considered sick leave laws are Alaska, Arizona, Hawaii, Illinois, Iowa, Maryland, Massachusetts (where the voters just approved it), Michigan, Nebraska, New Jersey, New York, North Carolina, Oregon, South Carolina, Vermont and Washington State.

Connecticut recently passed tweaks to its sick leave law that guarantees at least some annual paid sick leave for most full and part-time employees.

Iowa's proposal gives an idea of how these measures can make life for employers more complicated. As written, it would allow employees to earn more than five hours ("five and fifty-four hundredths hours") of sick time for every 40 hours of work, up to an 18-day (144-hour) cap.

While the proliferation of state sick leave laws complicates life for employers with multi-state locations, it can be a nightmare for single-state businesses where cities adopt their own ordinances.

Five cities in New Jersey have adopted paid sick leave laws, as have New York City, Seattle, Washington, D.C., and Portland and Eugene, OR.

To avoid multi-jurisdictional confusion within their borders, 10 states passed laws banning cities and counties from passing sick leave laws: Georgia, Wisconsin, Louisiana, North Carolina, Tennessee, Mississippi, Kansas, Arizona, Indiana and Florida.

Nationwide legislation requiring private sector employers to provide paid sick leave has been introduced in Congress by the Democrats but was not expected to pass even before the last election.

Even if eventually passed, it would be unlikely to preempt state laws, creating yet another layer of regulatory compliance for employers, according to attorneys for the firm of Seyfarth Shaw LLP.

Employers operating in these jurisdictions need to prepare, even if they already provide sick leave.

In addition to imposing new paid sick leave on employers who didn't have it before, many of the new laws require employers who currently offer paid sick leave to review and possibly revise their policies and how they administer them.

Many of the laws under consideration also add restrictions on when employers can request documentation for sick leave from employees, and add penalties for retaliation for the use of sick leave, the Seyfarth Shaw attorneys note.

Another Recordkeeping Burden

For starters, employers must decide how to record and monitor employees' hours, both to determine how much paid sick leave an employee accrues and when an employee becomes eligible for it.

Employers also may need to consider whether their timekeeping systems are sufficient, and whether the individual or department responsible for tracking employees' time can handle this increased workload, the Seyfarth Shaw attorneys said.

These laws impose new direct costs for employers who previously did not provide paid sick time, including both the cost of the actual paid sick days and overtime exposure for replacement workers.

Although most large employers already have sick leave policies and are not subject to new cost issues, they will face significantly increased administrative burdens resulting from the need to sync the new legal requirements with their existing leave policies.

For example, the practice of sick time accrual in hourly units is a foreign concept to most companies that traditionally dealt in the accrual of sick time in units of days, the Seyfarth Shaw attorneys point out.

Also make sure to keep a close eye on further changes coming down the road, they warn. "Employers should continue to track this new area of regulation carefully, as laws shift quickly."