

PAPER OR PLASTIC?

Retailers May No Longer Have A Choice As Certain Communities Are Choosing For Us

Concerns over plastic bag debris and their inability to breakdown in landfills have led a number of cities to adopt legislation prohibiting or limiting the use of plastic bags at certain types of retail establishments. Unfortunately for national retailers, the legislation being adopted is not consistent. For instance, a retailer may be required to implement a plastic bag recycling program at its stores in New York City, but be prohibited from using plastic bags at its stores in Malibu. Legislation pending in Seattle and Massachusetts would place a tax on plastic bags used by consumers to carry out their goods from retail stores.

The legislation also differentiates between the types of establishments that are subject to the plastic bag requirements. Chicago and New York City have both passed legislation requiring certain retail establishments to implement plastic bag recycling programs. In Chicago, only grocery and pharmacy stores are subject to these requirements. In New York City, all retail establishments having a certain retail size must comply. In addition, the New York State Assembly passed legislation that would implement a plastic bag recycling program statewide. Under the state legislation, however, all retail stores are still required to comply, but the size of retail establishments affected is different than the New York City law. New York's Governor has not yet signed the state legislation.

In 2006, the state of California adopted legislation to create a pilot program that requires large supermarkets and retail establishments with pharmacies to adopt in-store plastic bag recycling programs.

Under the program, affected retailers are required to label plastic bags with a message to return the plastic bags to the store for recycling and provide reusable alternatives to the plastic bags. In December 2007, San Francisco became the first city to adopt a ban on the use of plastic bags (applicable only to large supermarkets and chain pharmacy stores).

The result of these different types of legislation is that national retailers subject to these varying requirements will be forced to implement different programs at different stores or, alternatively, institute a program chain-wide to comply with the most stringent requirements. As more communities consider similar legislation, there is no guarantee that new requirements will not be more stringent. It is currently a moving target. For instance, a store in one location may be prohibited from using plastic bags, in another location be required to implement a plastic bag recycling program, and in another location be required to charge a tax for each plastic bag used. In addition, each of these requirements may depend on the type and thickness of plastic bag used.

A number of cities are considering implementation of similar legislation, including (1) plastic bag recycling, (2) taxing plastic bags used by consumers; or (3) requiring retailers to adopt plastic bag recycling programs. As more of this type of legislation is adopted, the more difficult it will be for national retailers to comply with the varying requirements. Retailers will need to keep up with proposals and get involved early in any legislative process to ensure consistency among the requirements.

If you have any questions, please contact one of the following, or your Vorys relationship attorney:

Benita A. Kahn
bakahn@vorys.com
614.464.6487

Kristin L. Watt
klwatt@vorys.com
614.464.8398

Summer K. Plantz
skplantz@vorys.com
513.723.4030

This client alert is for general information purposes and should not be regarded as legal advice.