

Black Friday Blues: People Get Hurt in Crowded Stores

November 22, 2016 | Alison Landry

Following the serenity of Thanksgiving, many of us immediately pivot to the contemporary joy of Christmas - **shopping**. The day after Thanksgiving, many of us wake in the dark at 4 a.m., grab a coffee, and join the pilgrimage with our community to the local big box store. We patiently stand in the cold, waiting. Yes, we are talking about Black Friday.

We discuss Black Friday because when the doors open, and the crowd floods in, shoppers are injured by the pushing and shoving mass trying to purchase this year's "must have," hopefully for a bargain price. Black Friday injuries are not [uncommon](#). When stores open up their doors on Black Friday, they will be facing more than just a crowd of eager shoppers; they are facing a crowd of potential tort liability.

Negligence is a tort that holds an actor responsible for injury to another where the actor fails to exercise reasonable care. Generally, there is no duty to protect another person from harm caused by a third party. This is because it would be unfair to hold you responsible for the action of someone else. However, where the law recognizes the existence of a special relationship, a person – or store – can be held liable for injury resulting from the conduct of a third party. One nationally recognized special relationship is that between a business and its business invitees.

Stores owe a reasonable duty of care to its customers. This means that if a store is aware of a puddle in aisle 5, and doesn't act to clean it up or make it safe for customers, they are liable for the injury that results (this is the classic "slip and fall" case). Stores also owe a duty to protect their customers from foreseeable harm resulting from third party conduct. Foreseeable is a fancy word lawyers use to say that someone knew or should have known that harm was likely.

Black Friday cases generally rely on the theory that the store has a duty to protect the customer from injury because they are aware of – or should be aware of – the risk of harm when crowds enter the store. Of course, "assumption of the risk" will play a role in the court's analysis. The legal system treats assumption of the risk as a defense to negligence. It excuses the negligent act because the injured person knew of the risk involved and proceeded anyway. It's no secret that Black Friday shopping can be [dangerous](#), and the people who show up for store openings on Black Friday know this.

For example, in 2012 a Florida woman sued [Target](#) after she was injured when customers rushed the door. The woman sustained injuries of a broken shoulder and developed carpal tunnel syndrome. The case never reached a jury and settled for an undisclosed amount. Wal-Mart has also seen its fair share of Black Friday lawsuits. In 2015 [Wal-Mart](#) was sued when a customer "fell violently to the floor" and was trampled by Black Friday customers. The case eventually [settled](#), but no dollar amounts were disclosed.

And it's not just injury to customers; it's also injury to employees. In 2008, a Wal-Mart employee was trampled to death when the Black Friday crowds rushed in the store. Despite a wrongful death lawsuit, Wal-Mart was only given a [\\$7,000](#) fine from the Occupational Safety and Health Administration (OSHA) for failing to control its Black Friday crowd. OSHA now uses this case as an example accompanying its "[Crowd Management Safety Guidelines for Retailers](#)."

We encourage business owners who will be partaking in Black Friday "festivities" to read OSHA's Guidelines in full. The Guidelines include precautions such as advanced crowd management planning, i.e. hiring extra employees and/or security to be on site and properly training such staff. OSHA recommends that during pre-event setup, stores setup barricades or rope lines, locate high interest sale items in different parts of the store, and have signs or employees available with information on lining up and entering the store when doors open. For management after doors open, recommended measures include crowd entry management, use of more than one entrance, and having a public address system or bullhorn available to manage and communicate to the crowd.

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