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Walmart To Discontinue E-Cigarette Sales In US Stores

By **Mike Curley**

Law360 (September 20, 2019, 7:24 PM EDT) -- As states and the federal government are putting increased scrutiny on electronic cigarettes amid hundreds of lung illness cases blamed on the devices, retail giant Walmart Inc. announced Friday that it will stop selling e-cigarettes at its U.S. stores.

The move comes after the governors of New York, California and Michigan took **executive action** to ban the sale of certain vaping devices, such as flavored vapes and illegal or counterfeit devices.

The retailer, which is also the parent company of Sam's Club, said it does not plan to pull the products from its shelves, but rather sell through its current inventory to complete its exit from the e-cigarette market. A company spokesperson said Walmart will continue to sell regular cigarettes.

"Given the growing federal, state and local regulatory complexity and uncertainty regarding e-cigarettes, we plan to discontinue the sale of electronic nicotine delivery products at all Walmart and Sam's Club U.S. locations," Walmart said in a statement.

The federal government has also been going after e-cigarette makers of late, with the U.S. Food and Drug Administration sending a warning letter to vape maker Juul Labs **earlier this month** about marketing its products as safe and to youths and a congressional subcommittee **threatening to subpoena** documents from the company this week.

On Thursday, the FDA **announced** that it has launched a criminal probe into vaping-related lung illness that has sickened at least 530 people and killed seven. In addition, the Trump administration **said last week** that it was planning to ban all flavored e-cigarette cartridges in response to the nationwide outbreak of vaping-related illness.

Last year, the FDA announced it was **sending an ultimatum** to e-cigarette companies, demanding that they come up with plans to keep their products out of teens' hands, or the FDA would rethink its policy of allowing the products to stay on store shelves.

Vape makers are also facing lawsuits over the use of e-cigarettes, particularly among youths, such as a **proposed class action** against Juul in Florida federal court that claims the company tailors its advertising to appeal to minors and hides the high amount of nicotine that users ingest from vaping its products. Another **proposed class suit** in California claims the company deceptively advertised the nicotine content in its products.

Scott P. Schlesinger of Schlesinger Law Firm, who represents a Florida girl and her parents in a suit accusing Juul of marketing to minors, told Law360 on Friday that Walmart's announcement is good news, but the federal government should have stepped in sooner to curb e-cigarettes before companies like Walmart felt they needed to take action.

He said the FDA is supposed to keep tobacco products off the market if they haven't been approved, and now the government is "chasing after the problem."

"It's unfortunate that the problem has gotten so completely out of control that now, individual corporate entities are stepping in to do what they can, where they can, for a problem, an epidemic that never should have existed," he said. "A reaction of that magnitude shows the critical nature of

this urgent, emergent epidemic. It shows it's a societal problem."

A spokesperson for the FDA said it has set a May 2020 deadline for submission of all e-cigarette premarket approval applications, which it called a "dramatic acceleration" of its previous timeline. The spokesperson said the FDA pledges to stop youth use of e-cigarettes and plans to push for review of non-tobacco-flavored products and finalize a policy to make getting unauthorized e-cigarette products off the market a top priority.

"FDA's oversight of these products is a top priority for the agency. We have aggressively enforced the law," the agency said in a statement. "We'll continue using all of our tools to protect kids, including compliance and enforcement actions and penalties."

Juul, and other e-cigarette companies could not immediately be reached for comment Friday.

--Additional reporting by Sam Reisman, Emily Field and Lauren Berg. Editing by Alanna Weissman.

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