



Ten Employment Priorities For 2008

By John Donovan (Atlanta)

As an industry, the retail automobile business still lags behind most of American business in terms of the attention paid to employment matters. This is due to a number of factors including the absence of human resources departments, high turnover, a lack of formal manager training and, of course, the hectic pace of work at dealerships. Too often the end result can be expensive, embarrassing and often unnecessary discrimination charges and lawsuits.

Fortunately, these charges and lawsuits are not an inevitable part of the dealership business. We know from experience that a dealer can reduce or even eliminate its exposure to employee claims by taking a few basic steps.

In this issue of Dealership Update, we list ten areas which regularly give rise to employee problems. You don't have to do everything at once. Try tackling one item a month throughout 2008. A year from now, you will have eliminated the most common sources of employment problems facing dealers.

1. Update your employee handbook

Most dealers have come to recognize that adopting a well-drafted employee handbook is a good idea which will protect them from a wide range of employee-related problems. But we find that, at many dealerships, once the handbook is printed and distributed, no one gives it another thought. As a result, the handbook gradually grows old and no longer reflects the dealership's actual policies, or worse, does not contain important new policies such as a Customer Safeguards policy, cell phone policy and a broad no-harassment policy. Like all business documents, handbooks need to be reviewed at least every few years and revised as necessary to keep up with the latest challenges. Have your controllers and all department managers read through the handbook at least once a year and determine if changes need to be made.

2. Clean up your new-employee package

Many dealerships have new employees sign a stack of policies and memos along with the handbook during their orientation. In many cases, the policies were adopted years before on an *ad hoc* basis. Often they are out-of-date or even conflict with the employee handbook or with other policies.

While a number of documents such as W-2s, I-9s and insurance forms must actually be signed by the employee, many of these individual policies can and should be included in the handbook. One signature at the back of the handbook is just as binding as a signature at the bottom of each separate policy. Rule of Thumb: If the policy is important enough to have every new employee sign it, it is important enough to include in the handbook.

If your company has multiple dealerships, be sure that they are all using the same set of forms. If a particular policy or form is a good idea at one location, it's probably a good idea at all locations.

3. Update your sales-pay plan

Most dealers understand the importance of ensuring that their sales people receive at least the minimum wage on a weekly or monthly basis. But dealers are also vulnerable to contract claims. Over the last few years, we've seen a flood of litigation against dealerships involving the wording of their sales pay plans.

Typically, the dealer has agreed to pay "25% of commissionable gross" but does not clearly explain what calculations go into determining the amount on which commissions will be calculated. This vagueness can allow a plaintiff's attorney to drag the dealer in front of a jury and seek back pay for every sales person going back as far as six years. Many state laws also provide for liquidated damages and attorneys' fees if an employer fails to pay "all wages due."

Make sure that your sales pay plan says what you mean for it to say and says it in clear, layman's terms. That will go a long way toward ensuring you are never sued over it, and if you are, that the jury will have no difficulty determining what the pay plan actually means.

4. Update your managers' pay plans

We see as many lawsuits and threatened lawsuits over poorly-drafted managers pay plans as we do over sales-pay plans. Because managers are generally pretty well paid, these disputes often involve enough money to make it worthwhile for the manager to hire an attorney. Fortunately, it is relatively easy to draft a pay plan which will head off most wage disputes.

We recommend that dealers take a close look at every manager's pay plan every time a new manager is hired. The plan that was appropriate for the predecessor may not fit the new manager.

5. Check on your dealership's overall wage and hour compliance

For decades, some dealers have not paid overtime, yet not incurred liability because the laws were complicated and employees did not know that they were not getting all that they were due. But that is changing. A growing number of plaintiffs' attorneys have discovered that most dealers are not in complete compliance with the federal and state wage laws. As a result, they know that if they sue a dealer, they have a pretty good chance of being awarded all of their attorneys' fees, even if their clients receive very little. A quick wage and hour audit will ensure that you are paying everyone properly and not running up a large back wage liability for your dealership.



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And remember that there are various state laws dealing with wages – ensure compliance with them, too. Many of them contain significant penalties for non-compliance including fines, attorneys’ fees and even criminal charges.

Many dealers continue to ignore wage-hour matters because they are somewhat complicated and they do not want to deal with paying additional overtime. The reality is that you can usually comply with these laws without paying employees any additional money by simply adjusting the employee’s duties or adjusting the employee’s pay plan.

6. Fine tune your “no-harassment” policy

While sexual harassment charges have declined over the last couple of years, other forms of harassment including religious and national origin harassment have been increasing. Dealerships seem to have more than their fair share of these problems. Fortunately, over the last several years, the courts have spelled out exactly what steps an employer must take in order to protect itself from harassment claims. The most important step is to develop a comprehensive policy covering all forms of harassment.

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Make sure that your policies and procedures include all of the steps that the courts expect. You should also ensure that your managers understand what is expected of them as members of management, as well as the importance of responding promptly and properly to all harassment claims. In most cases, harassment claims at dealerships should be reported directly to HR or the Controller for investigation.

7. Audit your hiring procedures

The best way to avoid an expensive lawsuit over firing a poor employee is not to hire the poor employee in the first place. Adopting – and strictly adhering to – a structured hiring procedure will help a dealer screen out many of these problem employees.

We recommend that dealers develop a hiring procedure, ensure that their managers understand the reasons for adopting the procedures, and then hold managers accountable for their compliance with them.

8. Consider adopting an arbitration policy for employee disputes

Arbitration gives you an alternative to going before a jury of your employee’s peers. While it is not a substitute for good management practices or a solution to every employment problem, it does provide an effective alternative to our slow and expensive court system. There are pros and cons to this approach which we would be happy to discuss with you on an individual basis.

9. Understand religious discrimination

Religious discrimination is unlike other forms of discrimination in that it requires employers to “reasonably accommodate” their employees’ religious beliefs unless it would impose “an undue hardship” on the employer. What this actually means - in plain language - is that an employer must allow its employees to practice their religion at work unless the employer can prove that the conduct is damaging to its business or imposing a hardship on coworkers.

You can expect to face religious accommodation issues in areas such as scheduling work, religious dress and appearance, and religious practices at work. That means that, when you are faced with an employee request for special treatment, you must determine if the request is religion-based, examine the actual impact on the business and coworkers, and then either grant the requested accommodation or consider possible alternatives.

10. Train your managers

Many discrimination charges and lawsuits are the direct result of an untrained manager acting inappropriately or failing to act when he or she should have acted. Dealers can be held legally liable for the conduct of any individual they place in a supervisory position, even if the individual acts contrary to the employer’s policies. As a result, more and more dealers are realizing that the first – and probably most important - step in avoiding employment-related claims is to make sure that all of their managers receive some training in employment law. Training will help make managers part of the solution, not a part of the problem.

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