



## Round Up The Usual Suspects

By John Donovan (Atlanta)

Over the last year, dealers have devoted most if not all of their attention to keeping their dealerships afloat. They've spent time cutting staff, combining job duties and slashing costs as they watched extraordinary events unfold in the automobile industry. That has not left much time to study what else is going on around them.

There is no question that the Obama Administration has brought change and will be bringing more in the months ahead. One area where we already see evidence of this is in the U. S. Department of Labor. Hilda Solis, the new Secretary of Labor, has announced that she intends to aggressively enforce the country's minimum wage and overtime laws, and she is hiring 250 new investigators to help her do just that.

It's not surprising that most dealerships have paid little or no attention to their wage-hour compliance since the economic downturn began. Unfortunately, many do not realize that the belt-tightening measures they have taken, coupled with the continued poor economy, has caused many of their employees to lose their exemption from overtime. As a result, many dealerships are now exposed to significant minimum wage and overtime liability at a time when they can least afford it.

The good news is that it is not too late to fix these problems. We strongly recommend that dealerships conduct a comprehensive audit of their compliance by examining the current job duties and pay plans of all their employees to ensure that they are paying overtime wherever it is due.

Over the years, we have audited wage-and-hour compliance at hundreds of dealerships and we have identified the most common wage-hour problems. These ten "usual suspects" are a good place to start your audit.

**1. Salespeople who do not punch in and out every day.**

There is no fine for failing to keep accurate time records on employees. But without good time records, a dealership cannot prove that its sales people received at least the minimum wage for every hour worked in the pay period. That can lead to significant liability.

**2. Sales people who are paid their commissions weekly or biweekly, but the dealership only checks minimum wage at the end of the month.**

An employer must normally ensure that employees receive at least the minimum wage on a weekly basis. But if an employee is paid a commission, the employer can use the same period that it pays commissions to check compliance with minimum wage.

So if your dealership pays commissions biweekly, check minimum-wage compliance at the end of the two week period. If you pay commissions monthly, check minimum-wage compliance monthly. What you cannot do is pay commissions weekly or biweekly, but only check minimum-wage compliance monthly.



**3. Treating "product specialists" as if they were "sales people."**

Some dealers use product specialists instead of sales people. They greet the customer, identify the vehicle they are interested in, do a walk around, and take the customer on a demo drive. If the customer is considering purchasing the vehicle, the product specialist then turns them over to a sales manager who completes the deal.

Although there are no published court cases on this point, a product specialist likely does not qualify for the "salesman" exemption from overtime. This is because the product specialist is not directly involved in the actual sale of the vehicle. Therefore, product specialists will be entitled to overtime if they work more than 40 hours in a workweek.

**4. Warranty clerks/warranty administrators who are paid a salary or a salary and a commission.**

These employees' duties do not qualify them for an exemption from overtime. (Remember, contrary to popular belief, being paid a salary does *not* make an employee exempt from overtime.)

Therefore, these employees are entitled to be paid overtime on all compensation they receive – salary and commission – if they work more than 40 hours in a workweek.

**5. Bookers and dispatchers who are paid a salary or a salary and a commission.**

These employees' duties also do not qualify them for an exemption from overtime. Therefore these employees are entitled to be paid overtime on all compensation they receive – salary and commission – if they work more than 40 hours in a workweek. An alternative would be to structure their pay plan to make them exempt from overtime under the "commission-paid" exemption.

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