

OADA NEWS

IN THIS ISSUE:

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- | | | | | | |
|---------------------------|---|---------------------------|---|---------------------------|--|
| <u>01</u> | \$173,912! Subaru Dealers #ShareTheLove | <u>12</u> | Will You Really Give Me \$3,000 for my Trade-In? (cont.) | <u>24</u> | 2018's Top Twenty Legal Trends for Automobile Dealers (cont.) |
| <u>02</u> | May At A Glance
Top Legal Reminders: May 2018 | | Dealers Team Up & Donate Engines to Local Automotive Technology Programs | <u>25</u> | 2018's Top Twenty Legal Trends for Automobile Dealers (cont.) |
| <u>03</u> | 2018 OADA Convention Highlights | <u>13</u> | More Than A Billion Back | <u>26</u> | 2018's Top Twenty Legal Trends for Automobile Dealers (cont.) |
| <u>04</u> | 2018 OADA Convention Highlights (cont.) | <u>14</u> | NADA Market Beat: March 2018 | <u>27</u> | Dealer Grassroots
New Design. Better Performance. |
| <u>05</u> | Kemphorn Marks 80 Years & Still Growing!
Don't Let Us Print Inaccurate Data | <u>15</u> | NADA Market Beat: March 2018 (cont.) | <u>28</u> | 2017 Ohio Motor Vehicle Titling Manuals are Available!
Custom Label Bottled Water |
| <u>06</u> | $E=mc^2$: What Einstein Can Teach Your Dealership About Drafting Pay Plans | <u>16</u> | 5 Important Tips for Effective EHS Management | <u>29</u> | Bike Helmets Save Lives! |
| <u>07</u> | Drive German: "This is a Time-Saving Service" You Promised to Always Protect Them | <u>17</u> | The PPE is Right: A Workplace Hazard Assessment Guide | <u>30</u> | Dealership Buy/Sells: A 360° Approach |
| <u>08</u> | U.S. Supreme Court Rules that Service Advisors are Exempt Under the FLSA
Choose CareWorks Now. | <u>18</u> | The PPE is Right: A Workplace Hazard Assessment Guide (cont.) | <u>31</u> | Discounted Cedar Point and Kings Island Tickets |
| <u>09</u> | 2018 Employer/MCO Open Enrollment Form | <u>19</u> | The PPE is Right: A Workplace Hazard Assessment Guide (cont.) | <u>32</u> | How to Handle Your Dealer Licensing Requirements in a Buy/Sell |
| <u>10</u> | Continue to Shop the 2018 NADA & ATD Expos
Next Generation Takes Control of Brookville Car Dealership
NADA Applauds EPA Announcement on a Vehicle Emissions, Fuel Economy | <u>20</u> | The PPE is Right: A Workplace Hazard Assessment Guide (cont.) | <u>33</u> | Buy/Sell Webinar Series: Financial Due Diligence |
| <u>11</u> | New ATD Report: Employment at U.S. Commercial Truck Dealership Up 12%
Will You Really Give Me \$3,000 for my Trade-In? | <u>21</u> | How to Calculate Sales Tax for Non-Resident Transactions | <u>34</u> | How Can My Dealership Benefit (And Save Money!!) From A Wellness Program? |
| | | <u>22</u> | How to Calculate Sales Tax for Non-Resident Transactions (cont.)
BWC Discount Programs | <u>35</u> | Cutter & Buck and Clique Now Available Through OADA Services |
| | | <u>23</u> | BWC Discount Programs (cont.)
2018's Top Twenty Legal Trends for Automobile Dealers | | |

WHAT'S YOUR STORY?

Let us know what your dealership has been up to- Send us your information for a chance to be featured in next month's newsletter!

[CLICK HERE!](#)



1.

SUBARU share the love EVENT

\$16,381



Subaru of Dayton & the Humane Society of Greater Dayton

\$23,966



Cascade Subaru & Conservancy for Cuyahoga Valley National Park



\$173,912!

SUBARU DEALERS #SHARETHELOVE

2017 marked the 10th anniversary of Subaru's Share the Love Event in the U.S.! As a part of this campaign, Subaru of America, Inc. donated \$250 for every new Subaru vehicle sold or leased between November 16, 2017 and January 2, 2018 to a charity of the customer's choice. We are proud to announce that 7 OADA members, thanks to Subaru of America's Share the Love Event, were able to raise almost \$174,000 for local charities.

THANK YOU to Subaru and all of the participating dealerships across the state for their generosity and dedication to improving their communities! ■

\$16,598



Waikem Subaru & the Stark County Humane Society

\$66,535



Byers Subaru Dublin & the Stefanie Spielman Fund for Breast Cancer Research

\$32,000



Boardman Subaru & Akron Children's Hospital

\$10,000



LaRiche Subaru & Open Arms

\$8,432



Byers Airport Subaru & the Columbus Dog Connection

At A Glance:

MAY

16 HOW TO HANDLE YOUR DEALER LICENSING REQUIREMENTS IN A BUY SELL

OADA Buy/Sell Webinar Series

TIME: 11am - 11:45am

COST: \$20

[REGISTER](#)

22 BUY/SELL WEBINAR SERIES: FINANCIAL DUE DILIGENCE

OADA Buy/Sell Webinar Series

TIME: 11am - 12pm

COST: \$20

[REGISTER](#)

29 HOW CAN MY DEALERSHIP BENEFIT (AND SAVE MONEY!!) FROM A WELLNESS PROGRAM?

OADA Buy/Sell Webinar Series

TIME: 11am - 12pm

COST: \$20

[REGISTER](#)

TOP LEGAL REMINDERS

May 2018

1] TECHNICIAN DRESS CODE FOR SUMMER MONTHS.

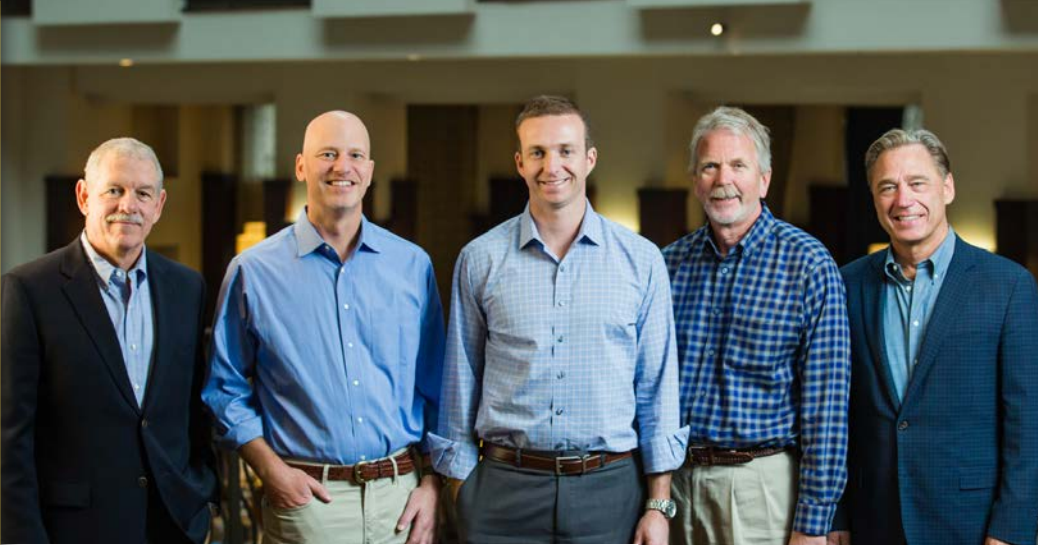
Oftentimes, as the weather warms, technicians begin to approach management about cooler clothing, such as short-sleeves, shorts, or tennis shoes, to accommodate for the warmer weather. Remember the Occupational Safety and Health Administration (OSHA) has established guidelines for a technician's personal protection. Technicians need slip-resistant shoes (employer not required to purchase but required to monitor), no open toed shoes or sandals should be permitted in the service and detail departments. Moreover, all technicians should be wearing protective safety glasses and protective gloves when performing repairs. With regards to clothing, shorts are something that each specific dealership will have to determine the hazards posed to the technicians prior to making this decision. If this poses an additional hazard to skin abrasion, chemical exposure, etc., then shorts are not suggested. The decision for wearing shorts is up to the dealership. The main thing is that they must be protected from the hazards at the workplace. There is no limitation on the style of clothing as long as it is protecting the employee from the specific hazards they are exposed to. To learn more about OSHA's guidance and recommended practices, click [HERE](#) for OSHA's Heat Illness Publications.

2] HOLIDAY PAY REQUIREMENTS.

Federal and Ohio law **do not** require any special or additional pay for employees who work on Sundays or on holidays. All employers should consult with their pay plans and wage and hour policies to determine if additional requirements for holiday pay should be considered. Also, hours paid for holidays, where the employee does not work, need not be counted as hours worked for overtime purposes. For more questions on holiday pay, contact Fisher Phillips at 440-838-8800.

3] BEWARE OF PHISHING ATTACKS.

OADA was alerted to an increase of online phishing attacks. According to the dealership, perpetrators are actively monitoring individual's inboxes to see when they receive group emails to potential targets. When they identify an ideal email, they "reply all" to the email using the identity of one of the initial recipients with a generic download or a "click here". However, instead of sending a document or another file type, they are installing malware on the recipient's computer that could potentially allow them to capture sensitive data and information. All dealership employees should be aware of the potential for phishing as a cyber security threat to your dealership and only open legitimate emails to prevent the threat from entering the dealership's system. ■



2018 OADA CONVENTION HIGHLIGHTS

information provided by OADA

OADA members, sponsors, staff and guests attended the 85th Annual Convention in Music City, USA- Nashville, Tennessee. With mostly sunny days and just a little rain, from Honky Tonks to history, attendees took part in everything that Nashville has to offer.

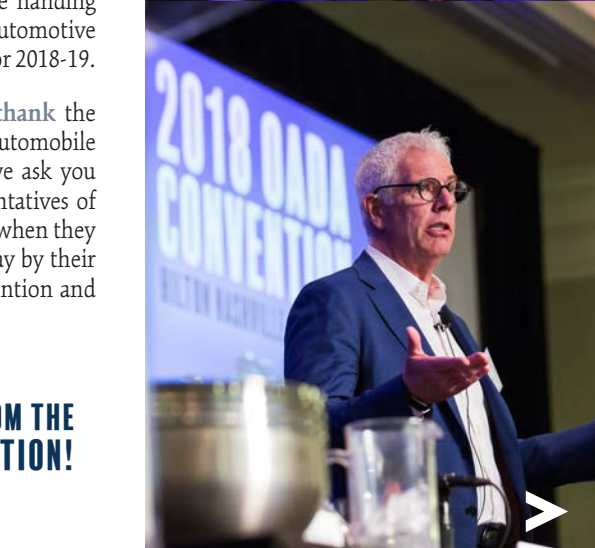
The convention kicked-off on Friday, April 20 with the OADA registration and hospitality room giving out attendees the chance to say hello to old friends, grab a quick snack and pickup credentials. That evening took our attendees to the Chairman's Reception and Dinner located at ACME Feed & Seed with spectacular views of Broadway, the river and Nissan Stadium. Entertainment was provided by the Ryan Broshear Band, a former employee of Executive Committee Member Josh Sweeney at Jake Sweeney Chevrolet in Cincinnati. We can't forget about the food, it was some of the best in Nashville! The informal reception allowed guests the opportunity to network, rekindle friendships from previous years and make new ones.

The General Business Session's speakers included President of Cox Automotive Sandy Schwartz and Director of U.S. Sales for Ford Motor Company Dianne Craig, who both addressed the future of the automotive industry. Also featured was a panel including VP of Major Accounts at Hireology BreAnna Fisher, Principal with the Ryan Adams Group Tom Ryan and Partner with Fisher Phillips Melanie Webber. The panel discussed the need for dealerships to take a look at their hiring structure including everything from their job posts to culture. The General Business Sessions ended with the annual business meeting & town hall forum.

During the weekend a variety of optional activities were offered, including a trip to TopGolf Nashville, a songwriters experience & tour of the Country Music Hall of Fame, a walking history tour of Broadway ending with a behind the scenes tour of the historic Ryman Auditorium and finally, a songwriters performance with line dancing lessons at the famous Wildhorse Saloon.

The convention concluded with the Farewell Dinner on Sunday Evening. Chairman John Yark of Yark Automotive Group received the Chairman's Award for 2017-18 and made comments on his year as OADA Chairman. Chairman Yark thanked his family, fellow dealers and sponsors for joining him in the first-time convention location (Nashville, TN) before handing over the reigns to Rhett Ricart of Ricart Automotive in Columbus as the new OADA Chairman for 2018-19.

In a continuing effort to **recognize and thank** the many companies who support the Ohio Automobile Dealers Association and the convention, we ask you to extend the same courtesy to the representatives of the companies listed on the following page- when they call on you in your dealership- as they display by their continued sponsorship of the OADA Convention and other events throughout the year.



SEE MORE PHOTOS FROM THE 2018 OADA CONVENTION!





GOLD LEVEL SPONSORS

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Cox Automotive

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NADA Retirement from EMPOWER

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KEMPTHORN MARKS 80 YEARS & STILL GROWING!

information published on CantonRep.com



CANTON- Kempthorn Motors might be 80 years old, but age hasn't stalled its growth.

The dealership will be opening a new collision center at 2213 Cleveland Ave. NW. The building once was home to the local American Red Cross offices and the former Seiple Lithograph.

Kempthorn has been remodeling the building for several months after buying it last year. Plans initially called for a new building in the 1600 block of Cleveland Ave. NW. The dealership had cleared zoning and other issues with the project, but it continued to be bogged down. One day while driving to the dealership, Eric Kempthorn passed the building and decided to change course.

"It just made sense," Kempthorn said of renovating the existing building.

Changes include a new entrance off Cleveland Avenue NW where vehicles can be dropped off for repair work. Three new paint booths, including one large enough to accommodate a semi tractor, have been installed in the repair bay. The building's size provides space to allow the dealership to expand its body shop business, Kempthorn said.

With a larger collision center, Kempthorn plans to repair all brands, makes and models of vehicles. The state-of-the-art operation will help



the dealership meet a wider variety of the requirements demanded by car insurance companies, he said. Bob Helm, who has more than 35 years with the dealership, and Chuck King will direct the expanded operation.

The Kempthorn dealership started in 1938 when James O. Kempthorn, who had worked as a mechanic and sales manager at another dealership, started selling new Dodge and Plymouth cars at 811 Cleveland Ave. NW.

Dick Kempthorn started working at the dealership with his father during the 1940s while still a McKinley High School student. After graduating high school, Dick Kempthorn served with the Navy during World War II, was a football All-American while attending the University of Michigan and then served in the Air Force during the Korean War. In 1953, he returned to Canton and worked full-time at the dealership.

By then, James O. Kempthorn had moved up the street to the current location at 1449 Cleveland Ave. NW. Dick Kempthorn took the helm in 1965. His three children, James, Dana Kempthorn Parker and Eric, now direct the operation.

The siblings are continuing the family legacy, Eric Kempthorn said. "We're working with the foundation dad built for us, taking care of people," he said.

The dealership sells new Volkswagen, Mazda, Volvo, Mercedes-Benz and Jaguar vehicles, along with Sprinter commercial vans that are made by Mercedes. The whims of auto manufacturers have factored into changes in the brands sold by Kempthorn through the years. Restructuring by General Motors led to the closing of Kempthorn Buick in 2013, and changes at Chrysler ended the dealership's ties with that car maker.

Nearly all of the Kempthorn operations were brought together at 1449 Cleveland Ave. NW in 2001. That site has grown since James O. Kempthorn relocated there in 1948. A new showroom was built in the 1980s and there were expansions in the 1990s.

Moving the collision center to the new building will open space in the Auto Mall, but no decision has been made on how the space will be used, Kempthorn said.

The dealership has about 80 employees, and Kempthorn credits efforts of the workforce for the business' success.

"We've been fortunate with our employees," he said, noting that many of the workers have had long careers with the dealership. "A key to our success has been the longevity and experience of an incredible group of employees." ■

DON'T LET US PRINT INACCURATE DATA,

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6.



$$E = mc^2$$

WHAT EINSTEIN CAN TEACH YOUR DEALERSHIP ABOUT DRAFTING PAY PLANS

information provided by Fisher Phillips Attorney Tillman Y. Coffey

I bet you've heard of the famous equation $E=mc^2$. You may know that Albert Einstein is credited as its developer. You may even know that it's often called the Theory of Relativity. But, like most people, you might not know what all the symbols mean or how to work the equation to achieve the result Einstein promised. Generally speaking, the only people who fully understand the equation, what the symbols represent, and how to perform the calculations are the physicists, scientists, and mathematicians- all persons with specialized skills, knowledge, and experience.

By now you're probably thinking: What does this have to do with my dealership? Probably nothing from a physics standpoint. But maybe everything as it relates to your pay plans and how they are drafted, utilized, and understood. Relatively speaking (get it?), dealership pay plans are frequently just as confusing to the average reasonably intelligent person as Einstein's famous equation. In fact, often only a very small group of people- the people who draft them- fully understand dealership pay plans. And, like the symbols used by Einstein, pay plans rely on language unique to retail automotive and only those within the industry understand it.

THE FRIEND OR NEIGHBOR TEST

If you think your plans are above reproach, ask a friend or neighbor who has never worked in retail automotive to read yours and then explain exactly how your employees earn compensation and how your dealership calculates commissions. While you're at it, if your plan uses common terminology such as "gross", "gross profit", or "costs", ask your victim to define those terms.

It's likely your friend or neighbor would have a better chance of explaining Einstein's theory than interpreting the plan as you intended. At this point, it's helpful to remember that, should your pay plans ever face a legal challenge, you can expect they will be scrutinized by folks with experience similar to your friends and neighbors, who do not know the industry buzz words (or the secret handshake, for that matter).

CONFUSING PAY PLAN + DISGRUNTLED EMPLOYEES = LAWSUITS

Recent lawsuits, several of which were class actions, should serve as a wake-up call to review your pay plans and your methods used to calculate compensation according to those plans. Although the specific factual assertions differ in these lawsuits, they all have the same central theme in common: the dealership did not compensate the plaintiffs as promised in its pay plan and as required by law.

Among the legal claims asserted were breach of contract, fraud, wage theft, and wage and hour violations. Several cases alleged that the dealership inappropriately added fabricated costs to deals that were not actual costs. In some cases, plaintiffs alleged that the dealership included costs or deductions when computing commissions that the pay plan had not mentioned. Still other cases included

allegations that the dealerships agreed to calculate commissions based on "gross profit." but failed to use the actual gross profit number in the calculation.

While winning a lawsuit is certainly a significant event, the primary goal should be to avoid a pay plan lawsuit altogether. Lawsuits involve risks, disruption, and legal costs, not to mention the possibility you will have to pay damages. Luckily you can take steps to reduce your risk of ending up in a lawsuit by drafting and following better pay plans. With better pay plans, chances are that the dealerships involved in the cases mentioned above would have achieved their compensation goals while avoiding the legal risks.

YOU DON'T NEED TO BE EINSTEIN TO CRAFT A GOOD PAY PLAN

Pay plans should explain how compensation is earned and what will go into the calculations, using the common, everyday definition of terms and phrases or by defining key terms within the context of the pay plan itself (to the extent possible). You should be careful when using terms that are typical to any industry, such as "gross profit" and "costs" because, just as the symbols used in Einstein's equation are constants subject to the laws of physics, these terms have specific legal meaning that generally cannot be reinterpreted by a pay plan drafter.

Among other components, plans should include language that no prior or subsequent oral representation contrary to the terms of the plan are enforceable, nor are any changes to the plan that are not in writing and signed by the employee and high level manager (i.e., General Manager).

Once a good plan is in place, your dealership must calculate compensation based on the terms of that plan document as written. The document should include a reservation of rights to change the plan *prospectively*. If you decide to make any adjustments to the plan, you should continue to compensate employees under the old plan through the date the change is implemented.

For those who believe that they are not at risk because they have been using the same pay plan forever without a legal challenge (i.e., the if-it-ain't-broke-don't-fix-it approach), hopefully your exceptional luck will continue. Keep in mind, however, most of the dealerships involved in the cases mentioned above were in your situation... until they weren't.

IT ALL ADDS UP: A SOLID PAY PLAN IS WORTH THE EFFORT

Pay plans have come a long way from the old days when many resembled ransom notes written on the back of cocktail napkins. There is still work to be done in many cases. A good plan is detailed, thorough and protects both the employee and the dealership. And they should be easy to understand, even by a layman outside of the automotive business. In other words, nobody should need Einstein's help to figure them out. ■

DRIVE GERMAIN:

"This is a time-saving service"

Jeff Reed has been a customer of Germain Automotive Group for 14 years.

In December, he decided it was time for a new car but wasn't sure what he wanted. So his wife bought him a subscription to Drive Germain.

Since then, he's churned through about a dozen vehicles for what amounts to extended test drives.

"It's the gift that keeps on giving," said Reed, 54, who lives in the Columbus, Ohio area. "I've had a ball driving all these different vehicles. My wife found the vehicle she's going to purchase. I probably won't buy until after spring."

Germain Automotive, based in Columbus, launched the monthly subscription program Dec. 1. Drive Germain, established as a separate company, buys vehicles from the dealership group, pays Germain to service them and eventually sells them back to the group, which markets them as certified pre-owned.

"We're not doing this to make a ton of money. The margins are terrifyingly thin," said Austin Germain, the CFO- chief "flip" officer, in this case- of Drive Germain. "We're doing this to offer our customers something our competitors don't and to make our retail process better."

Drive Germain operates through a mobile subscription car service developed by Clutch Technologies. Germain Automotive gathers customer information from the app that allows it to better service them, Austin Germain said.

Germain Automotive has 15 dealerships in Michigan, Ohio and Florida, selling about 25,000 new and used vehicles a year.

Drive Germain had just 15 subscribers in the Columbus area as of March, with a goal of at least 100 by year end. When Drive Germain was launched, the app got five to 10 downloads a week. It's now up to 40 or 50, Austin Germain said.



The fleet it uses comprises 25 vehicles from the Volkswagen, Mercedes-Benz, BMW, Ford, Lexus, Jeep and Honda brands that Germain Automotive sells. They are mostly new or late-model used cars with sticker prices of \$40,000 to \$50,000.

Membership costs \$1,000 a month and covers insurance, maintenance, roadside assistance, cleaning of the vehicles and taxes. There is a \$500 fee to join and a \$1,000 deductible for insurance claims. An "elite" tier costing \$1,500, with more expensive vehicles, will be offered in May.

Customers can swap vehicles as often as they want. Some customers drive a car until it's low on gasoline, then order a different car with a full tank.

"This is a time-saving service," Austin Germain said. "The customer does pay for gasoline, but we fill it for them and send them a picture of the receipt. It's automatically charged to their credit card."

Vehicle swaps, with Drive Germain and other Clutch-based programs call "flips," are done at a customer's home or other designated location, but only on weekdays during business hours. On average, subscribers flip one or two times a week, Austin Germain said.

A Drive Germain concierge delivers the new vehicle, transfers the customer's possessions into it, gives a brief tutorial and takes away the other vehicle for refueling and cleaning. It's a painless, one-minute process for the customer, said Jeremy Gillespie, one of Drive Germain's two concierges.

Germain Automotive markets the program to customers in emails and through social media. It has attracted customers ages 20 to 60, including small-business owners, traveling salespeople and stay-at-home moms.

"We believe there should be one Drive Germain vehicle per family," Austin Germain said. "It's \$1,000 a month, but the potential savings of not having to have these other vehicles in your garage is there."



**YOU PROMISED
TO ALWAYS
PROTECT THEM.**



CheckToProtect.org for auto recalls

As for profits, those will rise as the program gains more customers and can become more efficient, Germain said. For now, vehicles are kept in Drive Germain for about 10,000 miles. But, he added, "we're trying to figure out what makes the most sense for the fleet in terms of selling them back into retail to mitigate the losses when sold as a used car."

He believes subscriptions won't fully replace buying or leasing a vehicle but do support the group's retail business.

Said Reed: "When you start buying a \$50,000 to \$60,000 vehicle, a two-hour test drive isn't enough." ■





8.

U.S. SUPREME COURT RULES THAT SERVICE ADVISORS ARE EXEMPT UNDER THE FLSA

information provided by OADA Legal Counsel & Fisher Phillips, LLP

In a 5-to-4 decision, the United States Supreme Court issued a victory to the automotive industry last month deciding that service advisors are exempt from the overtime pay requirement under the Fair Labor Standards Act (FLSA). After a 6 year battle involving two trips to the U.S. Supreme Court, the Court held that service advisors are "salesm[en]... primarily engaged in... servicing automobiles" and therefore are exempt from the overtime pay requirements of the FLSA. A slip opinion of the case, *Encino Motorcars, LLC v. Navarro et al.*, can be found [HERE](#).

In 1961 Congress exempted all dealership employees from overtime pay requirements. However, in 1966, Congress narrowed the exemption to "any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles." After several interpretations and court cases, the U.S. Department of Labor (DOL) recognized that service advisors fit under that exemption in 1978. However, in 2011 the DOL issued a controversial decision reversing its decision, finding that service advisors did not fit within that exemption and sparking this controversy.

Within one year of the DOL's stunning decision, five service advisors, who worked at least 55 hours most workweeks, filed a suit against their employer

dealership claiming that they were entitled to time-and-a-half compensation for hours worked over 40 in a workweek. Over the following seven years, the case went through the judicial process, appearing before the U.S. Supreme Court twice.

In 2015, the case was heard by the Ninth District Court of Appeals (with jurisdiction over California, Washington, Nevada, Arizona, Oregon, Alaska, Hawaii, Idaho, and Montana) and the court decided that the service advisors were entitled to overtime compensation based on the DOL's 2011 decision, which the court found was "rationally explained." The dealership appealed in the Ninth Circuit's decision to the U.S. Supreme Court. With the death of Justice Scalia, however, the Court did not issue a decision and instead remanded the case back to the Ninth Circuit with instructions to consider the case with no deference to the controversial DOL guidance. Again the Ninth Circuit found that the service advisors were not exempt so were entitled to overtime compensation under the FLSA.

The dealership, represented by attorneys from Fisher Phillips Automotive Dealership Practice Group (OADA's outside counsel for labor and employment law), again appealed to the Supreme Court, which finally overruled the Ninth Circuit's and held that

service advisors are exempt from the FLSA's overtime requirements. Justice Clarence Thomas, writing for the majority, wrote: "A service advisor is obviously a 'salesman.' The ordinary meaning of 'salesman' is someone who sells goods or services. Service advisors do precisely that."

This decision provides stability in the current pay practices for U.S. auto dealers who employ an estimated 82,000 service advisors according to NADA and reported by *Automotive News*. Both NADA and other State Associations have been actively monitoring this case as well as offering guidance to the Court, through *Amicus Curiae* briefs. At long last, dealers can confidently treat service advisors as exempt from the overtime pay requirements of the FLSA. Don't forget, however, that your salesmen, partsmen, and service advisors still are not exempt from the FLSA's minimum wage requirements.

If you have any questions about the *Encino Motorcars* case of the FLSA, please do not hesitate to contact OADA Legal Counsel Sara Bruce at 614-923-2243 or sbruce@oada.com, Matt Chacey at 614-923-2232 or mchacey@oada.com, or Melanie Webber from Fisher Phillips-Cleveland at 440-838-8800 or mwebber@fisherphillips.com. ■

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Ohio BWC Open Enrollment ends **May 25.**

CareWorks



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The endorsed MCO of Ohio Automobile Dealers Association

10.

CONTINUE TO SHOP THE 2018 NADA & ATD EXPOS

information provided by NADA

With more than 550 exhibitors at this year's NADA and ATD Shows in Las Vegas, you may have missed out on seeing some key exhibitors during your visit. Perhaps you needed more time to consider your purchasing decisions as well. The good news is, the 2018 Expo is available all year long to registered attendees.

More than 550 exhibitors from our 2018 shows are [available online](#) for the rest of the year to all show attendees. Browse products, view discounts and specials, ask questions and plan your purchases, all as a continued benefit of your registration.

PRODUCTS AND SERVICES ARE AVAILABLE IN THE FOLLOWING CATEGORIES:

Advertising/Marketing/Promotion • Aftermarket/Accessories • Business Consulting/Accounting • DMS and CRM Providers • Facility Design/Improvement/Furnishings • Finance and Insurance • Parts, Service, Body Shop • Remarketing • Social Media/Communication • Training and Education • Vehicle Inventory Software/Valuation • Vehicle OEMs • Vehicle Reconditioning • Website Hosting and Strategies

CONTINUE TO SHOP THE EXPO ALL YEAR LONG ON OUR [MYPLANNER WEBSITE](#). ■



NEXT GENERATION TAKES CONTROL OF BROOKVILLE CAR DEALERSHIP

information published May 13, 2018 by the Dayton Daily News

Paige Reichard's father, Jeff Reichard, operates the Dayton location, which opened in 1949. Gene Reichard purchased the dealership in 1985.

Paige Reichard said her goal is to improve the sales and service business at Reichard Chevrolet, the Brookville location, 575 Arlington Road. She was raised in Beavercreek and graduated from the Ohio State University with her Bachelor of Science in Business Administration with a focus in Operations Management.

She has been in the car business with her family for the past five years, starting her career at Reichard Buick GMC on Salem Avenue in Dayton. ■



NADA APPLAUDS EPA ANNOUNCEMENT ON A VEHICLE EMISSIONS, FUEL ECONOMY

information provided by NADA

2022-2025, and its intention to initiate a joint rulemaking with NHTSA on appropriately tailored GHG and fuel economy standards for that time frame.

"NADA HAS LONG SUPPORTED A DATA-DRIVEN AND INFORMED PROCESS FOR DETERMINING FUTURE GREENHOUSE GAS AND FUEL ECONOMY STANDARDS, AND WE APPLAUD EPA FOR PUTTING US BACK ON THIS PATH."

"America's franchised auto dealers fully support continuous improvements in fuel economy and vehicle emissions, and we fully support fuel economy requirements that will allow us to build on the progress we've already achieved while keeping new vehicles affordable for working men and women all across America. Standards alone- whatever they are- won't do the trick. But smart standards that maintain affordability and encourage fleet turnover will help maximize the number of cleaner, safer and more fuel-efficient vehicles we get on the road every year." ■

TYSONS, VA. (APRIL 2)- NADA President and CEO Peter Welch on Monday issued the following statement in response to the EPA's completion of its Midterm Evaluation for greenhouse gas (GHG) emissions standards for cars and light trucks for model years

NEW ATD REPORT: **EMPLOYMENT AT U.S. COMMERCIAL TRUCK DEALERSHIPS**



UP 12%



TYSONS, VA. (APRIL 18, 2018)- The nation's franchised new medium- and heavy-duty truck dealerships employed more than 145,300 people in 2017, up 12.3 percent from 2016, according to a new report released by the American Truck Dealers (ATD).

"Overall employment at U.S. truck dealerships is the highest it has been in the last five years," said ATD Senior Economist Patrick Manzi. "Truck dealers continue to contribute to their communities with jobs that pay well and offer the ability for advancement. Last year, the majority of truck dealership employees saw their incomes rise."

Manzi added that having an adequate number of staff to meet customer demand

helps truck dealerships minimize downtime for their clients, but demand remains high for technical positions in the service department.

ATD Data 2017, an annual financial profile of America's franchised new-truck dealerships, includes a departmental sales analysis of new and used trucks, service and parts and body shop as well as employment figures and more.

Other highlights from ATD Data 2017 include:

- Franchised truck dealers sold 415,042 medium- and heavy-duty trucks, up 3.7 percent;
- Total new-truck dealership sales topped \$97 billion, up 13.9 percent;
- Truck dealerships wrote more than 11 million repair orders and totaled more than \$31 billion in service and parts sales, up 13.7% and 13.2% respectively; and
- There were 2,265 new-truck dealerships, up from 2,261 in 2016.

Looking to the future, Manzi added that real-time communication between the dealership's service center and the driver will reduce downtime and get drivers back on the road faster than ever before.

"With new and advanced communication technologies, commercial vehicle drivers can receive up-to-date information about which dealerships in the area have the parts and availability to service their vehicles the fastest," he said. "Truck drivers will no longer have to stop and wait while they find out if a dealer has a part they need."

[CLICK HERE](#) to download ATD Data 2017. ■

WILL YOU REALLY GIVE ME \$3,000 FOR MY TRADE-IN?

Reviewing Advertising Guidelines for Minimum Trade-In Allowances

information provided by OADA Staff Counsel

Oftentimes, dealerships look for ways to incentivize consumers to visit their store to purchase their new or used vehicles from other dealerships. Some use a minimum trade-in amount as "something different". And while the advertisement may seem very straight-forward, dealerships may violate two CSPA provisions in advertising trade-in amounts if they aren't careful.

First, remember that the CSPA specifically prohibits a dealer from advertising a price to be paid for a trade-in as a range of prices. Moreover, the Ohio Attorney General's Office considers it unfair and deceptive to advertise a trade-in price or allowance that appears to be a fixed amount, but is actually a range. For example, statements like "Up to \$3,000

IF THE DEALERSHIP IS ADVERTISING A TRADE-IN ALLOWANCE, IT CANNOT INFLATE THE PRICE OF THE VEHICLE IN ORDER TO COMPENSATE FOR THAT DISCOUNT.

for your trade" or "as much as \$3,000 for every trade". These statements appear to the average consumer as if they will receive \$3,000 for their trade when in fact they could receive any amount between \$0 and \$3,000. *Therefore, no dealer should present a trade-in allowance as a range.*

A dealership can advertise a specific minimum trade-in allowance, such as "We'll pay \$3,000 minimum for all trade-ins", so long as the dealership remembers that the price of motor vehicles offered for sale by the dealer must be within the range of prices at which the dealer usually sells such vehicles, and cannot be increased because of the amount offered for the trade. Meaning that the price of

12.

the vehicle cannot increase by the amount of the trade-in allowance in order to accommodate for the discount. If the dealership is advertising a trade-in allowance, it cannot inflate the price of the vehicle in order to compensate for that discount.

Secondly, the dealership must honor the advertised trade-in allowance for all vehicles, regardless of condition of age, *unless* the advertisement clearly and conspicuously discloses any limitations on the offer. For example, if you offer a \$3,000 minimum trade-in allowance for all vehicles, then you must give a \$3,000 trade-in allowance for the 1980 Plymouth Turismo with 250,000 miles that isn't operational. By contrast, the offer could be limited if you clearly and conspicuously

disclose any limitations or conditions on the offer, such as the following:

- Minimum Year (i.e. "2005 or newer")
- Maximum Mileage ("Under 100,000 miles")
- Ability to run ("Vehicle must be operational at time of trade-in")
- How many vehicles may be used ("Limit of 1 vehicle per transaction")
- Vehicle Condition ("No branded title, grey market vehicle, frame damage, salvage, lemon law, or flood vehicles")

For more information on advertising trade-in allowances, please contact OADA's legal counsel, Sara Bruce at 614-923-2243, sbruce@oada.com or Matt Chacey at 614-923-2232, mchacey@oada.com. ■



DEALERS TEAM UP & DONATE ENGINES TO LOCAL AUTOMOTIVE TECHNOLOGY PROGRAMS

Our dealers joined forces to ensure that the future of the automotive industry is in well-educated and capable hands, and, according to the United States Department of Labor, the job outlook for automotive service technicians is a bright one. In 2016 there were approximately 750,000 job opportunities for technicians, and with a 6% projected growth rate we can expect to see an additional 50,000 positions unfold over the next 10 years. Due to high demand, competitive pay and opportunity for growth, it isn't uncommon for salaries of technicians to exceed \$60,000+ per year.

TOLEDO AUTOMOBILE DEALERS ASSOCIATION DONATES 4 ENGINES TO TOLEDO PUBLIC SCHOOLS

This generous donation, valued in excess of \$20,000, will enhance the automotive programs of Start High School, Waite High School and Woodward High School. Each school offers a variety of Career Technology Programs that provide opportunities for students to get a jump-start on their career with hands-on experiences, possible internships and college credit. Programs offered include courses that prepare students for careers in Automotive Technology, Auto Collision and Diesel Technology.

There are currently 165 students enrolled in these programs who will be using the engines to learn general service and maintenance, as well as breakdown and reassembly. *"We are excited for the engine donations and the learning opportunities they will provide for our students. The teachers and I would like to thank the Toledo Automobile Dealers Association for their donation and continued support of our Automotive programs and our students,"* Toledo Public Schools Auto Tech Manager Cassandra Seimet exclaims.

Toledo Automobile Dealers Association (TADA) President Zach Doran states, *"We are humbled and excited for the opportunity to play a role in shaping the next generation of young professionals by providing these students with the tools necessary to succeed. This is just the beginning of a strong and promising partnership, and we look forward to bringing more students into this exciting and dynamic industry."* ■

HATFIELD KIA & RICART AUTOMOTIVE DONATE 7 ENGINES TO COLUMBUS STATE COMMUNITY COLLEGE

Columbus State's ASE Education Foundation-Accredited Automotive Technology program is designed to equip students with the skills necessary to be successful Service Technicians, Parts Professionals and Service Advisors. Both classroom and hands-on experiences prepare graduates for a wide variety of job opportunities in new-car dealerships, independent repair shops and fleet repair facilities. Courses cover all the pertinent information required for pursuit of the Automotive Service Excellence (ASE) certification examinations, completion of a number of other certificates, and/or earning an associate's degree.

The seven engines provided by the Hatfield and Ricart Organizations, valued in excess of \$35,000, will help in CSCC's Automotive Engines: Theory and Operation courses. This course is 48 hours of instruction, and is taught to between 72 to 90 students each year in pursuit of either their associate degree in Automotive Technology or the MAST Master Automotive Service Technician Certificate. The donation will keep CSCC students current in emerging engine technology.

Steve Levin, Automotive Technology Coordinator/Instructor at Columbus State, comments: *"The Columbus State Community College Automotive Technology program is excited to receive these engines, and we are very appreciative for the support from Kia, Ricart Automotive and the Hatfield Organization. In addition to helping our students, this donation saves our program money and is a great example of the value in partnerships between the auto industry and Columbus State as we work together to prepare our students for success."*

Ricart Automotive's Vice President and Director of Fixed Operations Jared Ricart also speaks to this partnership, stating: *"We are extremely happy to be able to provide the tools necessary for the students at CSCC to become successful. I also wanted to thank Kia Motors for allowing us to donate these engines in the name of education. These students deserve the absolute best, and the partnership with Kia Motors is ensuring we are heading that direction with our Partners at CSCC."*

As the automotive industry continues to thrive, local dealers are optimistic for its future. Hatfield Kia's General Manager Brian Frye states, *"I'm glad that we could contribute the engines to Columbus State Community College. Hatfield Kia takes great pride in being part of the community we serve. We give back as often as possible and appreciate the opportunity to help!"* ■

MORE THAN A BILLION BACK, AGAIN

13.

information provided by CareWorksComp

Building a culture of safety across the state is at the heart of our work at the Ohio Bureau of Workers' Compensation. Reducing workplace accidents while returning injured workers back to the job and back to life helps both employers and workers thrive.

Safer workplaces and fewer injuries have helped us reduce rates to 30 year lows and deliver more than \$4 billion in rebates and credits to Ohio employers since 2011. That leaves more money in employers' hands to invest in their business.

Another factor supporting a robust workers' comp system in Ohio is wise management of the premium dollars BWC collects from 240,000 employers, BWC's financial position is solid with strong investment income and returns.

The result of prudent fiscal management, strong investments and falling claim numbers; We're poised to deliver our largest rebate in 20 years. That would bring the total returned to the economy to more than \$8 billion since 2011.

WHAT DOES BWC'S PLAN INCLUDE?

A one-time rebate for private employers and public-taxing districts will total approximately \$1.5 billion.

HOW MUCH WOULD EMPLOYERS RECEIVE AND WHEN?

Most rebates would equal 85% of the employer's premium for the policy year ending June 30, 2017 (calendar year 2016 for public employers). BWC would begin sending checks in early July.

Private employers in the Group-Retrospective Rating Program would receive checks in the Fall.

WHO WILL BE ELIGIBLE FOR THE REBATE?

Both private employers and public employer taxing districts that pay into the State Insurance Fund are eligible for the rebate. Generally, the employer must have been billed premium for the policy year ending June 30, 2017 (Dec. 31, 2016 for public employers), and be current in meeting their policy requirements. Employers with an outstanding BWC balance will have their rebate first applied to that balance. Employers that report through a Professional Employer Organization should receive their rebate from their PEO, which is required to pass a portion of the rebate on to their members.

HOW WILL THE PLAN IMPACT LOCAL GOVERNMENTS AND SCHOOLS?

Local governments and schools have benefited from three \$1 billion rebates since 2013 and a \$15 million rebate for Public Work Relief Employees' Fund.

During that time, BWC have returned \$402 million- \$125 million to schools and \$277 million to local government entities. This rebate will add an estimated \$48 million to schools and \$111 million to local governments. As an example, a school district with \$12 million in payroll would have been paying \$96,000 in premium in 2011, and \$73,200 in 2018. That's \$124,000 in premium savings. That district would have also received \$288,000 in rebates and credits during that time, making for almost \$413,000 in savings.

HOW IS IT POSSIBLE THAT BWC HAS \$1.5 BILLION TO PROVIDE REBATES?

Despite rate reductions and rebates and credits already totaling \$4 billion since 2011, our net position has continued to grow. The State Insurance Fund's net position stands at nearly \$11 billion, primarily due to strong investment income and returns. Investments earned a 7.8 percent return in 2017 and an average of 6.6 percent over the last five fiscal years. Prudent fiscal management and declining claims also factor into our financial strength.

WILL THIS IMPACT BWC'S ABILITY TO OPERATE AS NORMAL AND CONTINUE TO CARE FOR INJURED WORKERS?

No. Even with a \$1.5 billion rebate, BWC's finances will remain strong, allowing us to continue providing injured workers with the care they need to heal and return to work. In fact, we are developing a proposal to invest a significant amount into worker safety and wellness, which should benefit Ohio workers by further reducing workplace injuries.

WHAT ELSE HAS BWC DONE TO HELP OHIO BUSINESSES?

Once the latest rebates have been distributed, BWC will have saved Ohio businesses \$8 billion through rebates, credits and rate reductions since the beginning of 2011. That includes:

- \$1 billion rebates in 2013, 2014 and 2017;
- \$1.2 billion in credits to transition to a modern billing system at no cost to employers;
- Rate reductions for private employers of an average of 28.2 percent*. That means BWC collected \$1.7 billion less from employers than if 2010 rates had remained unchanged;
- Rate reductions for public employers of an average of 33.9 percent, or \$434 million less than had 2010 rates remained steady;
- Moving from the third highest rates in 2008 to the 11th lowest. ■

* This rate will increase to 35% on July 1, 2018.

...WE'RE POISED TO DELIVER OUR LARGEST REBATE IN 20 YEARS. THAT WOULD BRING THE TOTAL RETURNED TO THE ECONOMY TO MORE THAN \$8 BILLION SINCE 2011.

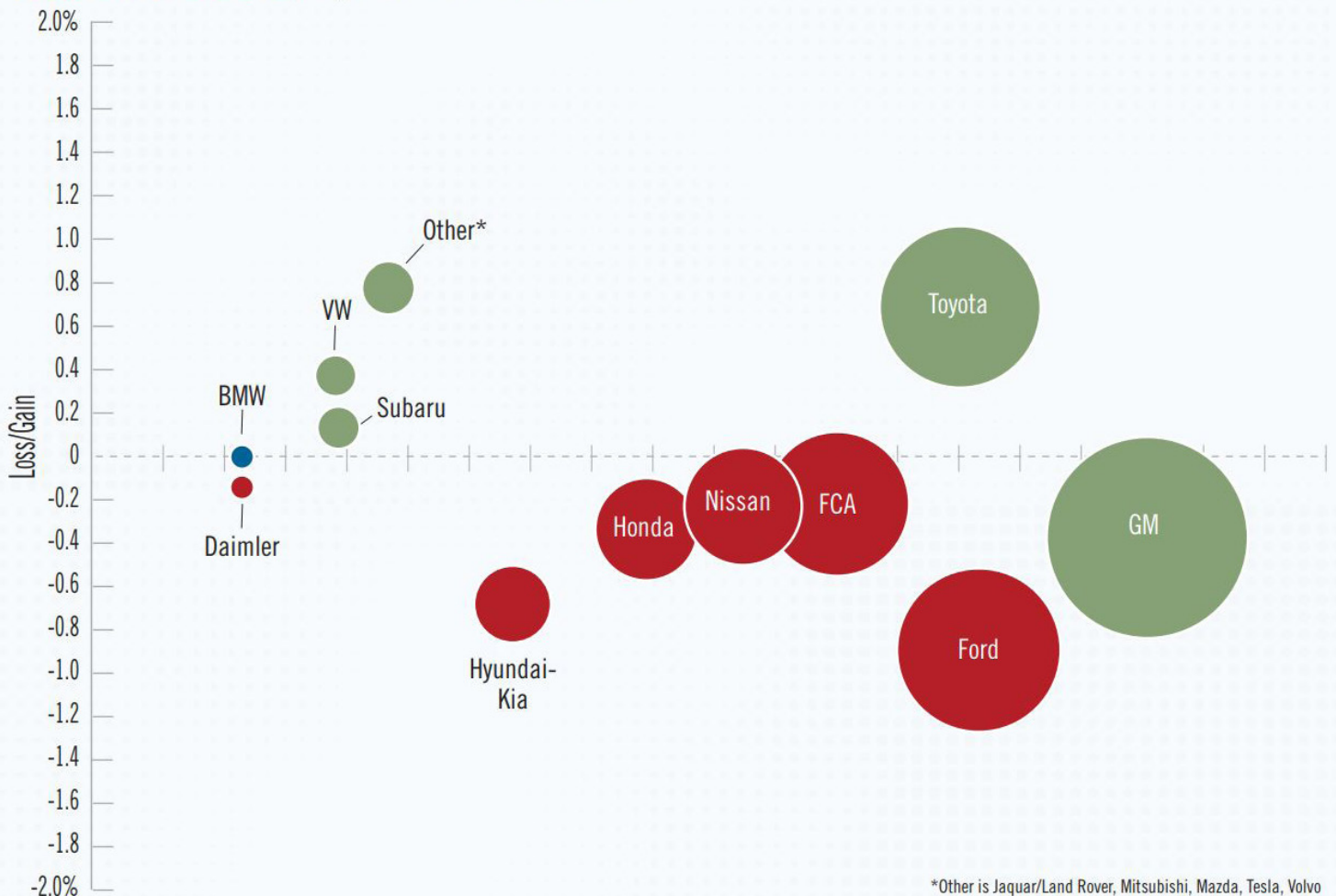


MARKET BEAT

Patrick Manzi, NADA Senior Economist
Boyi Xu, Economist

New light-vehicle sales were up in March, closing out the month with a SAAR of 17.4 million units. Through the first quarter of 2018, new-vehicle sales are up more than 80,000 units from the first quarter of 2017. Sales were helped by a strong economy and one additional selling day compared to March of last year. After falling slightly in February, incentives rose slightly in March. According to J.D. Power, through the first half of March the average discount was 10.3%. Light trucks again represented more than two-thirds of all new vehicles sold in the first quarter, with strong gains in the crossover utility segment. Through the first quarter, crossovers represented 38.2% of all new vehicles sold, an increase of 4.4 percentage points from this time last year. Interest rates have begun to rise, and we expect two or three more rate rises before the end of the year—which will continue to put upward pressure on monthly payments and likely slow the sales pace. Furthermore, we expect 3.8 million off-lease vehicles to return to market in 2018, and the increased supply of these vehicles will make purchasing a slightly used vehicle more attractive than in recent years. Despite these headwinds, we still expect 2018 to end with 16.7 million new light-vehicle sales.

Market Share, by manufacturer



*Other is Jaquar/Land Rover, Mitsubishi, Mazda, Tesla, Volvo

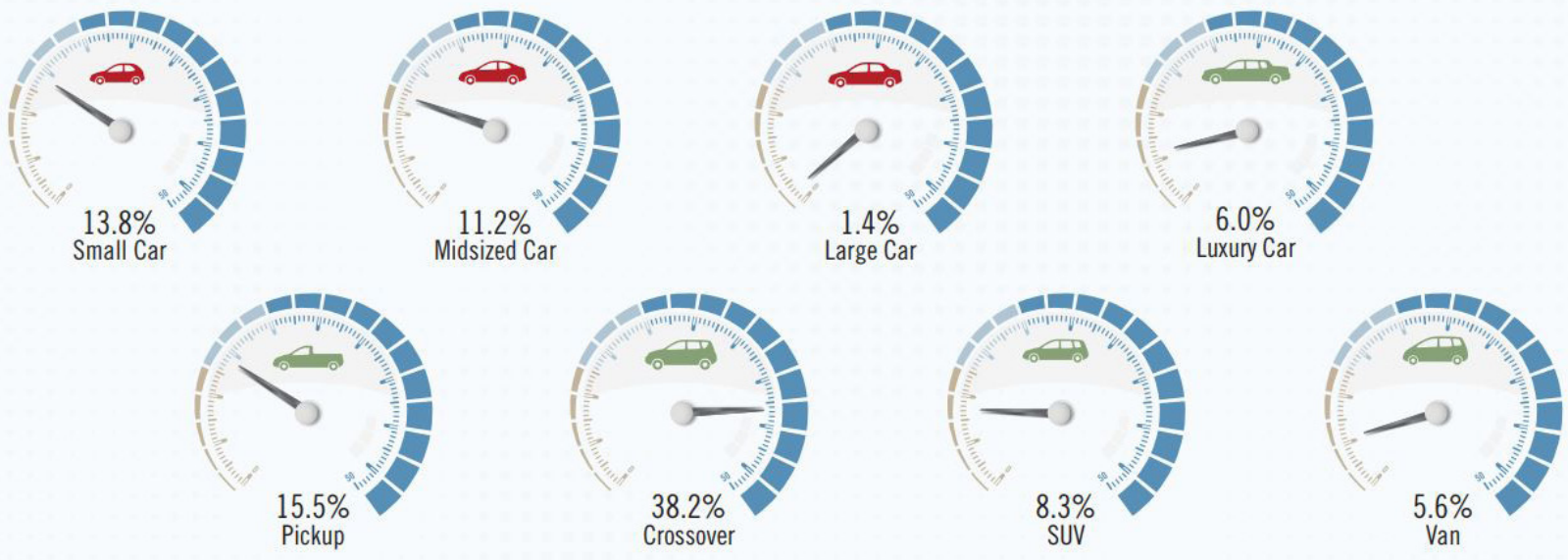
U.S. Light-Vehicle Sales

(Seasonally Adjusted at Annual Rates)

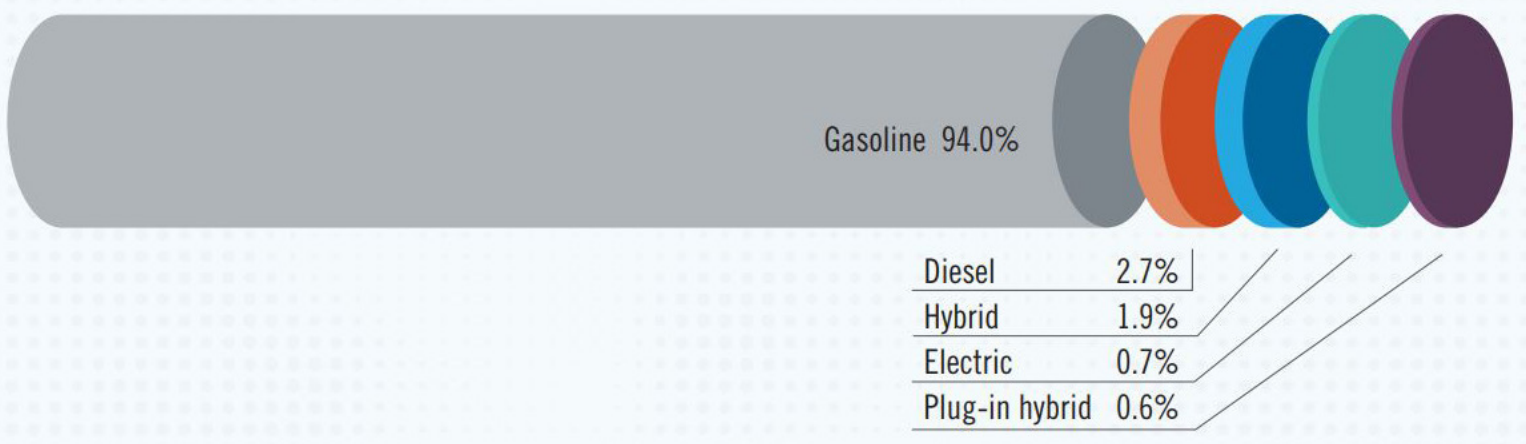


	Mar 2018	Y/Y Change %	Jan - Mar 2018	YTD Change%
Total Car	5.43	-11.7%	5.48	-12.0%
Total Light Truck	11.97	13.1%	11.69	7.6%
Domestic Light Vehicle	13.42	3.2%	13.15	-0.7%
Import Light Vehicle	3.98	7.3%	4.02	4.4%
Total Light Vehicle SAAR	17.40	4.1%	17.17	0.5%

Market Share, by segment



Market Share, by powertrain



KPA SAFETY CORNER

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5 IMPORTANT TIPS FOR EFFECTIVE EHS MANAGEMENT

Environmental Health and Safety (EHS) Management isn't just important because it's a part of regulatory compliance, it shows your employees that you care about their well-being.

However, when handled improperly, EHS Management can negatively impact your business, both in terms of company culture and productivity- all of which will affect your profits.

Read on to get our top five EHS Management tips.

TIP 1: COLLECT AS MUCH DATA AS POSSIBLE

You can't start the process of effective EHS Management without gathering and analyzing data- and the more you study, the better your EHS plans and strategies will be.

Plus, rigorous data analysis and testing can reveal things your employees may not feel comfortable telling you. Studies have shown that 45% of employees are uncomfortable discussing safety risks with their employers.

When gathering data, rely on both industry experts and employee feedback. Also, make sure you're speaking with employees at different levels and positions within your company about their health and safety concerns.

Encourage them to give feedback by implementing a recognition or rewards program.

TIP 2: MAKE AN EHS MANAGEMENT A BENEFIT OF WORKING FOR YOUR COMPANY

When you're in the process of evaluating your EHS systems, make sure you're reminding both current and potential employees that it's a company value, and that risk management in all forms is something they need to make a priority throughout the work day.

As with the recognition of those who offer EHS feedback, make sure you recognize

employees and departments who contribute to a "caring office culture."

When crafting company correspondence and newsletters make sure you're clearly outlining safety standards as often as possible, also run employee pictures in company newsletters (it's great if your clients can see this matters to you, too).

TIP 3: CREATE SUCCESSFUL EHS MESSAGING

Even in a low-risk environment, where employees aren't handling heavy equipment or dangerous chemicals, EHS Management expectations must be clearly laid out and implemented.

This means doing a serious risk assessment of your work environment, prioritizing your risks, and most importantly, running periodic safety training programs for employees, and using professional services to assess how to best get these messages out to your employees.

Make sure your EHS expectations are outlined in posters that are clearly visible throughout your workplace.

TIP 4: ASK LEADERSHIP TO BUY-IN

When it comes to EHS Management, leadership buy-ins will build credibility, remind employees that they're an important company asset, and even helps to save your company money in the long run.

Taking the initiative to make healthy decisions, especially when directed to do so from the top, will help to keep morale high.

TIP 5: SELF-AUDIT REGULARLY

Unfortunately, 72% of employees say they don't know what the role of their company's EHS Department is. Make sure your employees know it exists by continually conducting EHS self-audits.

You'll avoid costly- and dangerous- potential health and safety risks by implementing a continuous EHS Management strategy. Audits, whether you conduct them yourself or hire a professional to run them, will also help you to prepare for an unexpected visit from regulators.

Keep in mind, it's all about the preventative steps that you take every quarter.

YOU NOW KNOW HOW TO IMPLEMENT EFFECTIVE EHS MANAGEMENT

If you need further information regarding EHS Management, or wish to engage the services of a professional, get in touch with us to start the process.

No matter the size of your company or the industry you're in, we can make sure you're in accordance with regulations and that you're effectively managing your risks. ■

THE PPE IS RIGHT:

A WORKPLACE HAZARD ASSESSMENT GUIDE

This tool has been designed to help you conduct a workplace hazard assessment for the purpose of determining the necessary personal protective equipment (PPE) for exposed employees. The hazard assessment checklist identifies activities that may create hazards to which your employees may be exposed. The activities are grouped according to the part of the body that may require PPE. The instructions below outline the steps you should take to complete the assessment and determine what PPE must be provided to your employees.

Instructions:

1. Using the Hazard Assessment Certification Form, conduct a walk through survey of each work area and job/task for each employee position described in the selected Assessment Location. Read through the list of work activities in the first column, putting a check next to the activities performed in that work area or job. Be aware that there may be simultaneous exposures to hazards.
2. Read through the list of hazards in the second column, putting a check next to the hazards to which employees may be exposed while performing the work activities or while present in the work area. (For example, work activity: grinding; work-related exposure: flying particles.)
3. Decide how you are going to control the hazards. Consider an appropriate engineering control, such as guarding or ventilation, or an administrative control, such as a safety policy, to eliminate or reduce the hazards before resorting to using PPE. If the hazard cannot be eliminated without the use of select PPE, indicate which type(s) of PPE will be required to protect your employee from the hazard.
4. Once the need for PPE has been determined, you as the employer must now provide qualified PPE for your employees at no cost to them. In addition, you must train employees on at least the following: when PPE is necessary; what PPE is necessary; how to properly put on, take off, adjust, and wear PPE; the limitations of PPE; and the proper care, maintenance, useful life, and disposal of PPE.
5. Repeat steps 1 through 5 for each department.

Note: This document is meant only to serve as an example of a checklist that may be used in the automotive service industry. Work-related exposures, hazards, and necessary PPE can vary greatly across industries and jobs. As such, Hazard Assessments should be customized to address actual work performed at your facility.

HAZARD ASSESSMENT CHECKLIST



Facility: _____

Facility Address: _____

Assessment Location (e.g. department): _____

EYES/FACE

Hazardous activities:	Work-related exposure to:	Can Hazard be eliminated without the use of PPE?
<input type="checkbox"/> Materials handling (warehouse activities)	<input type="checkbox"/> Airborne dust	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Spraying/pressurized spraying/aerosols	<input type="checkbox"/> Flying particles	If not, required PPE:
<input type="checkbox"/> Using compressed air	<input type="checkbox"/> Particulates	<input type="checkbox"/> Safety glasses
<input type="checkbox"/> Sanding	<input type="checkbox"/> Chemicals	<input type="checkbox"/> Chemical goggles
<input type="checkbox"/> Cutting/using knives/blades	<input type="checkbox"/> Intense light (welding/torch)	<input type="checkbox"/> Welding shield/goggles
<input type="checkbox"/> Grinding	<input type="checkbox"/> Extreme heat/cold	<input type="checkbox"/> Welding apron/jacket
<input type="checkbox"/> Hammering	<input type="checkbox"/> Isocyanates	<input type="checkbox"/> Face shield
<input type="checkbox"/> Welding/gas torch	<input type="checkbox"/> Other: _____	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Working under a vehicle	<input type="checkbox"/> Other: _____	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Battery charging	<input type="checkbox"/> Other: _____	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Mixing		
<input type="checkbox"/> Painting		
<input type="checkbox"/> Using hazardous chemicals		
<input type="checkbox"/> Other: _____		
<input type="checkbox"/> Other: _____		
<input type="checkbox"/> Other: _____		

LUNGS/RESPIRATORY

Hazardous activities:	Work-related exposure to:	Can Hazard be eliminated without the use of PPE?
<input type="checkbox"/> Cleaning	<input type="checkbox"/> Asbestos	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Sanding	<input type="checkbox"/> Paint spray	If not, required PPE:
<input type="checkbox"/> Mixing	<input type="checkbox"/> Dust	<input type="checkbox"/> Disposable dust/mist mask
<input type="checkbox"/> Painting	<input type="checkbox"/> Organic vapors	<input type="checkbox"/> Respirator (Refer to Respiratory Protection Program)
<input type="checkbox"/> Compressed air/gas operations	<input type="checkbox"/> Diisocyanates	<input type="checkbox"/> Supplied air
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Other: _____	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Other: _____	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Other: _____	<input type="checkbox"/> Other: _____

EARS/HEARING

Hazardous activities:	Work-related exposure to:	Can Hazard be eliminated without the use of PPE?
<input type="checkbox"/> Grinding	<input type="checkbox"/> Loud tools/equipment	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Ventilation fans	<input type="checkbox"/> Other: _____	If not, required PPE:
<input type="checkbox"/> Motors	<input type="checkbox"/> Other: _____	<input type="checkbox"/> Hearing protection
<input type="checkbox"/> Sanding	<input type="checkbox"/> Other: _____	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Pneumatic equipment		<input type="checkbox"/> Other: _____
<input type="checkbox"/> Compressor		<input type="checkbox"/> Other: _____
<input type="checkbox"/> Other: _____		
<input type="checkbox"/> Other: _____		
<input type="checkbox"/> Other: _____		

BODY/TORSO/LIMBS

Hazardous activities:	Work-related exposure to:	Can Hazard be eliminated without the use of PPE?
<input type="checkbox"/> Materials handling (warehouse activities)	<input type="checkbox"/> Irritating chemicals	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Sanding	<input type="checkbox"/> Tools materials that could scrape, bruise, cut	If not, required PPE:
<input type="checkbox"/> Cutting/using knives/blades	<input type="checkbox"/> Extreme heat/cold	<input type="checkbox"/> Heat resistant gloves
<input type="checkbox"/> Grinding	<input type="checkbox"/> Vibration power tools	<input type="checkbox"/> Nitrile gloves
<input type="checkbox"/> Hammering	<input type="checkbox"/> Repetitive motion	<input type="checkbox"/> Anti-vibration gloves
<input type="checkbox"/> Welding	<input type="checkbox"/> Heavy equipment	<input type="checkbox"/> Leather/cut-resistant gloves
<input type="checkbox"/> Vehicle repair	<input type="checkbox"/> Slippery surfaces	<input type="checkbox"/> Wrist supports
<input type="checkbox"/> Working with glass	<input type="checkbox"/> Isocyanates	<input type="checkbox"/> Safety shoes/boots
<input type="checkbox"/> Keyboard entry	<input type="checkbox"/> Electric shock/arc	<input type="checkbox"/> Slip-resistant soles
<input type="checkbox"/> Painting	<input type="checkbox"/> Other: _____	<input type="checkbox"/> Oil-resistant soles
<input type="checkbox"/> Lifting of heavy objects	<input type="checkbox"/> Other: _____	<input type="checkbox"/> Paint suit
<input type="checkbox"/> Use of flammable materials (low flashpoint)	<input type="checkbox"/> Other: _____	<input type="checkbox"/> Electrician gloves
<input type="checkbox"/> Use of petroleum products		<input type="checkbox"/> Latex gloves
<input type="checkbox"/> Hybrid vehicle repair		<input type="checkbox"/> Other: _____
<input type="checkbox"/> Other: _____		<input type="checkbox"/> Other: _____
<input type="checkbox"/> Other: _____		<input type="checkbox"/> Other: _____
<input type="checkbox"/> Other: _____		<input type="checkbox"/> Other: _____

About KPA

In business since 1986, KPA delivers Environmental Health & Safety, Risk Management, HR Management, and Sales & Finance Compliance programs to over 6,500 clients nationwide that achieve regulatory compliance, control risk, protect their assets, and effectively manage people through a combination of intuitive software, interactive training, and onsite compliance audit services.

Disclaimer: This document is general in nature and is not complete or thorough. Qualified legal counsel should be consulted to address facility specific issues. KPA is not providing legal advice and assumes no liability for the information set forth in any resource document.

HOW TO CALCULATE SALES TAX FOR NON-RESIDENT TRANSACTIONS

information provided by OADA Staff Counsel

Dealers frequently sell vehicles to non-residents of Ohio, including purchasers from other states and other countries. You may benefit from a brief review of how to calculate and remit sales tax for these non-resident transactions. In July 2017, the Ohio Department of Taxation (ODT) released an updated Information Release, *ST 2007-04 Sales and Use Tax: Sales of Motor Vehicles to Nonresidents of Ohio (Revised June 2017)*. This most recent version can be found [HERE](#). We recommend retaining a copy of the release for future reference.

STEP 1: WHERE IS THE MOTOR VEHICLE BEING REMOVED TO?

Determining which state the Non-resident is from, and where the vehicle will be removed to, allows a dealer to determine whether it must collect any tax and remit it to the state of Ohio. Dealers are required to collect and remit sales tax to the state of Ohio for Non-residents who will remove the vehicle to: Arizona, California, Florida, Indiana, Massachusetts, Michigan or South Carolina ("reciprocal states"). See Step 2 for more information on how to determine how much tax is owed.

Sales of motor vehicles to Non-residents of Ohio that are removed to any other state, known as "non-reciprocal states", or to any province of Canada, are not subject to Ohio tax. Non-reciprocal states will most likely require the consumer to remit sales tax once they title the vehicle in their home state.

In contrast, sales tax is due for sales to Non-residents of Ohio that will remove the vehicle to any foreign country other than Canada. Ohio tax should be collected at six percent (6%) of the price of the vehicle pursuant to statute.

STEP 2: CALCULATING SALES TAX FOR RECIPROCAL STATES

Here's how to determine the tax due from Non-residents who will remove the motor vehicle to one of the seven reciprocal states:

- Calculate the Ohio sales tax for the vehicles as you would for any sale to an Ohio resident, taking into account the trade-in deduction if the sale is of a new vehicle. The tax rate to apply to the Ohio price is 6.0%.
- Calculate the other state price taking into account the trade-in allowance as permitted by the other state and apply the tax rate and special provisions of the other state as listed in the following chart.

Whichever is the lesser amount will be the amount a dealer should collect from the purchaser to remit to the state of Ohio. **Remember, that if Ohio's calculation is the lesser amount, the purchaser will owe the difference between the Ohio calculation and the other state's calculation when the purchaser goes to title the vehicle in the home state.** In those instances, the purchaser may want the dealership to include all applicable taxes in the deal, including those due in the home state.

The following is the list of the states, applicable tax rates, and the adjustments required to determine the proper amount of sales tax to collect:

STATE	SALES TAX RATE	TRADE-IN ALLOWANCE	SPECIAL PROVISIONS
Arizona	5.60%	Yes- New & Used	
California	7.50%	No	
Florida	6.00%	Yes- New & Used	
Indiana	7.00%	Yes- New & Used	<i>Non-resident exemption for RVs and trailers with a load capacity of at least 220 pounds</i>
Massachusetts	6.25%	Yes- New & Used	
Michigan	6.00%	Yes- New & Used	<i>Initially, in 2013, up to \$2,000 of the value of the motor vehicle being traded-in could be used to reduce the price. That trade-in amount increases annually by \$500 beginning on January 1, 2015 and is capped at \$14,000</i>
South Carolina	5.00%	Yes- New & Used	<i>Tax cap of \$500 (effective for sales on or after July 1, 2017) Tax cap of \$300 (effective for sales prior to July 1, 2017)</i>

Source: Ohio Department of Taxation- Information Release 2007-04- Sales and Use Tax: Sales of Motor Vehicles to Nonresidents of Ohio, Page 2.

A sale to a non-resident of Ohio that will remove the vehicle purchased to one of the seven states where tax is to be collected could still qualify for exemption from the tax if a valid Ohio exemption exists. For example, a trucking company from Michigan could claim an exemption for personal property used in a highway transportation for hire if they are carrying goods belonging to others and are the holder of a permit or certificate issued by the United States authorizing the holder to engage in transportation of the personal property belonging to others for consideration over or on highways. Exemptions allowed in other states but not in Ohio do not qualify for exemption from the Ohio tax.



information provided by CareWorksComp

The BWC offers many programs and options for saving money, and here is a general overview of what these programs are and their compatibility with the various alternative rating programs available:

DRUG FREE SAFETY PROGRAM (DFSP)- This program allows employers to implement a drug and alcohol policy, testing, and safety training program to earn a rebate on premiums. There are two levels to the DFSP; a **4% premium rebate** is given at the basic level participation, and a **7% premium rebate** is given at the advanced level participation. The DFSP is compatible with traditional Group Rating, Grow Ohio, Small Deductible Program, and individual rating.

EXAMPLES

Example 1: An Indiana resident purchases a new vehicle from an Ohio dealer. There is no trade-in involved in the transaction.

	OHIO CALCULATION	INDIANA CALCULATION
Purchase Price	\$23,000	\$23,000
Tax Rate	6.00%	7.00%
Calculated Tax	\$1,380	\$1,610
Tax to be remitted to Ohio:		\$1,380

Example 2: A Michigan resident purchases a new vehicle from an Ohio dealer. The customer has a trade-in. Michigan's trade-in allowance is limited to \$4,000 in 2018 (this amount will change annually).

	OHIO CALCULATION	MICHIGAN CALCULATION
Purchase Price	\$28,000	\$28,000
Trade-In Allowance	\$7,500	\$4,000
Tax Base	\$20,500	\$24,000
Tax Rate	6.00%	6.00%
Calculated Tax	\$1,230	\$1,440
Tax to be remitted to Ohio:		\$1,230

Example 3: A California resident purchases a new vehicle from an Ohio dealer. There is no trade-in involved in the transaction.

	OHIO CALCULATION	CALIFORNIA CALCULATION
Purchase Price	\$33,000	\$33,000
Tax Rate	6.00%	7.50%
Calculated Tax	\$1,980	\$2,475
Tax to be remitted to Ohio:		\$1,980

In these examples, the dealer will report and pay to Ohio a tax amount that will be less than due in the resident's home state. Upon return to the home state, the purchaser may owe additional tax to that state. The Ohio dealer at the request of the customer may collect the entire amount of tax due to both states for the transaction. The bill of sale should list the tax amounts for the two states respectively. When completing the application for an Ohio title and the non-resident affidavit, the dealer should list only the Ohio tax collected and should remit that amount, less

discount, to the Clerk of Courts. Taxes a dealer collects for another state should be remitted by the dealer to the appropriate state, according to that state's law.

Example 4: An Indiana resident purchases a used vehicle from an Ohio dealer. The customer has a trade-in.

	OHIO CALCULATION	INDIANA CALCULATION
Purchase Price	\$17,000	\$17,000
Trade-In Allowance	\$3,500	\$3,500
Tax Base	\$17,000	\$13,500
Tax Rate	6.00%	7.00%
Calculated Tax	\$1,020	\$945
Tax to be remitted to Ohio:		\$945

Example 5: A South Carolina resident purchases a new vehicle from an Ohio dealer. The customer has a trade-in. South Carolina has a \$5,000 cap on the amount of tax to collect on the sale of a vehicle, effective July 1, 2017.

	OHIO CALCULATION	SOUTH CAROLINA CALCULATION
Purchase Price	\$24,000	\$24,000
Trade-In Allowance	\$4,500	\$4,500
Tax Base	\$19,500	\$19,500
Tax Rate	6.00%	5.00%
Calculated Tax	\$1,170	\$975
Tax to be remitted to Ohio:		\$500

STEP 3: COMPLETE THE CORRECT PAPERWORK

Make sure your paperwork is in order. All non-resident purchasers must complete an affidavit regarding a sale to an out-of-state resident. This form, STEC-NP, can be found [HERE](#). The amount of tax collected on the sale must be stated on the affidavit, as well as on the application for title. The original should be retained by the dealer, one copy should be made for the purchaser, and at least one copy for the Clerk of Courts.

Please do not hesitate to contact OADA Legal Counsel with any additional questions or concerns. You can reach Sara Bruce, Vice President of Legal Affairs at 614-923-2243 or sbruce@oada.com and Matt Chacey, Staff Counsel at 614-923-2232 or mchacey@oada.com. ■

GO GREEN DISCOUNT PROGRAM- This program is part of the BWC's Destination Excellence Program and it offers a **1% premium rebate** (up to \$2,000) in exchange for an employer conducting their BWC transactions via the BWC's website at www.bwc.ohio.gov. This includes receiving payroll reports, report payroll, paying premiums, and filing First Reports of Injury (FROI). This rebate is given automatically by BWC to eligible employers. It is compatible with *all* alternative rating programs.

INDUSTRY-SPECIFIC SAFETY PROGRAM (ISSP)- This program offers employers the opportunity to receive a **3% premium rebate** for completing an online safety assessment and completing up to three loss prevention activities, depending on amount of payroll. ISSP is compatible with traditional Group Rating, Grow Ohio individual rating, and the One Claim Program.

LAPSE FREE DISCOUNT PROGRAM- This program is part of the BWC's Destination Excellence Program and it offers a **1% premium rebate** (up to \$2,000) in exchange for an employer not having any lapses in coverage during the 60 months prior to the rebate eligibility evaluation date. This rebate is given automatically by BWC to eligible employers. It is compatible with traditional Group Rating, Grow

Ohio, individual rating, and Group Retrospective rating.

SAFETY COUNCIL REBATE PROGRAM- This program's goal is to increase safety awareness by joining a local safety council. There is a total **premium rebate incentive of 4%** awarded to employers, broken down as follows:

- **2% Participation Rebate** for attending their safety council's monthly meetings (at least 10 out of 12).
- **2% Performance Rebate** for reducing either the frequency or severity of claims by 10% or with maintenance at zero.

The Safety Council Rebate Incentive Program is compatible with *all* alternative rating programs, however traditional Group Rating is only compatible with the *2% Performance Bonus*, and Group Retrospective Rating is only compatible with the *2% Participation Rebate*.

TRANSITIONAL WORK BONUS (TWB)- This program is designed to reward employers (**up to 10% of pure premium**) who successfully use approved transitional work plans to facilitate early return-to-work for injured workers with eligible claims. It requires that the employer complete a

transitional work bonus application by the deadline. This program is compatible with traditional Group Rating, Grow Ohio, individual rating, and the One Claim Program.

UPCOMING DEADLINES:

May 15, 2018- last date to request a change to your installment plan for PY 2018.

May 31, 2018- Drug Free Safety Program (DFSP) application deadline for a 7/1 start date • Industry Specific Safety Program (ISSP) application deadline for a 7/1 start date • Transitional Work Bonus application deadline for a 7/1 start date.

June 21, 2018- due date for the first installment for PY 2018! (Please note this was recently updated by BWC).

June 30, 2018- Early Payment Discount due date (employer must pay full PY 2018 estimated annual premium in order to receive this discount) • Deadline to complete Safety Council participation requirements for PY 2017 • Deadline to complete ISSP loss-prevention activities for PY 2017 • Deadline to complete the ISSP loss-prevention for PY 2017 • Deadline to complete the ISSP on-site consultation survey (form SH-29) for PY 2017. ■



2018'S TOP TWENTY LEGAL TRENDS FOR AUTOMOBILE DEALERS

information provided by Eric L. Chase, ESQ.

2018 MIGHT BE A YEAR OF EXTRAORDINARY GOOD FORTUNE FOR DEALERS,

not only in sales, profits and store values, but also in legal and regulatory reform. At the same time, counter-developments in political and investigatory arenas could profoundly undermine some of the upbeat initiatives and developments. Every dealer needs to take a hard look at which of the following trends could impact their business, and plan accordingly.

1. FRANCHISOR SALES PERFORMANCE STANDARDS AND PRESSURES ON DEALERS

Franchisor governance of dealer sales performance is inherently problematic. First, their "accuracy" in determining dealer sales efficiency and "expectation" numbers, as well as establishing fair minimum sales benchmarks, is flawed and scientifically unsound.

Second, the methodologies used make certain a significant percentage of dealers will always be deemed "under-performing." Third, any system devised to assure the "failure" of dealers with lower numbers is unfair. Fourth, auto makers use these results, based on unreliable and unfair metrics, to arbitrarily identify "winners" and "losers" from among their franchisee network.

For many years, manufacturers have evaluated, identified and enforced dealer sales objectives and requirements under a misguided pretense of scientific validation and reliability. The truth is, these metrics are an unfair and inaccurate gauge of whether a dealer may be in material breach of the dealer agreement.

U.S. auto franchisors (almost universally) measure dealer sales efficiency by computing an "average"

sales penetration benchmark for all the same-brand dealers in the applicable region or state. Then they compare each dealer's sales penetration in its area of responsibility measured against "opportunity" or "expected" or "average" sales. Dealers whose sales penetration falls below "average" of all same-brand dealers in the comparative geography are deemed "under performing." That means, at any given time, about half the dealer network of an auto franchisor is unsatisfactory, and in material breach of the dealer agreement!

Keep in mind, sales performance evaluations often impact a dealers' eligibility for certain bonuses, which can determine a dealer's profitability or competitiveness. Also, if a dealer is looking to acquire another dealership, below average sales of existing stores can be an automatic disqualifier.



If manufacturers want to use metric-based statistics in determining dealer sales performance efficiency, they must be required to first demonstrate the validity and accuracy of both the metrics themselves and their statistically demonstrable relationship to the sales performance of individual dealers.

There are too many variables that arriving at any kind of meaningful "average" sales evaluation is probably a lost cause. Not to mention, using an "average" penetration threshold as a minimum passing grade is both absurd and unreasonable. No manufacturer should construct a network plan that assures the automatic failure of about half its franchisees at a given time. With an "average" benchmark for all dealers, the failure rate never improves, because the "average" will move up or down along with a brand's sales trends. Even if a brand's sales double, the number of "below average" dealers will stay constant. Manufacturers should use systems that increase the likelihood and assure the possibility that every franchisee can comply with reasonable standards at the same time.

So, in revamping their current methodologies, what should auto franchisors do instead? First, instead of "one-size-fits-all" metrics that depend on convoluted and artificially devised comparisons, they should establish discerning standards so that each store is assessed on its own compliance with those standards (*i.e. adequate facilities, well-trained professional sales and service staffs, customer friendly policies and practices, reasonable capitalization, regular suitable advertising in local media, appropriate and adequate inventories of vehicles and parts, etc.*)

Second, if manufacturers insist on relying upon vehicle sales metrics, they must develop methodologies that are fully explained to dealers and proven to be statistically valid to scientifically determine how many vehicles a given dealer should sell or should have sold.

2. AUTONOMOUS CARS: A THREAT TO DEALER SURVIVAL, OR A MAJOR GROWTH OPPORTUNITY?

Auto retailers are just starting to figure out what role they will play in the autonomous vehicle wave coming down the road. Some predict human-driven vehicles will be legislated off the highways in 15-20 years, which will spell the demise of automotive retailing. Most industry experts see autonomous vehicles serving as an "addition" not a "substitution" to existing automotive sales because they will enable many people who cannot or should not operate a vehicle (*i.e. those with disabilities or under the influence*). There is no indication that most current drivers will want to completely cede operational control of their vehicle.

So will today's franchised distribution network will be diminished or displaced? In my opinion, even if vast numbers of self-driving vehicles enter the marketplace in the next 10-20 years, today's dealers should continue as the principal retailers and fleet marketers of the new

units in a modernized and reconfigured distribution system.

3. IMPACT ON DEALERS FROM THE CHANGES IN GOVERNMENT AND THE PUSH-BACK AGAINST REGULATORY GROWTH

For legislation and regulations affecting dealers, 2018 will be a year of both uncertainty and some gains. The maelstrom that seems to perpetually surround the Administration of President Trump shows no sign of abating in 2018.

The development of various congressional oversight and special counsel investigations remains a wild card that could stymie much of President Trump's regulatory agenda. If the 2018 mid-term election cycle goes poorly for Republicans, 2019 legislative initiatives could drop or change precipitously. A serious impeachment initiative with a new Congress in 2019 could

and many others continue to push the envelope with electric vehicles (EVs).

I believe that "department store" and online sales by nationwide or regional vendors are likely at some point in the future, but so is the expansion of products and needed services, tailor-made for the brick-and-mortar dealership.

5. AFTER MANUFACTURER SCANDALS, ARE BRAND INTEGRITY AND BRAND REPUTATION RECOVERING?

The Volkswagen emissions scandal, GM ignition defect revelation and Takata airbag mess affected public confidence in many brands. Egregious factory misconduct and cover-ups have occurred (*or have been exposed*) with troubling frequency in the recent past. Hopefully, even if manufacturers are not motivated by doing the right thing for their own sake, they will see the wisdom of avoiding spectacular business losses, along with reputational harm.

6. TAXES AND THE POSITIVE IMPACT ON DEALERS OF A FEDERAL TAX OVERHAUL

On December 20, 2017, Congress passed the first major overhaul of the Internal Revenue Code since 1986. When all factors are taken into account, the newly revised Code lowers net income tax payments for individuals at all income levels, and cuts the corporate rate from 35 percent to 21 percent.

This is good news for dealers, as increases in personal and corporate disposable income will likely motivate more new car sales in 2018 than there would be otherwise. Dealers, however, have every reason for optimism about sales and profits, simulated by this new tax law.

7. FRANCHISOR PROGRAMS: INCENTIVES, 2-TIERED PRICING, STAIR-STEPS AND MORE

Although the particulars of Cadillac's "Project Pinnacle" are more complicated than most incentive programs, they illustrate the kind and quality control that franchisors seek. Automakers routinely put together "programs" they hope will boost sales of their vehicles. The aim is to "encourage" dealers to sell more units by paying them additional money as "incentives" or "bonuses". In certain programs, the per-unit payment to the dealer goes up at specified benchmarks in retail sales ("*stair-step*" programs).

But these programs result in high-volume dealers having more money per vehicle than their lower-volume peers. That complaint is the essence of "two-tiered pricing". Not only is that discriminatory result unfair to the lower-volume dealers, critics say, but it turns off customers.

For years, a few dealers have challenged "two-tiered" pricing on the basis of anti-discrimination and antitrust laws. But dealers also contend that such programs

"MOST INDUSTRY EXPERTS SEE AUTONOMOUS VEHICLES AS AN "ADDITION" NOT A "SUBSTITUTION" TO EXISTING AUTOMOTIVE SALES BECAUSE THEY WILL ENABLE MANY PEOPLE WHO CANNOT OR SHOULD NOT OPERATE A VEHICLE (I.E. THOSE WITH DISABILITIES OR UNDER THE INFLUENCE)."

the overall detail economy and cause the retail auto market to tumble. Even without intervening problematic political events, some economists warn that a major market correction is long overdue.

A thorough federal regulatory overhaul requires direct congressional action, with the passage of new laws and the repeal of old ones. Congressional cooperation, however, is an oxymoron as political partisanship continues. Regulatory cutbacks are happening administratively and by executive order in many areas without new laws enacted by Congress.

4. RETAILING BY NON-DEALERS

New car retailing could be changing and it could be changing sooner than many realize. Amazon, Wal-Mart, Costco, and other non-dealer entities are chomping at the bit to be direct vehicle retailers. Tesla



may be counter-productive, as a practical matter, when the resulting retail price differences destroy consumer confidence.

8. STATE FRANCHISE LAWS

For over a decade, material revisions to franchise laws have been enacted in about 20 states per year. State associations and the ATAE are both vigilant and proactive in confronting what they perceive as factory overreaches. 2018 should continue this trend, hopefully, with some emphasis in seeking to address the auto franchisors' flawed methodology in the evaluation of dealer sales. Elimination or reduction of auto franchisors' power to exercise their contractual right of first refusals should be a priority for amendments to state laws.

9. PRIVACY AND IDENTITY THEFT; CYBER SECURITY

Just when we think the threats of hacking and identity theft may be abating somewhat, or that protective software is prevailing, along comes the Equifax disaster, exposing over half of American adults (143,000,000 people) to thievery by sophisticated hackers. Then comes an announcement in October 2017 that 3 BILLION Yahoo accounts had been compromised. These recent, large-scale cyber nightmares should signal to small businesses that vulnerability to criminal actors is a problem for everyone who relies on computers, and that the problem will not get better anytime soon.

Dealers are finding that many customers, in response to the Equifax exposure, have frozen businesses' access to credit reports if frozen. In such circumstances, the customer must unfreeze the credit report so that the dealership can access the report. Unfortunately, this kind of delay and inconvenience, along with some added expense, will need to be endured for the foreseeable future.

As an overall proposition, auto dealers must remain especially vigilant as they obtain, safeguard, and store large volumes of sensitive customer information both in hard copy form and in electronic storage. Constant updating of cyber security is important, because computer invaders become more sophisticated all the time. 2018 is bound to see more examples of brazen hacking, cyber-attacks and identity thievery. Every dealer is well-advised to have a well-versed IT employee to oversee continuing and updated safeguards.

10. RECALLS

Recall numbers will continue their historical upward trend, yet the public will take such news in stride. Recalls are so commonplace now, they rarely get lasting headlines, unless there is also an issue of deliberate misconduct.

It's not that larger numbers of cars now have more defects, or more serious defects, than in earlier years. Quite the opposite is true. So why all the recalls? In large measure, the recall trend is so proactive because both automakers and state and federal government agencies want to avoid the negative impact of highly publicized



failures, especially if they threaten lives.

Thus, a very small percentage of defective cards within a model group is apt to spur a model-wide recall. For example, if only ten cars out of 100,000 manufactured vehicles are shown to have a serious safety defect, you nevertheless could see 100,000 recall notices. This is prudent, even when the odds of a serious defect in a particular vehicle are very low.

For dealers, recalls do generate service and parts income, at no cost to the customer. But downsides can include factory delays, which generate stress for both dealers and their customers. What is a dealer to do with new inventory in the face of recall notices? What about used inventory under recalls? What about the irate customer who receives a recall notice, but the factory is short on parts? What about consumers who ignore recalls altogether, choosing instead to drive with defective vehicles?

Dealers need to know the recall status of their inventory, and due diligence in keeping up on a continuous basis is a good practice. To be doubly certain, a dealership employee should regularly match vehicles in stock to the available public information about recalls. The National Highway Traffic Safety Administration (NHTSA) is an indispensable tool for recall information. See www.nhtsa.gov to search for relevant recall information by make, model and year.

11. ALTERNATE DISPUTE RESOLUTION

The Consumer Financial Protection Bureau (CFPB) has continued to assert itself in this area. On July 10, 2017, under former Director Richard Cordray, the CFPB published a rule that purportedly protected consumers' ability to bring class action lawsuits. However, that rule has been effectively overturned, and the CFPB is definitively moving in a different direction under the Trump Administration.

The big ADR question for dealers continues to be the viability of mandatory arbitration clauses in contracts with consumers, especially where a customer signs away any right to initiate a class or mass action. From the dealer's viewpoint (*and, I believe, the customer's as*

well), the availability of such provisions is a good thing. Hopefully 2018 will see more clarity and consistency on this important issue.

For now, the previous CFPB mission to thwart consumer arbitrations is in tatters. Therefore, dealers who want arbitration clauses with consumers should monitor developments in state and federal law, including relevant court decisions to assure legal compliance. State associations have done an excellent job staying current, and are reliable resources for dealers looking for guidance on arbitration provisions.

12. WORKFORCE ISSUES AND UNIONIZATION

The Obama era of one-sided, pro-labor, anti-business initiatives is receding, but hardly vanquished. Businesses (*and dealers in particular*) should be cautious about becoming overconfident in dealing with unionization issues.

Caution: A number of states now prohibit asking job candidates for hire about pay history. Hiring practices are under more and more scrutiny today than in the past. In addition, incidents of sexual harassment in the workplace will be met with fierce legal repercussions. A "zero-tolerance" policy for such misconduct is a must.

Look for a year of gradual transition to more fairness for employers on basic economic issues, and a more "enlightened" National Labor Relations Board (NLRB). State laws vary considerably in employment requirements. Stay current on your jurisdiction's workplace laws and regulations!

13. ENVIRONMENTAL ISSUES

Industrial waste and hazardous material are always subjects for dealers' attention and vigilance. The overarching environmental philosophy of EPA Chief Scott Pruitt and the Trump Administration appears to be to ease those restrictions on industries and businesses that arguably provide nothing meaningful to protect or conserve the environment. A more laissez-faire regulatory policy is likely to make administrative burdens down at the dealership level considerably less onerous. This easing regulatory approach will not





cause harm to the environment or foul water or air.

Dealers can draw some comfort from the probability that 2018 will see an easing of bureaucratic tasks associated with environmental matters. Nevertheless, dealers must be sticklers in complying with existing requirements, and assure that employees heed best environmental practices.

14. INVOLUNTARY TERMINATION

Auto franchisors continue to threaten "death penalty" sanctions against their dealers in large numbers, but the delivery of an actual termination notice to a targeted dealer is still a relative rarity. In all instances of franchisor termination threats, a dealer needs to respond in writing- promptly, civilly, accurately and firmly. The response should be factual and professional. It should contest the basis of the threat, and invite the franchisor to discuss all issues further. It is never a sound strategy to ignore such a serious matter. Of course, if you receive a notice of termination, call your experienced franchise attorney immediately.

15. RIGHTS OF FIRST REFUSAL (ROFRs) AND BUY-SELL ACTIVITY

For 30 years, I've contended that ROFRs limit buy-sell opportunities and tend to drive selling prices down. That is because prospective buyers are wary of wasting time and effort, only to be thwarted by a factory exercising its contractual ROFR. Five states now prohibit ROFRs, and there may be a minor state law trend to follow suit. ROFRs, or even their threat, have become serious impediments to buy-sell activity, especially when franchisors try to "cherry pick" their brand out of multi-brand deals.

16. CONSUMERISM

"The consumer is king" is still an applicable maxim, and dealers are well advised to walk the extra mile in directly resolving customer gripes at the earliest possible time. In dealer vs. consumer disputes, the deck remains heavily stacked in favor of the consumer, and dealers should stay mindful of this reality. Many states have

consumer fraud statutes that call for treble damages against businesses found liable for prohibited practices, PLUS attorneys' fees.

Of course, there are situations where the dealer should take a stand. In those cases, dealers should fully document all the facts, make sure that (a) it's worth the cost of a legal contest, and (b) all the facts line up favorably.

At the federal level, for several years now, the Consumer Financial Protection Bureau (CFPB), was the 500-pound gorilla of consumerism. Now, the bloom is off the rose. Again and again, under former Director Richard Cordray, the CFPB repeatedly tried to cast businesses and banks as villains out to cheat or discriminate against various classes of consumers.

The CFPB has been defanged under the Trump Administration, but that's not a disservice to consumers. Rather, it suggests there will be fairness and reasonableness in how the federal government approaches consumer-based issues. The CFPB had unlawfully tried to grab legally-prohibited jurisdiction over dealers through the "back-door" when dealers make loan applications available to consumers.

On a number of fronts, dealers in 2018 will see some relaxation of the unfair onslaught by consumer groups and state and federal regulators.

17. ENCROACHMENT AND FRANCHISE MODIFICATION

There may be fewer encroachment and modification cases in 2018, but they will be important nonetheless. The establishment or relocation of a competing same-line store near an existing location may potentially cause grievous harm to the original store's ability to remain profitable, retain their staff, and even their growth viability. With "modifications" of franchise agreements, a bevy of state laws now allow dealers to protest unilateral changes.

Auto franchisors usually visit protest-eligible dealers to try to coax them not to protest the establishment or relocation of a nearby competitive store. Now,

they do the same if a modification law is in place. A factory representative will tell the existing dealer that the proposal is either good for, or indifferent to, their livelihood, but those representations are, generally, not true. If you receive a notice from the factory stating the intention to put a competing dealer near you, or to change your dealer agreement in an important way, call your lawyer to explore your options. And do so right away, because statutory time limits for filing a protest are usually very short.

18. NATURAL DISASTERS, TERRORISM, AND UNREST

Hurricanes Harvey, Irma and Maria and major California wildfires stand as recent horrific reminders to America's auto dealers that calamities far beyond their control can have a profound impact on them, their businesses, their employees, as well as their communities, friends and neighbors.

Of course, human beings cannot control natural disasters. But they can, and should, take precautions to try to lessen the repercussions on themselves, their employees and customers, and to recover in the aftermath.

Every employee manual should contain a section devoted to what steps should be taken in the event of a serious emergency, including natural disasters. Also, dealers are prudent to consider business interruption insurance, and other applicable types of coverage.

19. WARRANTY REIMBURSEMENT

About 30 states now prohibit auto franchisors from surcharging dealers to recoup high warranty parts expense. A small number of states have amended their laws to stop the carmakers' practice of charging dealers for "add-on" warranty work and parts. This issue won't go away for a while, despite a series of dealer victories in court.

20. FACTORY AUDITS

Dealer fears or (and suspicions about) factory audits are often overblown. In nearly all instances, such audits are legitimate, and, in any event, auto franchisors have the right to audit dealers for compliance with basic contractual requirements. Most audits relate to oversight of work done and/or sales made and dealer claims for factory money including bonuses, incentive payments, warranty work, etc. To be sure, they must abide by state law and dealer agreement timing, but, unless there is a truly objectionable overreach, dealers must simply cooperate with auditors. Of course, the results of an audit, including chargebacks, are often reasonably disputable. In those instances, dealers can and should challenge questionable chargebacks. ■

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Eric L. Chase is an attorney and a member of Bressler, Amery & Ross, P.C. He devotes a significant part of his practice to the representation of franchised automotive dealers and he has been lead counsel in numerous landmark decisions. Eric can be reached at 973-514-1200, or, via email, at echase@bressler.com.

DEALER GRASSROOTS:

27.

BYERS CHEVROLET HOSTS STATE REPRESENTATIVE LAURA LANESE

George Kauffman from the Byers Auto Group recently hosted State Representative Laura Lanese (R- Grove City) at Byers Chevrolet in Grove City. Also on hand were Zach Doran and Joe Cannon from OADA. The group discussed the auto industry impact in the recent state budget debate, as well as workforce issues facing dealers. George then gave Representative Lanese a tour of his dealership and introduced her to his employees. ■



STATE REPRESENTATIVE BOB CUPP & STATE SENATOR MATT HUFFMAN VISIT RAABE FORD LINCOLN

Joe Nott from Raabe Ford Lincoln in Delphos recently hosted State Representative Bob Cupp and State Senator Matt Huffman at his dealership's Grand Re-Opening on May 7th. Also in attendance was Zach Doran from OADA. ■



Interested in inviting your legislators to your dealership? Contact Zach Doran at zdoran@oada.com or Joe Cannon at jcannon@oada.com to get the ball rolling.

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614-766-9100
Fax 614-766-9600

2017

2017 Ohio Motor Vehicle Titling Manuals are Available!

Did you miss the 2017 Fall Seminar series on Titling? Do you have a new title clerk who needs an all-encompassing reference?

OADA has a supply of manuals available for purchase! At only \$50 (plus tax and shipping) per manual, this is a bargain! Supplies are limited, so order yours before they are gone!

To order, simply call DeAnna Zahniser (614) 923-2231, or email dzahniser@oada.com to make your request. We will make sure one is shipped to you, and include an invoice.

Thank you!

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Bike Helmets Save Lives!

Currently in Ohio, estimates indicate that just **10-20%** of children wear bike helmets, yet more than **70%** of children ages 5 to 14 ride a bicycle regularly.



75% of bike-related fatalities would be **prevented** with a helmet.

Helmet use can reduce the risk of head injury by **85%** and severe brain injury by **88%**



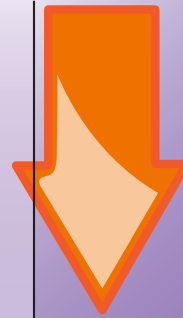
A **\$10** bike helmet **saves** healthcare system **\$41** per child.



Helmet Policies Work!

The Ohio AAP supports policies that require bike helmet use for all children

16 years of age and younger.



Bicycle-related head injury rates among children have **decreased by up to 45%** following the passage of bicycle helmet legislation in other states.

75% of parents support a mandatory bike helmet law for children

Put a Lid on It!

Bike Helmet Month is May 2018.

The Ohio AAP's Bike Helmet Safety Awareness Program started in 2011 as a one-day event in September, and evolved into an annual event in May.



Over **40,000** bike helmets have been distributed to Ohio's children since 2011 through the Ohio AAP.

The Ohio AAP now has **over 350** partners involved in the Put a Lid on It! Program.

What Can You Do?

Encourage all Ohio legislators to

participate in the week!

Send a letter to the editor

to your local newspaper sharing why you support bike helmet use.



Use **#bikehelmetssafety** to post messages to your **Twitter Feed** and **Facebook Page**, and change your profile photo to the **"Put A Lid On It" logo May 2018!**



To learn more, visit <http://ohioaap.org/PutALidOnIt> or contact Hayley Southworth at hsouthworth@ohioaap.org.



DEALERSHIP BUY-SELLS: A 360° APPROACH

OADA WEBINAR SERIES



The Buy-Sell Market is Booming Are You Prepared to Dive In?

In late January, *Automotive News* reported that early indicators signal a bustling buy-sell market for 2018. While some dealers are contemplating an exit from an increasingly complex retail world, others are looking to acquire stores to better compete in the evolving automotive landscape. Whether you are considering exiting the market or increasing your footprint, the OADA Buy-Sell webinar series was developed to provide answers to common questions.

Over the course of 3 months, OADA will host a webinar series designed to help answers critical questions like:

- Is now the time to consider buying or selling?
- What environmental conditions are relevant when acquiring new property?
- How do I evaluate the seller's books to see if this is a good opportunity?
- What steps do I take to transition employees from the old dealership to the new dealership?
- When can I get my Ohio New Dealer's license from the BMV?
- What terms and conditions are crucial for a buy-sell agreement?
- How do I structure the transaction to protect my other investments?

...and many more! ■

DEALERSHIP BUY/SELL SERIES SCHEDULE

THE BUY-SELL TRANSACTION: DOTTING THE "I" AND CROSSING THE "T"

March 15, 2018- 11:00am

As the "Buy/Sell" market in the retail automotive industry continues at an accelerated pace, David Brown will discuss marketing opportunities, early stage negotiating, asset purchase agreement issues, reviewing vendor contracts, real estate issues, non-compete contracts and more.

I AM BUYING (OR SELLING) MY DEALERSHIP: WHAT ABOUT THE EMPLOYEES?

April 16, 2018- 11:00am

Dealers should be aware of what their employment obligations and liabilities will be for the employees if the affected business, whether they are selling or buying. Melanie Webber, a partner at Fisher Phillips, will guide us through this process.

HOW TO HANDLE YOUR DEALER LICENSING REQUIREMENTS IN A BUY/SELL

May 16, 2018- 11:00am

OADA has invited members of the BMV Dealer Licensing team to discuss the process and procedures for licensing your new dealership and what steps are necessary prior to, during, and after the purchase of the new dealership.

ENVIRONMENTAL RISKS ASSOCIATED WITH COMMERCIAL REAL ESTATE

April 9, 2018- 11:00am

Curt Spence from Spence Environmental Consulting joins OADA to talk with dealers about the environmental risks associated with commercial real estate and how to manage those risks.

IS THE SKY FALLING? DEALERSHIP VALUES AND THE BUY/SELL MARKET IN A SHIFTING AUTO RETAIL CLIMATE

April 18, 2018- 11:00am

The webinar will discuss the offering perspectives of motivations of buyers and sellers in today's active buy/sell market. Erin Kerrigan from Kerrigan Advisors will review buy/sell market trends, today's blue sky values and the impact of rising dealership real estate values on transactions.

FINANCIAL DUE DILIGENCE IN THE BUY/SELL PROCESS

May 22, 2018- 11:00am

Reviewing what type of information a buying dealer needs to know before agreeing to purchase a new dealership is crucial to the process. Join the experts at Schneider Downs for an in-depth look at what a purchaser needs to look for and what a seller needs to consider prior to offering.

3 WAYS TO REGISTER!

1. ONLINE AT WWW.OADA.COM
2. BY PHONE AT 614-923-2231
3. BY EMAIL AT DZAHNISR@OADA.COM

YOUR WEBINAR PURCHASING OPTIONS:

1 Webinar	3 Webinars	6 Webinars
\$20	\$50	\$100

All webinars are recorded and available for purchase as a part of the buy-sell package. For more information, contact DeAnna Zahniser at 614-923-2231.

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Ohio Automobile Dealers Association

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How to Handle Your Dealer Licensing Requirements in a Buy Sell

OADA Spring Buy/Sell Webinar Series

Wednesday, May 16,
2018

11:00am-11:45am



Tel: 614-923-2231
614-766-9100 x109
800-686-9100

There is a \$20 connection fee for OADA member dealers. This is a members-only webinar.

As the “Buy/Sell” market in the retail automotive industry continues at an accelerated pace, dealers need to consider a variety of factors as they contemplate a buy/sell. Have I covered all aspects of the transaction? Have I thought everything through? What might I be missing?

As dealers move beyond the initial due diligence process and a letter of intent gets signed, the question turns from “Am I going to buy?” to “When is my closing date?” An essential component of the closing preparation process is securing a new motor vehicle dealers license with the Ohio Bureau of Motor Vehicle’s Dealer Licensing section. This is essential to ensure that the buying dealer has the ability to sell motor vehicles as close to the date of sale as possible.

OADA has invited Sarah Stedtefeld, Acting Chief of the Dealer Licensing Section of the BMV to discuss the process and procedures for licensing your new dealership and what steps are necessary prior to, during, and after the purchase of the new dealership.

During the presentation, attendees will learn:

- Whether or not a buyer can “transfer” the seller’s license;
- Can a buyer sell vehicles without a license;
- How a buyer can obtain a new license;
- What documents are required for submission to get a new license;
- Can a buyer take over the seller’s dealer plates;
- What does a buyer do about the seller’s inventory;
- Does a buyer need to transfer the salespeople to the new dealership; and
- Much more!

Join OADA and Ms. Stedtefeld to learn more about the dealer licensing process during this 45 minute presentation.

This webinar is part of the OADA Spring Buy/Sell Webinar Series. For more information about this series, please visit our website at www.oda.com.

How to Handle Your Dealer Licensing Requirements in a Buy-Sell

Name (s) _____

Dealership _____

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Phone _____

Webinar \$20.00

Link to Electronic Recording \$20.00

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Buy/Sell Webinar Series: Financial Due Diligence

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OADA Spring Buy/Sell Webinar Series

Before you enter into a buy/sell transaction, you obviously examine the financial aspects from all angles. But have you thought of everything? Please join us on Tuesday, May 22, as we examine a buy/sell transaction from the financial side.

Tuesday, May 22,
2018

11:00am-noon



OADA is pleased to welcome the experts from Schneider Downs, to present this topic to you. This webinar will focus on the financial aspects integral to a transaction from the initial considerations of the deal to the final signing of the Asset Purchase Agreement. We will concentrate on such issues as the following:

- Initial questions to consider
- Impact of an asset vs. stock transaction
- Capitalization structure
- Analysis of quality of earnings
- Add backs and adjustments
- and much more!

Tel: 614-923-2231
614-766-9100 x109
800-686-9100

Our presenters for this webinar will be Trevor Warren and Joe Patrick with the Professional Service firm of Schneider Downs. Trevor and Joe work extensively in the automobile dealer industry and have been involved with numerous acquisition/divestiture transactions. Please tune in for this integral piece of the OADA Spring Buy/Sell Webinar Series.

This webinar is part of the OADA Spring Buy/Sell Webinar Series. For more information about this series, please visit our website at www.oada.com.

There is a \$20 connection fee for OADA member dealers. This is a members-only webinar.

Buy/Sell Webinar Series: Financial Due Diligence

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Phone _____

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Tuesday, May 29,
2018

11:00am-noon



Tel: 614-923-2231
614-766-9100 x109
800-686-9100

There is no connection
fee for OADA member
dealers. Non-members
will be charged a \$50
connection fee.

How Can My Dealership Benefit (and Save Money!!) From a Wellness Program?



OADA Brown Bag Lunch Webinar Series

If you are like most dealerships, you are constantly looking for ways to retain the best employees, maintain a safe and healthy workplace, and reduce your healthcare costs while still providing comprehensive healthcare coverage. While you may have considered implementing a wellness program in the past, you may have wondered if it was really worthwhile, what it would cost, and how it may save you money on your healthcare premiums.

OADA is pleased to offer this complimentary webinar that will provide you with answers as you may be considering a wellness program. Hosted by OADA, this one hour webinar will feature speakers from Benefit Administrators, OADA's endorsed insurance broker, who will discuss cost saving options as it relates to wellness programs. In addition, this webinar will feature Sally Lanning, EA Wellness Manager, to discuss wellness programs in more depth. Through a partnership with Medical Mutual, EA Wellness places an emphasis on employee wellness by giving employees access to proven programs designed to help employees live healthier lives.

Sally will cover a variety of topics, including:

- *Definition of wellness*
- *Facts about health in the workplace*
- *The benefits for employers & employees*
- *Building a healthy workplace*
- *What a healthy worksite looks like*
- *Incentives & value of investments*
- *EA Wellness*
- *Next steps*

The goal of this presentation is to present solid information and cost saving measures to our members as you contemplate a wellness program, and what the cost/benefit analysis may look like. Register today!

How Can My Dealership Benefit (and Save Money!!) From a Wellness Program?

Name (s) _____

Dealership _____

Email (s) _____

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Link to Electronic Recording FREE

DVD Recording \$20.00

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