



ADA NEWS

SEPTEMBER 2011

a publication of the Ohio Automobile Dealers Association

The Numbers Are In – OADA’s Workers’ Compensation Group Retrospective Rating Program Receives a 60% Refund for the 2010 Policy Year!

Participating dealers in OADA’s group retrospective rating program are currently projected to receive a 60% refund on their workers’ compensation premiums!

Over the past few years the Bureau of Workers’ Compensation (BWC) has created several new programs that can provide meaningful savings for Ohio employers. Depending on their individual

circumstances, one program in particular has shown promising results for some dealerships. That program is called group retrospective rating.

Last year OADA formed its first group for the retrospective rating program. These dealers, who did not qualify for traditional group rating, are currently projected to receive a 60% refund of the workers’ compensation premium for the 2010 policy year! They were able to achieve a savings level that exceeds the highest savings available through traditional group rating (51%) by 15%!

This program is similar to traditional group rating in that it forms groups of like-type employers who have low loss ratios (low projected claims cost histories compared to higher projected premium to be paid). Group retrospective rating differs from traditional group rating in that instead of projecting savings by the group’s past performance, BWC’s group retrospective rating program measures actual claim cost and premium paid performance for the period of time the group is together. In other words, the group is in the same life boat holding hands. Any claims that are incurred by an individual member of the group will count against all program participants as it relates to potential savings for the group. It is also critical to understand that if the group’s performance is poor; the group’s actual claim losses come in double the projected figures, that the group retro program members will all be assessed additional premium by BWC.

Participants must have a low frequency of injuries, embrace a safety

culture, and be willing to aggressively manage claims that do occur. The key therefore to group retrospective rating is in the underwriting. Our partner in this program, CareWorks Consultants Inc., offers our members unmatched resources and expertise to assure programs such as this one offer the best savings possible.

How do I determine if my dealership qualifies for traditional group or group retrospective rating?

If you apply for OADA’s traditional group rating program your dealership will automatically be reviewed to determine if you qualify for our retrospective program. Whether your dealership has just lost its group eligibility or you have been out of group for several years you still owe it to yourself to see whether you might qualify for group retrospective rating. The process begins at www.care-worksconsultants.com/groupratingapplication/OADA or by contacting OADA’s dedicated Account Executive, Kirsten Gibson, toll-free at 1-800-837-3200, ext. 7110 or via email to kirsten.gibson@ccitpa.com.

If you have any questions regarding OADA’s workers’ compensation programs, contact Charlie Howard at OADA, 1-800-686-9100, ext. 110. ■

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She Said WHAT About Me?

By John Donovan of Fisher & Phillips (Atlanta Office)

One of your sales managers steps into your office and closes the door. “Boss, you’re not going to believe what Mary, that new sales person, has said about you on her Facebook page.” She posted:

“Can you believe the GM expects us to work 55 hours a week and only pays us minimum wage????? Who does he think he is? An overseer on a plantation???? One of us needs to tell that scumbag that the days of slavery are OVER!”

Your first reaction is that she needs to go and she needs to go today. After all, you are in an “employment-at-will” state, so you can terminate an employee for “good reason, bad reason or no reason at all.” Insulting your boss in front of the world is certainly a good reason. Besides you have read or heard lots of stories about employees being fired for dumb things they have said on Facebook.

But hold on. There are a couple of reasons why terminating her under these circumstances could be against the law and could cost you dearly.

Here’s why:

Protecting Hateful Speech

First, the National Labor Relations Act (NLRA) makes it unlawful for an employer to take disciplinary action against an employee for engaging in “protected, concerted activity.” The NLRA applies to all employers and employees, whether you have a union or not. According to the National Labor Relations Board, which enforces the Act, “concerted activity” includes gripes, complaints and protests concerning wages, hours and working conditions between and among employees. Such activity is generally “protected” so long as it is done in a reasonable manner, that is, in a non-threatening, non-malicious, non-disruptive way.

Cases involving protected, concerted activity have up until now involved oral or written comments made to coworkers and supervisors. But in 2010, the NLRB under the Obama Administration made the leap into cyberspace by issuing a complaint against an employer who fired an employee for calling her manager a “scumbag” and a “psycho” on her Facebook page. AMR of Connecticut. The case was discussed in a prior edition of our newsletter. (See “NLRB

Poised To Rule On Facebook Case,” by John Polson, Labor Letter, Feb. 2011).

The NLRB took the position that the comments were concerted activity because they involved a matter of interest to more than one employee and it pointed to the fact that other employees had responded to her initial Facebook posting with their own comments. The Board also contended that the posting was protected because it was not extreme or outrageous. Finally, the Board contended that the company had maintained an unlawful policy prohibiting employees from using the internet to make “disparaging” or discriminatory” comments.

The case was settled on the eve of trial so we will never know if the judge would have agreed with the General Counsel or concluded that the comments crossed the line and became “unprotected.” It’s clear, however, that the NLRB under the Obama Administration intends to interpret “protected, concerted activity” in a far more “pro-employee” way than any previous Administration has.

But we also know that even in the NLRB’s eyes, not every electronic comment will be considered “protected.” For example, the NLRB refused to issue a complaint where a newspaper reporter was fired over Twitter comments that he had made. In that case, the reporter had posted unflattering comments about the city’s homicide rate and about a competing TV station network. The Board decided that the comments had nothing to do with the reporter’s own employment issues. While this case shows that the NLRB does not consider every posting to be “protected,” it will definitely take aggressive action if there is any indication that it is.

Second, the NLRA is not an employer’s only concern. If an employee posts comments on his or her Facebook page complaining about wages, discriminatory treatment, harassment or unethical or unlawful conduct – and is later fired – you have opened the door to a retaliation claim. Retaliation claims are the fastest growing kind of discrimination claims, up 63% in the last five years.

Retaliation occurs if employees can show that they engaged in some form

of protected conduct – as simple as an oral or electronic complaint – and something bad then happened to them. They do not have to prove that the complaint was valid or that the employer actually did something discriminatory or unlawful. Employees need only show a connection between the complaint and the adverse employment action. Therefore, you need to recognize that once an employee makes a complaint concerning harassment, discrimination, wages, illegal conduct, etc., the employee should not be terminated or disciplined unless you have solid evidence of misconduct or poor performance.

Our Advice

The law is still developing in this area and therefore it’s difficult to predict where it will wind up. So it makes sense to take steps to protect your dealership when and if it does happen to you.

For now, we recommend the following:

If you do not already have one, adopt a comprehensive policy concerning blogging, Facebook, and social networking, explaining what conduct is permitted and what is not. Believe it or not, many employees believe that they can say whatever they want on Facebook so long as they do it on their own computer and after work hours. Having such a policy will help educate your employees and may prevent problems for you. Your policy should:

- address the privacy rights of customers and the need to maintain strict confidentiality of all customer information;
- define confidential company information and the need to maintain strict confidentiality;
- prohibit the use of the dealership’s name and logo in any personal Facebook communication;
- prohibit employees from speaking on behalf of the company; and
- avoid prohibiting employees from making comments that “disparage” or “defame” the company, as the NLRB sees these words as unlawfully limiting protected conduct.

When you become aware of an offensive Facebook or other internet post-

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Reminder: Off-Site Display of Motor Vehicles Violates Ohio Law

Ohio law prohibits dealers from displaying new or used vehicles at a location other than their dealership premises. There are two limited exceptions to this rule, but neither will assist a sole dealership trying to display a single vehicle at a location other than his licensed dealership.

R.C. §4517.03 prohibits new motor vehicle dealers from selling, displaying, offering for sale, or dealing in motor vehicles “any place except an established place of business that is used exclusively for the purpose of selling, displaying, offering for sale or dealing in motor vehicles”. There are only two exceptions to this prohibition. The first exception permits competitive makes and models of new vehicles to be displayed at car shows. The second exception allows a manufacturer or distributor to exhibit a single motor vehicle in a public place.

Motor Vehicle Show Exception: This exception allows the display of new vehicles at a public event involving a group of licensed new motor vehicle

dealers within a general market area. The law allows a group of dealerships to join together for the primary purpose of exhibiting competitive makes and models of new motor vehicles to provide the general public the opportunity to review and inspect the vehicles at a single location. The group must request and receive permission from the Registrar of Motor Vehicles to hold the show at least 30 days from its planned opening date. Furthermore, any sponsor of such an event must send invitations to display and participate in the show to all new motor vehicle dealers in the general market area dealing in competitive types of vehicles.

Manufacturer/Distributor Exception: A manufacturer or distributor may exhibit a single motor vehicle for display in a public place. The manufacturer or distributor may do so only if it requests and is granted permission by the Registrar not less than thirty days before the show.

Under no circumstance may a dealer exhibit a used vehicle away from his licensed location.

An exception that would allow a single dealer to display vehicles at a location other than its licensed location could open a Pandora’s box of issues amongst dealers. The current prohibition guards against unfair or abusive practices. The prohibition prevents a dealer from displaying a vehicle for sale in a location that would otherwise be unavailable due to franchise law restrictions.

The next time you are presented with the opportunity to display a vehicle at an event, remember there may be a cost for the “free” advertising. The Bureau of Motor Vehicles Dealer Licensing Division can seek criminal prosecution resulting in loss of your dealer license. Obviously, a decision to display a vehicle at an unlicensed location is done at your own risk.

If you have any questions, please call our Legal Hotline at 614-766-9100. ■

Terminating Employees for Theft: Legal Termination for Illegal Conduct

“We are being robbed!” exclaims Joe Burke, Parts Manager of the ABC Dealership, “We are missing battery parts, windshield wiper blades and other items from our inventory. It’s got to be an inside job and I think I know the name of thief.”

Theft by employees is a critical concern of retailers, including vehicle dealers, who maintain an inventory of products. Termination of an employee for theft poses potential legal liability. Following are tips for avoiding –or at least lessening – your legal liability.

Admissions – If the employee admits to the theft ask for a written confession. The confession should be in the employee’s own handwriting. Managers should be warned against threatening, “under the hot light” tactics” which can backfire. These methods can be viewed as coercion - lessening the credibility of the confession. If the employee refuses to admit to the theft, you must choose carefully how to characterize the termination. Your evidence must be solid

enough to hold up under the potential scrutiny of a discrimination charge or lawsuit or unemployment compensation claim.

Police Involvement – A public arrest of a suspect by the police maybe a deterrent to future misconduct but could also result in a lawsuit for defamation or malicious prosecution. However, the police can be helpful in surveillance and collecting evidence. Use the information you obtain from the police in conducting your own investigation and reaching a conclusion as to whether the employee is guilty or not. Do not tie your decision to the outcome of the judicial process. For example, do not advise the employee that he/she will be terminated if found guilty as a result of prosecution. A prosecutor may decline to take the case or the employee may plead no contest. Make your own decision and take action regarding the employee based on your own investigation (taking into consideration any information provided by the police).

Maintain evidence and documenta-

tion – Video footage of an employee caught red handed is golden evidence. However, failure to maintain your evidence and notes can result in an inability to defend your decision in future legal actions. Organize and store the records of the investigation for future use. Nothing should be allowed to be destroyed. Copy and preserve records that would be disposed of in the ordinary course of business. Juries often assume that when an employer destroys documents or evidence, the employer is trying to hide something.

While vehicle dealers can take strong efforts to reduce employee theft, eliminating it entirely is probably not possible. However, by following these tips, dealers, do have the ability to greatly diminish the opportunity for the insult of an expensive lawsuit being added to the injury of theft.

If you have questions regarding this article, or any other employment-related issues, contact Maribeth Wuertz at Fisher & Phillips - Cleveland, 800-800-8806. ■

Title Defect Rescission Fund Amendments Effective September 29, 2011

OADA worked with legislators and the Attorney General's Office during the budget debate to strengthen Ohio's Title Defect Rescission Fund ("TDR"), which allows dealers who participate in the Fund to sell a vehicle without first having title in the dealership name. This program has worked well for dealers and consumers for over a decade, but required updates to address issues related to statutes of limitation, trade in vehicles, and funding of the program.

The mechanics of TDR remain unchanged: dealers are able to sell used vehicles without first obtaining title in their name if they pay into the fund when assessments are required, and if they agree to rescind the transaction if the title cannot be transferred in a timely fashion or if the title is somehow defective.

Current law requires rescission if:

- the title cannot be obtained within 40 days following the date of sale;
- The title was branded rebuilt salvage and that was not disclosed at the time of sale in writing;
- The odometer disclosure was inaccurate.
- New: effective September 29, 2011, the dealer will be required to refund the purchase price if the title was branded as a manufacturer buyback and that fact was not disclosed in writing at the time of sale.

The obligation to rescind is triggered by a request from the consumer. Until now, there's been no time restriction- a consumer could drive a vehicle for months or years before demanding rescission. The amendments to TDR now provide a statute of limitations. In the case of a title which is not obtained within 40 days, the customer has 60 days from the date of title transfer to demand repurchase. In all other instances, the customer has 180 days from the date the title is transferred to notify the dealer of their demand for repurchase. Consumers and dealers may also negotiate a compromise that is satisfactory to both parties.

The amendments prevent the consumer from obtaining a windfall. The statute currently requires the dealer to refund the

customer's "full purchase price", although the customer may have only paid a small amount of the sale price in cash and financed the remainder. The amendments clarify that the consumer can only obtain a refund of the amount they paid the dealer.

The amendments address trade in vehicles and the dealer's responsibility for paying off existing liens. Around the country, many states prohibit dealers from selling trades until liens are satisfied. Others require dealers to pay as much as \$500 annually for the privilege of selling these vehicles. Now, effective September 29th, 2011, Ohio law addresses trades by allowing dealers to sell those vehicles (like other used vehicles), but if a dealer does not pay an existing lien within 30 days of taking possession the customer may notify the Attorney General's office and request payment through the Fund. The Attorney General's office is required to contact the dealership to determine if the payoff has been sent to the lien holder. If not, the TDR Fund will pay the lien and pursue the dealer for the payoff amount plus late fees and any other penalties.

Assessments may become a thing of the past. Wholesale titles cost five dollars. The law now redirects fifty cents of each wholesale title to the Title Defect Rescission Fund. Furthermore, individuals who seek their first license to sell motor vehicles must also pay \$150.00 into the fund. These funding mechanisms are designed to maintain a sufficient balance in the fund to avoid future assessments. The Attorney General is authorized, but is not required, to assess dealers if the TDR Fund falls below \$300,000. We see this as an emergency measure which is highly unlikely to occur given the number of titles processed annually.

The Title Defect Rescission Fund has allowed dealers to efficiently move inventory since 1996 with very little out of pocket expense. The amendments to the TDR statute improve the statute by ensuring all dealers participate in the Fund, all consumers are protected, and the cost to dealers remains minimal while maintaining the ability to buy and sell vehicles is not impaired. ■



AD REVIEW CORNER

Attention to Detail Makes All the Difference

Attention to detail can mean the difference between a good ad and a bad one. Often when we look at ads, we find two or three "small" problems in one advertisement. Taken separately, each mistake isn't so bad, but taken together, they create an ad that could mislead an unsophisticated consumer. It's time to make sure that you're not missing these details.

- Invoice pricing: If you use the word "invoice" in any advertisement, you must also include the statement, "invoice pricing may not reflect dealer's actual cost" in the advertisement. This requirement applies regardless of the advertising medium used- print, electronic, television or radio.
- "Drive for": creative dealers often advertise a lease with a statement like, "Drive for \$239/mo." Make sure that the ad clearly and conspicuously discloses that this offer is a lease offer. Reg. M requires that the word "lease" be in the body of any lease advertisement and consumers don't always make the connection between "drive" and "lease".
- Abbreviations: Use of abbreviations like "FMCC", "GMS", and "WAC" are considered unfair and deceptive according to the Ohio Attorney General's Guidelines for Motor Vehicle Advertising.
- "0% for 60 months" and similar offers: Reg. Z requires that any credit advertisement which includes a monthly term must also include a monthly payment

Ad Review Corner

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Chemical Exposure Warning: Aircraft® Stripper Remover

By Eric Schmitz of KPA

Recently, a worker in Georgia died from overexposure to methylene chloride. Exposure to the chemical in lower doses can harm the central nervous system and the liver, and it raises the risk of cancer.

Be aware that some common products at dealerships contain high levels of methylene chloride. Consider replacing them with alternatives. These products of concern include: Aircraft® Stripper Remover, 3M Safest Stripper, Removall 400 Graffiti, and Overspray Remover.

Methylene Chloride (MC) is used in many other brands, and across many industrial applications. It is a clear, colorless liquid with a chloroform-like odor. The most likely way a worker would be affected by MC is from inhaling vapors, or if the liquid comes in contact with eyes or skin, or if it is ingested.

This table includes some common operations in which exposure to MC may occur, along with recommended controls:

Methylene Chloride	
Operations	Controls
Use as solvent in paint and varnish removers; manufacture of aerosols; cold cleaning and ultrasonic cleaning; and as a solvent in furniture stripping.	General dilution ventilation; local exhaust ventilation; personal protective equipment; substitution.
Use as solvent in vapor degreasing.	Process enclosure; local exhaust ventilation; chilling coils; substitution.
Use as a secondary refrigerant in air conditioning and scientific testing.	General dilution ventilation; local exhaust ventilation; personal protective equipment.



Our Recommendation:

There are many safer alternatives on the market. We recommend substituting products with ingredients that are less toxic. You should compare MSDS labels before purchasing chemicals because it pays-off for employers through avoiding lawsuits, and benefiting from lower workers' compensation costs, and improved employee health (fewer sick days, etc).

That said, if you absolutely must continue using Methylene Chloride containing compounds in your facility, OSHA publishes permissible levels of exposure, and as long as the employer documents air samples obtained through accepted monitoring techniques, the following levels are compliant with OSHA regulations:

Exposure may not exceed 25 parts MC per million parts of air (25 ppm) as an eight-hour time-weighted average (8-hour TWA PEL) or 125 parts of MC per million parts of air (125 ppm) averaged over a 15-minute period (STEL). You must maintain documentation of your sampling.

Employers are required to offer employees a medical surveillance program if they are exposed to MC at concentrations at or above 12.5 ppm for 8 hour TWA for more than 30 days a year or at concentrations exceeding the PELs (25 ppm 8-hour TWA or 125 PPM 15-minute STEL) for more than 10 days a year.

Technicians exposed to MC at these levels must be fit tested, and provided with an appropriate respirator. Training must be completed as needed and annually, and keep all documentation and certificates on premise.

Local and state laws may vary, and you should check your MSDS database or talk to Glorianna Cooley of KPA for more information about Methylene chloride at your facility. Glorianna can be reached at 614-432-5044. ■

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ing, do not lose your temper or overreact. Remember, you are dealing with a complicated problem and you need all the facts before you take any action. Always get a printout of the offending post. Do not base any decision on someone else's paraphrasing of the comment. Besides, if you wind up terminating the employee, you will certainly want to have a copy of the offending post as your Exhibit 1.

Make sure that the post was public. Although there are not many court rulings on this point, you can run into trouble if you access a post that was intended to be shared

only among a small group and has not been made generally available.

Determine if the post involves a complaint about discrimination, harassment or unfair treatment. If so, investigate the employee's complaint as you would any other employee complaint.

What is the nature of the posting? Does it involve disclosure of customer information or confidential company information? This will almost always justify termination. But if the post could be construed as complaining about "wage, hours or working conditions," including managers' actions, these kinds of complaints are the ones that are most likely to attract NLRB attention.

Next, interview the employee to determine if he or she actually made the posting and why it was posted. Finally, talk with an employment lawyer before you take any action. The law is complicated and continues to develop. Terminating an employee under the wrong set of circumstances can create more problems for your dealership than the posting ever would.

On Wednesday, September 21, 2011, as part of our Brown Bag Lunch Series, OADA will be hosting "Social Media in the Workplace: Are You Protected?" This webinar will cover various legal concerns, policies, and best practices and will be presented by Melanie Webber of Fisher & Phillips. Register today at www.oada.com! ■

NADA Regulatory Review

The following is excerpted from NADA's Spring/Summer Regulatory Review publication. These excerpts reflect some of the less reported regulatory issues NADA has been addressing over the past several months on behalf of dealers. For a copy of the full publication go to <http://www.nada.org/Publications/Regulatory+Review/default.htm>

EPA/NHTSA Issue Final Rule on Fuel Economy Labels

EPA/NHTSA issued a final fuel economy label rule in late May, rejecting a proposal that would have made new vehicle purchasing decisions more difficult by evaluating automakers or fuel types unfairly with letter grades. When they roll out in MY 2013, the new labels will provide consumers with an enhanced ability to shop for vehicles with different powertrain technologies and fuel types. This new information should improve the vehicle shopping and purchasing process; however, it also is expected to raise questions and concerns dealership sales personnel should be prepared to address. For example, the labels will compare a vehicle's emissions performance against all vehicles, as opposed to those within the same class. Also, since a vehicle's five year estimated fuel cost is compared to a hypothetical "average new vehicle," it will be of limited value. Regulatory Affairs has begun working with EPA on an outreach strategy.

Commercial Truck CAFE/GHG Standards

Last November, NHTSA and EPA formally issued a joint truck CAFE/GHG proposal. In January, Regulatory Affairs filed a detailed set of comments addressing the proposal which followed up on hearing testimony presented by ATD Chairman Kyle Treadway last November. A draft joint final rule is under review by OMB and a final rule is expected to issue in July.

EPA Reverses Course on Used Oil and Waste Tires

Regulatory Affairs testified in June 2010 on an EPA proposal to severely restrict how used oil and waste tires are managed. The proposal would have required dealerships to send these common motor vehicle services wastes only to strictly-regulated solid waste incinerators, eliminating the wide range of legitimate burners that historically recover the heat value from used oil

and tires or recycle them into new products. August 2010 comments argued that used motor oils and tires should be treated as traditional fuels exempt from the definition of solid waste, stressing the long history of carefully tailored regulation, the sensitive nature of their recycling markets, the benefits of on-site used oil recycling in space heaters and other burners, and the need to maximize the collection of do-it-yourself (DIY) used oil. Moreover, since used tires are never discarded, they should not be "solid waste".

Several EPA related rules were issued in February. Fortunately, they contained none of the proposed restrictions that would have undermined the ability of dealerships to burn used oil collected from DIYs in space heaters. A dealership's willingness to collect DIY oil is a key element of its eligibility for the NADA-supported federal Superfund exemption for used oil that was issued in the 1990s. EPA effectively has left its used-oil burning rules untouched, allowing dealerships to continue to burn the used oil they collect, including from DIYs, in space heaters if vented to the atmosphere and under 500,000 BTUs/ hour in size (assuming no state laws to the contrary). Dealerships that send used oil off-site for fuel processing should continue to take steps to prevent contamination during storage, and to separately collect and ship any DIY used oil they collect. Regarding scrap tires, EPA's final rules allow undiscarded used tires to be treated as traditional fuels and to be burned in of non-incinerator units.

EPA Issues New Air Conditioning Rule

In February, EPA issued a final rule approving HFO-1234yf for use in light-duty motor vehicle air conditioning (A/C) systems. Regulatory Affairs' comments filed in 2009 and 2010 focused on flammability and cost concerns. When used properly, HFO-1234yf can reduce the environmental impact of motor vehicle A/C systems. It has a global warming potential that is 99.7 percent less than the current refrigerant, HFC134a, and no ozone-depleting potential. By using HFO-1234yf, automakers will earn credits toward their MY 2012-16 fuel economy/GHG reduction targets. EPA plans to issue a rule later this year on the servicing of HFO-1234yf vehicle A/C systems

FRB Proposes Temporarily Exempting Dealers from Small Business Credit Application Data Requirements

As requested by Regulatory Affairs, the Federal Reserve Board has proposed temporarily exempting motor vehicle dealers engaged in indirect (three-party) vehicle financing transactions from a new, comprehensive data collection and reporting requirement that is scheduled to take effect July 21, 2011.

Section 1071 of the Dodd-Frank Law, which takes effect on the Designated Transfer Date, imposes a new requirement on financial institutions (including motor vehicle dealers) that receive credit applications from a small business or a women-owned or minority-owned business. The purpose of the new requirement, which amends the ECOA, is to "facilitate enforcement of fair lending laws."

Section 1071 requires financial institutions to inquire into whether a credit applicant is a small business or a women-owned or minority-owned business and to maintain a record of responses to the inquiry that is separate from the credit application. Applicants may refuse to provide this information. The employee(s) involved in making a decision on the credit application may not have access to the applicant's response unless the financial institution determines that it is not feasible to prevent such access, whereupon the financial institution must provide the applicant with a certain notice. Should the credit applicant provide the information, the financial institution must

- compile and itemize eight fields of data related to the credit applicant and the credit requested;
- retain the data for a period of three years;
- submit the data to the federal government on an annual basis; and
- make it available to the public upon request.

The financial institution must ensure that the collected information generally does not contain any personally identifiable information concerning an individual who is connected with the business credit appli-

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NADA News

A Message from Ohio NADA Director, Chuck Eddy

Dodd-Frank Law Takes Effect with Implications for F&I Office

It's hard to believe it's been a year since Congress passed one of the biggest regulatory overhauls our nation has ever seen. I'm talking about the so-called Dodd-Frank law (also known as the Wall Street Reform and Consumer Protection Act), which takes aim at lending standards that Congress members believe led to the financial crisis of 2008 and 2009.

Thanks to our successful grass-roots campaign in 2010, dealer-assisted financing was saved from additional federal oversight under the Dodd-Frank law. But auto loans, and more specifically the processes our F&I offices use to issue them, have been affected by the new law, which includes several provisions related to disclosure of credit terms and action a creditor must take when turning down a loan application.

Here are two big changes every dealer should know about and some ways NADA is helping us comply with these new rules.

1. New credit score disclosures for adverse action notices – Starting July 21, creditors who use a credit score in taking adverse action (such as turning down a request for credit) are required to include the consumer's credit score in the notices they provide to customers. To help dealers comply with this new rule, NADA has updated its "Dealer Guide to Adverse Action Notices," explaining when an adverse action notice must be issued, what the notice must say, when dealers can rely on a finance source's notice and other important issues. This guide also includes a model adverse-action notice that NADA developed for dealerships based on the government's model notice. To download the guide, sign in to or sign up for NADA University at www.NADAuniversity.com, select "Resource Toolbox," then "Driven," and "Legal/Regulatory."
2. Changes to the Risk-Based Pricing Rule – Also included in the Dodd-Frank law were changes to the Federal Risk-Based Pricing Rule (RBPR), which requires dealers and other businesses that use credit reports and extend credit to consumers to provide a new notice, known as a Risk-Based Pricing Notice, to customers who receive credit on terms that are less favorable than the terms received by a "substantial proportion" of their other credit customers. (Note, however, that the changes to the RBPR do not affect dealers who issue Credit Score Disclosure Exception Notices in lieu of Risk-Based Pricing Notices.) NADA's "Dealer Guide to the Risk-Based Pricing Rule" has been updated to account for these changes. To download the guide, sign in to or sign up for NADA University at www.NADAuniversity.com, select "Resource Toolbox," then "Driven," and "Legal/Regulatory."

In addition to the guides, NADA University has produced a brief video on the changes featuring NADA attorney Brad Miller. You can also view the archived webinar "New Credit Score Disclosures for Adverse Action and Risk-Based Pricing Notices" at www.NADAuniversity.com in the Learning Hub under "Legal/Regulatory."

In other legislative and regulatory news ...

Dealers Must Use New IRS Cash Reporting Form

The IRS has issued an updated Form 8300, effective July 1, 2011, that dealers must use to report cash transactions of more than \$10,000. Cash payments of more than \$10,000 in one transaction or in two or more related transactions must be reported to the IRS using the new form. For a link to the new form and details about cash reporting requirements, visit www.nada.org/regulations.



Chuck Eddy,
Ohio NADA Director

Now Playing on NADA-TV ...

- "AutoFocus with David Hyatt"—a television interview program

Here's a list of recent interviews:

1. NADA Foundation Chairman Bob Mallon discusses the importance of charitable giving.
2. Chief Economist Paul Taylor talks about NADA's most recent state-of-the-industry report.

To view these videos, visit the NADA-TV channel on NADAFrontPage.com by clicking on the link in the upper right corner of the home page.

In other NADA news...

President Bush and Sergio Marchionne to Keynote 2012 Convention in Las Vegas

President George W. Bush and Sergio Marchionne, chief executive officer of Chrysler Group and chairman of Fiat Industrial S.p.A., are the scheduled keynote speakers for the 2012 NADA and ATD Convention and Expo in Las Vegas next February. NADA chairmen Stephen Wade and Bill Underiner will also deliver industry remarks. The inspirational address will be provided by Aron Ralston, whose autobiography "Between a Rock and a Hard Place" was the subject of the film "127 Hours." The 2012 convention, which runs Feb. 3-6 at the Las Vegas Convention Center, will mark the first time that the NADA and ATD conventions will be held together. The convention also includes workshop sessions, franchise meetings, hundreds of exhibits and a new Social Connection Zone. Dealers and managers are encouraged to register early to take advantage of discounted pricing and reduced hotel rates. To register, visit www.nadaconventionandexpo.org.

Prices of Fuel-Efficient Used Cars Expected to Remain High in August

Although used-car prices likely peaked in June, average trade-in values of many popular, fuel-efficient small cars for the 2006-2009 model years are still expected to be 10 percent to 30 percent higher in August than they were at the beginning of the year, says Jonathan Banks, senior analyst with the NADA Used Car Guide.

NADA News

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Don't Be Shocked — Be Informed

Service Technicians Need To Know: Basic Hybrid Safety
Second in a 3-part Series by Peter Zaidel of KPA

As a vehicle service technician, you are undoubtedly professionally excited about hybrid vehicles, which represent new engineering innovations that are interesting to service. With hybrid vehicle sales expected to increase to 11% of all new car sales in the U.S. by 2012, hybrid vehicle training will be an increasing part of your professional education.

You are probably aware of the new dangers of servicing hybrid vehicles. The high-voltage battery responsible for the outstanding mileage of the vehicles packs enough juice to kill, quickly. The electrolyte in the high-voltage battery will dissolve human tissue.

Fortunately, manufacturers design hybrid vehicles not only with an eye on fuel efficiency and overall attractiveness to the buyer, but also with strong consideration for the safety of service technicians and emergency responders. In Japan, where many of the first hybrid cars were developed, the government required that hybrid vehicles be designed so that use of the “Jaws of Life” on a crashed and mangled vehicle could not penetrate the high-voltage circuit. Likewise, in the U.S., hybrid vehicles must comply with strict DOT standards to be allowed on the road.

Eight Basics of Hybrid Safety

Vehicle manufacturers and third-party training centers have extensive programs for service technicians. Many technicians have not yet been trained, however, because hybrid vehicles are still rare for most service bays. Here's a list of some of the basics that every service technician should know:

1. Identifying a vehicle as a hybrid
2. Is the vehicle really turned off?
3. Protecting yourself from high voltage
4. Protecting yourself from corrosive liquids
5. Disposing of high-voltage batteries
6. Towing and in-shop vehicle movement
7. What to do in case of fire
8. Getting trained

1. Identifying a vehicle as a hybrid

If it's a Prius, it's a hybrid – that one is easy. But what if the vehicle is a Lexus 400, or a Honda Civic, a Ford Escape, a Nissan Altima, a Saturn VUE, a GMC Sierra, or a Dodge Durango? Of the 25+ hybrid vehicles sold in the U.S. today, over 20 models have both hybrid and gasoline-only options with the same external appearance.

Your personal safety depends on being aware of all hybrids in the service area,

even if you are not personally working on them. Almost all hybrids share these common identifiers:

- Hybrid badging on the body of the vehicle, typically including the rear right section and under-hood identifiers including the extra motor, the inverter, and additional “hybrid” badges
- READY indicator inside the vehicle, in the ignition area
- Orange high-voltage power cables

2. Is the vehicle really turned off?

This may be the single most important safety factor for service technicians working in a shop where there are hybrid vehicles, because the hybrid system is silent when running on battery. Hybrid systems can automatically turn themselves off and on, switching between the high-voltage battery and the gasoline engine, so it is easy for the technician to be unpleasantly surprised that a vehicle thought to be “off” is in fact “on.”

Many hybrids have keyless ignition, with on/off sensitivity up to 20 feet away from the vehicle. As a service technician, for your own safety, you need to observe the following service protocol:

- Whether you service hybrid vehicles or not, be aware that a silent hybrid is not necessarily powered off until it is verified that the vehicle is powered down.
- Keep vehicle keys a safe distance from the hybrid (more than 20 feet).
- Always check the vehicle dashboard hybrid indicator to ensure the vehicle is truly “off” before you begin any kind of work on the vehicle.
- Do not leave the key in the “on” position with the vehicle “off” for an extended period of time. This will cause the auxiliary 12 volt battery to rapidly discharge. Shutting the vehicle “off” will accomplish the following safety objectives:
 - Shuts down the hybrid system
 - Isolates the high voltage current
 - Stops (low-voltage) power to the SRS electric control unit (ECU)
 - Shuts down the internal combustion engine and fuel pump

3. Protecting yourself from high voltage

You may be concerned that you can be electrocuted by simply touching the body of a hybrid vehicle because of the high-voltage circuitry inside. It is true that the amount of voltage and amperage in these vehicles is enough to be fatal if a technician comes in

contact with the high-voltage circuits.

However, the high voltage system on hybrid vehicles does not ground to the body or the chassis. The high-voltage system is isolated from the car body completely. A technician would have to touch pole-to-pole or become part of the circuit for an injury to occur.

- As a highly visible safety warning for drivers, technicians, and emergency responders, all high voltage hybrid vehicle circuits are encased and heavily insulated and normally identified by the SAE standard color-coding of bright orange.
- The vehicle manufacturers' maintenance books repeatedly remind you to never cut into, touch, mangle, or otherwise disturb the big Orange Cables that carry the high voltage from the batteries (in the back) to the controller (in the front).
- Always wear class “O” heavy-duty gloves (lineman's gloves) rated to withstand 1,000 volts when disconnecting high-voltage components, such as the battery. These gloves should be maintained in excellent condition and checked prior to each use to ensure there are no leaks. Even a small opening can draw current that is seeking a ground.
- Always disconnect the high-voltage hybrid battery before doing any major repair work or electrical work. See the instructions in the manufacturer's manual. Most manufacturers also recommend waiting at least 10 minutes before working on the vehicle after the battery has been isolated or disconnected. The high-voltage capacitors need time to discharge so there is no residual voltage to pose a shock hazard.

4. Protect yourself from corrosive liquids

While most service technicians, even if untrained in hybrids, are aware of the danger of high voltage, there is another major safety difference that you need to be aware of. Lead acid batteries used in gasoline-powered vehicles are, as the name implies, acidic. With a pH around “0” most Service technicians have been trained in neutralization techniques. The high-voltage batteries of hybrids are completely different. They contain a corrosive electrolyte fluid that is a caustic alkaline (pH 13.5), so it's on the completely opposite side of the pH scale. The fluid is in a self-contained enclosure, so the risk of accidental spillage is reduced.

Basic Hybrid Safety

continued on Page 13



Brown Bag Lunch Webinar Series

presented by
The Ohio Automobile Dealers Association

Understanding Health Care in 2011-2012 *Meaningful Options for Dealerships*

This Webinar is being hosted and moderated by OADA. Registration fee for members is \$30.00 per connection. Non-member fee is \$50.00.

The Webinar is scheduled for Tuesday, September 13, 2011, from 11:00am-noon

We all know that health care costs are skyrocketing. The news media tells you so, and you see it at your dealerships. Yet, you feel like you have to offer a quality health care plan in order to hire and retain the best employees. So what's a dealer to do?

Join OADA and Benefit Administrators for a webinar that will walk you through the ever changing landscape of health care coverage. We will discuss new business processes for employer groups of various sizes, as well as strategies that will save your dealership and your employees time and money.

A few topics to be covered include:

- Underwriting and the Renewal Process
- Claims Experience
- Self-funding
- Wellness programs - discounted rates
- And Much More!

Finally, we hope to end the program with the most recent changes to health care reform.

Benefit Administrators is OADA's endorsed Health Care Broker, and are experts in the field of health care coverage. Webinar speakers will be Chris Campisi and Chris Pagnotto from Benefit Administrators. Benefit Administrators Group was established in 1979 to provide leading-edge solutions to complex insurance demands. The key to the success of Benefit Administrators is staying abreast of industry changes, consumer trends and both federal and state laws.

Webinar Details

The webinar is being moderated by OADA, and registrations are set up through the Go to Webinar service. Webinar fee is \$30.00 per connection (member rate), and \$50 per connection for non-member dealers. Once dealers officially register, they will receive a confirmation email which contains the log-in and dial-in information to access the webinar.

Don't miss this opportunity, register today by using the form below, or through the OADA website at www.oada.com. You can also call DeAnna Zahniser directly at 614-923-2231. We hope you will join us!

Registration Form

Understanding Health Care in 2011-2012: Meaningful Options for Dealerships

Registrant

Name (s) _____

Position (s) _____

Dealership Name _____

Address, City, State & Zip _____

Telephone () _____

Fax () _____

E-mail _____

Payment: Check No. _____ Credit Card: Visa/MC # _____ exp. _____ sec.code _____

*non-members of OADA are \$50.00 per connection. **Members pay \$30.00.***

Please register me for the webinar. (Registrants must provide an email address)

I have already registered online for the webinar. My registration fee is enclosed.

Return to: OADA • 655 Metro Place South, Suite 270 • Dublin • Ohio • 43017 **or fax to** 614-766-9600
You can also **register by logging onto the OADA web page** at www.oada.com, or by calling 800-686-9100 x109.



Brown Bag Lunch Webinar Series

presented by
The Ohio Automobile Dealers Association

Social Media in the Workplace: Are You Protected?

This Webinar is being hosted and moderated by OADA. Registration fee for members is \$30.00 per connection. Non-member fee is \$50.00.

The Webinar is scheduled for Wednesday, September 21, 2011, from 11:00am-noon

As the popularity and usage of social media in the workplace continues to increase, risks and opportunities abound for both employers and employees. Establishing solid social networking policies and training employees on what's okay and what's not okay has become critically important. Join OADA and Melanie Webber, Partner at Fisher & Phillips LLP, as we discuss how to navigate this social media minefield.

As recently as this summer, The National Labor Relations Board issued a complaint against a Chicago area BMW dealership, alleging unlawful termination of an employee for posting photos and comments on Facebook that were critical of the dealerships. In this complaint, the employee, a car salesman, and co-workers were unhappy with the quality of food and beverages at a dealership event promoting a new BMW model. Salesmen complained that their sales commissions could suffer as a result. Following the event, the salesman posted photos and commentary on his Facebook page critical that only hot dogs and bottled water were being offered to customers. Other employees had access to the Facebook page.

The following week, the dealership's management asked the salesman to remove the posts, and he immediately complied. Nevertheless, shortly after a meeting with the managers, the employee was terminated for posting the images and comments.

The NLRB complaint alleged that the employee's Facebook posting was protected concerted activity within the meaning of Section 7 of the National Labor Relations Act because it involved a discussion among employees about their terms and conditions of employment. How would you handle a similar situation?

The webinar agenda will include:

- Legal concerns regarding employee remarks about their workplace via social media
- Monitoring employee communications, confidentiality and trade secret risks
- The Federal Trade Commission's interest in employer/employee use of social media and how it impacts your dealership
- Social media policies and best practices for employers and employees

Our webinar presenter is Melanie Webber, a partner and chair of the firm's Human Resources practice group. Melanie has been a frequent speaker at OADA seminars in the past and also lectures on a variety of employment law issues including FMLA, the ADA, Fair Labor Standards Act, sexual harassment and maintaining union-free status.

Webinar Details

The webinar is being moderated by OADA, and registrations are set up through the Go to Webinar service. Webinar fee is \$30.00 per connection (member rate), and \$50 per connection for non-member dealers. Once dealers officially register, they will receive a confirmation email which contains the log-in and dial-in information to access the webinar.

Don't miss this opportunity, register today by using the form below, or through the OADA website at www.oada.com. You can also call DeAnna Zahniser directly at 614-923-2231. We hope you will join us!

Registration Form

Social Media in the Workplace: Are You Protected?

Registrant

Name (s) _____

Position (s) _____

Dealership Name _____

Address, City, State & Zip _____

Telephone () _____

Fax () _____

E-mail _____

Payment: Check No. _____

Credit Card: Visa/MC # _____

exp. _____

sec.code _____

*non-members of OADA are \$50.00 per connection. **Members pay \$30.00.***

Please register me for the webinar. (Registrants must provide an email address)

I have already registered online for the webinar. My registration fee is enclosed.

Return to: OADA • 655 Metro Place South, Suite 270 • Dublin • Ohio • 43017 **or fax to** 614-766-9600
You can also **register by logging onto the OADA web page** at www.oada.com, or by calling 800-686-9100 x109.

NADA News

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Average trade-in values for three- to five-year-old Toyota Prius are expected to be 30 percent higher in August 2011 compared to January 2011, according to the NADA Used Car Guide. Over the same time period, the Chevrolet Aveo is expected to be up 21 percent. “Car owners still have a lot of equity built up in their used cars, which puts them in a better financial position to make a down payment on a new vehicle,” Banks said.

Hyundai, Lexus and Subaru Top Rankings in NADA Survey

Dealers’ satisfaction with their respective automakers improved this year, according to NADA’s latest survey of nearly 15,400 franchises. The Dealer Attitude Survey, conducted by NADA’s Industry Relations group, measures dealers’ sentiments on the value of their franchises, automaker policy decisions that affect the dealership and the automakers’ field staff who visit stores. Hyundai finished in the top overall spot for the second consecutive survey period, and its affiliate Kia finished fourth, according to NADA’s 2011 winter survey results. Toyota’s Lexus division, which was recently dethroned after 26 consecutive survey periods in the top slot, came in at No. 2. Subaru finished third for

the fourth consecutive time. Mercedes-Benz ranked fifth. Click here for the full summary of the 2011 winter survey.

NADA 20 Groups for Fixed Ops Managers Meeting this Fall

NADA 20 Groups for Fixed Ops Managers focus on service, parts, and body shop issues. Dedicated fixed operations professionals from similar volume, non-competing dealerships use their combined experience, the best-in-class financial composite, and knowledgeable consultants to tackle the issues that are most important to fixed operations. Here are the meetings coming up this fall:

Chrysler: Nov. 13-15 (Chicago)
Ford: Jan. 11-13 (Scottsdale)
GM: Sept. 14-16 (Orlando), Nov. 16-18 (Indianapolis)
Mercedes: Nov. 16-18 (San Antonio)
Nissan: Nov. 9-11 (Las Vegas)
Toyota: Dec. 14-16 (Las Vegas)
All Import: Nov. 9-11 (New Orleans)

Seats Available in Five Remaining Academy Classes of 2011

There are only five more Academy classes starting in 2011. Classes starting in September include:

Dealer Candidate Academy (starts Sept. 12)

General Dealership Management (Sept. 19)

Truck Dealer Academy (Sept. 26)

Individual Academy classes (e.g., Financial, Parts, Service and Variable Parts 1 & 2) are also open to department managers, who may attend a week of classes even if they don’t have a student in the Academy program. Visit www.NADA.org/nadauniversity/academy to download the schedule and applications for all programs, or call 800.557.6232, ext. 2 for more information.

NADA Used Car Guide Introduces Mobile VIN Scanner

NADA Used Car Guide has added a VIN barcode scanner to its family of mobile products, which includes NADA AppraisalPRO, available for Apple and Android devices. The VIN scanner simplifies the vehicle decoding process by giving dealers the ability to scan and retrieve NADA vehicle values—including features like automatic adjustments for mileage and accessories—more efficiently and faster than ever before. The VIN scanner app is available for download to Android and iPhone mobile devices. For a free trial subscription, go to www.nada.com/scanner or call 866.974.NADA. ■

Regulatory Review

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cant.

Because dealers will require additional direction from the government before they can be expected to carry out these duties, Regulatory Affairs met with Board staff on several occasions to suggest and request that the Board exercise its authority under ECOA to temporarily exempt dealers from the duties imposed by section

1071 until the effective date of final regulations explaining those duties. The Board’s announcement adopts Regulatory Affairs’ proposal for motor vehicle dealers covered by the dealer exclusion from the authority of the new Consumer Financial Protection Bureau (which is set forth in section 1029 of the Dodd-Frank Law) and seeks public comments on its proposal. Regulatory Affairs will file a comment supporting the proposal and expects that the Board will issue a final rule adopting it.

With regard to finance operations not covered by the dealer exclusion (e.g., dealers’ buy-here-pay-here operations and the finance operations of the assignee-financial institutions to which dealers assign credit contracts), CFPB General Counsel Leonard Kennedy recently issued a memorandum stating that “financial institutions’ obligations under section 1071 do not go into effect until the Bureau issues necessary implementing regulations.” ■

Ad Review Corner

continued from Page 4

and down payment. If a dealer wants to advertise that a manufacturer is offering 0% financing on a particular vehicle without including additional Reg. Z disclosures, the solution is simple: advertise “0% available” without mentioning the monthly term.

- “With approved credit”: Any advertisement that includes an APR offer like

“1.9% APR on all 2011 Toyotas” must also state “with approved credit” or words of similar import.

- Stock numbers: Remember that a stock number cannot be used to indicate a limited quantity of the new vehicle being advertised. If the quantity in stock isn’t enough to meet reasonably anticipated demand, the advertisement needs to indicate “1 at this price” or similar language.

- Terms and limitations: Don’t hide your disclosures. Can you read the terms and limitations or are they in an indistinguishable color or size? Are they in close proximity to the offer they modify? Make sure people understand the offer you are making.

Don’t let a good ad go bad. A few minutes addressing the details is all it takes to design a compliant, effective advertisement. ■

Ohio Enacts Consumer's Use Tax Amnesty Provisions

By Mark Rossetti, Manager and Kathy Petrucci, Shareholder, Schneider Downs & Co.

Ohio Governor John R. Kasich signed H.B. 153 into law on June 30, 2011, enacting legislation to introduce a consumer use tax amnesty program that will run from October 1, 2011 through May 1, 2013.

This is a very taxpayer-friendly program that offers consumers the opportunity to become compliant with the use tax laws and save big dollars on unreported use tax liabilities.

Although some details of the program are still being worked out, here is a look at what the amnesty program can offer to dealers:

1) If a dealer comes forward to participate in the program, the normal seven-year audit look-back period is shortened to January 1, 2009 forward. Additionally, if a dealer participates in the program and did not have a use tax account as of June 1, 2011, all penalties and interest will be abated on delinquent amounts.

For example:

Dealer A does not have a use tax account as of June 1, 2011, but has unreported use tax

liability of \$20,000 per year from January 1, 2005 forward. Dealer A enters into the amnesty program on January 1, 2012. Dealer A will report and remit use tax of \$60,000 (\$20,000 for each 2009, 2010 and 2011) and pay no penalties or interest on the delinquent amount. If Dealer A had a use tax account as of June 1, 2011, the look-back period is the same, but penalties and interest would be due on any delinquent amounts.

2) If a dealer is currently under audit, they can participate in the program as long as an assessment has not been issued prior to October 1, 2011. This could be a great opportunity for these dealers, because they might be able to mitigate additional exposure by limiting the look-back period to January 1, 2009 and forward, and get penalty abatement.

3) The program allows seven-year use tax payment plans.

H.B. 153 also shortened the look-back period to January 1, 2008 forward for taxpayers not participating in the program. This means that upon audit, dealers not participating in the program would get a shorter

look-back period than before the law change, but would still have an additional year of tax liability compared to dealers entering the program. In the example above, Dealer A would pay an additional \$20,000 for 2008, plus penalties and interest.

In conjunction with amnesty program, the Voluntary Disclosure Program (VDA) has been suspended. Dealers with a VDA currently in process will be formally contacted by the State of Ohio regarding changes to the program.

In our OADA webinar back on March 16, 2011, we outlined several use tax issues for auto dealers. If your dealership has use tax exposure, you definitely should consider participating in this amnesty program to limit your liability and save dollars. For more information on how to participate in the amnesty program please go to the ODT's website http://tax.ohio.gov/divisions/sales_and_use/index_use.stm (more information should be available after September 1, 2011.) For questions, call Mark Rossetti at Schneider Doewns & Co., Inc. at (614)586-7234. ■

OADA Submits Comments Opposing Newly Proposed Federal Agency Rules

OADA opposes the Department of Labor's proposed rule regarding the "advice" exception

OADA opposes the National Labor Relations Board's proposed rule regarding "streamlining" union elections

This past month OADA submitted written comments opposing the latest round of proposed rules by the National Labor Relations Board (NLRB) and the Department of Labor (DOL) that have the potential to significantly affect employers as it relates to union organization in the work place.

This past January OADA commented on the NLRB's proposed rule that would require employers to post an 11x17 poster informing their employees of their right to organize. OADA wrote that it is our belief that this proposed rule is not only an unnecessary requirement of employers but we also believes the Board lacks the statutory authority to promulgate such a rule.

To date the NLRB has not made a decision as it relates to the adoption or withdrawal of this rule.

In this latest round, the NLRB has proposed a rule that will "streamline" the union election process. Interestingly enough, approximately ninety (90) percent of union elections are already being held in a timely manner. The proposed rule also postpones critical hearings, would require employers to disclose their entire case theory in their Statement of Position (or waive the argument), and requires the disclosure of employees' private contact information without the employees' consent.

Not to be outdone, the DOL has proposed its own rule that would narrow the advice exception under the Labor Management Reporting and Disclosure Act (LMRDA). What does this mean?

It would effectively obstruct the free speech rights of employers. It would mean that most discussions regarding union activity

between company managers and their attorneys or consultants would be subject to public reporting requirements.

In our comments to both federal agencies, OADA emphasized the unintended consequences and added burdens the adoption of these rules would have on the employer community. We also emphasized the lack of need and agency authority to adopt these rules.

If you would like to see our comments in their entirety, go to www.oada.com under "OADA News". Once the comment periods close for these proposed rules the respective agencies will either adopt, amend, or withdraw the rule. OADA will continue to follow the developments of these proposed rules and keep you informed as this process continues. ■

Basic Hybrid Safety

continued from Page 8

- Hybrid battery electrolyte fluid can dissolve human tissue.
- Neutralization techniques in case of a spill are completely different from those of lead acid battery fluids, because the hybrid battery electrolyte is a caustic alkaline solution. Learning the neutralization techniques is part of a hybrid training program.
- The high-voltage nickel-metal hydride (NiMH) battery pack is considered a hazardous material, and employees shipping the battery pack must be DOT HazMat certified.
- To avoid injury by coming in contact with the electrolyte, wear proper personal protective equipment including
 - Splash shield or safety goggles
 - Rubber, latex or Nitrile gloves
 - Apron suitable for alkaline
 - Rubber boots

5. Disposing of high-voltage batteries

The high-voltage hybrid batteries are handled very differently than conventional batteries for gasoline-powered vehicles.

- The high-voltage NiMH battery pack is considered a hazardous material.
- Employees preparing the battery pack for shipment must be DOT HazMat certified.
- Hybrid battery packs are returned to the manufacturer for disposal. Most hybrid batteries have a core charge as a way for the manufacturer to ensure their return in order to collect the deposit. As hybrid batteries are now designed to last for the life of the vehicle, disposal will be rare for the next few years, until more vehicles reach end-of-life.

6. Towing and in-shop movement

Regenerative brakes can generate electricity if the vehicle is moved with all four wheels on the ground.

- Do not physically push hybrids around the shop. Either drive them or push them around on rollers.
- Do not tow hybrids with all four wheels on the ground. When towing vehicle hybrid, pick up the front wheels or carry it on a flat bed.

7. In case of fire

At last, something simple about the hybrid:

- Water is a suitable extinguishing agent for hybrid fires.

8. Get training

If your service department is planning to have hybrids in the shop, all employees should have some level of training, including oil-change technicians and lot personnel.

- All service department staff needs basic hybrid training, including hybrid identification.
- Hybrid manufacturers are a necessary and excellent source of training and documentation for service personnel.
- Training for technicians requires both hands-on training from the manufacturer and computer-based training.
- Many independent courses for teaching technicians about working on these vehicles can be found with an Internet search for “hybrid vehicle training technicians.” These are especially valuable for body shops, standalone service shops, and dealerships that want to service hybrids that are not in their franchise.
- For franchise dealerships, manufacturers generally require Master Technician certification and additional training in order to work on hybrid vehicles, including being current on OBD-II, scan tools, lab scopes, and electrical analysis.
- Special training is also required for collision centers.

Hybrid vehicles may seem similar to gasoline-powered engines, and indeed there is much in common. But the differences are important ones from a safety perspective, bringing risks of injury and even death to the untrained or careless service technician.

Proper training, adherence to your department’s service operations protocols, and constant vigilance around these “silent while on” vehicles will ensure a safe environment.

Sidebar – Sources of hybrid vehicle training

Hybrid Electric Vehicle Information

- California Cars Initiative — <http://www.calcars.org/>
- EV World (news) — www.evworld.com/
- Electric Drive Transportation Association <http://www.electricdrive.org/>
- Fuel Economy — http://www.fueleconomy.gov/feg/hybrid_sbs.shtml
- How Stuff Works — <http://auto.howstuffworks.com/hybrid-car.htm>
- Hybrid Cars — <http://www.hybridcars.com/>
- Hybrid Car Online — <http://www.hybridcar.com/>
- Hybrid Vehicle Consortium — <http://www.hybridconsortium.org/>
- Hybrid Jungle — <http://www.hybridjungle.net/>

- National Renewable Energy Lab — <http://www.nrel.gov/vehiclesandfuels/hev/>
- NE Vehicle Consort. — www.navc.org/
- SAE — www.sae.org/servlets/techtrack?PROD_TYP=PAPER (search: hybrid vehicles)
- SoulTek — http://www.soultek.com/clean_energy/hybrid_cars/hybrid_cars.htm
- SW Research Inst. — www.swri.org/4org/d03/vehsys/home.htm
- U.S Dept. of Energy — http://www.eere.energy.gov/afdc/vehicles/hybrid_electric.html
- Union of Concerned Scientists -- <http://www.hybridcenter.org/>
- Wikipedia — http://en.wikipedia.org/wiki/Hybrid_vehicle

Vehicle-Specific HEV Sites

- DaimlerChrysler — www.daimlerchrysler.com/index_e.htm?/products/products_e.htm
- Ford — www.ford.com/ (click on: environmental vehicles)
- GM — www.gm.com/
- Honda — www.automobiles.honda.com/
- Nissan — http://www.nissanusa.com/altima/#/key-features/hybrid/?intcmp=Altima_HEV.Promo.Altima.Home.P3
- Solectria — www.solectria.com
- Toyota — prius.toyota.com/

Aftermarket training

- Automotive Career Development Center — www.auto-careers.org/
- Mid-Del Technology Center — www.evtraining.com/ (click on “hybrid technology”)
- i-car (for body shops) — www.i-car.com (also required by Toyota body shops)
- SAE Hybrid Symposium — <http://www.sae.org/events/training/symposia/hybrid/>
- National Alternative Fuels Training Consortium — <http://www.naftc.wvu.edu/>
- Automotive Technician Training Services -- <http://www.attstraining.com/Classes.html>

This safety update is provided by KPA, the nationwide leader in Environmental Safety and Compliance Programs for vehicle and equipment dealers. For reprints of this article, questions about this topic or any environmental or safety matters, contact the KPA Marketing Dept. at 866-356-1735, or visit us online at www.kpaonline.com.

This article was written by Peter Zaidel, Product Manager with KPA, based in Colorado. ■

2012 OADA CONVENTION

Friday, March 23 - Monday, March 26



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Lake Buena Vista, Florida

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655 Metro Place South, Suite 270

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Phone: 614-923-2228

FAX: 614-766-9600

E-mail: smcgavern@oada.com



Brown Bag Lunch Webinar Series

presented by
The Ohio Automobile Dealers Association



The Amended Oil Spill Prevention, Control and Countermeasure (SPCC) Rule: Will You Be Ready on November 10?

This Webinar is being hosted and moderated by OADA. Registration fee is \$20 per connection for member dealers. Non-member fee is \$40 per connection. **The Webinar is scheduled for Wednesday, September 14, 2011, from 11:00am to 12:30pm**

The Amended Oil Spill Prevention, Control and Countermeasure (SPCC) Rule (40 CFR Part 112), regulates oil storage systems. New SPCC requirements are coming out on November 10, 2011. Will your dealership be ready? Attend the OADA webinar to learn what the new requirements are, and determine what your dealership may need to do in order to comply.

SPCC Compliance Basics include:

- Written SPCC Plans with Professional Engineer Certification
- Secondary Containment for Aboveground Storage Tanks and 55-Gallon Drums
- Integrity Testing
- Emergency Procedures and Notification Requirements
- Oil Spill Contingency Plans
- Employee Training
- Routine Facility Inspections
- Site Security Requirements
- Fuel Transfer Procedures

Tier 1 Qualified Facilities (the new shortcut to compliance for smaller facilities) will also be discussed. This SPCC webinar will be approximately 90 minutes in length and will include site diagrams and photographs to aid in clarifying the SPCC rule requirements. There will also be time at the end of the webinar to answer questions.

Your webinar speaker will be R. Curtis Spence, P.E.. Curt is the owner and president of Spence Environmental Consulting, Inc. located in Central Ohio. Mr. Spence has over 20 years of environmental consulting experience including the preparation of SPCC plans for a wide range of industrial, commercial and publically owned facilities in Ohio and surrounding states. Curt has spoken at many OADA events and meetings in the past. A dynamic speaker, Curt has been extremely well received by OADA members. This webinar is a must see if you need to meet SPCC requirements.

For more information, please visit our website at www.oada.com, or contact DeAnna Zahniser at 614-923-2231 or dzahniser@oada.com. Registration fee is \$20 per connection for member dealers, and \$40 per connection for non-member dealers. Register today!

Registration Form

The Amended Oil Spill Prevention, Control and Countermeasure (SPCC) Rule: Will You Be Ready on November 10?

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Please register me for the webinar. (Registrants must provide an email address)

I have already registered online for the webinar. My registration fee is enclosed.

Return to: OADA • 655 Metro Place South, Suite 270 • Dublin • Ohio • 43017 **or fax to** 614-766-9600
You can also **register by logging onto the OADA web page** at www.oada.com, or by calling 800-686-9100 x109.

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