



ADA NEWS

NOVEMBER 2011

a publication of the Ohio Automobile Dealers Association

OADA Submits Comments Opposing Newly Proposed OSHA Rule

OADA would like to thank the labor and employment law firm of Fisher & Phillips as well as NADA for their assistance with these comments

Last week, for the fourth time this year, OADA submitted written comments opposing a proposed rule by a federal regulatory agency. In this proposed rule, the Occupational Safety and Health Administration (OSHA) is proposing the elimination of the automobile dealer exemption which require all automobile dealers to maintain

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the OSHA 300 logs, the 300A summaries and supporting documentation.

In our comments, OADA expressed our belief that automobile dealers should continue to be exempt in any revision of OSHA's rulemaking standard. The Association believes that automobile dealers around the country have demonstrated a strong commitment to safety and health of their employees. Also, the fact that OSHA has exempted the automobile dealers from recordkeeping documentation requirements over the past 20+ years demonstrates that OSHA recognizes that automobile dealers have a good safety record and that the work performed by automobile dealers is of low-hazard status.

In addition, OADA stated that in our view, OSHA in its economic feasibility analysis has significantly underestimated the cost to employers on these proposals, particularly the cost associated with the new industries being brought into the non-exempt classification.

This past January OADA commented on the National Labor Relations Board's (NLRB) 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 believe the Board lacks the statutory authority to promulgate such a rule. Unfortunately the NLRB chose to adopt this proposed rule which will go into effect on November 14, 2011. Currently several national trade organizations, including NADA, are suing the NLRB over the

adoption of this rule.

This past summer OADA submitted comments opposing the adoption of another proposed rule by the NLRB as well as the adoption of a proposed rule by the Department of Labor (DOL). 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.

OADA will continue to follow the developments of these proposed rules and keep you informed as this process continues.

If you would like to see our comments to any of these federal agencies in their entirety, go to www.oada.com under "OADA News". ■

Employers Can Discriminate!

By Fisher & Phillips

For some employees who can't figure out why they are not getting that promotion, the answer could be as simple as looking in the mirror. Grooming and personal appearance are playing an ever-increasing role in workplace raise and promotion decisions. A recent CareerBuilder.com survey listed the following as the top reasons that would make an employer less likely to offer an employee a promotion:

1. Piercings
2. Bad Breath
3. Visible Tattoo
4. Wrinkled Clothes
5. Messy Hair
6. Casual Dress
7. Too much perfume or cologne
8. Too much makeup
9. Messy office or cubicle
10. Chewed fingernails
11. Too suntanned

Is not giving an employee a promotion because of their bad breath or fingernails illegal? Some employees might think so, but generally speaking, the answer is "no." You are legally free to deny that new corner office to employees because they have bad breath or dress as though they just came from the beach. This is one of those areas where employers actually can discriminate, because discrimination based on such characteristics does not violate Title VII – unless issues of race, religion, sex or national origin are intertwined.

Employers do have the option of regulating workplace grooming and appearance. But from our experience many are sometimes reluctant to exercise this right because everyone "knows" that discrimination is unlawful. The truth is you have a lot of control over the dress and appearance of your employees. The key is to carefully draft

and consistently enforce a reasonable dress code.

Doing It Right

There is no legal requirement for a dress or appearance policy. Yet, having such a policy in place before a tattoo, nose ring, haircut, or head covering becomes an issue allows you to defend claims of discrimination. More importantly, a well-written policy can help protect a company's public image, promote a productive work environment, comply with health and safety standards, and even prevent claims of unlawful harassment. Having such policies in place also helps better ensure that highly qualified employees are not overlooked, albeit legally, for a promotion because they are permitted to come to work with messy hair or wrinkled clothes.

A dress and appearance policy based on business needs that is applied uniformly will generally not run afoul of employees' seemingly endless civil rights. Any appearance policy should be based on justifiable business reasons that do not have a disproportionate effect on particular segments of the workforce, particularly those in a protected category. Of course, as with all employment policies, you must ensure that such policies are applied consistently and fairly without regard to an applicant's or employee's race, sex, national origin, religion, color, disability, age, or any other protected status.

Employees are becoming wise to these issues and seeking to challenge grooming- and dress-based decisions by tying them to protected categories such as religion and disability, with some degree of success. As an example, some courts have held that obesity can be considered a disability which calls into question the viability of

making employment decisions because of an employee's weight. In fact, Michigan even prohibits discrimination in employment based upon weight by state statute. Other courts have found that no-beard policies discriminate against men who wear beards for religious reasons. It's important to be wise to these risks and be certain to draft their appearance and grooming policies so that they do not encroach upon a protected category.

When faced with grooming- and dress-based cases, courts and arbitrators will balance an employee's desire for self-expression with an employer's right to enforce a reasonable dress code necessary to protect the company's image. If done correctly, in most cases the employer's reasonable dress code will prevail. Case in point, in an arbitration decided several years ago, a woman of Mayan descent was required to cover up a nose ring she wore to work in her position as a hospital receptionist.

The employee viewed the nose ring as part of her Mayan cultural heritage whereas the hospital viewed it as a violation of its dress guidelines prohibiting extremes in jewelry. The arbitrator agreed with the employer. He viewed the employer's requirement that the nose ring be covered as reasonable because as a receptionist the employee was the first person to make an impression upon hospital visitors.

The case highlights that courts and arbitrators continue to support an employer's right to enforce a reasonable dress code as long as it does not encroach upon a protected activity and can be tied to reasonable business needs.

For more information contact Melanie Webber at Fisher & Phillips, Cleveland office, 800-800-8806. ■



Attacking Computer Expenses in 2012

This Webinar is being hosted and moderated by OADA. Registration fee for members is \$25.00 per connection. Non-member fee is \$50.00.

The Webinar is scheduled for Wednesday, November 16, 2011, from 11:00am - noon

You can spend countless hours trying to figure out which DMS vendor is right for your business and still not be sure if you've covered all bases and made the best decisions. Need some help? OADA is pleased to bring you Paul Gillrie, founder of the Gillrie Institute and guru of DMS systems analysis. In this webinar, he will lay it all out for you: comparisons, pros and cons, advantages and disadvantages, features, benefits, and more. This is one webinar that is a must for your dealership!

Webinar topics include:

- Vendors that are emerging as the most viable; their limitations and strengths
- Market changes and how these may impact you and your dealership
- New products that may make your business simpler or more efficient
- Solutions to look at and which ones to avoid
- How increased competition in the marketplace has changed the pricing models of the large and small DMS vendors
- Contract terms that many vendors are trying to promulgate and enforce
- How to protect yourself for the long term
- Tactics and strategies that can help you get what you need from your vendor
- What you can do immediately to lower (or at least limit the increase in) your technology costs

After spending 15 years as the Director of Training for an auto industry computer giant, Paul Gillrie founded the Gillrie Institute as an independant and scrupulous think tank on DMS systems. For nearly 20 years, Paul has been providing dealers and their advisors current, accurate analysis and consumer reports of the technology issues facing the retail auto industry. The Gillrie Institute does not have a business or financial relationship with any computer vendor.

Get informed! Register today!

Webinar Details

The webinar is being moderated by OADA, and registrations are set up through the Go to Webinar service. Webinar fee is \$25.00 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
Attacking Computer Expenses in 2012

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 \$25.00.***

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.



ADREVIEW CORNER

Can You Spot the Problems?

2012 Toyota Camry
Only \$250/mo. No money Down



1.9% for 60 months



36 month lease, \$1500 due at inception includes first month's payment and bank acquisition fee. 12,000 miles/year. Tax, title, registration and doc fees extra.

When I was a kid, there was a children's magazine I loved because it included "find the hidden object" puzzles in every edition. I would look at the picture of Farmer Brown's barn and silo and search for the trumpet, letter J, apple, and rainbow. Today, I do the same thing with newspaper ads. But instead of looking for hidden objects, I look for violations of Reg. M and Reg. Z and disclosures that are incomplete. Today, I'm going to share the fun. Can you spot the problems?

ANSWERS: Reg. M and state law require the word "Lease" to be prominent in the body of the advertisement. A footnote is not sufficient.

"No Money Down" is more promi-

Ad Review

continued on Page 7

REMINDER - November 10, 2011 SPCC Rule Compliance Deadline

By R. Curtis Spence, P.E., Spence Environmental Consulting, Inc.

The compliance date for oil storage facilities to amend or develop new Spill Prevention Control and Countermeasures (SPCC) Plans is November 10, 2011. The SPCC rule applies to facilities with aboveground oil storage tanks and 55-gallon drums with a total facility storage capacity exceeding 1,320 gallons. Oil includes gasoline, diesel fuel, hydraulic fluid, motor oil and other petroleum products.

The SPCC rule is a part of the Oil Pollution Prevention regulation (40 CFR Part 112) and outlines requirements for the prevention of, preparedness for, and response to oil discharges. Regulated facilities must develop and implement SPCC Plans that establish procedures and equipment requirements to prevent oil discharges from reaching navigable waters or adjoining shorelines.

Owners and operators with aboveground oil storage capacity of 10,000 gallons or less may self-certify their SPCC Plans in lieu of review and certification by a Professional Engineer (PE) if they meet

the following criteria:

- Have 10,000 gallons or less in aggregate aboveground oil storage capacity with no single vessel larger than 5,000 gallons.
- Have not had a single discharge of oil to navigable waters exceeding 1,000 gallons or two discharges of oil to navigable waters each exceeding 42 U.S. gallons within any twelve-month period, in the three years prior to the SPCC Plan certification date.

On September 14, 2011 OADA and Spence Environmental presented a webinar that fully explains the SPCC requirements and walks dealers, step-by-step through the self certification process. If you would like a DVD of the SPCC webinar, contact DeAnna Zahniser at OADA, 800-686-9100, ext. 109.

You can contact R. Curtis Spence, P.E. at (614) 837-4750 if you have questions or would like additional information regarding the SPCC requirements. ■

NLRB Delays Deadline for Posting New Notice

By Fisher & Phillips

The National Labor Relations Board announced on October 5, 2011, that it will delay the requirement that most private employers in the U.S. post a controversial new notice until January 31, 2012. The Board had issued a Final Rule in August, requiring all employers covered by the National Labor Relations Act to post an 11" x 17" "Notification of Employee Rights under the National Labor Relations Act." At the time, the posting requirement was to become effective 75 days after publication of the Final Rule in the Federal Register, which would have been November 14, 2011.

The Notice informs employees of their legal rights under the National Labor Relations Act, and essentially gives them

a road map for filing unfair labor practice charges against their employers. The Notice was, and is, strongly opposed by many employers, chambers of commerce and other organizations.

The Board's stated reason for delaying the posting deadline is "to allow for enhanced education and outreach to employers, particularly those who operate small and medium sized businesses." No other changes in the rule, or in the form or content of the notice, have been announced.

If you have questions regarding this requirement or other labor or employment law questions, contact Melanie Webber at Fisher & Phillips, (800) 800-8806. ■

Spot the Violations Game: Can You Find All 7?

safety CONCERNS

Brought to you by KPA, OADA's Endorsed Provider of Safety and Environmental Compliance Services



reoccurring offenses are likely if puddles aren't addressed as they happen.

Solution - All spills must be contained and cleaned immediately; as they occur to prevent slip hazards.

Regulation Details - "Housekeeping." All places of employment, passageways, storerooms, and service rooms should be kept clean, orderly, and in a sanitary condition. (2)The floor of every workroom should be maintained in a clean and, so far as possible, a dry condition. Where wet processes are used, drainage should be maintained, and false floors, platforms, mats, or other dry standing places should be provided where practical. (3)To facilitate cleaning

[spills], every floor, working place, and passageway should be kept free from protruding nails, splinters, holes, or loose boards.

Violation: Food in Service Bay

Food, and food preparation equipment shouldn't be in the same area where hazardous chemicals are in use.

Solution - Ensure that all food preparation equipment is to be restricted to an employee break room. This includes but is not limited to toasters, coffee makers, microwaves, utensils or blenders.

Regulation Details - Sanitary storage: No food or beverages shall be stored in toilet rooms or in an area exposed to a toxic material.

Violation: Unlabeled Drum

A label is missing from a container. Without a label, contents are unknown: flammable? hazardous?

Solution - Apply an appropriate label to the container and fill out the required information.

Regulation Details - Labeling: label each container in accordance with the applicable Department of Transportation regulations on hazardous materials under general labeling requirements.

Violation: Unsecured Cylinders

Compressed gas cylinders are not securely fastened.

Solution - Fasten those cylinders to rigid structures so that they will not fall or be knocked over.

Regulation Details - Compressed gas cylinders in portable service shall be conveyed by suitable trucks to which they are securely fastened; and all gas cylinders in service shall be securely held in substantial racks or secured to other rigid structures so that they will not fall or be knocked over.

Violation: Slip Hazard

Spills that aren't cleaned up in a timely manner become slip hazards. It's a big deal because there are multiple regulations that apply, and

Violation: Trip Hazard/ Extension Cord Used as Fixed Wiring

Leaving boxes, cords, or hoses in walk areas can cause significant trip hazards.

Solution - Decide if the hazard can be removed (In this case, the appliance shouldn't even be in the bay). If it has to stay, then make sure the cord is not in the way.

Regulation Details - Flexible cords and cables that run on the ground, where accessible to the public [or employees], should be covered with approved nonconductive mats. Cables and mats should be arranged so they don't present a tripping hazard. Extension cords cannot be used as a substitute for fixed wiring.

Solution - Either replace extension cords with permanent wiring, or move things around so machinery is connected to existing permanent wiring.

Regulation Details - Flexible cords and cables can't be used as a substitute for fixed wiring. Never run an extension cord through holes in walls, ceilings, or floor, doorways, windows, or similar openings. Don't attach it to building surfaces; or conceal it behind building walls, ceilings, or floors.

Violation: Missing Label

All secondary containers including spray bottles, squeeze bottles, dispensers, used oil buckets, and all other secondary containers require proper labeling. These containers should be labeled with at least the chemical product name, and its hazard warning.

Safety Concerns

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Ways to Reduce Liability For Holiday Gatherings

By Fisher & Phillips

Company parties and office get-togethers are a part of the holiday season. As much fun and source of camaraderie as these events can be for employees and employers, they are also a source of concern. This is especially true if alcohol is served at the events.

If one of your employees gets drunk at an office party and after leaving the party, causes an automobile accident in which injuries occur, it is very likely that your dealership will be sued. And, while you may be able to raise a successful defense to such a lawsuit, the defense of the case (regardless of the outcome) will be expensive in terms time and money as well as from an employee relations perspective. Office parties often give rise to complaints of sex harassment. Further, an employee who sustains injury while attending such an event may even be eligible for Workers' Compensation.

For example, an employee of a small business broke his neck when he drove off a pier at his employer's premises during a company picnic. His injury was compensable under Workers' Compensation since the company picnic was held on the employer's premises and was supervised, paid for, and sponsored by the employer for the purpose of generating friendly relations. See *Kohlmayer v. Keller*, 24 Ohio St. 2d 10

(1970).

The following pointers are provided as considerations and suggestions for dealerships that sponsor a holiday event for their employees.

- Strongly consider offering an alcohol-free event.
- If alcohol is provided, ensure alcohol is only served by a licensed establishment.
- Consider holding Company holiday events and office parties off premises and not during working hours.
- Employee attendance at these events should be absolutely voluntary.
- Make the event a family affair by offering events where spouses and/or children are included.
- Provide plenty of food and nonalcoholic beverages.
- Set a tone of moderation before the event by sending out a memo prior to the event reminding employees:
 - To drink responsibly and not to drink and drive.
 - Proper attire is expected.
 - Even though the environment is festive, professional conduct is required. The party is an extension of the workplace. Inappropriate jokes, comments, and physical contact are no more suitable at a party than they are in the workplace.

- Consider arranging for transportation (e.g. taxi vouchers or shuttle service) for guests who have consumed too much alcohol.
- Designate "spotters" to make sure that people who have had too much to drink do not leave on their own.
- Instruct those serving alcohol to refuse service to anyone who is visibly intoxicated.
- Check the dealership's general liability policies to determine whether there is coverage for the type of event being sponsored.
- Consider requiring employees to sign a workers' compensation waiver prior to attending the event. Ohio laws provide that injuries which occur at such an event are non-compensable if the employee executed a waiver prior to the event. To receive a sample waiver, please contact Fisher & Phillips.

If you have any questions or comments about information contained in this article, please call Fisher & Phillips, (800) 800-8806.

The information contained in this article is for general information purposes only and legal counsel should be consulted for specific application. ■

REMINDER - OADA Services Offers Dealers a FREE Copy of the NLRB's Newly Required Poster

Go to www.oadaservices.com for your complimentary notice which must be posted by January 31, 2012

As of November 14, 2011 every employer covered by the National Labor Relations Act will be required to post the prescribed poster. This new notice requirement must be 11x17 in size.

Initially the compliance date for posting this notice was November 14, 2011. This date has now been extended to January 31, 2012. The stated reason for the delay was to allow for more education and awareness of this posting requirement.

The notice may be printed in black and white and be 11x17 or printed on two 8.5x11 pieces of paper. In order to make it easy for dealers to comply, OADA has printed these posters on the same manila poster board we

use for the other employment posters required by state and federal agencies.

This poster is offered to members at no charge if ordered online at www.oadaservices.com. Simply go to the website, and it is a featured item on the main page. Members will need to register on the website (if they haven't done so already) in order to get the poster for free. You may also call the OADA Services sales desk at 614-923-2238 to order the poster by phone, but there is a fee of \$5 plus shipping to order it this way. Should you have any questions or need assistance registering to use the website, please don't hesitate to contact Lindsey Rusk at OADA Services at 614-923-2238 / lrusk@oada.com

It is important to remember that the Final Rule makes it an independent violation of the Act should an employer fail or refuse to post the Notice (or, presumably, fail to do so appropriately.) Of additional concern, the Final Rule states that an employer's failure to post the Notice will likely serve to extend the six-month limitation period for filing unfair labor practice charges, and may be evidence of anti-union motivation in any NLRB proceeding where motive is an issue.

If you have questions regarding these posting requirements, please contact Charlie Howard, ext. 110 or Sara Bruce, ext. 108 at OADA, 800-686-9100. ■

Congratulations to Bob Ross Buick GMC for Raising Over \$20,000 in the Fight Against Breast Cancer

On Saturday, October 15, 2011 friends, family, co-workers, breast cancer survivors and friends of Norma Ross walked in the American Cancer Society's Making Strides Against Breast Cancer Walk in Dayton. The event gathered together over 9,000 participants and raised over \$400,000.

Jenell Ross, Bob Ross Motor Cars, put together a team in honor of her mother and was overwhelmed by the success. The Norma Ross Team raised \$21,000 and lead the pack by contributing more than any other individual, team or company in the entire Miami Valley Region. They also surpassed the amount of funds donated last year by over \$9,000.

"I don't know how to thank all of you, but whatever you did to help support this very important cause, I truly appreciate. Norma would have been so pleased to know that 50 people walked in her memory and the amount of money raised for this potentially deadly disease. Thank you! Thank you! Thank you is all that I can say. Every single person who donated their money and/or their time made this day a true success," said Jenell Ross.

For more information on how Making Strides Against Breast Cancer donations support the American Cancer Society's fight against breast cancer please visit www.makingstrides.acevents.org. ■

Ohio Motorcycle Dealers Association

ANNUAL MEMBERSHIP MEETING ANNOUNCED

Motorcycle Dealers, Mark Your Calendars!

The Annual Motorcycle Dealership Membership Meeting has been scheduled!

Thursday, January 26, 2012

Crowne Plaza Dublin

600 Metro Place North, Dublin

(same location as last year)

Meeting will begin at approximately 10:00 a.m., and last until @2:00 p.m.

Lunch will be provided. Watch your mail for registration information!

If you have any questions, or want to register early, please contact

DeAnna Zahniser at 614-923-2231, or dzahniser@oada.com

We look forward to seeing you there!

Safety Concerns

continued from Page 5

Solution - Label all secondary containers with their contents, manufacturer name, and appropriate hazard warnings.

Regulation Details - The employer should ensure that each container of hazardous chemicals in the workplace is labeled, tagged or marked with (I) identity of the hazardous chemicals contained therein, (ii) appropriate hazard warnings with "words, pictures and symbols or combination thereof" which provide at least general information regarding the hazards of the chemical.

Violation: Loose Face Plate

Loose or missing cover plates on electrical outlet(s) or switches.

Solution - All outlets and switches must be

Ad Review

continued from Page 4

nently advertised than the \$1500 due at lease inception. This is considered a violation of Reg. M and state law.

Mileage Penalty: The ad correctly discloses the allowable miles per year, but fails to provide the penalty for excess miles. The ad should read, "12,000 miles/year, 10 cents per mile thereafter" or words of similar import.

1.9% for 60 months: "60 months" is a Reg. Z triggering term, which requires the ad to include the following: a monthly payment, number of months, APR, and down payment.

protected by cover plates.

Regulation Details - All pull boxes, junction boxes, and fittings should have covers identified for the purpose. If metal covers are used, they need to be grounded. In completed installations, each box should have a cover, faceplate, or fixture canopy. Covers with holes for electrical plug-ins should have proper bushings, or at least have smooth, well-rounded surfaces.

Dealers are encouraged to use KPA's Facility Safety Inspection Checklist and perform a self-assessment of your own facility or contact Nick Hardesty or Glorianna Cooley of KPA and arrange for a KPA representative to walk through your dealership and assist you with this compliance assessment. Nick can be reached at 262-510-7620 or Glorianna at 614-432-5044. ■

The ad would not require Reg. Z disclosures if the offer had simply stated "1.9% APR available".

"With approved Credit": Whenever an APR is offered, the ad must include "with approved credit" or words of similar import.

Mouse print Disclosures: Make sure your disclosures are in a font size that can be read easily.

Now that you've spotted the problems, give this to your staff or ad agency and see how they do. We're here to help, so call with any advertising compliance questions. ■

2012 OADA CONVENTION

Friday, March 23 - Monday, March 26



Disney's Grand Floridian Resort & Spa

Lake Buena Vista, Florida

Visit *Disney's Grand Floridian* Resort & Spa at:

www.disneyconventionears.com

REGISTER TODAY FOR THE OADA CONVENTION! BRING YOUR FAMILY AND KEY MANAGERS!

PHENOMENAL OADA GROUP GUEST ROOM RATE OF \$275.00 PER NIGHT (STANDARD ROOM ACCOMMODATES A FAMILY OF 4 PEOPLE). This group rate applies to 3 DAY PRE-CONVENTION DATES AND 3 DAY POST CONVENTION DATES...BASED UPON AVAILABILITY AT *Disney's Grand Floridian* Resort & Spa.

Rates for Concierge Level Rooms are available upon request.

TAKE ADVANTAGE OF THE OADA EARLY BIRD REGISTRATION DISCOUNT

when you mail your completed registration form to OADA by December 31, 2011 with your check or credit card number, you will receive a \$50.00 discount on your registration fee (adults only.)

This applies to **dealers**, their spouse/guest and **sponsors**, their spouse/guest.

INFORMATIVE, DYNAMIC, EDUCATIONAL SPEAKERS

Offering General Business Sessions, Afternoon Breakout Sessions, Legislative & Legal Updates

VISIT WWW.OADA.COM FOR ADDITIONAL COPIES OF THE REGISTRATION FORM.

REGISTRATION IS EASY!

Mail to: Sheryl McGavern

OADA: Ohio Automobile Dealers Association

655 Metro Place South, Suite 270

Dublin, OH 43017

Phone: 614-923-2228

FAX: 614-766-9600

E-mail: smcgavern@oada.com

NADA News

A Message from Ohio NADA Director, Chuck Eddy

Study Takes a Look at ROI of Factory Image Programs

In today's uncertain business environment, perhaps the single most important issue for dealers – and all business owners, for that matter – is expense control. As NADA Chairman Stephen Wade said in his convention speech earlier this year, “We’ve learned we can operate in ways we never thought possible . . . watching every penny, crossing every “t” and dotting every “i.”

In many ways, we’re still watching that bottom line like hawks as our industry slowly recovers. That’s why many dealers are worried about factory image programs that can require millions of dollars to upgrade facilities. In fact, Stephen Wade says it’s the one concern that he hears about the most from dealers, regardless of dealership size or brand, as he travels around the country meeting with dealers. These costs have a significant impact on our balance sheets, in many cases severely straining them and in some cases even persuading dealers to leave the business.

Manufacturers often justify image programs on the grounds that “the store image must support the brand” and “customers expect all our stores to offer a similar look and feel.” But there’s little hard evidence of the return on investment of such spending, to either the OEM or the dealer. As a result, we make facility investment decisions based on subjective factors, such as opinions and personalities, which – as you know – is no way to run a business.

That’s why NADA has commissioned an independent, fact-based study to uncover both positive and negative factors that drive ROI – so that dealers like you and I are in a better position to make informed, rational decisions about our facilities. We expect the study’s findings to be of use to dealers and OEMs alike, by moving the facilities debate away from opinion and assertion and more toward facts and data. Glenn Mercer, an experienced independent industry consultant, is conducting the study, which is expected to be completed by year-end.

In today’s back-to-basics business environment, it’s absolutely necessary to “crunch the numbers” before making big decisions. Thanks to NADA, we just got a little help.

Underriner to Lead NADA in 2012

The NADA board of directors has elected William P. Underriner chairman and David W. Westcott vice chairman for 2012. Underriner, 59, president and co-owner of Underriner Motors in Billings, Mont., and NADA’s current vice chairman, has served three terms as NADA treasurer and represents Montana’s new-car dealers on the board of directors. “I’m honored that my peers have elected me for this position,” said Underriner. “I’m looking forward to the challenges ahead and to the unknown because you never know what can happen in the auto industry.” Westcott, 64, president of David Westcott Buick GMC Suzuki in Burlington, N.C., currently represents North Carolina’s new-car dealers on NADA’s board of directors. The election was held Sept. 20 at an NADA board meeting in Washington, D.C. Underriner and Westcott will take office at the 2012 NADA-ATD Convention and Expo in Las Vegas.

In legislative and regulatory news ...

Dealers Must Ensure Compliance with Federal Advertising

Requirements

There are several important federal regulations that govern the advertising of leases and credit. Dealers, their advertising agencies and others responsible for the content of dealer ads should be familiar with these regulations. However, dealers are ultimately responsible for ensuring that all of their ads comply with the applicable rules. If you advertise consumer leases, then your ads must comply with the rules for lease advertising found in the Consumer Leasing Act and Regulation M (“Reg M”). If you advertise consumer credit, then your ads must comply with the rules for credit advertising under the Truth in Lending Act (“TILA”) and Regulation Z (“Reg Z”). All required disclosures under Regs M and Z – not only the trigger terms, but also the required follow-on disclosures – must be made “clearly and conspicuously” to be compliant. For more information, click here. (http://www.nada.org/regulatory_affairs/news/Featured+Stories/CreditAdvertReminder.htm)

Do-Not-Call Fees Increased

The Federal Trade Commission has announced updated fees for telemarketers accessing phone numbers on the National Do Not Call Registry. Beginning Oct. 1, 2011, and ending Sept. 30, 2012, telemarketers will pay \$56, an increase of \$1, for access to the DNC Registry phone numbers in a single area code, up to a maximum charge of \$15,503 for all area codes nationwide, an increase from the previous maximum of \$15,058. (<http://www.ftc.gov/opa/2011/08/telemarketing.shtm>)

IRS Issues Estate Tax Guidance

In late 2010, Congress passed the “Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010,” which reinstated the estate tax retroactively to the beginning of 2010. For people who died in 2010, it included a provision that permits their executors to opt out of estate tax and apply the carryover basis rules that applied before the estate tax returned. The IRS recently issued guidance on this procedure, in the form of two publications: Notice 2011-66 (http://www.irs.gov/irb/2011-35_IRB/ar09.html), which establishes the timing and manner of the election, and Revenue Procedure 2011-41 (http://www.irs.gov/irb/2011-35_IRB/ar10.html), which provides guidelines on allocating basis increases among assets under the carryover basis rules.

In other NADA news...

Families of 9/11 Thank NADA Foundation for Scholarships

Scholarship America recently held an emotional “Evening of Remembrance” in New York to thank donors – including Bob



**Chuck Eddy,
Ohio NADA Director**

NADA News

continued on Page 11

Safety Programs That Make Sense

The seminar will be held in one location, centrally located in Columbus.

Registration begins at 8:00 a.m.

The seminar will begin at 8:30 a.m., and conclude at noon. Registration fee for members is \$95.00 per person, and \$225 per person for non-members.

Wednesday, November 16, 2011

Embassy Suites Dublin

5100 Upper Metro Place, Dublin

This program meets BWC's mandatory 2 hour safety training requirement for any employer who is participating in a group rating program and who has had a claim from January 1, 2009 through December 31, 2010.

Sometimes, good businesses make bad decisions. Take, for example the case of the **Illinois dealership that received \$49,000 in fines for common OSHA violations**. Small businesses are especially vulnerable to bad decisions in using substandard safety processes and systems. During a recent OSHA visit, a used car dealership in Urbana, Illinois learned the value of investing in safe operating conditions that hard way, as it was fined \$49,000 for a combination of 14 safety and 6 health violations.

On the list of violations are seven of the top ten most commonly cited dealership violations by OSHA in 2010 and are things to watch for at any dealership facility. Here is the list of citations from Bill Smith Auto Parts, Inc. *Safety violations Included:*

- failed to take basic precautions such as installing machine guarding
- properly maintaining powered industrial trucks;
- ensuring the proper storage of potentially hazardous materials;
- lack of guarding on open-sided floors;
- a lack of a work rest on grinder machinery;
- failing to properly store compressed gas cylinders;
- modifying powered industrial trucks for noncertified uses;
- not providing guarding on pulleys and other equipment lower than 7 feet from the floor to prevent struck-by hazards;
- not removing damaged cords and electrical equipment from use.

Five Serious Health Violations Included:

- failing to have a written respirator program;
- develop and implement a hazardous communications program;

- mark hazardous material containers properly;
- have material safety data sheets (MSDS) available for hazardous materials in use and conduct hazardous chemical training.

Are you prepared if an OSHA inspector knocks on your door? Concerned about your employees well-being? Do you want to implement procedures to control workers' compensation costs?

Where do you start? OADA in conjunction with KPA, the largest provider of safety and environmental compliance services for dealers in the country will be offering this valuable seminar outlining the basic requirements of a safety program in the dealership setting.

We will cover both the pressing requirements and the upcoming changes:

- Did you know OSHA has proposed a rule change that would require car dealers to post OSHA 300 logs? Learn what this proposed requirement would mean
- Did you know Hybrid safety kits have an expiration date?
- Have you ever heard of Methylene Chloride? Do you know its dangers?
- Do you know the five most frequent citations for hoists that you will undoubtedly find at your dealership?
- Are you up to speed on the dealership's responsibilities related to Personal Protective Equipment (PPE) for your employees?
- Many of the fluids your technicians drain, fill or dispose of are highly flammable. Learn how to best protect your employees and dealership property from flash fires.
- How often do the various areas within the dealership need to be inspected?
- The elements of "Right to Know" and Emergency Response.
- Common OSHA violations

If you have additional questions, please contact DeAnna Zahniser at (800) 686-9100 x109. Register today!

Registration Form Safety Programs that Make Sense

Registrant

Name (s) _____

Dealership Name _____

Risk No. _____

Address, City, State & Zip _____

Telephone () _____

Fax () _____

E-mail _____

Payment: Check No. _____

Credit Card: Visa/MC # _____

sec. code _____

exp. _____

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.

Mallon of the National Automobile Dealers Charitable Foundation – that contributed \$1 million or more to support the educational needs of the September 11 families. Lauren Segel, the president of Scholarship America, said the event was organized at the request of the families who wanted to publicly thank “those who contributed so much and so meaningfully in the dark days following the September 11 tragedy.” Immediately following the 9/11 attacks, the NADA Foundation created the Survivors Relief Fund and launched a national fundraising campaign. In a matter of weeks, dealers contributed \$1.6 million, making it one of the most successful charitable campaigns since the Foundation’s inception in 1975. More than 3,000 students could qualify for scholarship aid through 2030, the year the last of the 9/11 students will be eligible for university.

NADA, ATD Using Technology to Enhance Convention Experience

The NADA-ATD Convention and Expo will feature several enhancements to dealers’ convention experience, including:

- A NADA Convention and Expo Smartphone App that will put the entire convention website at your fingertips
- Interactive displays throughout the convention center that will allow you to search for workshops, franchise meetings and exhibitors using a quick and easy touch screen
- A Social Connection Zone featuring a high-end lounge with a social media wall, comfy chairs, coffee, free wireless Internet and recharging stations
- MyNADAPlanner, the convention tool that allows you to select workshops, note times of franchise meetings, schedule meetings with exhibitors and create a road map to the convention before even leaving the dealership

Convention registration is brisk, with five hotels already sold out. Register today at www.nadaconventionandexpo.org.

NADART Answers Questions about New DOL Policy on Electronic Disclosures

A new Department of Labor (DOL) policy allows for broader use of electronic disclosures to satisfy participant fee disclosure regulations in 401(k) and other retirement

plans. It is based on feedback received from retirement plan sponsors (i.e., employers), plan administrators and other interested parties. The policy should benefit not only plan sponsors (since electronic disclosures cost less to produce and distribute) but participants as well, as they will have more timely access to these documents. This interim policy, outlined in a seven-page document called Technical Release 2011-03, can be downloaded from the DOL website www.dol.gov/ebsa/newsroom/2011/ebsa091311.html.

The DOL does not dictate a specific method of delivery, but requires that the communication is secure and offers examples such as “a continuous-access website” or e-mail. The DOL also recommends that retirement plan sponsors have some way of obtaining and regularly updating their participants’ e-mail addresses. Participants who still want paper copies of the disclosures should be able to request them, free of charge.

NADA Retirement Administrators, Inc. (NADART) works closely with its plan sponsors and their retirement plan needs, which includes the means to distribute and access plan-related documents and disclosures electronically. For example, its secure website offers plan sponsors and participants access to electronic documents and other online resources. NADART also allows participants to select electronic or paper delivery. Questions about this DOL policy, participant disclosures or the impact it may have on your retirement plan, can be directed to NADART at 800.462.3278 or nadart@nada.org.

Boost Service Department Profits with NADA’s Atwood

NADA University Instructor Bob Atwood will share profit-building ideas and management techniques during a week-long seminar Oct. 31-Nov. 4 at NADA headquarters in McLean, Va. Atwood will help participants review and analyze their service department’s performance from every possible angle, including repair order analysis, profit-centering, warranty management, proficiency assessment, production techniques, scheduling and loading, legal requirements and much more. Space is limited. Call 800.557.6232 or sign in to www.NADAuniversity.com and register through the NADA U Store.

NADA U Launches Drive to Help Members Sign In and Sign Up

Not all NADA and ATD members have activated their free NADA University

accounts to access membership benefits like Driven management guides, online courses and MarketINSIGHT webinars. So NADA U is initiating a campaign to help members sign in, sign up all your employees and take a quick personal tour. The effort includes a calling campaign, direct mail and a new how-to video. NADA U also is offering a special incentive: members who call 800.557.6232 to participate in a telephone demo will receive a NADA online course of their choice free (a \$199 value).

20 Group Sees Uptick in Requests for In-Dealership Consulting

NADA 20 Group reports an increase in dealer requests for in-dealership consulting, with many dealers targeting specific areas of operations, such as sales training and service and parts sales. Dealers who’ve taken advantage of this 20 group service report noted improvement in their operations. “There’s nothing as effective as having an expert come to your dealership, examine your operations and talk to your people,” says Dave Allen, senior director of NADA 20 Group. For more information, call Allen at 703.821.7214 or Diane Carnovsky, 20 Group sales manager, at 703.749.4744.

NADA 20 Groups for Fixed Ops Managers Meeting in a City Near You—Controllers/CFO Groups Now Forming

NADA 20 Groups for Fixed Ops Managers focus on service, parts, and body shops 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. Call Diane Carnovsky, 20 Group sales manager, at 703.749.4744, to reserve a spot in one of the following meetings:

- Chrysler: Nov. 13-15 (Chicago)
- Ford: Jan. 11-13 (Scottsdale)
- GM: 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) ■

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