U.S. DEPARTMENT OF LABOR ZEROES IN ON DEALERSHIPS FOR MINIMUM WAGE COMPLIANCE

In recent months, the U.S. Department of Labor has been actively auditing dealerships for compliance with minimum wage laws. In some cases, these minimum wage audits are also conducted by state agencies. After many years of reduced numbers of audits on this matter, the agency has indicated it is receiving an increased number of complaints from employees and is finding more dealerships out of compliance with minimum wage laws.

The area of greatest concern in these audits is adequate recordkeeping to demonstrate the number of hours employees work and then ensuring that they have been paid for all of the hours actually worked. This lack of recordkeeping has resulted in fines being levied against dealerships, which, in some cases, have been substantial.

Any dispute can be appealed, but, in general, the agency's response has been negative unless it can be proven that an employee was not actually working during the period in question.

To ensure your compliance with minimum wage laws, it is important to have a wage and hour plan in place. First, accurate records of employees' actual hours worked must be kept in order to avoid the imposition of fines.

The rules do not require a time clock—simple handwritten time sheets signed by the employee each week will suffice. However, a time clock is typically more accurate in accounting for the time employees actually work. If there are any adjustments to the time reflected, the employee and employer should initial them before the payroll is completed.

Secondly, the pay periods—or the settlement periods—need to coincide with the actual payroll dates. In other words, if a company pays sales personnel weekly, but settles with employees monthly for purposes of calculating the minimum wages owed to each salesperson, the company will likely be found to be non-compliant with the minimum wage laws.

To demonstrate this, let's consider an example:

John works 50 hours each week during the month of February (exactly four weeks). John doesn't sell any vehicles the first week of the month and does not receive a paycheck. John sells three vehicles the second week and receives a paycheck for $375. He sells two vehicles the third week receiving $490 in commissions and finishes strong the fourth week with seven deals, receiving $2,135 in commissions.

Sally, the office manager, calculates John's minimum wage comparison as follows:

- 200 hours X $5.15/hr = $1,030 – (Minimum wage required per calculation)

- *$375 + $490 + $2,135 = $3,000 – (Actual commissions paid)*

Sally determines that John has exceeded his minimum wage requirement and does not pay any additional sums to John for minimum wage as a result.

However, Sally's settlement period used here does not coincide with the actual pay calendar. As a result, the calculation will be found deficient under the minimum wage laws. The pay calendar for commissions is weekly, and the settlement period for determining minimum wage is monthly. The correct settlement period must also be weekly. Consequently, John is owed a paycheck for the first week of February in the amount of $257.50 to satisfy minimum wage requirements.

The law does not require the settlement period be one week in length—it could be longer. However, it is the most convenient interval and helps prevent mistakes such as the example above while ensuring each salesperson has been paid appropriately. Additionally, this matching of pay calendars to settlement periods does not prevent a dealer from reducing a salesperson's subsequent commission compensation by an amount equal to the shortfall between minimum wage and commissions earned in a prior period. This would be the case as long as the employee is paid at least minimum wage for hours worked in each and every settlement period.

Auto Team America can provide additional assistance to your dealership personnel in wage and hour compliance and can assist in evaluating your company's existing compliance efforts and their effectiveness. For further information, contact your Auto Team America firm.

NOT SURE HOW LONG TO KEEP YOUR DEALERSHIP RECORDS?

Call your Auto Team America firm to ask for a Record Retention checklist.

AS PREMIUMS INCREASE, REVIEW YOUR INSURANCE OPTIONS

It never fails. For years you have paid your insurance premiums without complaint and without significant claims. The insurance company was more than happy to cash your premium checks and insure you against potential losses.

But last year was different. Last year, a technician had an accident in the shop—or the pipes froze and caused severe water damage to your building. In addition, the stock market dropped in value. All of these factors can add up to a huge increase in your insurance premiums for this year.

Aside from writing a bigger check this year, what alternatives do you have? Actually, you have many other insurance options.

The first option is to *self-insure*, which can have many forms. The first—and simplest—is to carry no insurance, but this is also the most risky. It would certainly save you money in premium reduction up front, but if you were to have a serious event occur, the dealership would be on the hook for all of the costs and losses.

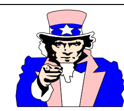
Another form of self-insurance is the *risk retention group*. Under this type of arrangement, your company becomes a member of a group of similar companies that pool their premiums and share in each other's losses. The risk with this self-insurance is obvious. If you are diligent about your own risk management and loss control, you will still be at the mercy of others who may not be as diligent.

An *umbrella policy* would cover the dealership for losses that exceed a certain amount. Combined with the *no insurance* option mentioned above, this can be an effective method of limiting a dealership's potential exposure.

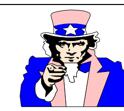
The last form of self-insurance is *captive insurance*, which has many potential benefits. A dealership can set up a captive insurance company much in the same way they establish reinsurance companies. It is established as a separate entity from the dealership to insure the risks of the dealership.

The dealership pays premiums to the captive insurance company, which establishes reserves, invests premiums, earns investment income, pays claims, and generally operates in the same manner as a traditional insurance company. The benefit is that the net earnings of the captive company stay with the captive company.

There are obviously many alternatives to traditional insurance that are available to dealers. This article briefly describes a few of them and it is not intended to be all encompassing. For further information on these alternatives, contact your Auto Team America firm.



Tax Tip



VANS, TRUCKS EXCLUDED FROM DEPRECIATION LIMITS ON LUXURY VEHICLES

On June 23, 2004, the IRS finalized regulations to exclude trucks and vans that "qualify as non-personal use vehicles" from the depreciation limits on luxury vehicles. This exclusion is available to vehicles placed in service before the effective date of June 25, 2004.

The tax code Section 280F(a) imposes annual dollar limitations on the depreciation deduction allowable for passenger automobiles. This new regulation will no longer place these limitations on vans, light duty trucks, or any specially modified vehicle used in a taxpayer's trade or business, and which is unlikely to be used more than a de minimus amount for personal purposes.

The final regulations provide that the exclusion is also available for vehicles placed in service before the effective date. Taxpayers wishing to take advantage of this new regulation may file amended federal tax returns before the end of 2004 for open taxable years treating the vehicle as property not subject to annual depreciation limits imposed by code Section 280F(a) or may treat the change as a change in method of accounting by filing a Form 3115, "Application for Change in Accounting Method".