

## FAIRPAY RULE ESTABLISHES NEW REGULATIONS ON OVERTIME EXEMPTIONS

The FairPay rule, recently issued by the U.S. Department of Labor, amends the “white collar” minimum wage and overtime exemptions. Generally, the new regulations preserve the main categories or types of overtime exemptions—executive, administrative and professionals. To be exempt, employees must meet specific job duties *and* receive a minimum salary or guarantee of \$455 per week.

Commission employees must receive at least one and one-half times minimum wage per

hour worked; receive over half their total compensation from commissions on goods and services; and be employed by a dealership with no less than 75 percent of gross sales at retail.

*To qualify for the executive employee exemption, all of the following tests must be met:*

- The employee must be compensated on a salary basis at a rate not less than \$455 per week;
- The employee’s primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more

other full-time employees or their equivalent; and

- The employee must have the authority to hire or fire other employees; or the employee’s suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

This exemption generally applies to dealers and dealership department managers.

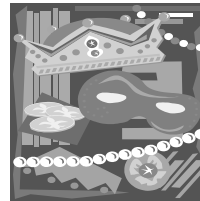
*To qualify for the administrative employee exemption, all of the following tests must be met:*

- The employee must be compensated on a salary or fee basis at a rate not less than \$455 per week;
- The employee’s primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the dealership or its customers; and
- The employee’s primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

This exemption typically applies to dealership assistant department managers, office managers, human resource personnel and others involved in the exercise of discretion and independent judgment with respect to matters of

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### **What you will learn...**

- The recent consumer affairs federal regulations impacting dealership operations.
- The current concerns with the escalation of consumer litigation.
- The latest developments in information safeguarding, Fair Credit Reporting, and financial privacy affecting dealerships.

Watch your mail for registration information or contact your ATA firm to receive an invitation.

significance. However, this exemption generally does not apply to clerical positions. In dealerships, clerical staff paid on an hourly basis should *continue* to be eligible for overtime pay.

*To qualify for the learned professional employee exemption, all of the following tests must be met:*

- The employee must be compensated on a salary or fee basis at a rate not less than \$455 per week;
- The employee's primary duty must be the performance of work requiring advanced knowledge in a field of science or learning, customarily acquired by a prolonged course of specialized intellectual instruction.

This typically applies to in-house attorneys and accountants, but not clerks or bookkeepers.

For overtime exemptions to be applied to certain employees, they must use discretion and independent judgment with respect to matters of significance while performing their job duties. It is important for dealerships to include this in the job duties and written descriptions of these exempted employees.

For further guidance with the new regulations on overtime exemptions, contact your local Auto Team America firm.



### QUICK CHECK

*Have you reviewed your computer security guidelines recently?*

- Make sure your dealership employees have access to the applications that they need and *only* those applications.
- Each employee should have their own password.
- It should be required that passwords be changed often.

## HOW CANADIAN USED VEHICLE PRICES CAN IMPACT U.S. PRICES

Believe it or not, the price of used cars and trucks in parts of Canada can have a significant impact on selected United States markets. Prior to 2004, exporting vehicles from Canada into selected United States markets was big business for Canadian dealers. This market was driven by three factors:

- 1) The exchange rate between the Canadian and U.S. dollars prior to Spring 2003;
- 2) The Canadian pricing policies of the three Detroit based manufacturers; and
- 3) The fleet sales policies of those same three Detroit based manufacturers.

These three factors—combined with a Canadian lease penetration factor that in the late 90's reached percentages far higher than in the United States—led to a seemingly unlimited availability of certain types of vehicles to Western Canadian dealers. In 2001 and 2002, it looked as if there was an unlimited supply of diesel pickup trucks available to GM, Ford and Chrysler dealers in Western Canada.

The combination of all these factors created a market where Canadian dealers may not have been as careful and prudent as they should have been when giving trade-in values for many types of used vehicles. The export market was strong, the Canadian dollar was weak, and every dealer knew that their friendly broker would be calling on them in the next few days. Vehicles that were overvalued for their local market could be shipped south to the U.S. In many cases, significant profits could be generated from these wholesale activities.

In fact, some Canadian dealers



## Tax Tip

### IRS REQUIRES REGISTERED OR CERTIFIED MAIL AS PROOF OF DELIVERY

On Sept. 20, 2004, the Internal Revenue Service proposed rules to provide that a registered or certified mail receipt is the only evidence of delivery of documents that have a filing deadline as prescribed by the internal revenue laws.

Other than direct proof of actual delivery, the proposed rules clarify that the exclusive means to establish prima facie evidence of delivery of federal tax documents is to prove the use of registered or certified mail.

The IRS added that it currently accepts only a registered or certified mail to establish a presumption of delivery if IRS has no record of ever having received the document in question. Accordingly, the proposed regulations clarify and confirm current IRS practice under the existing regulations. Therefore, whenever mailing documents to IRS or Tax Court close to their due date, it is best to document the mailing via registered or certified mail.

The IRS said that it may extend to a private delivery service a rule similar to the prima facie evidence of delivery rule applicable to registered and certified mail but that to date no comments or suggestions for extending the rule have been received.

in strong truck markets leased diesel pickups and other medium duty trucks for six or nine months, brought them back, and then exported the vehicles for significant profits. They were sweetening the deal for their lease customers by sharing part of their profits on export. This allowed many lease customers to have the use of these vehicles for six months at a time with monthly costs of less than \$200.

This all changed in early 2003. The Canadian dollar increased in value by nearly 18% in a period of approximately five months, manufacturers took a closer look at nearly new vehicles being exported, and the market for used vehicles in Canada has strengthened.

The market in Canada has strengthened because of a decline in the number of vehicles being leased, which are then returned to the manufacturers at the end of

two or three years. In addition, dealers are becoming more realistic with their residual numbers because the export solution no longer exists.

As a result, fewer vehicles are now being exported to the American market and those that are being exported have a higher cost. This shows how the Canadian used vehicle market has affected the price of used vehicles in the United States over the past several years.



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