

Ask Fisher & Phillips: Our Top 10 Questions from Dealers (Part One)

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Our Dealership Practice Group represents thousands of dealerships all across the country, from large consolidators to regional groups to single dealerships. Because we have worked so closely with so many dealerships for so many years, we have acquired an in-depth understanding of dealership operations as well as a wealth of practical experience in dealing with dealers' unique labor and employment issues.

In the next few editions of "Ask Fisher & Phillips," we will provide answers to the top ten questions we've received from dealers over the last year. These questions are not unique to any one dealership or to the year 2014. We hope that by providing this information, your dealership will be better equipped to manage employees in 2015 and improve your Employee Satisfaction Index (ESI) score for the new year.

1. Can We Prohibit Employees from "Gossiping" About Their Pay?

QUESTION:

If we have employees discussing pay, can we write them up?

ANSWER:

The National Labor Relations Act (NLRA) permits employees to discuss the terms and conditions of their employment, including what they are paid and how much they (and others) make. This applies whether the employees are union or non-union. As a result, you cannot take any action whatsoever against employees for discussing their pay. If your handbook or any other employment policies prohibit employees from discussing their pay, this would be a good time to think about revising your policies. The NLRB has been closely scrutinizing employment policies for their compliance with the NLRA, and has issued citations and fines against several employers for maintaining unlawful policies, including policies that prohibit employees from discussing their pay.

2. Do You See How They Dress These Days?!?

QUESTION:

I am planning to update our current dress code policy and want to touch on tattoos and piercings. I realize this a sensitive subject so I'm looking for advice on proper verbiage. What is the best way to tackle this?

ANSWER:

In reality, you have quite a bit of freedom in how you draft and implement your dress code policy. The only rule is not to make absolute restrictions and to allow for exceptions based on disability and religion. Other than that, you can set different standards for different departments,

and can even set different standards for men and women (provided they generally conform to what is acceptable dress for a man or a woman).

3. How Do We Make Our Employees Do Their Jobs?

QUESTION:

We have been having some issues with our sales team not wanting to participate in sales events and advertising events. This has never come up before. Are we able to add a policy or update the job descriptions stating they will participate in all sales and advertising events?

ANSWER:

You do not have to update your policies or job descriptions, although you are certainly free to do so. The bottom line is that as employees of the dealership, they must do anything you ask them to do unless they believe that it would violate a law or create a safety risk. That is not the case here, so you can simply require that they attend advertising or other events. If they refuse to attend, you may treat it as an unexcused absence or act of insubordination and write them up. They would then be subject to the normal disciplinary process, up to and including termination. Of course, if the employee is not exempt from minimum wage, you would be required to track any additional hours worked and ensure that the employee received at least the minimum wage for such time.