

The Top 5 New Year's Resolutions for Your Dealership

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By [Matthew Simpson](#)

Given the hectic pace of work at dealerships, employment matters sometimes fall to the back of a dealership's "to-do" list. Too often, the end result is expensive, embarrassing, and often unnecessary discrimination charges and lawsuits.

Fortunately, employment claims and lawsuits are *not* an inevitable part of the dealership business. We know from experience that a dealership can reduce its exposure to employee claims by taking a few basic steps.

Here are the top five areas which regularly give rise to employee problems along with an explanation of what you need to do to prevent issues from arising. You don't have to do everything at once. Try tackling one or two items per quarter throughout 2015 so that a year from now, you will have eliminated the most common sources of employment problems facing dealers.

1. Update your Employee Handbook: Over the years, most dealers have come to recognize that adopting a well-drafted employee handbook is a good idea which will protect them from a wide range of employee-related problems. However, we find that, at many dealerships, once the handbook is printed and distributed, no one gives it another thought. As a result, the handbook gradually grows old and no longer reflects the dealership's actual policies, or worse, does not contain important new policies such as a Social Media or Bring Your Own Device Policy. Like all business documents, handbooks need to be reviewed at least every few years and revised as necessary to keep up with the latest challenges.

2. Clean up your new employee package: Many dealerships have new employees sign a stack of policies and memos along with the handbook during their orientation. In many cases, the policies were adopted years before on an *ad hoc* basis. Often these policies are out-of-date or even conflict with the employee handbook or with other policies. While a number of documents such as W-2s, I-9s, and insurance forms must actually be signed by the employee, many of these individual policies can and should be included in the handbook. One signature at the back of the handbook is just as binding as a signature at the bottom of each separate policy.

3. Check on your dealership's wage and hour compliance: In the last six months, we have seen a rash of wage-hour class action lawsuits alleging that dealerships are not accurately recording their salespersons' hours worked and are thus depriving them of all compensation owed. A quick wage and hour audit will ensure that you are paying everyone properly and not running up a large back-wage liability for your dealership.

Dealers are also vulnerable to contract and wage payment claims. Over the last few years, we have seen a flood of litigation against dealerships involving the wording of their sales pay plans. Typically, the dealer has agreed to pay “25% of gross profit” but does not clearly explain what calculations go into determining the amount on which commissions will be calculated. This vagueness can allow a plaintiff’s attorney to drag the dealer in front of a jury and seek back pay for every salesperson going back as far as six years. Many state laws also provide for liquidated damages and attorneys’ fees if an employer fails to pay “all wages due.”

Many dealers continue to put off these kinds of wage-hour matters because they are somewhat complicated and the dealers don’t want to face paying additional compensation. However, the reality is that dealers can usually comply with these laws without paying employees any additional money by simply adjusting the employee’s duties or adjusting the employee’s pay plan.

4. Consider adopting an arbitration policy for employee disputes: Arbitration gives a dealer an alternative to going before a jury of an employee’s peers. While it is not a substitute for good management practices or a solution to every employment problem, it does provide an effective alternative to our slow and expensive court system. All things considered, we believe that arbitration is a good idea for most dealerships.

5. Train your managers: Many discrimination charges and lawsuits are the direct result of an untrained manager acting inappropriately or failing to act when he or she should have acted. Dealers can be held legally liable for the conduct of any individual they place in a supervisory position, even if the individual’s acts are contrary to the employer’s policies. As a result, more and more dealers are realizing that the first – and probably most important - step in avoiding employment-related claims is to make sure that all of their managers receive some training in employment law. We recommend that managers be trained in all of the following critical areas:

- How to properly screen and hire
- How to deal with applicants and employees with criminal records
- How to deal with drug use and testing
- How to deal with harassment problems
- How to deal with religious issues
- How to deal with employee medical problems and the FMLA
- How to properly counsel poor performers
- How to properly terminate an employee

Managers must be a part of the solution, not a part of the problem. Serious management training is the first step in accomplishing this.

For more information, contact the author at MSimpson@laborlawyers.com or (404) 231-1400.