

NEWS BULLETIN

Maine Automobile Dealers Association

180 Civic Center Drive
DIAL 623-3882

P. O. Box 2667

e-mail:info@maineautodealers.com

Augusta, Maine 04338-2667

FAX 623-2318

2011-19

NEW LABOR LAW POSTERS TO BE DISTRIBUTED

At our Fall Regional Meetings, MADA will be distributing to each member present updated Labor Law posters which incorporate State and Federal requirements under general labor law as well as USERRA law requirements affecting military personnel, and the new National Labor Relations Board poster. With respect to this latter requirement, which must be displayed as of November 14, 2011, there is an effort underway in Washington to eliminate that obligation. However, as the law now stands, this poster must be displayed no later than November 14, 2011. We expect that we will have updated information relative to the efforts to repeal this obligation when we meet with you during this regional meeting tour.

NADA CHALLENGES FTC RISK-BASED PRICING INTERPRETATION

On September 22, 2011, NADA filed a legal action challenging a recent Federal Trade Commission interpretation concerning whether certain dealers are covered by section 311 of the FACT Act (which the federal Risk-Based Pricing Rule implements) and thus must issue either a Risk-Based Pricing Notice or a Credit Score Disclosure Exception Notice as required by the Risk-Based Pricing Rule. The action was brought in the U.S. District Court for the District of Columbia.

In order to be covered by section 311, initial creditors must, among other things, "use" a credit report. NADA had argued to the FTC that dealers in three-party financing transactions who do not order, obtain, or otherwise review a credit report as part of the credit application or extension process do not "use" a credit report and thus fall outside the scope of section 311. The FTC issued an interpretation on July 15, 2011 that rejects this argument and generally concludes that such dealers "use" a credit report based on the use of a credit report by the finance source that underwrites and approves the consumer's credit application and takes assignment of the financing contract from the dealer. Even though, in three-party financing transactions, neither the dealer nor the finance source acts as an agent (or on behalf) of the other, the FTC interpretation concludes, in part, that the finance source acts "at the behest of the automobile dealer" and does not obtain and use the credit report "independently of the automobile dealer".

The FTC interpretation has the practical effect of requiring dealers who do not otherwise obtain credit scores to do so for the sole purpose of being able to complete the notice that must be delivered to consumers. This can be very costly, and it requires these dealers to access sensitive customer information which, if compromised, could result in identity theft. Because NADA believes the FTC interpretation is inconsistent with section 311 and adversely affects the dealers to whom it applies and their customers, NADA has initiated this legal challenge.

OSHA GRANTS 30-DAY EXTENSION ON RECORDKEEPING RULE

At NADA's request, OSHA is extending, for 30 days, the current deadline for comments on a proposal to modify its injury and illness recordkeeping and recording rule. The extension will allow for more time to review underlying Bureau of Labor Statistics data. As proposed, the rule would eliminate a 30-year-old exemption for automobile dealers from keeping OSHA's Form 300, the log of employee injuries and illnesses most businesses must fill out annually. Currently, dealerships are only required to complete the OSHA Form 300 if they are notified, in advance, that their business has been randomly selected for the forthcoming calendar year as part of a sample of otherwise exempt businesses. Requiring dealerships to complete Form 300 would impose considerable burdens with little or no worker health and safety benefit. NADA intends to file comments by the new deadline.

EMPLOYEE HANDBOOKS - HOLD THE PRESSES

If your dealership utilizes an employee handbook to inform your personnel about dealership policies, there is at least one change you must consider in your next edition. The Maine Legislature this year amended the law with respect to some citizens rights to bring firearms to the worksite. Under previous Maine law, or up to September 28, 2011, the employer could determine company policy with respect to firearms on company property. The Legislature changed that ability. This new law prohibits Maine employers from banning concealed guns in vehicles on workplace property. This law states that an employer may not prohibit an employee from keeping a firearm in his/her vehicle, if:

- the employee has a valid permit to carry a concealed firearm;
- the firearm is kept in the employee's vehicle and is not visible; and
- the vehicle is locked.

The law change provides employers immunity from liability for any damages, injury or death involving the use or theft of a firearm that has been transported and stored on the premises as permitted by this new law.

Many employers have written policies that prohibit employees from bringing any weapons on workplace premises. Because employers can no longer prohibit employees from keeping concealed weapons in locked vehicles on company premises, employers with such policies will have to review and revise them to make sure they are consistent with this new law. However, because the law addresses only concealed firearms kept in a vehicle, **it does not affect employers' rights to ban employees from carrying weapons into work, or from having any weapons other than concealed firearms (with a valid permit) anywhere on workplace premises.** Additionally, by its own terms, the law does not require an employer to authorize an employee to carry a firearm in a place where carrying a firearm is otherwise prohibited by law.

GOVERNOR LEPAGE INVITES YOUR THOUGHTS

MADA has recently been invited to participate in Governor Paul LePage's Workshops on Job Creation, a series of gatherings around the State. The Governor aims to focus the mission of state government to do whatever it can to ensure that Maine businesses succeed, grow, and create more and better-paying jobs for Maine Citizens. Please respond to MADA's dealership survey on this subject, to arrive shortly.