



Helping You Drive Vermont's Economy

Vermont Vehicle and Automotive Distributors Association

WEEKLY DRIVETRAIN

Latest regulatory reminders, state requirements & industry happenings

August 9, 2021

Greetings



FTC Obtains \$450,000 Settlement from Dealership Owner for Alleged Financing Scheme

The Federal Trade Commission (FTC) reached a \$450,000 settlement agreement with the owner-manager of a dealership group in Arizona and New Mexico to resolve allegations that the owner and his dealerships deceived consumers and falsified

information on vehicle financing applications.

Notably, this agreement follows an [earlier settlement](#) to cease business operations of the owner's four dealership entities. According to the FTC, the owner "formulated, directed, controlled, had the authority to control or participated in" the dealerships' illegal conduct. This settlement concludes the FTC's [August 2018 case](#) alleging that the dealership falsified consumers' income and down payment information to get vehicles financed and engaged in unlawful advertising.

This action underscores the FTC's intention to hold dealer owners -- as well as the dealership entities themselves -- responsible for alleged unlawful behavior, and it further highlights the need for dealers to conduct robust training and oversight of

their finance operations.

View the FTC's full press release [here](#).



CDC Updates Masking Guidance

The Centers for Disease Control and Prevention (CDC) has updated its recent guidance which said that fully vaccinated individuals would no longer need to wear a mask.

The new recommendation says that fully vaccinated individuals should "wear a mask in public indoor settings in areas of substantial transmission." Unvaccinated individuals should always wear masks.

The CDC added that fully vaccinated people who have known exposure to someone with a suspected or confirmed case of COVID-19 should be tested 3-5 days after the exposure and wear a mask in public indoor settings for 14 days or until they receive a negative test result. Vaccinated people should isolate if they have tested positive for COVID-19 in the prior 10 days or are experiencing COVID-19 symptoms.

The agency said that current data suggests that transmission of COVID-19 in outdoor settings is unlikely and that vaccinated individuals generally do not need to wear a mask unless it is crowded or if they have someone in their household who is immunocompromised.

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Vaccinations and Masks in the Dealerships: What's Old Is New Again

The CDC's recent recommendation that people in geographic areas with substantial



or high COVID transmission rates wear masks indoors, regardless of vaccination status, has added a new wrinkle in the already challenging world of vaccinations and mask wearing for dealerships across the country. Although the CDC's recommendations standing alone are not legal requirements, federal workplace safety authorities (OSHA), workplace bias policymakers (EEOC), and other government agencies often rely on these

guidelines for establishing and determining compliance with legal obligations and requirements. It remains to be seen what actions these government agencies will take based on the CDC's recent recommendation that would force dealerships into action.

With the surge in COVID-19 infections due in large part to the highly transmissible Delta variant that is the basis of the CDC's recent recommendation, and indications that unvaccinated persons are at a higher risk of contracting and thus transmitting the Delta variant, many dealerships are revisiting their employee vaccination and mask-wearing policies and requirements. Often reluctantly, many dealerships are contemplating less of a "carrot" and more of a "stick" approach to getting their employee vaccination numbers up. For those contemplating their next move, the following information addresses some of the common vaccinated-related questions.

Can you ask your employees if they are fully vaccinated? Yes. The question should be framed in a simple "yes" or "no" format preceded by a "warning" to the employee that you do not need or want any additional information from the employee. Eliciting information about possible medical conditions would invoke federal and state disability laws.

Can you ask why an employee is not vaccinated? Yes, **but only** when the questions are "job-related and consistent with business necessity." The EEOC has said that an employer meets this standard if it has a reasonable belief, based on objective evidence, that an employee who is not vaccinated would pose a direct threat to their health or the health of others. This can be a complex and challenging hurdle to clear based on individual facts and circumstances and could create legal risks for the dealership. We strongly recommend that you seek legal counsel **before** making these inquiries.

Can you require your employees to show proof they have been fully vaccinated? Yes. If you require proof of vaccination, you should ask the employee

to present documentation for inspection, showing manufacturer of the vaccine, the provider who administered it, and the date(s) of administration. To avoid potential legal issues related to this process, you should not make additional inquiries beyond your request to provide the documentation with first conferring with counsel. In most situations, you should affirmatively inform employees that they do need to nor should they, provide any additional personal or family medical information. If you believe that you need more information than the documentation described, we recommend that you consult with legal counsel before making the request. In all circumstances, you should treat the vaccination information as a confidential medical information.

Can you require your employees to be fully vaccinated as a condition of employment or continued employment? Generally, yes, subject to certain federal and state limitations and the terms of a collective bargaining agreement should your employees be subject to one. For example, if your dealership implements a policy that requires all employees to be vaccinated as a condition of employment, you cannot automatically refuse to hire or employ anyone or exclude employees from the workplace or certain activities if they cannot be vaccinated for certain medical or religious reasons. Rather, in those circumstances, you will be responsible to determine whether you can provide a reasonable accommodation (absent undue hardship) that would eliminate or reduce the safety risk posed by unvaccinated employees in the workplace to an acceptable level. This determination involves engaging in a flexible interactive process with the applicant or employee to determine if a reasonable accommodation exists. This process is likely to include obtaining supporting documentation about the employee's disability or religious belief and considering the possible options for accommodation given the nature of the workforce and the employee's position. You should consult legal counsel in developing the proper inquiries or a protocol for responding to requests for accommodation.

The EEOC recommends that those managers responsible for communicating with your employees about compliance with your vaccination requirement should know how to recognize an employee's accommodation request. You should also train your managers about the process they should follow to refer accommodation requests through the proper confidential channels for consideration. While the EEOC's guidance does not mention this, you should strongly consider providing details about the accommodation request procedure in writing to all your employees (whether in hard copy, electronically, or both).

Finally, the EEOC reminds employers that it is unlawful to disclose that an employee is receiving a reasonable accommodation, just as it is a violation of federal law to

retaliate against an employee for requesting an accommodation. Likewise, you should not reveal or openly identify which employees have or have not been vaccinated.

If being vaccinated is a condition of employment, do my employees have the legal right to refuse being vaccinated? Yes, under the circumstances described above, based upon certain medical or religious reasons.

Who should communicate with employees about these issues? Only employees who have been trained on how to do so, i.e., those who know what they can and cannot ask and can recognize possible requests for accommodations. In most situations, the person who handles human resources issues for the dealership will be the best choice. These communications should also be treated as confidential.

Can you require employees who are not vaccinated to wear masks if you do not require employees to be vaccinated? Yes, you can implement and enforce masking requirements, providing the above-referenced process for employees who are unable to wear a mask for medical or religious reasons. In those situations, you should engage in the interactive process described above to determine if a reasonable accommodation (that will not create an undue hardship) is available.

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Benefits of Selling Your Dealership Now Rather Than Later

6 factors that are effecting today's buy/sell market

Capital Gains and other taxes will surely increase.

Selling right now provides a chance of beating out the tax man – if retroactivity proves too hard to implement.

If you are lucky or smart, by selling your dealership in 2021 you may reap capital gains at the 20% rate and avoid the proposed nearly 40% rate of future.

Timing is always everything.

If you want to enter the race to close the sale of your dealership in 2021, remember that the average franchisor takes at least 120 days from date of submission to

approve your Buyer. That means if you don't start now, you miss the opportunity to cash out in 2021 and possibly forfeit an additional 20% of the gain you earn on a sale.

Dealership Values are higher than ever.

Prices for dealerships have never been higher and that is not going to be sustainable. Prices being paid for dealerships increased rapidly over the period of several months. While they are still quite high, when they begin to fall the change will be rapid.

Strong Qualified Buyers.

Financially strong buyers are looking for good dealerships to acquire, however the list of those capable of purchasing at today's high prices is short. For any given dealership, there are only a few ideal candidates. You need to be available when the right buyer wants you.

Consolidation is eating up independent and small cluster dealerships at a rapid rate.

There comes a time when enough of the dealerships surrounding you may have been added to other groups, making your own inconsequential and far less valuable.

Questionable Future.

Rolling the dice on politics is a dangerous game. No one expects a reversion to incentivizing businesses through lower taxes and less regulation in the current administration. Whether policies shift or stay the same, gambling on a favorable change in 4 to 8 years is not a reliable approach to get the most from your sale.

Our message is that if you believe selling now is the right step for you, acting at once is essential in order to have a chance of closing at historical high values. Starting the process now just barely provides enough time to obtain a realistic evaluation of your dealership, prepare for sale, procure the right candidate and obtain franchisor approval.

By Nancy Phillips Associates

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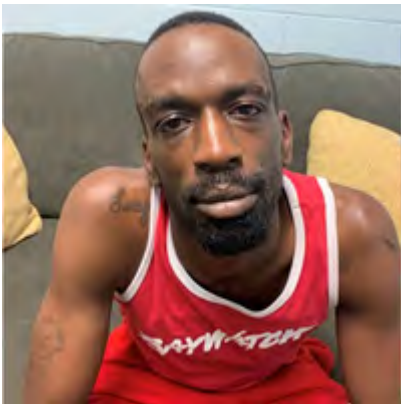
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Damaged air hoses in Fixed Operations are more than just a maintenance issue. Bulging or leaking air hoses should be replaced immediately as they can burst and throw hose material and air into the eyes or face of the user. (An eye can be blown from its socket at 30psi while most shops operate at over 140!) Not to mention the risk of a runaway hose slapping the employee in the face or a customer's

vehicle. Also, remember that hose clamps are not acceptable repairs for fittings - only allow the use of crimped ends or just replace the hose.



Fraud Alert

Detective Joseph Kropff with the US Secret Service and City of Laurel, Maryland Police Department is looking for information related to an individual suspected of purchasing at least 5 vehicles with stolen identities and has attempted at least 11 additional purchases and was denied or arrest on scene. These attempts have taken place in both

Maryland and Virginia. A flyer with additional information, including the suspect's name, photo and one example of a fraudulent ID, can be viewed [here](#). Though Maryland and Virginia are more than a few miles away, it's good to keep your employees up to date on potential scams, especially when perpetrators successfully steal five vehicles and attempt eleven more.



DOL Rescinds Joint Employer Rule

The Department of Labor has [rescinded](#) its March 2020 joint employer rule under the Fair Labor Standards Act (FLSA), effective Sept. 28, 2021. If two entities are found to be joint employers, both are jointly liable for minimum wages and overtime pay under the FLSA. Per the rescinded March 2020 rule, companies were considered joint employers of

contract and franchise workers only if they hire, fire and supervise employees, set their pay, and maintain employment records. Dealerships historically see joint

employer issues with respect to staff or services that are contracted for such as dealer exchange drivers, detailers, janitorial services, etc.

In September 2020, the U.S. District Court for the Southern District of New York vacated most of the March 2020 rule. The DOL has rescinded the 2020 rule following the court decision and a review of the congressional intent, statutory language and prior DOL guidance. Moving forward, the specific tests to determine joint employer—and the application of the facts—vary across states and court circuits. Dealerships, especially those who regularly engage independent contractors and/or other businesses to provide services, should work with their attorneys to understand the impacts to their business of this rescission. As always, actual worker and dealership practices are more relevant than what may be contractually or theoretically possible. Questions on DOL's rescission of the joint employer rule can be directed to regulatoryaffairs@nada.org.

Jeff Weber, Chairman, NADA Regulatory Affairs Committee



Industry News of Interest

Automotive Sales

Average New Car Prices Hit a Record \$41,000 in July

The number of new cars being sold is from record levels, but the prices being paid for them are the highest ever. According to the J.D. Power and LMC

Automotive, the average transaction price for a new vehicle is projected to be \$41,044 during the month of July, a 17% increase over last year. Cars are turning off dealer lots more than twice as quickly as they were in 2019, before the coronavirus pandemic began to cause issues for the industry. Used car prices have seen a similar jump..

New Vehicle Prices Set All-Time Record, With No End in Sight to Rapid Rise

New vehicle prices continued an unprecedented rise last month, the upward jump reflecting a variety of factors, including ongoing inventory shortages triggered by the pandemic and problems sourcing critical semiconductors. Prices on new vehicles are at an all-time high. The average prices of a new vehicle in June was \$42,258, according to KBB.com analysts. The typical new vehicle buyer laid out an estimated \$42,258 in June, according to Kelley Blue Book. That was up \$928 from May, and

\$2,527 – or 6.4% — from June 2020. The recent surge in pricing has been one of the most dramatic in the last half century. To put the latest surge into perspective, the typical new vehicle price was around \$36,000 at the end of 2019, according to manufacturer data.

Pandemic Reinforced OEM Brand Loyalty

The recently released J.D. Power 2021 U.S. Automotive Brand Loyalty Study found vehicle owners remain vastly loyal to their specific brands, in part due to the effects of pandemic lockdowns. With many vehicle shoppers hesitant to venture out to showrooms, they often relied on their relationship with their current dealer.

Industry Is Done With Bloated Output

U.S. automakers won't go back to bloated output and bulging dealer lots, even after the global semiconductor shortage ends, according to Mike Jackson, CEO of AutoNation, Inc. He says that overproduction and excessive inventories are "the old model" and feels automakers will pursue a new strategy going forward. Since automakers book revenue when they ship cars from factories to dealer lots, they have tended to produce more cars than the market demands, then use incentives to wheedle dealers into accepting them. But excessive incentives can eat into carmaker profits and damage vehicle brands.

Electric Vehicles

Biden Seeking Pledge for 40% of Car Sales to Be EV by 2030

The White House is negotiating to have automakers pledge that 40% or more of the vehicles they sell in the U.S. will be electric by the end of the decade, something the companies say will require the government to help promote the use of the cars. A pledge on new car sales would be significant because while some U.S. automakers have promised to convert their model lineups to electric vehicles, they haven't made any promises on volumes. Automakers are looking for support from the government in meeting those goals, such as subsidies or funding for charging infrastructure like that contained in a bill working its way through the Senate now.

Electric-Vehicle Sales Growth Outpaces Broader Industry

The auto industry's push into electric vehicles has gained traction this year with sales of these models growing at a faster clip than the broader U.S. car business. While still a sliver of the overall market, sales of plug-in vehicles more than doubled in the first half of 2021 compared with last year, when the pandemic sapped sales. That far outpaced the 29% rise for total vehicle sales, according to research firm Wards Intelligence.

Electrified Vehicle Sales Take Off in Q2 as Gas Prices Rise

According to Kelley Blue Book, pure EV purchases exceeded 100,000 for the second quarter, marking the first time that's happened. Additionally, hybrids — including plug-in hybrids — added another 250,000+ units to the electrified vehicle tally for the quarter. The demand for these vehicles is increasing as gas prices remain above the \$3 mark. AAA reported prices at the pump are 40% higher now than they were at this time last year when COVID-19-related travel restrictions were in place.

Next Step for EVs: Design Batteries to Strengthen Car, Extend Range

Automakers and battery manufacturers are racing to develop new electric-vehicle batteries that can reinforce body structures and open the door to breakthroughs in driving range. What engineers call structural batteries hold the promise of lighter weight and greater energy efficiency - resulting in driving ranges between charges that could top 600 miles.

GM Planning Electric GMC Pickup as Part of \$35 Billion EV Push

General Motors Co. is developing an electric pickup for its premium GMC truck and sport utility brand. The Detroit automaker's EV plans will accelerate later this year as a Hummer pickup and Cadillac Lyriq sport utility vehicle begin rolling off its production lines. An electric Chevy Silverado pickup also is on the way. GM stepped up its EV investment plans by 30% in June, pledging to spend \$35 billion on more than 30 plug-in vehicles by 2025 and a total of four battery plants.

Tesla

Musk: Supercharger network will charge extra for slow-charging non-Tesla EVs

Tesla CEO Elon Musk recently announced that the company would be making the Supercharger network open to other EVs later this year and provided a glimpse of how that will happen: by accelerating the growth of its charging network.

Tesla agrees to pay owners for cutting range and charging rate on some cars

Tesla has agreed to pay \$1.5 million to settle claims that it used software to cut usable battery capacity on 1,743 Model S sedans. Owners included in the lawsuit will get \$625 each, according to documents filed last week in the United States District Court in San Francisco. Filed in August 2019, the lawsuit claimed Tesla used an over-the-air (OTA) software update to limit the maximum amount to which batteries could be charged, effectively cutting range. Owners initially saw a 10%

reduction lasting about three months, then a smaller 7% reduction lasting another seven months, before full capacity was restored in March 2020.

Tesla to shift retail strategy, report says

Tesla Inc. plans to shutter some high-rent showrooms within shopping malls and instead emphasize remote work and cheaper locations, according to media reports. The electric automaker plans to rent spaces in mall parking lots, warehouses and other locations to manage test-drive fleets and delivery centers and also plans to make a large part of its retail work force remote, helping customers place orders online.

Consumer Reports Says Tesla's 'Full Self-Driving' Software Lacks Safeguards

Consumer Reports recently reported that Tesla Inc's "Full Self-Driving" software lacks safeguards and raised concerns the system's use on public roads puts the public at risk, citing reports from drivers. The publication cited videos posted on social media of drivers using it and raised concerns about issues, including "vehicles missing turns, scraping against bushes, and heading toward parked cars."

Legal & Regulatory

Biden Team Sees Chip Supply Gains, Relief Soon for Carmakers

Biden administration officials say they're starting to see signs of relief for the global semiconductor supply shortage, including commitments from manufacturers to make more automotive-grade chips for car companies that have had to idle production. U.S. Commerce Secretary Gina Raimondo has brokered a series of meetings between semiconductor manufacturers, their suppliers, and their customers, including automakers. Senior administration officials said the meetings helped ease mistrust between the sides related to the chipmakers' production and allocation and automakers' orders.

Biden Mileage Rule to Exceed Obama Climate Goal

In a major step against climate change, President Joe Biden is proposing a return to aggressive Obama-era vehicle mileage standards over five years, according to industry and government officials briefed on the plan. He's then aiming for even tougher anti-pollution rules after that to forcefully reduce greenhouse gas emissions and nudge 40% of U.S. drivers into electric vehicles by decade's end.

The 'car guy' president wants Americans to go electric

By Alex Guillen

Joe Biden's father sold cars for GM and Chrysler. As a senator, Biden was a top ally for two automakers that were major employers in Delaware. His most prized possession is a 1967 Goodwood-green Corvette Stingray. Now the self-professed “car guy” president wants Americans to make a big change in their driving habits: ditch the gasoline for electricity.

-politico



New NHTSA Publications

Impaired Driving State Landscapes/Fact Sheets

A new resource is now available on the NHTSA website, the Impaired Driving State Landscapes. These are State fact sheets on impaired driving, grouped by NHTSA region (Vermont is in Region 1). The fact sheets present statistics, trends, and countermeasure engagement for each State. [View](#)

[Vermont's fact sheet here](#) (pg. 13).

Early Estimate of Motor Vehicle Traffic Fatalities in 2020

The recently released Crash Stats report projects that an estimated 38,680 people died in motor vehicle traffic crashes during 2020. This is an increase of 7.2% compared to 2019. The estimate will be finalized later this year. [Read the official press release here.](#)



Child Passenger Safety Week

Every 32 seconds, one child under the age of 13 in a passenger vehicle is involved

in a crash. Many times, injuries and deaths can be prevented by the proper use of car seats, boosters, and seat belts.

- **Child Passenger Safety Week:** September 19-25, 2021
- **National Seat Check Saturday:** September 25, 2021

Visit the TSM website where you'll find campaign materials like sample press releases, graphics, and social media posts, for generating awareness about child car safety in your community.



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