

August 2022



Monthly Bulletin

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Chairman's Corner: Looking Forward

Fall is just around the corner, and we're looking forward to the busyness that the season brings.

July has been a very productive month at CNCDA. If you haven't already read, we achieved a HUGE milestone on the long road to overcome PAGA—the measure is now officially on the general election ballot for 2024.

Now begins the fundraising and education efforts to ensure voters understand the implications of the legislation and how we must defeat it to avoid hardship for all businesses throughout California.

As a reminder, PAGA repeals and replaces a 2004 law allowing employees to file lawsuits on behalf of themselves and other employees against employers to recover monetary penalties for certain state labor-law violations.

[To learn more about PAGA and donate to our efforts, click here.](#)

Earlier this week, we also published our California [Auto Outlook Quarterly](#) for Q2. In it, we see that consumer demand for electric vehicles remains strong, despite an uncertain current economic outlook.

Additionally, we are seeing trends that show California is slightly more insulated from a decline in vehicle registrations when compared to the rest of the country. New vehicle registrations are predicted to only decline



slightly for the remainder of 2022. And while, there is no “crystal ball” that tells us the industry's future for certain, these numbers remain promising as we look forward to the rollout of new vehicles (especially EV's) in the coming months.

Lastly, CNCDA is on a mission to have all California new car dealers join the membership (our goal is a 100% membership rate). It is only with our strength in numbers that we can affect real legislative change in Sacramento which benefits all dealers. Along with membership also comes support with compliance, legal, educational and relationship building opportunities that CNCDA offers.

If you have friendly relationships with any non-member ([Northern CA](#) or [Southern CA](#)) dealers, we would appreciate you reaching out and encouraging them to join us.

Please forward this bulletin along to show the great work we are doing on behalf of all new car dealers!

Lastly, September 1 will be the FINAL day to book your room at the Waldorf Astoria and join us at [CNCDA's 2022 Annual Convention in Laguna Niguel](#). Rooms are still available but selling fast. Please reserve your spot today. I'm looking forward to meeting other members and comparing notes for best practices moving forward. Hope to see you there!

John Oh
Lexus of Westminster
Chairman, CNCDA

\$750 ZEV Incentive to End on August 31

By: Anthony Bento, Director of Legal and Regulatory Affairs

On August 1, administrators of the Clean Fuel Reward Program (CFRP) announced that the program's reward amount (which is applied point-of-sale on qualifying zero and near-zero emission vehicle transactions) is being "temporarily reduced to \$0. The last day to apply the current \$750 maximum reward amount to sale/lease transactions is Wednesday, August 31, 2022."

The suspension in the CFRP reward amount is due to a dramatic reduction in revenue generated from California's Low Carbon Fuel Standard credits, which fund the CFRP. Other EV incentives, such as the Clean Vehicle Rebate Project (CVRP) and the various Clean Cars 4 All Programs (CC4A) are unaffected by this change.

Dealers should take care that staff is informed of this change. Also, any advertisements or communications regarding the availability of the CFRP reward amount should be amended to reflect this change.

If you have questions about the suspension of the CFRP reward amount, you can contact the program administrators by [clicking here](#).

As free to contact CNCDA's legal hotline at 916-441-2599 with any questions.

DMV Files Compliant Against Tesla for False Advertising

By: Anthony Bento, Director of Legal and Regulatory Affairs

For years, CNCDA has complained to the DMV that Tesla's advertising practices violate California law. Just to name a few violations, Tesla has maintained an illegal customer referral program, has advertised vehicle prices inclusive of expected gas savings, and has promoted and sold technology falsely described as "full self-driving."

The California DMV has taken notice of some of these violations and has decided to take action. On July 28, 2022, the DMV filed an administrative complaint against Tesla for "disseminat[ing] statements that are untrue or misleading, and not based on the facts, in advertising vehicles as equipped, with advanced driver assistance system (ADAS) features."

Descriptions related to Tesla's "Autopilot" and "Full Self-Driving" services are identified as particularly problematic. The DMV's complaint states that when describing these services, Tesla represents "that vehicles equipped with the ADAS features will operate as an autonomous vehicle, but vehicles equipped with those ADAS features could not at the time of those advertisements, and cannot now, operate as autonomous vehicles."

CNCDA will continue to monitor the DMV's administrative action. Although the DMV complaint asks for a potential suspension or revocation of Tesla's manufacturer license, it's far more likely that the matter will result in a settlement that will continue allow Tesla to sell vehicles (albeit with more complaint practices).

You can [read more about the DMV's action and access a copy of the complaint by clicking here](#).

Delays in Deliveries for Online Vehicle Orders Can Land Dealerships in Hot Water if FTC Rules Are Not Observed

By: Anthony Bento, Director of Legal and Regulatory Affairs

For several decades, the FTC has maintained its “Mail, Internet, or Telephone Order Merchandise Rule,” which applies to most goods a consumer orders by mail, telephone, fax, or on the Internet. Although this rule has been around since the 1970s, it has taken on new importance for dealers due to inventory shortages and the growing prevalence of online sales.

The Rule requires that when businesses advertise merchandise there is an expectation that the order will ship within 30 days unless the business clearly and conspicuously represents that shipment will not be made by such a date. Moreover, the rule requires customer consent to extend an order in the event of a delayed shipment.

If your dealership is engaging in online sales, we strongly encourage you to contact competent counsel and/or review the FTC’s guide on the Rule, [which is accessible here](#).

Bureau of Automotive Repair Reports Storage Fee Referral Line Results

By: Les Swizer, Staff Counsel

In a recent meeting of the Bureau of Automotive Repair (“BAR”) Advisory Group, representatives from the Enforcement Operations Branch presented results from a recently created

program for storage fee referrals. BAR created a dedicated email (ARDStorageReferrals@dca.ca.gov) for the purpose of receiving referrals from insurance companies believing storage fees being charged by an Automotive Repair Dealer (“ARD”) are not appropriate. The email was created “in response to concerns from the insurance industry about ARD storage charges.” Incoming complaints are analyzed by BAR’s Centralized Complaints Unit (“CCU”) where information is collected to determine the status of the vehicle. The BAR CCU then acts as a sort of intermediary between the insurance company and the ARD, seeking to determine appropriateness of the storage fees, adherence to various laws and regulations, and make recommendations to resolve the dispute.

According to BAR, incoming referral volume is increasing. As of the making of the presentation, over 30 referrals had been processed, resulting in reduction or elimination of as many as 16 ARD storage fees. BAR states the focus is on bad actors charging unreasonable fees and preventing claims from being paid.

For more information, or to view the presentation, [click here](#). If you have questions or wish to discuss further, feel free to reach out to me directly at lswizer@cncda.org.

Wage Data Collection Period Quickly Approaching: Start Plans to Collect Data for Likely New Rules and Fines

By: John Boggs, Fine, Boggs & Perkins

Many dealers do not even know they are required to track and report employment data (including wage data) to the federal (EEOC) and state government (DFEH)—agencies charged with enforcing civil rights requirements. Filing such data is one of the most over-looked

compliance requirements in dealerships. This article reviews the requirements of the current reporting requirements and gives advance notice to dealers of information they will likely have to report early in 2023 based on data from the fourth Quarter of 2022.

Payroll Reporting? Isn't that Supposed to be Confidential?

While employee payroll information is generally viewed as a private matter between the individuals and the employer, there are exceptions. For example, payroll tax rules require that employers detail payments made and taxes withheld from employees on an individual basis. When it comes to wage data reporting for equal employment purposes, however, individual names are not included; the purpose is for medium to large employers to provide aggregated data for analysis purposes.

Where does the Rule Originate?

As background, California Government Code Section 12999 required, for the first time, that certain employers report payroll/personnel information to the California government regarding their employees. The deadline for the first reporting was April 1, 2021 (normally March 31, but for the legal holiday). California dealers with 100 or more employees also are required to file the annual EEO-1 report with the federal Equal Employment Opportunity Commission, apart from the California reporting requirement. Employers in California could, at least up until 2022, simply file the federal EEO-1 in lieu of the California specific reporting requirements. But read on. That will likely all change very soon.

Do all Companies have to Comply?

Most dealerships will have at least 100 or more employees, triggering the requirement to submit reports to both the federal and California agencies, even if the employees may be spread over multiple locations. Employers must determine whether they have 100 or more

employees by counting those persons employed during the "Snapshot Period," or if they regularly employ 100 or more employees during the reporting year. If the dealer chooses to use the Snapshot Period, the dealer may choose any single pay period between October 1 and December 31 of the reporting year to count the employees. So, in just over a month, the measurement period begins. If a dealer has employees outside the State of California, it must count the out-of-state employees as well in making the determination. Part-time employees are counted the same as full-time employees. Employees who are on a leave of absence must also be counted. If you have questions regarding whether your dealership is required to participate, you can view applicable requirements and instructions on HR Hotlink, or you can contact qualified employment counsel.

What Data Must be Reported?

First, start with a list of all employees on the payroll during the identified Snapshot Period: a single payroll period between October 1 and December 31 of the reporting year. These employees will be broken out based on several criteria, including

- Race
- Ethnicity
- Gender
- Job Classification
- Compensation Levels

There are ten broad job classifications established by federal requirements and adopted by the state agency, they include Executive or senior level officials and managers; First-level or mid-level managers; Professionals; Technicians; Salespeople; Administrative support staff; Craft workers; Operatives; Laborers and helpers; and Service workers. Bear in mind that some of these classifications may be different than how most dealerships refer to their employees. Most notably: dealerships may refer to automotive

technicians as “Service” workers or “Technicians,” but the reporting classification for “Service Workers” is intended for employees in service industries such as hospitality or caregiving. And the “Technician” category is generally for workers performing scientific or engineering tasks. “Service Technicians” in a dealership environment will fall across several categories of “Craft Workers,” “Operatives” and “Laborers and Helpers”, depending upon their level of skill and experience.

Compensation levels, too, are broken out in bands set by the Bureau of Labor Statistics. Pro tip: the salary bands separate employees by annual compensation, not simply by the wages earned during the Snapshot period. Thus, employers must use the names and job classifications from the Snapshot Period to identify who must be included in the data set, but the wage breakouts must use the entire earnings from the annual reporting year (e.g., the W-2 earnings figure, regardless of whether the employee worked the entire calendar year). Dealers must also report the total number of hours worked by each employee in each band during the reporting year.

Finally, Dealers will also have to report information regarding the employer as a whole, including the employer’s name, address, main headquarters address, Tax ID number, NAICS code, Dun & Bradstreet number, how many employees are inside California and how many outside California, and the number of locations (establishments in and out of California). There are also other reporting requirements for multi-establishment employers, such as the names of those establishments and the major activity.

In order to file a pay data report, an official of the employer must certify that the employer’s report is accurate and was prepared in accordance with DFEH’s instructions. While an employer may designate their own certifying official, the certifying official must have knowledge of the information contained in the report (or have had

that information provided to them by individuals with knowledge contained in the report), have reviewed the report and can certify its accuracy, and be authorized to file the report on behalf of the employer. While Professional Employer Organizations and Human Resource Outsourcing Organizations may prepare and file pay data reports with DFEH on behalf of client employers, an official of the client employer, not from the PEO or HRO, must certify the report.

If you are an HR Hotlink user, remember to use the system’s provided tools to automate the preparation of the necessary reports.

What Happens with the Data?

The DFEH explains on its website: “Employers’ pay data reports will allow DFEH to more efficiently identify wage patterns and allow for effective enforcement of equal pay or anti-discrimination laws, when appropriate. DFEH’s strategic vision is a California free of discrimination.” SB 973 also authorizes the DFEH to enforce California’s Equal Pay Act set forth in Labor Code section 1197.5. That’s the law that requires that employer’s pay the same wages to employees regardless of gender, for example, if people perform substantially the same duties (regardless of job title).

Translated to plain English—the report gives the DFEH information to sue employers when they want to do so for alleged violations of the discrimination laws based on statistical data and have all the data at their fingertips before filing the claims.

Are there Changes for the New Year?

This is California, right? As we have always stated, California typically starts with getting their foot in the door by passing a relatively benign law, and then the following years, the law grows more cumbersome and less employer-friendly. This is no exception. Senate Bill 1162—which has passed the State Senate and is on its way through the Assembly and next on

to Governor Newsom's desk for signature—will require additional requirements and will lead to significant new financial risk.

First, the EEO-1 will no longer be permitted as an option for reporting under the current law as it pertains to the State of California. Dealers will have to file a separate report electronically with the DFEH apart from the federal EEO-1 requirement, including data on average and median wage levels in specific positions, categorized by race, sex, etc.

Senate Bill 1162 would also require that the DFEH publish each private employer's pay data report on a website available to the public. Yes, you read that correctly. There will be a website that plaintiffs' lawyers can look at to find employers to sue for wage disparities (gender/race discrimination) for example. And no doubt, the equal pay claims will be a new source for Private Attorneys General Act (PAGA) claims, since PAGA permits such claims to be brought even though they sound like discrimination claims.

And if employers don't report the data timely, employers are subject to the penalty provisions of the new law. The new law would allow a "court" to impose a civil penalty not to exceed one hundred dollars (\$100) per employee (or \$200 for subsequent violations per employee) on employers that fail to file the required report, payable to the Fair Employment and Housing Enforcement and Litigation Fund. That's right, the fines you pay will fund the litigation against you! Plaintiffs can also seek injunctive relief, or any other relief the "court" deems appropriate.

Wait, it doesn't stop there. The Labor Commissioner gets to investigate complaints alleging violations of reporting requirements and would allow the Labor Commissioner to impose a civil penalty for violations up to ten thousand dollars (\$10,000) *per violation*. If you are not starting to shake from anxiety, go back and start reading this article again.

Wait. There's more. Employers will also have to make their payroll practices transparent. That is, the employer must provide the employee the pay scale for the position the employee currently holds. California employers with more than 15 employees would have to include the pay scales for positions included in job postings, and not just upon request. So, let's be clear, you will have to make sure your pay plans are up-to-date and legally compliant because you will have to spell out the pay scale in job postings. A payroll practices internal audit will be crucial before you start down this path so plan ahead now. Especially consider having standardized pay plans for everyone—having mixed or various pay plans will surely lead to problems.

To be clear, Senate Bill 1162 has not yet been signed into law. However, the requirements and the upcoming measurement period justify notifying dealers of this likely upcoming new requirement so that dealers can prepare to have such information available and to make sure your payroll system can produce the necessary information easily.

To assist you in getting your dealership in order, HR Hotlink and Fine, Boggs & Perkins LLP, along with CNCDA, will be covering the wage-and-hour issues in Part II of the [California Dealership Bootcamp by webinar on August 19, 2022](#). Be sure to register for this important webinar!! And stayed tuned to the Bulletin for upcoming information. The information on all new laws will also be the topic in the New Laws Seminars around the State at the end of this year so make sure to register to attend early as these seminars sell out quickly.

Should you have questions regarding the foregoing, please contact Fine, Boggs & Perkins LLP at jboggs@employerlawyers.com or other qualified employment legal counsel for guidance.

Planning for the Family Business Transition: "What's Next"

By Federated Insurance, CNCDA Platinum Sponsor

As a business owner, you understand that ultimately you may face the challenge that your role as a leader at your company will one day end. This can be difficult, especially if your business is family owned and operated. Or, you may have already experienced this kind of transition through an illness, death, sale, or the business being passed down through generations. If you are planning to pass your business to family, it is important to discuss it with them openly and honestly. Planning for the next generation can be challenging, but the cost of not facing this question may be substantial, both financially and personally. Investing the time now to ensure a successful transition can be impactful for the new owner, and it will show your employees that there is a bright future for the next generation of the business.

Understand the Barriers

Some of the common barriers that can contribute to a lack of succession planning may include:

- Not having enough time to properly plan.
- Fear of giving up control of the company.
- Avoiding the issue due to its complexity.
- Holding on to fear of the unknown.
- Lacking clarity as to what the succession plan should look like.

Acknowledging these possible barriers can help move the business toward starting the important process of business succession planning.

Make Your Transition a Success

Ask yourself what you want the business to look like once you are no longer the leader. The right option for your business - whether it's a sale, a gift, or a combination of the two - will depend on

a variety of considerations and your individual circumstances. Success involves being proactive and preparing for the next generation of leaders for your company. Communicating your wishes, determining a plan, and implementing those wishes will provide you with the answer to the question, "what's next"?

A qualified attorney can help you sort through your options and can help design a business succession plan that will be in sync with what you want. Talk to your local marketing representative for a referral to a member of Federated's network of independent attorneys.

[Download your Planning for the Family Business Transition PDF](#)

This article is for general information and risk prevention only and should not be considered another offer of insurance or legal, financial, tax, or other expert advice. The recommendations herein may help reduce, but are not guaranteed to eliminate, any or all losses. The information herein may be subject to, and is not a substitute for, any laws or regulations that may apply. This information is current as of its publication date and is subject to change. Some of the services referenced herein are provided by third parties wholly independent of Federated. Federated provides access to these services with the understanding that neither Federated nor its employees provide legal or other expert advice. All products and services not available in all states. Qualified counsel should be sought with questions specific to your circumstances. All rights reserved.

Events

**Last Chance: Register for Dealership HR
Bootcamp Webinar: Part II**
August 19, 2 PM- 3:30 PM
\$49 CNCDA Members
Registration Closes August 18

John Boggs and Dave Reese of Fine, Boggs & Perkins LLP will address perhaps the most-common claims filed against dealerships over all other claims— California's Wage and Hour Nightmare. In Part II, they will outline the current trends/rules in wage and hour lawsuits and how to avoid them.

NOTE: You do not need to have attended Bootcamp Part I to attend subsequent sessions.

Register now at www.cncda.org/events.



**Save the Date: California Dealership HR
Bootcamp Webinar: Part III**
September 8, 2 PM

Join John Boggs and Dave Reese of Fine, Boggs & Perkins LLP for the final part of the California Dealership HR Bootcamp Part III.





2022 Annual Convention

OCTOBER 2-5, 2022

Ritz Carlton
Laguna Niguel, CA

Join us for CNCDA's Annual Convention in Laguna Niguel!

Don't miss this annual opportunity to catch up with fellow dealers and hear from industry experts on the latest and greatest developments in California's retail automotive industry. We secured additional discounted rooms at the Monarch Beach Resort and Club but be sure to book your room by September 1st to secure CNCDA's exclusive rate! We look forward to seeing you there!

DEADLINE TO BOOK ROOMS AT A DISCOUNT: September 1, 2022

REGISTER NOW: www.cncda.org/events



2022



CNCDA UPCOMING EVENTS

Upcoming Webinars:



AUGUST 19

California Dealership
HR Bootcamp Part II
2 p.m. - 3:30 p.m.



SEPTEMBER 27

The Safeguards are Coming:
FTC Revised Rule Becomes
Effective in December
10 a.m. - 11:30 a.m



SEPTEMBER 8

California Dealership
HR Bootcamp Part III
2 p.m. - 3:30 p.m.



DECEMBER 15

New Laws Webinar Series
Part I: 10 a.m. - 11:30 a.m.
Part II: 2 p.m. - 3:30 p.m.



SEPTEMBER 19

Buy/Sell Tips for Smart
Buyers in a Seller's Market
10 a.m. - 11 a.m.

REGISTER NOW AT

www.cncda.org/events



Upcoming In-Person Events:



OCTOBER 2 - 5

CNCDA Annual Convention
The Ritz-Carlton
Laguna Niguel, CA



DECEMBER 6

New Laws Seminar
9:30 a.m. - 11:30 a.m.
Anaheim, CA



DECEMBER 13

New Laws Seminar
9:30 a.m. - 11:30 a.m.
Fresno, CA



OCTOBER 25

Member Appreciation Dinner
Top of the Market
6 p.m. - 10 p.m.
San Diego, CA



DECEMBER 7

New Laws Seminar
9:30 a.m. - 11:30 a.m.
Burbank, CA



DECEMBER 14

New Laws Seminar
9:30 a.m. - 11:30 a.m.
Sacramento, CA



DECEMBER 5

New Laws Seminar
9:30 a.m. - 11:30 a.m.
San Diego, CA



DECEMBER 12

New Laws Seminar
9:30am - 11:30am
Walnut Creek, CA

STAY UP-TO-DATE

ON EVENTS BY VISITING

www.cncda.org/events

Thank You to CNCDA's 2022 Sponsors!

Thank you for investing in CNCDA and the franchise new car system in California. We could not accomplish our goals without the continued support, involvement, and enthusiasm of our committed sponsors.

Diamond



Platinum



Gold



Silver

