



Monthly Bulletin

October 2022

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Chairman's Corner: Annual Convention Recap & More

By: John Oh, Lexus of Westminster, Chairman, CNCDA

If you were able to attend this year's Annual Convention, we'd like to sincerely send you a HUGE thank you for your support, participation, and interest in helping guide the efforts of the association.

The Ritz Carlton Laguna Niguel and location offered stunning views and scenery. Cool, overcast mornings turned to sunny afternoons, which were perfect for our members who enjoyed watching pods of dolphins, playing a round of golf, and visiting the surf history museum while enjoying a glass (or two) of beer. Scroll down to view the event photos.

The convention seminar speakers were topical, provided meaningful insight, challenged us to think critically about our management styles and business structures while encouraging inclusivity. I hope to hear from other dealers if you take some of their recommendations and implement at your dealership(s) in the coming months. We also heard from Brian Maas, CNCDA President, at the invaluable member-only session. He shared CNCDA's efforts over the past few months and discussed plans to help support my fellow dealers.



The convention wrapped up nicely, with dinner and dancing to the incredible live band, Ideateam. Again, thank you for your attendance and participation. It's dealers like YOU who work hard move the needle in California, ensuring new car dealers are lobbied for and represented in Sacramento and across the state's various districts.

Save the Date for next year: the 2023 Annual Convention will be held October 8-11 at the Fairmont Kea Lani in Maui, Hawaii. When available, please register on [CNCDA's website](#); room availability at the hotel is limited as are the number of convention registrations.

And while your calendar is open, if you are a Principal Dealer or General Manager, make sure to RSVP for our hosted [Dealer Appreciation Dinner](#) at Top of the Market in San Diego on October 25. The menu looks incredible; you won't want to miss this event.

Lastly, do you or your management team have questions about the coming GAP coverage requirements? Do you know who now qualifies as a "covered borrower" under this coverage? If not, you're in luck. CNCDA's [New Laws Seminars](#) will cover these answers, and more. If you don't already know, the seminars breakdown and discuss new 2023 legislation directly impacting our dealerships and how we do business. Please visit the association events page to find a seminar located near you and register today; additionally, a webinar option will be hosted online this year. We hope you attend!

Thank you for your time and continued support.

John Oh
Lexus of Westminster
Chairman, CNCDA

ADA Website Accessibility Lawsuits Continue

By: Anthony Bento, Director of Legal and Regulatory Affairs



Dealers continue to get hit by lawsuits that allege their websites do not comply with the Americans with Disabilities Act (ADA). The state of the law on website accessibility remains murky, and some plaintiffs’ attorneys try to use this confusion to compel settlements.

CNCDA commissioned Rachelle Golden, an ADA expert, to prepare a checklist dealers can use to minimize their exposure to website accessibility claims. You can download the checklist by [CLICKING HERE.](#)

Also, dealers should note that many accessibility vendors, such as AudioEye, generally do not provide indemnification in the event a dealership is hit with an accessibility lawsuit. While these vendors can provide valuable services, they are unfortunately not a panacea. You can learn more about AudioEye’s service for dealerships by [CLICKING HERE.](#)

Working with Electric Vehicles: An Interview with KPA’s Wayne Curtis

Podcast By: KPA

The Safety Meeting
KPA

Accommodating Electric Vehicles within Dealerships with Wayne Curtis
Episode 12 • 22nd June 2022 • The Safety Meeting • KPA

00:00:00 00:11:53

▶ ↺ ↻ 1x 🔊 NOTES LINKS FOLLOW ⋮

On this episode of The Safety Meeting, guest host Toby chats with Wayne Curtis, Consulting Team Leader at KPA, about the rise of electric vehicles, how dealerships are able to accommodate the changes they bring, and how to address EV safety concerns. [CLICK HERE TO LISTEN.](#)

New Motor Vehicle Board Presentation Recap

By: Autumn Heacox, Director of Communications and Marketing



Late last month, CNCDA’s Director of Legal and Regulatory Affairs, Anthony Bento, participated in a roundtable discussion at the New Motor Vehicle Board discussing “Equity, Justice and Inclusion in the Motor Vehicle Industry.” The event was very successful, and we are proud of Anthony’s comprehensive presentation which covered electric/ alternative vehicle affordability and access.

[To view the presentation slide deck, please CLICK HERE.](#)

Background and Update on Monkeypox

By: Les Swizer, Staff Counsel



The monkeypox virus is a relative of the smallpox virus, with much milder symptoms. Monkeypox carries a high survival rate, with vulnerable populations such as young children, those with weakened immune systems, and those with certain pre-existing conditions at a higher risk for more serious illness. While the CDC reports that there have been over 25,000 confirmed cases of monkeypox in the United States and her territories, the risk of death or serious illness is exponentially lower than it was with COVID-19. Further, given its relation to smallpox, a vaccine already exists for monkeypox, unlike the novel coronavirus, which makes the illness easier to combat.

Some symptoms of monkeypox include fever, chills, rash, muscle aches, and headache. Some people will get flu-like symptoms then a rash, some will get the rash first, and some will only get a rash. Generally, monkeypox spreads primarily by close or direct contact, but can become airborne in

some cases. The virus is considered contagious until the rash heals, which means recovery can last upwards of four weeks.

There have been some inquiries to the CNCDA Legal Hotline regarding monkeypox and whether there are any specific requirements dealers need to follow. Currently, Cal/OSHA has only issued guidance for workplaces covered by the Aerosol Transmissible Diseases (ATD) standard, which does not include dealers. Dealers with employees suffering from monkeypox can apply any sick time or PTO as they would with any other sickness. While the spread of monkeypox is low risk in the workplace, it would be best practice to keep employees informed of the symptoms and potential methods of transmission of the virus and encourage employees experiencing any of the symptoms to stay home and avoid direct contact with others in the workplace. Dealers should note that given the extended recovery time of monkeypox, employees may need to take extended medical leave if they do not have adequate available paid time off.

More information about monkeypox can be found on the CDC website, [available HERE](#). You can also access updated information on monkeypox on the California Department of Public Health's website, [available HERE](#). You can also access Cal/OSHA's site on monkeypox [HERE](#). If you have questions or wish to discuss further, feel free to reach out via the Legal Hotline, at (916) 441-2599.

California Court of Appeal Discusses Importance of Employer's Reasonable Expectations in Determining Whether Employee's Work Meets the Executive Exemption

By: John Boggs, Fine, Boggs & Perkins



California's Industrial Welfare Commission (IWC) Wage Orders establish industry-specific wage and hour requirements—including the payment of overtime if an employee works above a set number of hours—that employers in that industry are required to follow. The IWC Wage Orders exempt certain executive, administrative and professional employees from these wage and hour requirements (such as overtime pay) if the employee performs certain duties and is paid a monthly salary equivalent to at least twice the state minimum wage for full-time employment. The employer bears the burden to

establish that an employee meets the requirements for application of the exemption. In layman's terms, this means that any employee treated as salaried-exempt is subject to challenge and the employer must prove the requirements of the exemption have been met.

On September 26, 2022, California's First District Court of Appeal published its decision in *Rodriguez v. Parivar, Inc.*, addressing the executive exemption, which exempts salaried managerial employees from the wage and hour requirements. The employee in *Rodriguez*, a salaried manager at a Jack in the Box restaurant, sued to recover unpaid overtime as well as wages associated with the employer's alleged failure to provide meal and rest periods required under California's labor laws. The employee claimed that the employer misclassified her as an exempt employee, contending that she "spent the majority of her time performing the exact same duties as non-exempt employees" at her restaurant.

Under the applicable regulations, the six prongs that must be proven to establish that a person is employed in an "executive capacity" are that the person is someone (a) whose duties and responsibilities involve the management of an enterprise or of a customarily recognized department or subdivision thereof; (b) who customarily and regularly directs the work of two or more other employees; (c) who has the authority to hire and fire, or whose recommendations and suggestions regarding a change in an employee's status receive particular weight; (d) who customarily and regularly exercises discretion and independent judgment; (e) who is "primarily engaged in duties which meet the test of the exemption"; and (f) who earns a monthly salary equivalent to no less than two times the state minimum wage for full-time employment. The only element at issue in the *Rodriguez* case was (e), whether the employee was primarily engaged in duties which meet the test of the exemption.

The *Rodriguez* court explained that, under the applicable federal and state regulations governing the IWC Wage Orders, "managerial and supervisory tasks within the scope of the executive exemption are generally 'easily recognized' and include such tasks as: '[i]nterviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing their work; maintaining their production or sales records for use in supervision or control; appraising their productivity and efficiency for the purpose of recommending promotions or other changes in their status; handling their complaints and grievances and disciplining them when necessary; planning the work; determining the techniques to be used; [and] apportioning the work among the workers. . .'"

In addition to these inherently managerial and supervisory tasks, tasks which are directly and closely related to those management and supervisory functions are also recognized as exempt. Thus, under the regulations, exempt work includes all work that is directly and closely related to exempt work and work which is properly viewed as a means for carrying out exempt functions. By contrast, nonexempt work includes all work that is neither management or supervision nor directly and closely related to those functions. In the usual case, a task is nonexempt and does not meet the requirements for the exemption if it consists of work of the same nature as that performed by the nonexempt subordinates of the executive.

The dispute in *Rodriguez* revolved around whether the employee was "primarily engaged in duties which meet the test of the [executive] exemption." The Wage Order defines "primarily" as "more than one-half the employee's work time." In determining whether an employee is primarily engaged in such duties, the Wage Orders provide "[t]he work actually performed by the employee during the course of the workweek must, first and foremost, be examined and the amount of time the employee

spends on such work, together with the employer's realistic expectations and the realistic requirements of the job, shall be considered in determining whether the employee satisfies this requirement." (Emphasis added.) By using a special verdict form that directed the jury to look the amount of time actually spent by the employee on exempt tasks, the trial court erroneously excluded other factors necessary to the consideration, including whether the employee complied with the employer's realistic expectations and the realistic requirements of the job. As a result of this error, the Court of Appeal reversed the jury's \$38,356.57 verdict against the employer and remanded for a new trial. The court also vacated a \$932,842.63 award of attorneys' fees and costs against the employer.

IWC Wage Order 7, which applies to automobile dealership operations in California, uses the same test as addressed in *Rodriguez* for the executive exemption. Virtually identical tests are used in connection with the administrative and professional exemptions. To properly utilize these exemptions from the Wage Order's wage and hour requirements (such as payment of overtime), dealerships should establish realistic job requirements which define the exempt duties that the employee is expected to perform, together with the realistic expectation that the employee will primarily spend his or her work time performing those exempt duties. These duties and expectations should be communicated to the employee in writing through written job descriptions signed by the employee, and should be reinforced by appropriate language in the employee's written pay plan. When an employee fails to meet the dealership's realistic expectations, written counseling or other discipline should be issued to the employee. It also means that dealers need to be aware that treating managers as exempt when they perform production duties as well as management duties (like a Parts Manager working the Parts Counter during the day) will place you in the same predicament as the *Rodriguez* employer as dealers will have to prove that a majority of the manager's time at work is spent doing management functions. Since this is not something that employers normally track, dual-role managers pose a real risk of liability due to the difficulty in proving the time spent on managing verses production.

If you have any questions about the executive, administrative, or professional exemptions, or other pay plan issues, please contact the Association's employment counsel John P. Boggs (jboggs@employerlawyers.com) of Fine, Boggs & Perkins, LLP (650.712.8908).

Welcome CNCDA's Foundation Executive Director

By: CNCDA Staff

Kim McPhaul has joined CNCDA as our Executive Director for the Foundation. Kim began working for California's dealers 18 years ago as a receptionist for CNCDA and over the years has worked for and learned from many amazing dealer and association leaders. Most recently, as Deputy Executive Director of the Orange County Automobile Dealers Association, she managed OCADA's workforce development programs and launched OCADA's charitable foundation, OC Driven for Success, connecting student technicians with service positions in Orange County dealerships. She is excited for the opportunity to grow your public charity, the CNCDA



Foundation, and build awareness and interest in auto tech careers, connecting student techs to California's dealerships. Kim earned her BA in Government from CSU Sacramento and lives with her family in West Sacramento. When time (and energy) permits she enjoys running, training for another marathon, or Spartan race.

Changes to the Reynolds LAW[®] Retail Motor Vehicle Installment Sales Contract

By: Reynolds Document Services



Reynolds Document Services devotes significant resources to monitoring changing requirements and best practices in the automotive sales and financing industry. It works with dealers, industry associations, and legal counsel throughout the country to determine dealer needs and best solutions. For example, in California, Reynolds works closely with the California New Car Dealers Association and other industry leaders as part of its continuous improvement of its LAW[®] F&I forms.

This year, Reynolds introduced a number of revisions to its LAW 553 California Retail Installment Sale Contracts; the first revision of that contract since 2016. These 2022 revisions primarily help address dealership and financial institution requests. Some of the revisions include changes to the Payment Schedule and the Itemization of Amount Financed to allow more flexibility, the removal of fields that were no longer being used as well as a number of changes to sections on the back of the contract in response to regulatory activity, court rulings and other customer requests.

Since arbitration agreement best practices continue to evolve, Reynolds also revised text in the Arbitration Provision of the ARB contract version. Changes included waivers involving court class actions, class or collective arbitration claim waivers, and arbitration fees over \$5,000.

In such a dynamic industry, change is required to keep abreast of legally required and best practice changes. Changes to the Reynolds LAW553CA Retail Installment Sale Contracts reflect input and ideas from a wide range of experienced members of the California automotive sales and credit community. Reynolds appreciates all of your support and contributions, with a special thanks to the CNCDA.

Do You Have News You'd Like to Share?

By: Autumn Heacox, Director of Communications and Marketing



Has your dealership reached a significant milestone? Or perhaps you've recently celebrated a huge accomplishment? Are you actively engaged in your community or plan to host a local event? We'd love to share YOUR big news with our membership and associates. Please send us your stories and photos. We may share in an upcoming monthly bulletin or our quarterly magazine.

Additionally, we always appreciate hearing from our dealers as they offer their perspective on the industry's best practices. If you'd like to submit an article for one of our publications, please let us know. Email news, articles, photos and more to Autumn Heacox at ahacox@cncda.org. We look forward to hearing from you!

Events

Dealer Appreciation Dinner

Tuesday, October 25, 2022
6 – 10 PM

To our Dealer Owners and General Managers, as a thank you for your loyalty and valued membership, we cordially invite you and a guest to our complimentary Dealer Appreciation Dinner at The Top of the Market in San Diego this fall. We can't wait to celebrate you!

[Check out the dinner menu below then RSVP HERE.](#)



New Laws Seminars

Various Dates, Times, and Locations

In 2022, policymakers in Sacramento approved a wide range of measures that directly impact California dealers. Although CNCDA and dealer advocacy was able to block some of the most onerous and unfair proposals, California’s legislature pushed forward a very progressive agenda this year. Important new laws include (but are certainly not limited to) new restrictions on the sale of GAP, new consumer disclosures, new employer leave obligations, and mandates on the sale of electric vehicles.

Prepare for 2023 by joining Brian Maas, CNCDA President; Anthony Bento, CNCDA Director of Legal and Regulatory Affairs; Les Swizer, CNCDA Staff Counsel; and John Boggs of Fine, Boggs, and Perkins LLP this fall and winter for our annual presentation on new laws impacting your dealership. This is your opportunity to learn what laws and regulations are coming your way and how you can best prepare yourself, your employees, and your business to navigate California’s ever-changing political and business climate. [CLICK HERE TO REGISTER TODAY.](#)

5-15 DEC

2022 NEW LAWS SEMINARS

DATES AND LOCATIONS

DECEMBER 5, 2022 SAN DIEGO	DECEMBER 6, 2022 ANAHEIM
DECEMBER 7, 2022 BURBANK	DECEMBER 12, 2022 WALNUT CREEK
DECEMBER 13, 2022 FRESNO	DECEMBER 14, 2022 SACRAMENTO
DECEMBER 15, 2022 WEBINAR	

REGISTRATION

WWW.CNCDA.ORG/EVENTS

PRESENTERS

 BRIAN MAAS President CNCDA	 ANTHONY BENTO Director of Legal and Regulatory Affairs, CNCDA
 JOHN BOGGS Fine, Boggs & Perkins LLP	 LES SWIZER Staff Counsel, CNCDA

MCLE Credit: The activity has been approved for Minimum Continuing Legal Education credit by the State Bar of California in the amount of 2 hours as appropriate to the content of the activities and CNCDA certifies that this activity conforms to the standards for approved education activities by the rules and regulations of the State Bar of California governing minimum continuing legal education. Provider #18508.

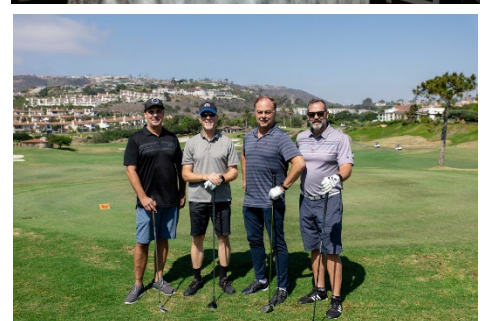
2022 Annual Convention Event Photos

View [Day 1 photos HERE.](#)

View all [Surf and Suds Tour photos HERE.](#)

View all [Golf Tournament photos HERE.](#)

Again, thanks to all who came! More photos to come...





2022-2023 UPCOMING EVENTS



Webinars:



DECEMBER 15

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

REGISTER NOW AT

www.cncda.org/events



In-Person Events:



OCTOBER 25

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



DECEMBER 5

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



DECEMBER 6

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



DECEMBER 7

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



DECEMBER 13

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



DECEMBER 14

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



DECEMBER 12

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



MARCH 29, 2023

Dealer Day
SAVE THE DATE
Sacramento, 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 continued support, involvement, and enthusiasm of our committed sponsors. *Interested in securing your 2023 CNCDA sponsorship? Email [Jennifer Aragon](#) today.*

Diamond



Platinum



NATIONAL BUSINESS BROKERS



Gold



Silver



HughesDealerLaw.com