Are You Paying Your Detailers Correctly?

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Over the last year, there has been an increase in dealership payroll audits by the U.S. Labor Department (DOL). Some DOL investigators have implied that these audits are part of a broad internal "initiative" to check wage-hour compliance at dealerships. As the audits have played out, it has become clear that their primary focus is on how detailers are paid.

Dealerships' arrangements with detailers vary. In some areas, the dealerships have their own detail department and treat the detailers as regular employees. In other areas, dealerships contract out their entire detailing operations to a third party. The DOL has audited dealerships with both arrangements for compliance with wage-hour law.

If you employ your own detailers, the dealership must carefully comply with both federal and state wage-hour laws. Detailers, wash rack employees, PDI techs and other unskilled service-department employees are not exempt from overtime. Therefore, they generally must receive overtime premium on their compensation if they work more than 40 hours in a workweek.

The one exception to this is where detailers are paid on a flat rate basis that satisfies the "commission-paid" exemption under Section 7(i) of the federal Fair Labor Standards Act. However, even the "commission-paid" exemption is unavailable in a number of states. In those states, dealerships must pay detailers overtime even on their flat-rate earnings.

Other dealerships contract out their detail operations to save money and to avoid the time and effort required to staff and manage the department. But contracting the work out does not automatically relieve the dealership from all potential liability. In several cases, the DOL has taken the position that the dealership is a "joint employer" with its detail company and that the dealership is therefore responsible for the detail company's failure to pay all wages and taxes owed. You need to have an arm's-length relationship with companies providing detail services. And insist on some assurances that the company will comply with wage and tax laws. Having a written agreement is a good way to do this.

Given the DOL's new interest in detailers, we recommend that every dealership review how it is paying its detail employees. There are multiple ways to pay them: hourly with overtime, hourly with

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bonus and overtime, piece rate with overtime or flat rate. However, it is critical that the dealership understands exactly what the state and federal law requires and then ensures that it is in compliance.

If your dealership contracts out the detail work, review that relationship to make sure that it will withstand government scrutiny and ensure that the detail company is paying its detailers correctly. If not, *you* may be required to pay them correctly.

Our advice? Audit the rest of your payroll to check for compliance. If you are not in compliance, make the necessary changes. If you receive a notification of an investigation, we recommend that you immediately contact counsel familiar with the federal wage-hour law who can help you measure your compliance and advise how to respond in a way that will minimize your liability.

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