ASK Fisher Phillips: Dealership Update

Insights
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Our Dealership Practice Group represents thousands of dealerships all across the country, from large consolidators to regional groups to single dealerships. Because we have worked so closely with so many dealerships for so many years, we have acquired an in-depth understanding of dealership operations as well as a wealth of practical experience in dealing with dealers' unique labor and employment issues.

In "Ask Fisher Phillips," we take some of the more common dealership questions and provide our response and suggestions. This section is based on our clients' real-life questions. But don't worry... all names have been removed to protect the innocent!

QUESTION:
We have a salesperson who signed off on his pay plan which states that if he has a CSI score below the national average he will be deducted $500. We know not to take him below minimum wage. He sent us an email saying this pay policy falls short of the law and we need to get with our legal counsel about it for the benefit of our sales team. Please advise.

ANSWER:
This has been coming up more and more often. Probably because every salesperson in the country has a computer and Internet access and a lot of free time.

GMs like to use the "carrot and stick" approach with bonuses like CSI: If you are good we reward you. But if you are bad, we punish you. The problem with this is that to a court or a jury, it looks like you are taking something away from the employee that he has otherwise earned. Or that the employee is being forced to pay money to the employer. Or that the employee is being forced to make a "kickback" to the employer in order to keep his job.

Using the word "forfeit" in the pay plan is also a good way to wind up in court. Many states have strict laws about paying employees *everything* that they have earned on their regular pay day. If the bad CSI scores result in employees not receiving *all* of the commissions they have earned, you have a ready-made lawsuit.

You can avoid this kind of challenge by carefully wording your bonus programs to keep them separate from the employee's regular compensation (commissions) and by ensuring that any bonus deduction is made only from other bonuses paid.

QUESTION:
We just purchased the assets of an existing car dealership with about 35 employees. We are retaining all of those employees and using their original start date for our records. Do they still have to complete new hire paperwork?

ANSWER:
You can, if you wish, use the employees' previous start date for purposes of determining the amount of vacation or other benefits the employees will receive. A lot of dealerships do this – it is an excellent way to transition the employees to new ownership while also giving them the benefit of their service under the prior ownership.

However, as far as the law is concerned, you are actually hiring all of these employees for the first time when you close on the sale and purchase the new dealership. Therefore, technically speaking, the employees' actual start date is the date of the closing. Not only should the employees complete a new W-4 form and I-9, we also recommend that they fill out a new application and background check authorization.

You should then run the new employees through your normal background screening, including drug testing and criminal-background checks. Once the employees have passed these steps, have them sign off on your handbook. This is a good way to impress upon the employees that even though they are working at their same desk as before, they are working for a new employer and are subject to the new employer's rules.