WEB EXCLUSIVE: Will Dealerships And Third-Party Detailers Continue To Face Increased DOL Scrutiny?

Insights
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During the Obama administration, the U.S. Department of Labor (DOL) placed special emphasis on scrutinizing the alleged misclassification of independent contractors and joint employer relationships. Dealerships were notably affected, as the DOL focused on pay practices of third-party detailers and, in some instances, attempted to hold the dealership responsible for alleged wage-hour violations of its third-party detail company.

Obama-Era DOL Turned Up The Heat On Dealerships

Specifically, the DOL took the position that dealerships were "joint employers" with their third-party detail companies, and were thus responsible for ensuring that the employees of the detail company were paid in accordance with the law. As a result, where a third-party company misclassified its detailers as independent contractors, or simply failed to pay them overtime as the law requires, the DOL attempted to assess back wage penalties against the dealership for the vendor's alleged violations. While there may not have been much legal support for the DOL's position, it was nonetheless consistent with the Obama administration's enforcement tactics and general policy trends.

In 2015, the DOL sought to limit the number of businesses using independent contractors, and issued informal guidance declaring their misclassification a "problematic trend." The following year they issued additional guidance purporting to broaden the definition of "joint employment," noting that the "the concept of joint employment, like employment generally, should be defined expansively" under federal wage and hour statutes. Inevitably, the informal guidance resulted in both an increase in misclassification disputes and a greater number of business relationships found to be joint employment situations by the DOL, including within the dealership industry.

New DOL, Same Scrutiny?

However, on June 7, 2017, Labor Secretary Alexander Acosta issued a press release announcing the withdrawal of these informal guidance documents. This development signals the Trump administration's desire to return to a more traditional view of employment relationships, and could result in fewer findings of joint employment relationships by the DOL.

Although the DOL's withdrawal of the guidance is somewhat significant, it has not resulted in the elimination of dealership "joint employment" audits, and we continue to see and hear reports of the

DOL maintaining the position that dealerships are responsible for their third-party detailers' wage-hour mistakes.

What Does This Mean For Dealerships?
Accordingly, dealerships should seek to mitigate the risk of a joint employer relationship and the liability arising from contracting work to third-party car detailing companies; some dealerships have chosen to stop contracting with these companies altogether. In the alternative, some dealerships have opted to enter into clear agreements that require the third-party car detailing companies to adhere to all federal and state employment laws.

Going forward, dealerships should also monitor whether the Trump-era DOL will take further steps to assure certainty regarding joint employer relationships. If you have any questions about joint employer relationships and how they may affect your organization, please contact any member of our Automotive Dealership Practice Group or your regular Fisher Phillips attorney.

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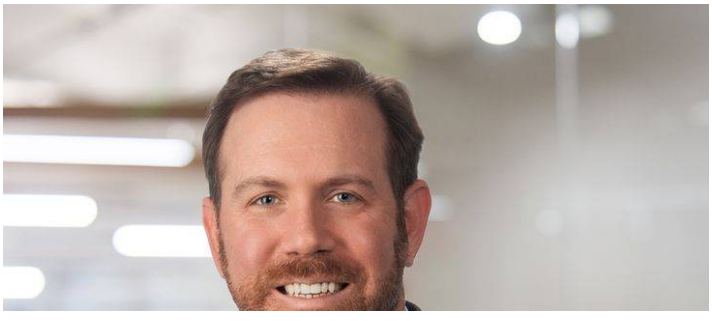

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