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DEALERSHIPS AVOID WAGE CLAIMS AGAINST DETAILER: 4 TIPS TO KEEP IT A “THEM” PROBLEM

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A Houston-based vendor that provides detailer, car wash, and valet services to area dealerships recently agreed to pay \$166K to resolve an employee misclassification complaint filed with the United States Department of Labor – but luckily area dealerships were never caught up in the legal web that ensnared the detailer. Instead, for the dealerships, this remained a “them” problem and not an “us” problem. According to the complaint, Majestic Dealership Services Inc. treated the workers providing these services to its dealership customers as independent contractors when they should have been classified as employees. The USDOL determined that these workers were actually Majestic’s employees and that the company had not paid them in compliance with applicable law. This insight summarizes the situation that unfolded and provides four suggestions your dealership can take to ensure this remains a “them” problem and not a “you” problem.

Dealerships Avoid Legal Troubles – But That’s Not Always the Case

Although it could have, there is no indication that the USDOL’s investigation ever focused on the dealerships using Majestic’s services. There are no reports that the federal authorities made any attempt to hold any of the dealers responsible for the unpaid wages. Majestic’s payment of the settlement amount has or should bring closure to this matter for all involved.

For dealerships using vendors to provide detailing and valet services, claims for unpaid wages by the workers providing

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those services are not always a “them” problem. Government agencies and lawyers for claimants in these situations often assert that the vendor and the dealership are joint employers of those doing the work and thus are jointly responsible for any wage violations.

The fact pattern often cited in support of the joint employer theory is that the vendor’s employees perform work traditionally performed by dealership employees on dealership property using dealership equipment and under the direction and approval of persons directly employed by the dealership. The joint employer theory approach increases the claimant’s chances of recovery, especially when the vendor cannot or will not pay the unpaid wages or is no longer in business.

The joint employer approach has had varying degrees of success based on the specific facts of each situation. Sometimes dealerships successfully defend and defeat the joint employer allegations and face no liability. In other situations, the dealership makes the business decision to contribute to the resolution of the claim to avoid the further disruption and costs of litigation. In some situations, the vendor assumes all responsibility and settles the matter on behalf of the dealership and vendor.

4 Steps to Keep it a “Them” Problem

Although dealerships using vendors for services such as those Majestic provided can never be completely immune to joint employment claims, here are four suggestions intended to reduce exposure to unpaid wage claims:

- 1. Contract with reputable vendors.** Make sure the vendor providing these services is a business registered with the Office of the Secretary of State. The vendor should be able to show proof of all required licenses and required insurance coverages for its employees. It should provide detailed invoices for the services provided and create and maintain accurate payroll records that it could provide to the dealership for inspection if requested to do so (one of the recommended provisions of the written agreement between the dealership and the vendor). The vendor should have the appearance of a legitimate company with the ability to pay wages (and unpaid wage claims if necessary) and to reimburse the dealership should its actions result in claims against the dealership. Using three former employees who own a truck and a power

washer to provide these services could make the dealership an easy target for joint employment allegations or even allegations that the dealership is the sole employer.

2. **Utilize a comprehensive written contract.** The dealership should formalize in writing its relationship with and expectations of the vendor. (Informal and handshake agreements have their place – but this is not one of them.) While a formal, written agreement does not eliminate the risk that vendors' employees will assert unpaid wage claims against your dealership, a written agreement should provide significant protection that otherwise may not exist. Among other provisions, the agreement should:

- explain the **nature of the relationship** between the dealership and the vendor, including the vendor's acknowledgment that its employees will perform the contracted for services and that it is free to provide services to other companies with few restrictions;
- include an attestation from the vendor that it has and will maintain all **relevant insurance coverages** and that it will comply with all legal obligations;
- contain the vendor's **agreement to indemnify** the dealership for all claims arising from the actions of the vendor or its employees, including claims for unpaid wages;
- specify that the vendor is responsible for **bearing the expenses and costs** related to the provision of services under the agreement; and
- include the vendor's agreement to **provide documents** to the dealership upon request if needed to confirm compliance with the terms of the agreement.

3. **Train your management.** Control over employees is one of the primary factors in determining whether a joint employment relationship exists. Dealership managers working with vendor employees should be trained to work through the vendor's onsite manager when needs and issues arise or if expectations change or are not met.

4. **Ensure your wage and hour practices are compliant.** A government investigation into a complaint raised by a vendor's employee could lead to a broader investigation

into the dealership's wage and hour practices. You should conduct periodic audits to ensure that all employees are properly classified and paid (both under state and federal law) and that your dealership has the legally required records to prove that employees are paid properly. The absence of time records likely left Majestic at the mercy of those employees seeking unpaid wages.

Conclusion

The USDOL has been clear that it is aggressively pursuing enforcement of federal wage and hour laws and seeking payment for wages deemed owed and unpaid. Attorneys representing employees who allege wage and hour violations are filing collective and class actions because they are more lucrative for them and problematic for employers. There is no time like the present to take steps to protect your dealership against claims made by your employees or those of your vendors.

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