



## Dealerships Working 24/7: Issues to Keep In Mind

### Insights

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Many Toyota dealerships have announced that they will remain open 24 hours a day in order to fix the accelerator problem that has prompted the recent recall of several models. This unprecedented step is likely to raise a number of employment law issues for the affected dealerships, and may serve as a model for any other companies that may face similar issues in the future.

#### **Minimum Wage And Overtime**

Under federal law, technicians are exempt from overtime. As a result, a dealership will be in compliance with federal law as long as at the end of the week, the technician has received at least \$7.25/hr. for all clock hours worked in the week. If flag hours are low for any reason, wages must be supplemented to bring the employee up to at least \$7.25/hr. Federal law does not impose any restriction on the number of hours per day or the number of days per week an employee may work.

Fourteen states now have minimum wages which are higher than the federal minimum wage. Because federal law does not "preempt" state wage laws, dealerships must pay technicians the *higher* of the federal or state minimum wage. A number of states do not recognize the federal overtime exemption for technicians. Therefore, dealerships in those states must comply with their state overtime law when it comes to the payment of overtime to technicians. For example, in California, a dealership may have to pay \$8/hr. for a technician's regular hours, \$12/hr. for hours in excess of 8 in a day or 40 in a week and \$16/hr. for hours in excess of 12 in a day. If a technician in California is required to provide his own tools, these rates of pay double. Therefore, scheduling may be important.

Finally, this campaign will also require the assistance of porters and service administrative employees. These employees typically do not qualify for any exemption from overtime. Therefore, it will be necessary to pay them overtime if they work extended hours.

Some state laws prohibit requiring an employee to work seven days in a row or on Sunday; others require additional payments for hours worked on Sunday. Again, this extraordinary event does not excuse a dealership from complying with these laws.

#### **Meal And Rest Breaks**

Although federal law does not require dealerships to provide paid or unpaid breaks, many state laws do require meal breaks during the employee's shift. These laws are not suspended by the

emergency nature of the recall work. Therefore dealerships located in states where breaks are required should ensure that employees are given the opportunity to use them. Regardless of the law, encourage your technicians who are working extended hours to take whatever breaks they feel are necessary. That is in everyone's best interests.

## **Safety**

The very nature of technicians' duties exposes them to a number of dangers throughout the day. When the dealership requires them to work longer than normal hours, the risks increase. During the push to repair as many cars as possible in the shortest amount of time, technicians may work faster than is prudent. Managers and supervisors must be especially careful to monitor the activities in the service department throughout this campaign and ensure that no one is cutting corners in order to expedite the work. Extra QA will be critical. A dealership cannot afford any "comeback" problems with these repairs.

OSHA provides that an employee may not be disciplined for refusing to perform work where the employee has a good faith concern about safety. If a technician reports he is unable or unwilling to work the extended hours because of a concern for safety, he should be excused and no disciplinary action should be taken.

## **Union Contracts**

Dealerships that have union contracts must review the specific language of their agreements to ensure that they have the right to make significant scheduling and work hours changes on short notice. In all likelihood, most contracts do not contemplate a 24-hour operation. These dealers should immediately consult with their Business Agents to ensure that the union understands the importance of accomplishing the repair work quickly and effectively and solicit their cooperation where necessary.

## **Customer Relations**

Media coverage of Toyota's problems has left the impression that the planned "fixes" will only correct some of the problems and that there are still other unsolved issues. Dealerships should be prepared to explain to customers the exact nature of the problem and the repair that is being made, using the most reliable and up-to-date technical information that is available.

Dealerships may want to provide this information in written form to customers to prevent future confusion. Dealerships should also ensure that every manager and technician is fully briefed with the most up-to-date information on the current repair and the entire gas pedal issue so that they can help correct any misinformation and avoid providing information which might further undermine a customer's confidence. You should also stress to employees the importance that customers be provided only with factual information, not personal opinions.

## **Employee Relations**

The prompt and efficient repair of these vehicles is an important and critical first step in rebuilding customer confidence. In order to do this, dealerships are asking a small number of their employees to make a large sacrifice and to work extended hours to get the work done as quickly as possible.

to make a large sacrifice and to work extended hours to get the work done as quickly as possible. Certainly, providing food and soft drinks through the recall/repair effort would be one way of showing the dealership's appreciation of their efforts.

But dealerships may also be postponing normal service and repair work in order to free up technicians to complete these repairs. In many cases, this means that technicians will be working much longer hours at rates that are effectively much lower than they normally would receive. Be sensitive to this and, where appropriate, pay these employees additional amounts to compensate them for their significant efforts on behalf of the dealership and Toyota.

If you have any questions concerning how this recall/repair campaign may impact your dealership, please contact any Fisher Phillips office and ask to speak to a member of the Dealership Practice Group.

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*This Legal Alert provides highlights of certain specific laws that come into play regarding a 24/7 operation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*