

**DEALER OBLIGATIONS IN A FACTORY RECALL**

There have been a number of highly visible recalls recently. Federal law requires manufacturers to report safety related problems to the federal government. When there are a sufficient number of safety related problems reported, a requirement to recall affected vehicles is triggered.

A recall is an expensive process for a manufacturer. The manufacturer bears the expense of notifying owners and dealers. Replacement of parts and repairs must be done at no cost to the customer. Reputations of manufacturers have been made or broken over how effectively they handle their obligations.

Dealers also have obligations in the event of a recall campaign. Like a manufacturer, your reputation with your customers can rise or fall based on how you handle your obligations.

Sale of New Vehicles. It is a violation of federal law to sell a new motor vehicle on which recall replacements and/or repairs have not been done. The National Highway Transportation Safety Administration has made clear that a dealer may not deliver a new vehicle with a promise to repair it when the customer can return. A new vehicle subject to recall, but not yet sold to a consumer, must be removed from sale as quickly as possible. Federal law makes clear that a recalled product cannot be sold until remedied.

Parts. Replacement motor vehicle parts and assemblies in a dealer's inventory fall under the same rule. If there is a recall affecting inventory parts or assemblies, a dealer must not sell them for dealer repairs or to the public.

Used Cars. Used cars subject to recall pose a thorny issue for dealers. While the law does not specifically penalize sale of a used car subject to a recall as it does sale of a new car, a dealer who sells a used car of the

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**WHO ARE YOU?**

Dealership employees, by training and by disposition, are not confrontational with the public. Confrontation doesn't sell cars. Confrontation doesn't satisfy customers.

Your employees may fear that asking for proof of identity may be rude and may interfere with the attempt to build rapport. However, today's atmosphere requires a new set of rules. Technology makes it easy for an outlaw to pretend to be someone else -- to defraud the dealership or to get information to facilitate a crime. So, it is not rude or out of place to ask customers, employment candidates,

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## Factory Recall (Continued)

brand for which it holds a franchise that has an unremedied recall runs the risk of significant

liability. If there is an accident related to the unremedied defect, the dealer may well see a lawsuit for negligence for selling the vehicle with a defect it knew or should have known was subject to recall.

In publications, NHTSA has advised manufacturers that they should “encourage” their franchised dealers to ensure that the used vehicles

of the manufacturer’s brand have all applicable recall work completed before resale to the public.

### What Should A Dealer Do?

Pretty clearly, in the event of a recall you must have procedures in place so that employees are aware of their obligations to protect the dealer from liability. In addition, customers’ emotions may run from aggravation at the inconvenience to fear of the problem. While there may be limited upside for you in helping emotional customers, there is a real

downside if you are not prepared and proactive.

- Any recall notification material should be

forwarded to the sales department, to the parts department, and to the service department.

- In the sales department, determine whether



the dealership stocks any new vehicles subject to the recall. Remove all affected new vehicles from sale. Mark them unavailable on your website inventory listing. Put indicators on inventory cards or computer listings. Move the keys to a secure area so that salespeople will not be tempted to demonstrate them. Train salespeople so that they understand the situation and

can handle customer inquiries. The vehicles will become available for sale once remedied, so emphasize the importance of taking orders and include “sweeteners” to make it worth the wait for customers.

- In the parts department, management should determine whether motor vehicle parts or assemblies subject to recall are in inventory. They should be immediately removed from sale until they can be replaced. Order the parts necessary for performing recall repairs at expected levels.

- In the service department, put in place a procedure to carefully and appropriately handle customer requests for performance of recall repairs and to handle repairs of dealer inventory. Train service advisers to do “triage” for customers who call – schedule the fearful customers quickly and provide loaners or pick-up assistance for customers who express annoyance. Respond with empathy to a customer’s concerns. Once the rush subsides, contact customers who don’t contact the dealership so that they know dealership

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## Who Are You (Continued)

and others “who are you?”

**Test drives.** A dealership must know two critical pieces of information about any customer about to go on a test drive – who are you and can you drive? The easiest way to learn that is to ask for a driver’s license. If the prospect does not have a license and causes an accident, the dealer could be liable for negligent entrustment. And having a copy of a driver’s license with a legible picture at the dealership is the salesperson’s best defense against being carjacked. A carjacker will be deterred if the dealership has a good picture, so if you don’t have a good quality copier on the sales floor, get one and copy the driver’s license of every prospect going on a test drive.

**Customers.** The dealership stands to lose the most in any sale to an identity thief. If your dealership has not yet put in place a program for compliance with the FTC’s Red Flags Rule, do it immediately. This formalized “know your customer” program is protection both for a person whose identity may be stolen and for your dealership.

**Employees.** Knowing who you hire would seem to be fundamental in any dealership personnel system. Whether it is to protect your customers’ non-public private information or the dealership’s other assets, make sure that you know the real identity of the person you are hiring. Under federal law, every new employee must fill out a form I-9 and provide proof of residency and right to work. At a minimum, the dealership should comply with its requirement to follow the federal I-9 process for every new employee.

**Law enforcement personnel.** Dealers sometimes get calls from people claiming to be police or other law enforcement personnel. Whether a caller is seeking information about a customer or employee or is just seeking

private dealer information, know whether the caller is really with a law enforcement agency. Don’t provide information over the phone. You want to look at a badge or other proper credentials. If the caller is seeking information



about a customer or employee, require a properly issued subpoena or other proper investigative demand.

**Government official.** Have you ever been visited by a “government official” claiming that you violated the law because of a credit application in a dumpster or an unsafe condition in your shop? By some coincidence, that visit is followed by a call from a vendor suggesting that you protect yourself by buying the vendor’s compliance program. No legitimate vendor uses that tactic, but that does not mean it doesn’t happen. It is unusual for a government official to visit a dealership. When one does visit, the person should have credentials and proper documentation authorizing an investigation. Demand them.

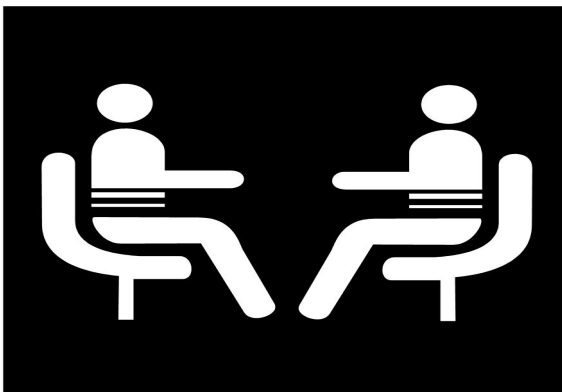
**Attorney.** Have you ever had a call from an attorney demanding that you solve a customer’s problem or suit will be filed immediately? How do you know it’s not your customer’s unemployed brother-in-law? Attorneys have letterhead and access to a fax machine and email. Require that the caller send you a letter confirming representation of the customer. Require a specific statement of what your

## INTERVIEWING EMPLOYMENT CANDIDATES

Many dealers assume that interviewing employment candidates comes naturally to all managers. That's not the case. Like many management tasks, interviewing is an acquired skill. Clearly, experience is the best teacher. But starting with some training in the basics is also very important.

Here are some tips for managers who interview employment candidates.

1. Prepare carefully for an interview. Develop a list of the qualifications that you are seeking. All questions should relate to the person's ability to do the essential functions of the job you are trying to fill.
2. Welcome the candidate and take time to explain the format of the interview. A hand shake, expressions of appreciation for coming to the dealership, and politeness ease the candidate into and out of the interview process. However, becoming overly familiar with the candidate can lead you into areas that you should avoid, such as marital status, number of children, etc. When trying to put the candidate at ease, still remember the areas you should avoid.
3. Do not ask leading questions, questions that can be answered with a yes or no. Ask open ended questions and allow the candidate to respond.
4. Use the dealership's form application. It



should be the dealership's policy to retain all job applications for a period of one year from the applicants providing them.

- 5 All interviews should be in person. Avoid pre-qualifying applicants by telephone. A lawyer for an applicant who never got an interview can argue that pre-qualification questions are used with the purpose of avoiding interviews with protected classes of applicants.
- 6 Avoid questions that could lead to claims of discrimination by rejected applicants.

### WHAT QUESTIONS MUST BE AVOIDED IN INTERVIEWING APPLICANTS?

- Age and date of birth – While an employer may inquire whether an applicant meets the state minimum age requirement for work, it cannot ask the age of the applicant or his or her date of birth.
- Arrests – One may only inquire about convictions.
- Citizenship, place of birth, nationality – One may ask whether someone is legally authorized to work in the U.S. and the applicant will be required to provide the INS I-9 form upon hiring. However, questions about national or ethnic background should be avoided.
- Disability – The only questions that may be asked must relate to whether the person can do the essential functions of the job with or without reasonable accommodations and, if accommodations are necessary, what those are. Questions about the person's disability, health problems, or prior work attendance record should be avoided.
- Marital status, pregnancy, number of children, childbearing age, or childcare – Questions concerning these issues should be avoided to prevent claims of discrimination.
- Race – No questions should be asked.