

Dealer Insights



Guarding your dealership's reputation

Common employee scams to look out for

What dealers should know about the new pension law

Are you keeping your employees happy?

Dealer Digest

Plus:

Seeing past the façade

How to hire the best



ABBOTT, NICHOLSON, QUILTER, ESSHAKI & YOUNGBLOOD, P.C.

300 River Place, Suite 3000
Detroit, MI 48207-4225

Telephone 313.566.2500
Facsimile 313.566.2502

www.anqey.com

Guarding your dealership's reputation

Common employee scams to look out for

You've spent years building your dealership's reputation for fairness and honesty, and it's a precious asset. But are you doing enough to make sure one bad employee isn't tarnishing your image and endangering your standing in the community by scamming customers?

In the competitive automobile industry, a blow to your dealership's reputation can severely damage its profitability. Knowing today's most prevalent frauds is the first step to making sure they don't happen at your business.

4 big rip-offs

Dealers must exercise constant vigilance to stop employees from taking wrong turns, either for their own profit or to win approval by increasing the dealership's bottom line. Instead of just assuming all is well if your employees are making sales and your dealership is making money, frequently check up on what's really happening in every area of your business.



Most fraud revolves around the financing department's relationships with customers. But salespeople also can be the culprits in scams against consumers. Here are the four biggest rip-offs:

1. Fake financing approval. This scam involves telling the customer he or she has been approved for financing, and then delivering the vehicle and letting the customer drive it for a few weeks. But then the other shoe drops — the financing department employee calls back to say the loan fell through. In order to keep the vehicle, the customer must pay a premium and increase the monthly payments.

Frequently check up on what's really happening in every area of your business.

Crooked employees usually practice this rip-off on customers with poor credit, who won't be too surprised to hear they're having financing problems. The employee knows the real payment amount and the interest rate offered by the financing institution before delivering the car. But he or she assumes that, after driving the vehicle for a time, the customer will develop a certain comfort level with it and agree to pay more to keep it.

2. Bogus credit score. In this fraud, a financing department employee lies to the customer about his or her credit score, saying it's lower than it really is. The employee then charges the customer a higher interest rate, increasing the dealership's income from the sale.

Again, crooked employees try this on customers with poor credit who they assume won't know their own credit scores. Most people with strong credit ratings will know when they are being duped.

3. "Forgotten" loan payoffs. Another major fraud is "forgetting" to pay off the customer's trade-in. This deliberate oversight gives the customer an extremely

low market value for the trade-in along with serious credit problems. Here's how it works:

When a customer trades in a car, he or she often still owes money on it, which the dealership agrees to pay. The salesperson deducts this amount from the customer's trade-in value, which is then used as partial payment for the new vehicle.

However, if the dealership doesn't pay the outstanding loan balance, the loan stays in the customer's name. Months later, the customer starts receiving calls from the bank. He or she can take legal action to make the dealer pay off the loan, but the late payments will still damage his or her credit.

Some customers will no doubt just pay off the loan balance, but they certainly won't return to purchase more vehicles — or recommend your dealership to their friends.

4. Padded totals. In this fraud, an employee includes items in the vehicle price that the customer didn't agree to, such as destination fees, and, most frequently, warranty costs. The salesperson quotes a price that doesn't include the warranty fee, and then gives the customer the monthly payment amount that *does* include it — without getting the customer's consent.



Stop employees from defrauding your customers

Any allegation of fraud at your dealership could be lethal to consumer confidence and cost you thousands of dollars in new and repeat business — not to mention the threat of legal action and criminal prosecution. Here's how to head off crooked employees before they start defrauding customers:

- ◆ Set up detailed procedures to prevent fraud. Have the finance manager review all customer agreements.
- ◆ Hold mandatory training, both during new-hire orientation and periodically throughout the year, to inform employees of the consequences of fraudulent behavior and the procedures you have in place to prevent it.
- ◆ Don't allow finance associates to work with the same financing institutions on every deal. This will prevent kickbacks or special arrangements.
- ◆ Send out customer satisfaction surveys to make sure your customers appreciated the service they received and felt comfortable with their treatment.

If the customer questions the warranty, the salesperson may say it's required in order to lock in a certain interest rate. This is false: The interest rate depends only on the customer's credit history.

Big price to pay

Crooked employees and dealers who practice these frauds may be making a few extra dollars per vehicle, but they're losing a lot more. After all, most dealership revenues come from loyal repeat customers. Defrauding customers costs a dealership potential repeat business, such as additional car sales and service.

Dealers who allow these practices also are hurting their industry reputation. Before buying cars, many people look at a dealership's reviews by past customers. If your employees are ripping off consumers, the public may know about it before you do. So stay aware, and don't let fraud happen at your dealership. ✦

What dealers should know about the new pension law

If you haven't done so already, you may need to amend your dealership's retirement and savings plans to comply with the Pension Protection Act of 2006. In creating it, legislators aimed at making employers properly fund their pension plans and encourage employees to save more for retirement. Here's how your dealership can benefit as well as where you may need to make adjustments.

Pension funding

If your dealership has an underfunded defined benefit plan, the new law gives you seven years to fully fund it. Each year, you must contribute the underfunded amount, which will be amortized over seven years along with interest and the present value of benefits accrued during the current plan year.

But you have less time if your plan has a funding status of less than 80% for the ongoing liability test and less than 70% for the at-risk test. If that's the case, beginning in 2008, you'll have to increase your target liability and pay this at-risk liability over a five-year period.

The law also requires your dealership to use more realistic interest rate assumptions to calculate pension fund reserves. And starting in 2008, you'll have to notify participants about the plan's funding status.

You can increase participation in your 401(k) plan by automatically enrolling all employees.

Hybrid plans

On the good news front, the law made it easier to convert a defined benefit plan into a combined defined benefit and 401(k) for plan years beginning after 2009. This will let you decrease your dealership's retirement plan expenses by allowing employees to save their own money for retirement.



The law also cleared up some uncertainty about cash balance plans. These plans must now be tested for age discrimination.

401(k) changes

If your dealership has a 401(k), you can increase participation in the plan by automatically enrolling all employees. The beginning contribution is 3% of salary, and it increases 1% yearly until it reaches 6%. If an employee opts out of the plan, you must give him or her 90 days to stop participating and withdraw all contributions and earnings.

If you amend your plan and offer automatic enrollment, there's another benefit. Your plan will no longer be subject to nondiscrimination tests limiting the amount high-income workers can contribute based on the average contribution rate of employees making less.

You also must now allow hardship withdrawals for any person listed as a beneficiary. And the maximum vesting schedule has decreased to a three-year cliff or six-year graded schedule. Review your plan document to make sure it contains these provisions. If it doesn't, have your plan administrator help you amend it.

Other provisions

The law also made permanent several provisions of the Economic Growth and Tax Relief Reconciliation Act

of 2001 (EGTRRA) that were due to sunset in a few years. They include a higher dollar amount for IRA contributions (\$4,000 for 2007) and higher dollar limits on defined contribution plans (\$16,000 for 2007).

The increased annual benefit limit under a defined benefit plan (\$180,000 for 2007) is now here to stay, as are catch-up contributions for workers age 50 or older (\$5,000 in 2007). The law also made permanent EGTRRA's modifications to the top-heavy nondiscrimination and coverage rules.

Besides the changes to retirement plans, the law toughened charitable contribution rules. For calendar year 2007, you'll no longer be allowed to write off

contributions of cash, checks or other monetary gifts unless you retain either a bank record such as a canceled check that supports the donation or a written statement from the charity that meets tax-law requirements.

Plan adjustments

Overall, making sure your pension plan is properly funded should increase your employees' confidence in your dealership. And having more ways at your disposal to encourage employees to save for retirement is another plus. Just make sure you understand what's required, so that all your plans make the grade. ✧

Are you keeping your employees happy?

According to the National Automobile Dealers Association, 100,000 jobs are available at 20,000 dealerships across the nation. It's not easy to find talented and motivated employees — so when you've found them, you want them to stay.

The good news? Although competitive pay and benefits are a must, improving retention is not just about money. Making employees happy with their jobs and their working environment can be just as important.

Cover the basics

First, cover employees' basic needs by offering competitive pay and benefits. But set up an array of benefits besides the essential health plan, retirement plan, paid vacation and sick time.

For instance, a tuition reimbursement program might be a good incentive. Although offering this benefit to your entire staff may seem expensive, typically only a small percentage uses it. It may be of greatest interest to employees in the finance and accounting departments.

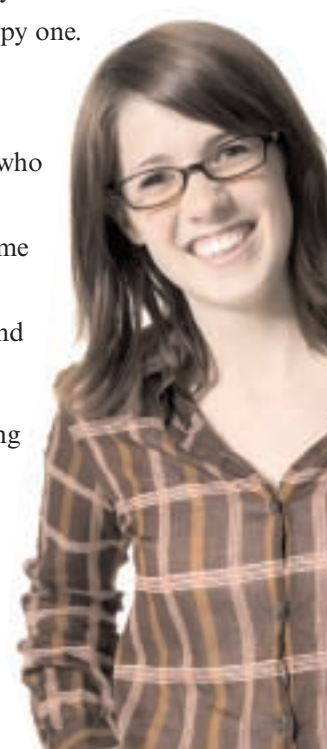
Try rewarding your technicians with bonuses based on production. Pay longevity bonuses and consider compensating longstanding employees at a higher rate than your competitors are offering. Reward employees with perfect attendance, and let staff trade in unused sick days for vacation time.

Try to accommodate reasonable requests and be flexible with schedules. A happy employee is more productive and efficient than an unhappy one.

Encourage efforts

Dealerships often lose good employees who have learned all they can and don't feel they're advancing. Their jobs have become monotonous. If you see this happening, change the employee's responsibilities and alter his or her work routine.

Give staff members a sense of belonging and accomplishment. Let them know your dealership's business goals, and keep them informed about how you're achieving those goals as a team.



Recognize and reward employees who are working hard and helping reach your objectives. Hold award ceremonies, give plaques, offer extra paid time off or simply say “thank you.”

Finally, hire department managers with strong people skills. Managers who don’t encourage staff and develop their talents cause them to go elsewhere.

Stay in touch

Little gestures show your interest and appreciation. For instance, let trusted employees use demonstrator vehicles for personal use. They’ll be taxed on the demo usage, but this is still a nice perk.

Likewise, save your employees time and trouble by offering them free or reduced-cost refreshments at

work. For employees interested in socializing, organize holiday parties and company picnics outside the workplace.

Don’t be afraid to ask what employees think. If you’re considering certain types of benefits or rewards, distribute surveys and have your staff rate them. And from time to time, just ask people what you can do to make them happier and keep them with you.

Appreciate everybody

Retaining good employees is not just about money and benefits. You can find many other ways to keep staff happy. If you’re consistent about them, even small gestures of interest and appreciation increase employees’ job satisfaction, giving them every reason to stay at your dealership. ✧

Seeing past the façade

How to hire the best

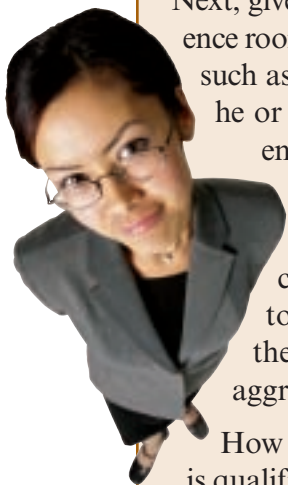
Your employees engage customers and act as your representatives. When you think about it, they’re really your dealership’s most valuable assets. So it’s imperative to hire people who embody your core values and principles. But that’s easier said than done, because many candidates put on a façade when interviewing. How can you discover who the applicant *really* is, and whether he or she will be a productive team member at your dealership?

First, cover all of the basics. Carefully review resumés and call to check references, educational background and previous employment. If applicants can’t pass those fundamental tests, you don’t need to look further.

Next, give your promising candidates a not-so-standard interview. Rather than meeting in a conference room or office, go on a tour of your facility or invite the interviewee to a company social event, such as an outing or luncheon. Watch how the candidate interacts with other employees. Would he or she be a good fit? How are his or her people skills? After the candidate leaves, ask your employees for their opinions. Would they like working with this person?

Finally, have the candidate perform a non-work-related activity that might lower his or her level of self-consciousness, such as driving. During your tour of the dealership, casually ask which is the candidate’s favorite car on the lot. Explain that you would love to talk over lunch, and insist that he or she drive the car. Observing someone behind the wheel offers insight into the way they handle life and business situations. Are they aggressive and reckless, or courteous and cautious?

How can you be sure you’re hiring the right people? Start by making sure each applicant is qualified and has honestly represented him- or herself in the areas of experience and education. Then, try some creative interviewing techniques to find out more about the applicant’s approach to dealing with customers and functioning as a team member.





Dealer Digest

Avoiding the perils of long-term loans

Longer loan terms are a rising trend — and one causing dealer concern. Nationwide, terms of 60 months or more are becoming the norm for consumers enticed by high-end cars. But as interest rates and vehicle prices rise, a longer term can keep a consumer upside-down for most of the life of the loan.



Not only does this hurt your customers, it endangers their loyalty to your dealership. The longer a consumer owns a vehicle, the less attached he or she becomes to the brand and dealership. And the lower the consumer's equity in the vehicle, the longer he or she will wait to purchase another one.

To avoid these problems, try suggesting that customers lease instead of buy. They'll then be able to ride in high-end vehicles but retain feasible monthly payments. And lease terms are decreasing to an average of 38 months in 2005, according to Edmunds.com, a Web site that provides car reviews and pricing advice. If you explain the perils of long-term loans and the advantages of leasing, your customers might well choose to lease, strengthening their ties to your dealership. ✧

Show your dealership in the best light

When a new customer walks in the door, what's his or her first impression of your dealership? It can be hard or impossible to erase a negative one, so make sure you're presenting polished inventory, spotless premises and a friendly staff, 24-7.



Position your most popular and eye-catching vehicles at the front of your premises, so people see them first. Use stickers and advertising products to keep your dealership and inventory turning heads. Remember that clean vehicles look better and sell faster, keeping turnover high. Wash used vehicles twice as often as

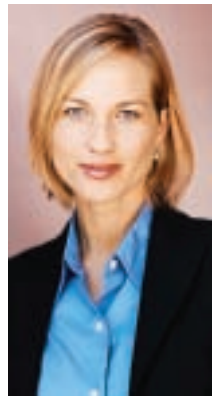
new ones. Start all vehicles every day — a dead battery can ruin a customer test drive.

After you've sparked the customer's interest in a vehicle, what really makes the sale is your presentable and knowledgeable staff. Give your employees regular training sessions, and have both employees and managers adhere to a professional dress code.

Employees learn from management's conduct and attitude, so make sure your managers are motivated and passionate about the automotive industry. They should focus on the positives of your dealership and the people working there. After all, employees who feel good about themselves and what they do produce more. ✧

Women are customers, too!

Buying a vehicle has traditionally been a man's gig, but today, women are often the ones in charge. They influence at least 80% of all vehicle purchases, according to Ford Motor Co., and it's increasingly common for women to buy vehicles on their own.



How should your sales staff interact with female customers? Above all, treat them with respect. She came to buy a car, not to flirt or be called "honey." If she's accompanied by a man, the salesperson should hand business cards to both customers.

Taking time to develop a relationship is great, but that doesn't mean making small talk about family or personal interests. Instead, the salesperson should find out what features the customer wants, and what she does and doesn't like about her current vehicle. Women tend to do their homework.

Having made the sale, the salesperson should ask for referrals. Like any satisfied customer, a woman can be a great source of business to help you build a solid customer base. ✧

GM'S VERBAL AGREEMENT WITH DEALER HELD TO BE ENFORCEABLE BY THE MICHIGAN COURT OF APPEALS

By: Heidi E. Warren, J.D.

On August 10, 2006, in an unpublished opinion, the Michigan Court of Appeals upheld a judgment in favor of an automobile dealership in a breach of contract case involving an assignment of a right of first refusal for the purchase of a dealership. In *Bero Motors, Inc. v. General Motors*, the Dealer had hoped to acquire a GMC franchise in order to sell GM's GMC truck brand. In order to accomplish this goal, the Dealer attempted to purchase a certain dealership holding a GMC truck franchise. After the Dealer's attempt failed, GM's representatives stepped in with the intention of helping the Dealer acquire a GMC franchise in exchange for the Dealer helping GM fulfill its Plan 2000 goals. Specifically, GM promised to assign its right of first refusal to the Dealer in the event of a sale of the GMC dealership originally contemplated by the Dealer, effectively giving the Dealer precedence over other buyers. In return, the Dealer promised it would offer to sell two of its other franchises to another local dealership and use a separate showroom to sell another manufacturer's vehicles. This agreement was never reduced to writing.

A few months later, the dealership that the Dealer wanted to purchase was sold to another buyer for a price less than what the Dealer had offered the dealership only a few months before. As a result, the Dealer filed suit seeking damages from GM for breach of contract for failing to honor its promise to assign the Dealer its right of first refusal. At trial, the jury returned a verdict in favor of the Dealer and GM appealed arguing that the agreement was not enforceable because it involved an interest in real estate and was never reduced to writing.

In dismissing this claim, the Michigan Court of Appeals gave a detailed opinion as to why the agreement did not need to be in writing and why the verbal promises exchanged by the parties' made the agreement enforceable. Finding that a right of first refusal does not create an interest in real estate, the court held that an agreement concerning a right of first refusal does not need to be in writing to be enforceable. Because the Dealer's commitment to offer to sell its

two competing franchises to a local dealership was induced by GM's promise to help the Dealer, there was an enforceable agreement. Whether or not the Dealer actually sold its two competing franchises did not enter into the analysis of the court.

Finally, the court recognized that just because the agreement did not include a time limit on performance, it did not mean that the agreement would be void for indefiniteness. The court held that in the event a contract does not specify a timeframe in which performance needs to be rendered, all that is required is that performance of the promises be within a reasonable time. In the *Bero* case, only a few months had passed since the Dealer and GM made these promises to one another. Finding that this was within a reasonable time, the court upheld the jury's verdict and the damages awarded to the Dealer.

Nevertheless, the court of appeals' decision in *Bero Motors, Inc. v. General Motors* is not a typical result when a manufacturer makes a verbal agreement with a dealer regarding relocation or changes in franchises. More often than not, such agreements need to be in writing to be enforceable against the parties. If these agreements are not in writing, then at the very least, performance or part performance of a promise by one of the parties is required in order to enforce a verbal agreement. Although this unpublished decision is non-binding, it is persuasive authority that can be used to defend or sue on breach of contract claims in which agreements were never reduced to writing.

Abbott Nicholson, P.C. is experienced in representing dealerships in all aspects of civil litigation. Should you have any additional questions concerning verbal or written contracts, or need legal counsel regarding a franchise issue or any other dealership issue, please contact John Youngblood, Robert Weller, or Michael Weikert at (313) 566-2500.

ABBOTT, NICHOLSON, QUILTER, ESSHAKI & YOUNGBLOOD, P.C.

300 RIVER PLACE, SUITE 3000 • DETROIT, MI 48207-4225 • TEL: 313.566.2500 • FAX: 313.566.2502 • www.anqey.com

John R. Nicholson
Carl F. Jarboe
Mary P. Nelson
Sean A. Fraser
Michael J. Weikert

Thomas R. Quilter III
Jay A. Kennedy
Michael R. Blum
Faith M. Gaudaen
David A. Antonelli

Gene J. Eshaki
Timothy J. Kramer
Daniel G. Kielczewski
Brian H. Rolfe

John F. Youngblood
William D. Gilbride, Jr.
Robert Y. Weller II
Christopher R. Gura

Of Counsel
Norbert T. Madison, Jr.
Thomas C. Shumaker
Lisa R. Gorman
Robert G. Lewandowski

C. Richard Abbott
(1935-2003)