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CARS
car allowance rebate system

All CARS payouts pledged by Sept. 30

Thanks to an army of 5,000 examiners (up from 225 at the beginning of the program), officials of the CARS program said they expect to pay all valid claims by Sept. 30. About 87 percent of the transactions, for $2.5 billion, reportedly had been paid by Sept. 15.

"All dealers will be paid by or before the end of September, probably before," Transportation Secretary Ray LaHood said at a Sept. 15 news conference. "We're down to the last applications that are deficient."

The $2.5 billion figure represented a doubling of payments in just six days. Dealers claimed about $2.88 billion from the program, which was funded for $3 billion in "cash-for-clunkers" transactions.

Some dealers with numerous CARS deals have had to lend personal money to their businesses, to cover cash flow problems created by payout delays.

"Cash flow is the lifeblood of small businesses, and dealers need those funds to pay our own employees," said Russ Darrow, chairman of the American International Automobile Dealers Association.

NHTSA on clunker scrappage amounts: Keep it

A lingering concern for dealers about the CARS program—apart for getting paid by the government—concerns disparities between what the dealers estimated their customers' trade-ins worth to be and what they eventually fetched.

Many dealers thought they were entitled only to $50 from the scrap yard; anything over that would have to be returned to the customer. The CARS playbook does not address the issue directly.

Now, after the program essentially is closed, the National Highway Traffic Safety Administration has clarified that dealers can keep the difference.

If the dealership estimated a clunker was worth, say, $150 but it ultimately sold for $250, the dealer is not obligated to share any of it with the customer, said NHTSA's Dan Smith, who participated in most of the agency's 10 Webinars on the CARS program.

"The $150 is a reasonable estimate that you swear to. If you get more, that doesn't mean your estimate was not in good faith," Smith said.

"An auditor might ask, 'What did you base the original estimate on?' If you knew you were going to get $250, then you would have had to tell the customer that."

Some headaches in final push for CARS approvals

Flawlessly designed programs likely would not have positioned the "update" command right next to the "cancel" command, which can reduce a CARS transaction to one for the heavens.

Dealers reported that and other frustrations during a 10th and likely final CARS Webinar hosted by the National Highway Traffic Safety Administration on Sept. 9.

Frank Borris, who oversees the Car Allowance Rebate System program for NHTSA, said his agency was aware of the "cancel" problem, but it probably would not be fixed before the final CARS transactions are settled.

"A solution may seem simple," he said. "But the system was developed quickly. And on a site that sees heavy activity 24 hours a day, it's tough to install a correction without interruption."

Borris said dealers who mistakenly cancelled a transaction while updating it should send an e-mail to help@cars.gov. Screen-captures help, he added.

Some dealers said that CARS Help staff erroneously told them to push "cancel" when a dealer merely wanted to self-reject an application.

NHTSA indicated it would not deny dealers repayment because of a keystroke error. Dealers should document each situation and send it to the

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AIADA mobilizing against 'Buy American' legislation

Included in an otherwise benign federal appropriations bill about energy and water is one sentence that has drawn the ire of the American International Automobile Dealers Association:

"None of the funds made available in this Act may be used to purchase passenger motor vehicles other than those manufactured by Ford, General Motors or Chrysler."

The AIADA has mobilized its Legislative Action Network to strike the provision inserted by freshman Rep. Larry Kissell (D-N.C.) into House Resolution 3183, the Energy and Water Development Appropriations Act. A companion bill in the Senate does not include the language.

The AIADA is calling on dealers to contact their federal lawmakers about what it calls "protectionist" legislation involving government automotive purchases. The association said dealers should cite three reasons:

1. "Buy America" provisions harm our relationships with other countries and can cause retaliation by our trading partners.
2. The language violates U.S. obligations to the World Trade Organization Government Procurement Agreement.
3. The language violates the Federal Acquisition Regulation, which requires free competition and prohibits sole source or brand requirements.

The CATA on Sept. 18 mailed all its members a directory with the addresses and telephone numbers of all state and federal Illinois elected officials. The AIADA supports the Senate version of the legislation.

In Memoriam

Howard Zazove, a suburban Chrysler-Plymouth dealer who later opened a namesake Pontiac store in Elmhurst, died Sept. 14. He was 86.

Mr. Zazove also served as a director on the CATA board from 1972 to 1975.

He operated LaGrange Chrysler-Plymouth from 1963 to 1975, then sold it and opened Howard Pontiac in 1975. Steven Zazove, now proprietor of Howard Buick-Pontiac-GMC, said his father sold used cars on Western Avenue in Chicago for about 12 years, beginning at age 16, before advancing to the finance department and, ultimately, dealer principal.

Howard Zazove is survived by his wife, Marge; sons Steven and David; daughters Lori and Ivy; and 10 grandchildren. Donations appreciated to the Leukemia Research Foundation, (847) 424-0600.

CARS

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9-AMC-NHTSA-CARS-AP-SUPPLIER@FAA.GOV email address. Other final concerns:

Stolen Clunkers – Apparently, clunkers make an attractive target for thieves, and some dealers have reported clunkers being stolen from their lots before they are disabled. NHTSA said dealers should file a police report, for enforcement concerns. But the vehicle's VIN now represents a junked auto, so a thief would have a problem trying to register it.

Returning Clunkers Money – There have been a few instances in which dealers have been reimbursed but the deal had to be unwound. To return Clunkers money, send a check (along with a relevant explanation) to DOT/NHTSA/CARS, c/o ESC, AMZ-300, P.O. BOX 268911, OKLAHOMA CITY, OK 73125-8911.

New Disposal Facility Certification Forms – NHTSA recently released new versions of the Disposal Facility Certification form and the Salvage Auction form. The new versions are in an electronic format and are "fillable" PDF forms. The forms can be found at http://www.cars.gov/dealersupport/required-forms.

It is acceptable to use a disposal facility other than the one identified on on the transaction, as long as the new facility is on the list of registered facilities.

In a Sept. 16 statement, the National Automobile Dealers Association called the CARS program "the most effective piece of the government's economic stimulus" and commended NHTSA for accelerating payments to dealers.

"Dealers across the country," the NADA wrote, "are reporting that they experienced one of the busiest summers in recent memory thanks to the boost in sales prompted by the clunkers program."

Said NADA Chairman John McEleney, "There's no question that this program was a boon to consumers, to automobile dealers and to the workers who build cars and trucks."

The program also removed nearly 700,000 older vehicles from the roads.

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Review past editions dating to 1998 or search by subject at http://cata.drivechicago.com.

Jerry H. Cizek III **President, Publisher**
Erik K. Higgins **Editor, Director of Dealer Affairs**

Pitfalls to avoid in employee terminations

By John Boggs, Esq.

My business is defending car dealerships against employment-related complaints, and I also serve as legal counsel to the California New-Car Dealers Association. In the last six months the volume of employment cases coming to my office has increased 300 percent, which is terrible news for dealers.

Increased Unemployment = More Employee Lawsuits. With unemployment at the highest rate since 1983, the number of lawsuits filed by terminated employees is at an all-time high. Just Google the phrase "how to sue when laid off," and you'll find over half a million articles.

The U.S. Equal Employment Opportunity Commission reported a 15 percent increase in the number of bias charges filed with the agency in 2008, on top of an 11 percent jump during the two previous years. Even if you successfully defend your case, you still lose.

In my experience, legal fees incurred by a dealership for a successful defense against a single claim bought by an employee are minimally between $75,000 and $125,000, let alone a judgment which typically exceeds $500,000 for the settlement.

Actions to take before terminating an employee

Many employees look upon a legal settlement for a payday at a time when a new job is hard to find. While you can't prevent employee lawsuits, the actions that you take prior to employee termination can have a major impact on whether or not you win the case in court, or on any settlement negotiated outside of court.

Here a several pitfalls to avoid in employee termination:

1. Hiring a high-risk employee

Start with the basics: Drug, background and reference checks are designed to protect companies from bringing problem employees into the workplace. While most companies now perform these checks, it's amazing how frequently new employees are hired before all of the results are confirmed and approved.

2. Using out-of-date, noncompliant employee handbooks, policies

Here's a quick way to increase your liability risk: Exhibit A in the courtroom is your company's handbook, with a policy that is not in compliance with the prevailing state or federal laws.

How can a company stay in sync with a steady stream of changes in employment law? In 2008 alone, significant changes were made to the Americans with Disabilities Act, the Family and Medical Leave Act, and new military leave requirements. Any breach in corporate compliance could open the door to potential employee legal action.

It's a daunting task to stay up-to-date, even with Human Resources staff attending training and continuing education classes. Policies and handbook changes need to be triggered by changes in the law, not "when there is time" or on a once-a-year refresh.

3. Vague or missing job descriptions

If you terminate someone for nonperformance, the court will look to the job description as the standard against which the employee's work should be measured.

Be honest: Does your organization have current job descriptions for all employees? Do the job descriptions clearly specify, in detail, the responsibilities, essential job functions, and reporting relationship?

You can expect a plaintiff's attorney to cast a wide net in order to demonstrate discrimination against the employee. Allegations of gender or racial discrimination and charges of retaliation make up the two biggest categories of employee complaints to the EEOC. When job descriptions are well drafted for all employees, a company can demonstrate consistent expectations among all employees.

4. Performance reviews that avoid difficult conversations

A performance review is your company's official statement on how satisfactorily an employee performs his or her required duties. If an employee is terminated for performance reasons, there had better be a history of performance reviews, or at the least counseling, that reflect poor performance.

A review full of "happy talk" that misses fact-based observations of substandard performance will be a gold mine for your terminated employee in a courtroom.

5. Botched termination

In the past, employers often tried to "buy off" employees who were being terminated by essentially swapping a sweet severance package for the former employee's signature on an agreement not to sue. This is often not possible economically because of tight financial conditions of companies. It also is compounded when large numbers of employees are laid off at one time.

There are many legal considerations to employee termination; the first consideration is human. How a termination is handled on a personal level can make a huge difference in whether the former employee files a lawsuit. Treat employees with fairness and dignity during the termination process, and they'll be less likely to "get even" with the company later.

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Manufacturers at Frankfurt Auto Show try to shake crisis mentality

FRANKFURT—After a year that threatened to engulf the automobile business in a bruising contraction in world trade and most Western economies, manufacturers arrived at the Frankfort Auto Show more eager to sell cars than spread apocalyptic warnings.

From compacts for the frugal to super-premium vehicles for the fabulous, the companies have new models to offer—some of them electric—and the world of auto enthusiasts is lapping them up as the industry begins to shake off the all-crisis, all-the-time attitude of the last year.

"You're talking more about products," Carlos Ghosn, chief executive of Renault, said Sept. 15, the first day the show was open to journalists. "We are happy."

As with so much lately, the Frankfurt auto show this year is a more modest affair, with fewer companies displaying their wares across less floor space.

Instead of the 1,046 companies at the biennial show's previous outing in 2007, there are 753 this year. That may reflect the industry's state of mind: 12 months after the Lehman Brothers debacle, things are less bad than expected and better than could be reasonably hoped for.

Ghosn said that Renault, which controls Nissan, expected worldwide auto sales to reach 59 million units in 2009. The good news, he said, is that at the beginning of the year, he expected it to be 55 million.

"The difficult crisis in the industry is not over yet, but there are increasing signs that the bottom has been reached," said Volkswagen Chief Executive Martin Winterkorn. "The industry can be cautiously optimistic."

But the Japanese auto market has stagnated, and the European market faces a downturn late this year and early next as the cash-for-clunkers programs that accelerated 2009 sales begin to run out. Germany spent $7.3 billion on the wildly popular program, which stimulated sales of smaller, environmentally friendly cars.

The question mark hanging over European spending has not stopped automakers from introducing what they say are the products of the future. Renault showed, for the first time, an all-electric sedan based on its existing Fluence line. Ghosn also announced a partnership with RWE, a German utility, to develop the infrastructure for recharging the batteries of electric cars.

RWE's chief executive, Jürgen Grossmann, handed Ghosn a package—and then autographed it—the size of a mailbox from a street corner. It represents, both executives said, the electric "filling station" of the future.

Burnishing its green credentials, Daimler showed off a "plug-in hybrid"—a car that can run on either electricity or gasoline, but can be recharged from the wall.

That the hybrid was a prototype version of the Mercedes S-Class suggested that no manufacturer could avoid electricity's surge. Daimler's chief executive, Dieter Zetsche, called the hybrid model "the best of green."

For those who still enjoy the smell of gasoline, Porsche showed its four-door Panamera, which made its debut in Shanghai this year.

That Porsche went first to China—a market it entered in 2001—and then came to Europe with the Panamera highlighted how much has changed since the last world economic downturn a decade ago. No executive interviewed could recall thinking so much about the potential in Asia, specifically China or India.

Lawsuit

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Common lawsuits filed by terminated employees are based on accusations of:

• Discrimination against a protected class, such as age, race or gender;

• Underpayment of wages and benefits; and

• Inadequate warning that a position was about to be eliminated.

Don't breath a sigh of relief too soon after a termination. The EEOC guidelines allow from 180 days to 300 days for a laid-off worker to file a grievance; many state laws have a window of one year or more.

Marketplace

Office Manager Professional accountant with 14+ years experience. Top performer in all aspects of business accounting, financial analysis, ensuring accuracy of financial reporting. Outstanding experience in working with management to set up and manage controls. Work well in team or individually to achieve goals and objectives. Margaret LaPiana, (708) 214-5211. Résumé on file at the CATA.

Compliance Consulting Dynamic, results-oriented professional with 15 years of experience in the automotive industry. Expert in automotive aftermarket and FTC compliance. Ability to recruit, manage, motivate staff. Successful in sales, consulting and training; proven problem solver. Paul Cuchna, (847) 858-3590. Résumé on file at the CATA.

Office Manager/Controller Experienced (50+ years) in automotive business, seeking temporary or part-time position. Charles Brothers, (630) 208-1015.