



By Marc Brandes

PITFALLS TO AVOID

IN THE AUTOMOTIVE

DEALERSHIP HIRING

PROCESS



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When representing automobile dealerships, it's easy to get caught up in the important details surrounding dealership operations including Federal and State regulatory requirements, mergers and acquisitions, franchise rights, credit facilities, and dealer agreements. But there is one other facet of the business that is key to the dealership's survival, and that is paying attention to the legal liabilities in the hiring process. In fact, the old saying "Our employees are the life blood of our business" should be changed to "Our employee hiring process is the lifeblood of our business." Unfortunately, some employers fail to take the basic steps to ensure they hire a quality individual while also protecting the best interests of their dealership.

Here are some important issues to consider:

1. **PREPARE, PREPARE, PREPARE.** Take the time to read the resume and employment application before you sit down at the interview. Too many times, managers who are interviewing an applicant have not even glanced at the resume or application until the interview itself. This doesn't enable the manager to catch any potential red flags prior to speaking with the applicant. The application, which should be reviewed for legal compliance on a yearly basis, can help provide basic information that will help a manager to size up the applicant. For example, does the applicant have any prior automobile dealership experience?
2. **BACKGROUND CHECKS.** Many companies utilize the services of third-party companies to perform background checks on prospective employees. Although this can be helpful, there are also many legal pitfalls in this area to be aware of. Make certain that if you choose to outsource this process, the company you choose is reputable, has insurance and will agree in writing to indemnify and hold your company harmless for all violations of Federal,

State and local law that occur as a result of their actions while performing services for your company. These background checks include, but are not limited to: educational verification; driver's license check; criminal history check; and credit check.

If a third-part does conduct the check, a written notice must be sent to the applicant advising that the background check is being conducted by the third party, that it will entail personal interviews (if applicable), and that it will be considered as part of the employment decision. The FCRA also requires that the applicant be given a copy of any report generated and of his/her rights under applicable law, as well as an opportunity to challenge or respond to the information gathered.

Given the time frame involved in background checks, supervisors or managers may be tempted to make job offers before background checks or drug screening tests are completed and results received. If a potential employee has misrepresented their work history or potential criminal record, you certainly wouldn't want them interacting with customers. Make sure you are protected before allowing an employee to report to work.

3. INTERVIEW QUESTIONS. Each interviewer develops his or her own interview style. Certainly, the interview process is the perfect time to assess whether a potential automobile salesperson will be able to win the trust of the customer. However, sometimes during the interview process, interviewers get comfortable and lose sight of the fact that certain questions cannot be asked and need to be avoided. In particular, you should eliminate questions that indicate:
- a. Religion. Do not ask about religious holidays observed. You may ask about the ability to work on weekends or holidays, if such availability is job-related. However, you may have to accommodate applicants whose religious observance conflicts with work schedules, if it is not an unreasonable burden to do so.
 - b. Disability. The Americans with Disabilities Act (ADA) prohibits all pre- employment medical inquiries. Do not ask questions about the number of days the applicant was sick in the previous year, specific diseases or illnesses, mental health problems and history, workers' compensation injuries or claims past addiction to drugs or extent of past illegal drug use, and prescription drug use. You may ask all applicants about their ability to perform the functions of the job. You may also inquire about the applicant's total number of absences in the previous year, as well as about current use of illegal drugs.
 - c. National origin. Do not ask applicants to reveal their national origin or citizenship. However, you may require evidence of eligibility to work in the United States.
 - d. Age. Do not ask about age or date of birth. You are permitted to verify that the applicant is of legal age to work.
 - e. Military status. While you may ask about job-related military experience or training, you should not inquire about a applicant's military status or type of military discharge. In addition, you should not inquire about future military commitments (e.g., reserve status) that may require time off from work.
 - f. Arrest or criminal record. Asking about a applicant's arrest record is prohibited under many state laws and can expose you to claims of disparate impact based on race. However, convictions may be asked about if relevant to the job.

- g. Financial status. Do not ask about a applicant's financial status (unless job-related), past pay garnishments, or bankruptcy. You may, however, perform credit checks if you follow the Fair Credit Reporting Act regulations.
- h. Gender. You can ask if an applicant has ever been known by another name, in order to facilitate accurate background checks. However, do not ask about a person's maiden name or gender; marital status; spouse; pregnancy; family plans; or childcare arrangements.
- i. Equal employment opportunity information. Do not ask about prior equal opportunity claims, sexual orientation, or nonprofessional memberships, as these inquiries may indicate the applicant's protected class.

Whether a salesperson, technician or receptionist, automobile dealership employees are important hires, as is the manner in which they are hired. Once employees are hired, a dealership can further protect its interests by other means including employment agreements containing non-compete or non-solicitation provisions.

But remember to put first things first. Taking employment precautions will help reduce your legal exposure and, at the same time, allow you to find new lifeblood for your automobile dealership.