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NADA calls on automakers to drop “stair-step” incentives

In Automotive News editorial it says they are “bad for business and confusing to consumers”

In an editorial that will run in next week’s edition of Automotive News, NADA will say in a full page ad that “stair step” incentives are bad for franchised auto dealers and bad for consumers while calling on all automakers to drop the programs.

NADA’s opposition to stair step incentive programs has been long running, dating back to their introduction more than 30 years ago.

“Dealers of all sizes have recognized the inherent unfairness of a manufacturer’s discriminatory pricing that tilts the playing field in favor of some dealers,” NADA chairman Bill Underrinner says in the editorial. He notes that Mike Jackson, chairman and CEO of AutoNation, shared his view of stair-step incentive programs quoting him in a recent presentation when he said “The practice is out of place in today’s marketplace, where customers demand transparency and that they undercut the confidence, goodwill and integrity around your pricing in the eyes of the customer.”



NADA has had a long-standing position in support of a “level playing field,” meaning lawful, equal and fair treatment by a manufacturer for ALL its dealers, both large and small. Underrinner notes, problematically, that manufacturer incentive pricing programs sometimes create short-term incentives that favor the larger, urban dealerships to the detriment of the smaller, more rural ones. Recent history also shows that the long-term effects of discriminatory programs are to marginalize the smaller dealers and place them at a competitive disadvantage in their marketplace. These programs also have a tendency to cause confusion among consumers and dealers as to the actual dealer cost of vehicles. This leads to consumer doubt and mistrust that reduces the value of the manufacturer’s brand. It also undercuts the goodwill between consumer and dealer. “This is certainly not good business for either the OEM or the dealer,” Underrinner says.

“The best way to maintain a level playing field is for factories to focus on what they do so well: build quality cars and trucks and avoid disparate treatment of their dealers that can limit their ability to compete. But then let dealers do what they do best, which is to vigorously compete for the customer’s business,” Underrinner concludes.

Maryland General Assembly outlines new employee rights

The Maryland General Assembly concluded its 2012 session in the spring, passing several laws affecting the workplace. Among the noteworthy measures that will take effect October 1 are the following:

- **Internet and Electronic Account Privacy Protection.** Maryland employers are prohibited from requiring employees or applicants to turn over passwords needed to access private websites, including those used for social media. Specifically, the new law bars employers from requiring or even requesting that an applicant or employee divulge his or her “user name, password, or other means for accessing a personal account or service through an electronic communication device.” Employers may, however, require employees to divulge passwords for “nonpersonal accounts or services that provide access to the employer’s internal computer or information systems.” The law does not define what is a “nonpersonal” account nor make any exception to allow employers to demand access to personal accounts that are used to access work accounts.

- **Jury Service.** A new law in this realm prohibits employers from discharging or otherwise retaliating against an employee who loses work time because they are summoned for jury service or acts related thereto. It also prohibits an employer from requiring an employee who appeared for jury service for four or more hours, including travel time, to work a shift that begins on or after 5:00 p.m. on the day of jury service or before 3:00 a.m. on the day following service. The law does not, however, prevent an employer from allowing an employee to work if he or she so chooses. It only prohibits the employer from requiring the employee to work.

- **Privileged Communications or Information Involving Labor Organizations.** Certain communications between a bargaining unit employee and his or her union official will be considered a privileged communication. The new law prohibits a labor organization or its agent from being compelled to disclose “any communication or information the labor organization or agent received or acquired in confidence from an employee while the labor organization or agent was acting in a representative capacity concerning an employee grievance.” The privilege applies where the grievance is the subject matter of an investigation, grievance proceeding, or a civil court, administrative, arbitration, or other civil proceeding. It is broadly defined, although there are some important circumstances where the union or its agent must disclose the communication:

- In a criminal proceeding;
- If the communication was not “germane to a grievance of the employee;” and
- Where it is reasonably necessary to prevent “certain death or substantial bodily harm.”

While the privilege protects the communication or information received by the labor organization or its agent, it does not protect the employee from being compelled to disclose the facts underlying the communication.

In addition, the union or its agent may disclose the communication if there is a “reasonable belief” that it is necessary to:

- “Prevent the employee from committing a crime, fraud or any act in violation of a collective bargaining agreement (“CBA”) that is likely to result in substantial injury to the financial interests or property of another and in furtherance of which the employee has used or is using the services of the labor organization or its agent;”
- Prevent, remedy, mitigate or rectify substantial injury to another person’s property or financial interests that has or will result from the employee’s criminal act;
- Secure legal advice about the compliance of the union or its agent with a court order or the CBA;
- Establish a claim/defense in a legal dispute between the employee and the union or its agent; or
- Comply with a court order, other law, or the terms of the CBA.

The union or its agent may also disclose the communication where:

- The communication is an admission that the employee committed a crime;
- The disclosure is necessary in any court, administrative, arbitration or other proceeding against the union or its agent in his or her personal or official representative capacity;
- The employee consents to the disclosure or waives the confidentiality of the communication;
- The employee is deceased or has been adjudicated incompetent and the union has the consent of the personal representative of the estate or the employee’s guardian; or
- Required by court order.

Finally, the Act contains a “savings clause” that states that where this law conflicts with any state or federal labor law, then the state or federal law will control.

Related to this new law, dealers should know that the U.S. Court of Appeals for the Second Circuit recently upheld a company’s restriction that limited employees to wearing only one pro-union button holding that “special circumstances justify restrictions on union insignia or apparel when their display may . . . unreasonably interfere with a public image that the employer has established.” The one pro-union button was “a necessary and appropriate means of protecting its legitimate managerial interest in displaying a particular public image through the messages contained on employee buttons,” the court said.

WANADA is grateful to Shaw Rosenthal, LLP for this employee rights update.

Reminder**MD processing fee cap is \$200 for 2012 through June 2014**

WANADA has received several calls from Maryland dealer members regarding the vehicle sale processing fee cap in Maryland that dealers may charge customers and reminds its members that the cap is \$200 for 2012, 2013 and the first half of 2014.

Maryland dealers will recall the processing fee cap was raised by the Maryland General Assembly in April 2011 from \$100 to \$200 with an *automatic* increase to \$300, July 2014.

Consumer auto credit scores drop to near pre-recession levels

Average credit scores for consumers buying a motor vehicle have dropped to near pre-recession levels, according to Experian Automotive, the credit scoring company. Experian says in its quarterly automotive credit analysis, that the average credit score for financing a new vehicle dropped six points, to 760 and dropped four points to 659 for used vehicles. Comparatively, credit scores in the first quarter of 2008 were at an average of 753 for new vehicles and 653 for used.

Lenders also continued to set favorable terms for consumers during the first quarter of 2012. Interest rates were lower year-over-year and loan terms were longer, giving consumers access to potentially lower monthly payments. For example, the average interest rates dropped to 4.56 percent on new vehicle loans and to 9.02 percent for used. The average loan terms also increased, extending by one month for new and used vehicles to a total of 64 and 59 months, respectively.

“During the first quarter of 2012, car shoppers definitely found more favorable conditions for their vehicle loans,” said Melinda Zabritski, director of automotive credit for Experian. “A reduction in average credit scores, lower interest rates and a lengthening of loan terms are all very good signs for the market and offer great opportunities for consumers looking to make a deal on a new or used vehicle.”

The analysis also showed that the average amount financed on new vehicles rose by \$589 in the first quarter of 2012, reaching a total of \$25,995. For used vehicles, the average amount financed increased by \$411, bringing the average total to \$17,050.

“Our report shows automotive lending is as healthy as it’s been since the market bottomed out in 2008,” Zabritski said. “With consumers doing a good job of paying back loans on time and the percentage of dollars at risk reaching its lowest point in six years, lenders are able to extend terms and provide lower rates. This thawing of the credit pipeline has been good for everyone, from consumers to lenders to automotive retailers.”

Experian’s report also noted that vehicle loans to nonprime, subprime and deep-subprime customers increased by 11.4 percent; auto repossession rates are down by 37.1 percent; thirty-

day delinquencies dropped by 7.6 percent and 60-day delinquencies dropped by 12.1 percent. Correspondingly, banks and credit unions gained market share to 40.21 percent and 16.89 percent, respectively.

Honda, Lexus take top spot in ALG's annual measurement of perceived quality among consumers



Ford and Hyundai have had the highest level of improvement in perception of quality among all automakers during the last five years, according to ALG, the industry benchmark for vehicle values. Since 2008, Ford's perception of quality has improved nearly 37%, while Hyundai's perception of quality has increased by 25%.

Honda ranks highest among mainstream brands with a perceived quality score of 81.3, followed closely by Toyota, whose perception of quality continues to recover from its drop in 2010. Toyota showed the largest year-over-year perception improvement of any brand. Honda and Toyota continue to be the perception of quality standard bearers among mainstream brands, with Subaru ranking third.

Among luxury brands, Lexus is highest ranked for the second consecutive year, with a perceived quality score of 85.4, with Mercedes-Benz, BMW and Porsche rounding out the top four.

"Changing the perception of quality is a long-term proposition," said ALG vice president Eric Lyman. "Consumers recognize the product improvements made by Ford and Hyundai and still recognize Honda and Toyota as being the quality leaders. But as more consumers consider brands like Subaru, Ford and Hyundai, that perception gap erodes."

Other brands with significant year-over-year improvement include Fiat, Scion, Dodge and Kia.

"Kia and Dodge are great examples of perception improvement based on product and marketing," said Lyman. "Both brands have launched many new products and done so with great advertising and marketing. Consumers recognize their improvement," Lyman said.

Now in its fifth year, ALG's Perceived Quality Study is a semi-annual consumer survey measuring the perceived quality of automotive brands. PQS reports the opinions of more than 3,000 U.S. consumers in order to gauge perceptions of mainstream and luxury brands. PQS is one of the metrics ALG examines in calculating auto industry benchmark residual values and helping companies and consumers understand the future value of their vehicles.

Staying ahead...

The only people who are sure to find what they are looking for in life are the fault finders.

--Foster's Law