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## OSHA Regulations Expanded to Require Automobile Dealers to Maintain OSHA 300 Logs

By Jerry Stovall, Jr.  
*Breazeale, Sachse & Wilson L.L.P.*

In the past, new and used car dealers were among the industries that were generally exempt from maintaining OSHA 300, Injury and Illness Logs and posting OSHA form 300A, Summary of Work-Related Injuries and Illnesses. However, effective January 1, 2015, OSHA will require both new and used car dealers to maintain OSHA 300 logs and post OSHA 300A logs. Generally OSHA 300 logs deal with recordable, as opposed to reportable, injuries and illnesses. The types of instances that must be included on the OSHA 300 logs can be found at 29 C.F.R. 1904, et seq.

Employers must record all work-related fatalities, injuries and illnesses that result in days away from work, loss of consciousness or medical treatment beyond first aid, and those resulting in restricted work or transfer to another job. In the event that you are inspected by OSHA, your 300 log is usually the first thing requested by the OSHA investigator. Failure to properly maintain the 300 log can result in monetary fines. More significantly, the failure to properly maintain a 300 log virtually guarantees that the OSHA investigator is going to conduct a very thorough inspection of your records and premises, which you want to avoid.

In addition, the type of injuries that must be reported to OSHA, as opposed to those that must merely be recorded on the 300 log, has also changed, requiring dealers to report more incidents to OSHA. The new regulations



mandate employers to report to OSHA within 24 hours any workplace illness or injury that results in hospital admittance, amputations, or loss of an eye if they occur within 24 hours of a work-related incident. (Prior regulations only required employers to report non-fatal hospitalizations of three or more employees.) Currently, it appears as if "amputation" is going to include the loss of a mere fingertip. Fatalities must still be reported within 8 hours; however, only fatalities occurring within 30 days of the work-related incident must be reported to OSHA.

All required injury reports can be made to OSHA by:

1. Calling OSHA's free and confidential number at 1-800-321-OSHA (6742).
2. Calling your closest Area Office during normal business hours.
3. Using the online form that should be available in the near future.

If not properly and proactively managed, these new recording and reporting obligations will create significant problems for auto dealers. Now that dealership injuries and illnesses are going to be entered into OSHA's system in the form of 300 logs and more incidents are going to be reported to OSHA, auto dealers should expect to see an increase in OSHA investigations and citations. It is critical that auto dealers prepare for these changes.

*Mr. Stovall has years of experience in assisting his clients to ensure that they are compliant with their OSHA documentation obligations and in representing them through the OSHA inspection and contest process. You can reach Mr. Stovall at 225-381-8042. ■*



## NADC MEMBER ANNOUNCEMENTS

**Do you have an announcement or an accomplishment that you would like to share with the NADC community?**

We are starting a new section where we will highlight member's achievements. Please send any news you would like to share to: [emurphy@dealercounsel.com](mailto:emurphy@dealercounsel.com).



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## Union Organizing Just Got Real: What Dealerships Need to Know

By Keith A. Watts, Maria Anastas and Daniel A. Adlong  
*Ogletree, Deakins, Nash, Smoak & Stewart, P.C.*

On December 12, 2014, the National Labor Relations Board implemented the long-anticipated “quickie election” rules, which govern the procedures for union representation elections. The new rules go into effect April 14, 2015 and constitute a sweeping regulatory change.

The rules tilt the playing field in favor of unions by allowing union elections just 10 to 21 days after filing an election petition. The rules eliminate most employer rights during the representation case process. Union win rates should increase as employers are blindsided by petitions and denied the time to communicate with employees about unionization.

### Expedited Union Elections

Union campaigns historically occurred over a 6 or 7 week period, but under the new rules they will be held 10 to 21 days after a union files an election petition. Many characterize this condensed period as unfair because unions often begin organizing months before a petition is even filed. During this unrestrained period, unions may communicate with employees regarding the purported benefits of unionization. Now, regardless of the length of the union’s pre-petition campaign, the employer will have less than a few weeks to respond. Since many employers do not learn of union organizing among their employees until they receive a faxed union representation petition from the NLRB, it is easy to understand why some see the new rules as unfair and an “ambush.”

### Deferred Voter Eligibility

The NLRB’s current rules provide both unions and employers the opportunity to raise voter eligibility and overall bargaining unit appropriateness issues during a pre-election hearing. At a minimum, the pre-election hearing and subsequent decision and direction of election by the Regional Director provide both parties with direction regarding voter eligibility issues, including whether certain individuals are statutory supervisors. Under the new rules, most disputes over voter eligibility and bargaining unit issues will be resolved after the election. Each Regional Director may determine whether to allow hearing issues to be resolved before the election.

Deferring these issues until after the election will result in problematic outcomes for employers, including uncertainty whether one or more job classifications qualify for “statutory supervisor” status under the

National Labor Relations Act — creating significant legal risk for employers who unknowingly treat these individuals as ineligible to vote.

### Expedited Hearings and Position Statements

While the new rules will reduce the number of pre-election hearings, the few hearings permitted to proceed pre-election will now commence just 8 calendar days after the petition is filed. Prior to the hearing, employers will now be required to research and file (generally one business day before the hearing) a detailed legal position statement addressing threshold issues including: (1) any proposed exclusions from the bargaining unit; (2) the overall appropriateness of the unit; (3) the proposed date, time, and place of the election; and (4) any other issues the employer seeks to raise at the hearing.

The expedited hearing and position statement requirements will create extraordinary pressure for employers to collect and analyze data, draft a legal position statement, and prepare witnesses to testify at the hearing — all within a mere 8 calendar days after the petition is filed.

### Multiple Lists of Employees

Under the current rules, an employer must provide a list of eligible voters to the NLRB and the union within 7 calendar days after approval of an election agreement or decision and direction of election. The eligible voter list must only include each employee’s name and home address. The new rules will impose additional burdens on employers and give unions quicker access to arguably confidential employee information.

Employers seeking a pre-election hearing must now provide the NLRB and unions with two separate lists of employees: (1) a list of all employees in the challenged, petitioned-for bargaining unit; and (2) a list of all the employees in the proposed unit the employer contends is appropriate. These lists need not include contact information. No later, however, than 2 business days after the Regional Director’s approval of an election agreement or decision and direction of election, employers will be required to submit electronically a list of all eligible voters (and serve a copy on the union). The time frame for providing this list has been shortened from 7 days to 2 days and the information required is more extensive. Employers must now provide the union with the available contact information for each eligible voter, including home addresses, cell and home phone numbers, and personal email addresses.



The new rules impose undue burdens on employers to create accurate lists of employees on an expedited basis. A greater concern, however, is that unions may now gain access to confidential employee information affecting 100 % of the bargaining unit even if the union only obtained signed union authorization cards from 30 % of the unit.

### **The Pro-Active Employer**

Pro-labor advocates say the new rules do not prejudice employers because employers can communicate “anti-union” information any time they choose — instead of waiting for a union petition to arrive. These advocates also argue that employers can combat union organizing regardless of the time period imposed by the new rules. While both of these views bear some truth, many employers and those lacking adequate resources will undoubtedly feel “ambushed” if they receive union petitions after the rules go into effect. To avoid experiencing an ambush, the time to act is now:

Conduct vulnerability assessments at select or at-risk locations. These assessments often reveal the strength of management and supervisory teams, current employee concerns and morale, and whether wages and benefits are market competitive. Once completed, an action plan with short-term execution dates should be implemented.

*Determine which individuals qualify for “statutory supervisor” status.* The NLRB offers guidance on its statutory supervisor test but the case law is more instructive — especially regarding classifications which may fall into a “gray area.” Labor counsel can assist in converting individuals who may not qualify, and vice versa. Once identified, all supervisors should receive comprehensive training addressing their role in creating and maintaining a positive work environment, the organization’s philosophy and stance on unions, union organizing trends and tactics, card signing, and lawful responses to union organizing.

*Educate employees regarding philosophy on unions and unionization.* Many pro-active employers include union card signing materials and presentations during new hire orientation. Labor counsel can assist in creating materials for new and current employees. Employers who have been reticent to communicate about such matters absent union activity may choose to reconsider their approach in the face of the new election rules.

*Analyze potential bargaining unit(s) in advance of union organizing.* This includes identifying a desired “appropriate unit” and ensuring that available facts and documents support that position.



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*Develop campaign materials, including a draft campaign calendar that coincides with a potential 10-21 day campaign period.* While these materials likely must be updated if a petition is filed, advanced preparation will alleviate much of the stress imposed by an election petition.

*Identify campaign response team and provide training.* The selection of a campaign response team and internal campaign communicators is a critical task in every campaign. Team members who understand their roles and responsibilities in advance will be better prepared to respond if a petition is filed.

*Prepare a draft or outline of the required NLRB position statement and collect supporting documentation.* These drafts could reduce much of the stress many employers will face when preparing for the hearing.

*Submit employee handbook and related personnel policies for legal review.* In recent years, the NLRB has issued numerous decisions affecting the legality of seemingly innocuous handbook and other policies affecting terms and conditions of employment. An employer who

wins a union election may face meritorious post-election objections based exclusively on unlawful handbook clauses. Sometimes, elections have been overturned based upon one or two unlawful phrases in an employer's handbook. ■

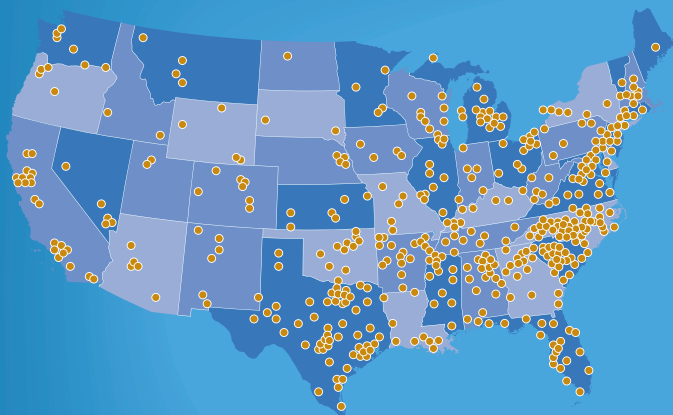
*Keith A. Watts is the Office Managing Shareholder of the Orange County ("The OC") office of Ogletree, Deakins, Nash, Smoak & Stewart PC and a member of the firm's Traditional Labor Relations Practice Group. He can be reached at [keith.watt@ogletreedeakins.com](mailto:keith.watt@ogletreedeakins.com).*

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## NADA Releases Federal Advertising Guide

Paul Metrey, *Chief Regulatory Counsel, Financial Services, Privacy, and Tax*  
*National Automobile Dealers Association*

As has been widely reported, the Federal Trade Commission has recently intensified scrutiny of dealer compliance with federal advertising standards. Since 2012 the FTC has initiated 5 rounds of enforcement actions against 18 dealers in 12 states for an array of alleged advertising violations. Two such rounds occurred this past December, one of which involved allegations of repeat violations (*i.e.*, allegations that a defendant that previously entered into a consent order with the FTC to resolve alleged advertising violations engaged in subsequent violations) and resulted in, among other provisions, the payment by a dealership group defendant of a \$360,000 civil penalty.

To help assist dealers, dealer attorneys, ad agencies, and others involved in dealer advertising in understanding the wide range of federal requirements that apply to dealer ads, NADA recently released its latest compliance publication entitled A Dealer Guide to Federal Advertising Requirements. This guide, which is available as a pdf on the home page of [www.nada.org](http://www.nada.org), contains examples of “bad” and “good” ads and includes short chapters on 41 federal advertising topics, such as the use of discount claims, email advertising, green marketing claims, internet advertising, satisfaction guarantees, and “trigger terms.” Readers can quickly access content on any topic by clicking on a hyperlink in the Table of Contents.

It is important to note that while the guide addresses numerous federal advertising requirements, it does not address additional advertising requirements that may be imposed at the state or local level, which vary considerably and must be addressed when dealer ads are reviewed for legal compliance. ■



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## 2015 11<sup>th</sup> ANNUAL NADC MEMBER CONFERENCE

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### PRELIMINARY AGENDA TOPICS INCLUDE:

- TOP LEGAL ISSUES FOR DEALERS IN 2015
- LEGAL ISSUES RELATING TO DEALER FEES
- MANUFACTURER MANIPULATION OF DEALERSHIP MARKET AREAS – IT'S FINANCIAL IMPACT
- BEHIND THE SCENES WITH A MANUFACTURER REPRESENTATIVE
- NADA UPDATE
- THE ART OF THE DEAL: CURRENT ACQUISITION MARKET AND HOW TO AVOID SURPRISES AT THE CLOSING TABLE
- A DEALER'S GUIDE TO ELECTRONIC TRANSACTIONS: GOING PAPERLESS
- USED CAR INFORMATION: TO DISCLOSE OR NOT TO DISCLOSE
- LEGAL UPDATE UNDER THE NLRB IMPACTING DEALERSHIPS
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### Overflow Hotel Information

Additional hotel rooms have also been secured at The St. Regis Monarch Beach for the nights of April 26th and April 27th.

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### Travel Plans:

Please arrange your travel to join NADC at the opening cocktail reception on Sunday, April 26th from 6:00 – 7:30 pm. The conference will conclude on Tuesday, April 28th at 3:00 pm. Only a select number of rooms are available pre and post the meeting dates. Please make your reservations today to secure additional dates if available.



## Executive Director's Message



Erin H. Murphy  
*NADC Executive Director*

2015 started off strong for NADC! We enjoyed another successful show at the 2015 NADA Convention & Expo in San Francisco, CA January 23-25. The weather in San Francisco was spectacular and the NADC booth's close proximity to the NADA Pavilion allowed us to visit with many of our current members and to meet many new and prospective members. We enjoyed visiting with all of you!

We also released the 2015 NADC Attorney Directory at the NADA Convention & Expo and will be mailing a copy to all of our members. We have organized the directory by state to assist you when you are looking for a referral. NADC Associate Members and Trade Association Executive Members are listed alphabetically at the end of the directory. We hope you will find the directory a useful tool and an easy reference guide to the NADC community. Should you need additional copies, or an electronic version, of the Attorney Directory please contact Charlotte Valentine at [cvalentine@dealercounsel.com](mailto:cvalentine@dealercounsel.com).

One of the most valuable benefits of NADC membership is the ability to learn from one another. You all have the ideas, expertise, best practices and war stories from which the rest of the membership can benefit. This is why we strongly encourage all members to submit articles for publication in *The Defender*. Please send your contributions or article proposals to [jamifarris@parkerpoe.com](mailto:jamifarris@parkerpoe.com) or [emurphy@dealercounsel.com](mailto:emurphy@dealercounsel.com).

Additionally, we hope you will join us at the 11<sup>th</sup> Annual NADC Member Conference being held April 26 – 28, 2015 at the Montage Resort in Laguna Beach, CA. The conference will be a two day program designed to provide you with updates, best practices, lessons learned and other useful information. The planning committee has prepared a great agenda and you will be sure to take home valuable tools that will benefit you and your dealer clients. Please check the website [www.dealercounsel.com](http://www.dealercounsel.com) for a detailed agenda in the "Events" section.

NADC is dedicated to continuing to provide valuable networking and educational opportunities in 2015. We strive to be an indispensable resource for your auto dealer practice and thus we are always open to your feedback. Please do not hesitate to share with us your thoughts on how we can make NADC more beneficial. We look forward to working together in 2015! ■



### NADC Job Board

Please remember to check the NADC Job Board in the members only section of the website if you are seeking employment.

Please send any job postings to:  
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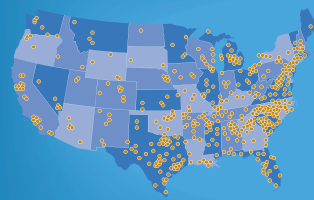


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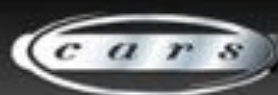
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