

# ◀◀◀ MICHIGAN AUTO DEALER ▶▶▶

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## DEALER PROMOTIONS MUST COMPLY WITH MICHIGAN LAW

By: Edward J. Castellani, JD, CPA

Dealers sometimes sponsor promotions or giveaways which may include a cash prize, a vehicle or use of a vehicle. These promotions are regulated by the Michigan Lottery Law and Bingo Law. Michigan's Lottery Law and Bingo Law generally provide that any business that is sponsoring a lottery or gift enterprise must comply with Michigan Lottery and Bingo rules and obtain appropriate licenses.

There is an important exception to the lottery and bingo rules which may allow a dealership to conduct its promotional activity without obtaining a license. In general, if a dealership is involved in a promotional activity to promote the dealership, or the sale of its products or services, which does not include the payment of money or other consideration for the chance or opportunity to win a prize that may be won by purchasing a product or service for substantially more than its fair market value, the dealership may not have to obtain a lottery or other license.

The rules regarding lottery licenses and business promotions are detailed and complex and contain significant penalties for violations. Dealers are encouraged to review with competent counsel any business promotions for compliance with Michigan Lottery Rules, Bingo Law and other requirements.

## OVERTIME EXEMPTIONS PRESERVED

By: Brandon W. Zuk, JD  
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In July, we wrote that an unintended consequence of the October 1, 2006, increase in Michigan's minimum wage would be to require overtime pay for many workers who currently are exempt from the overtime requirement.

On August 30, 2006, the State Legislature passed legislation to preserve the exempt status of workers who are currently exempt from the overtime pay requirement. On September 22, 2006, the Governor signed the legislation which took immediate effect. Hence, the minimum wage in Michigan increased on October 1, 2006, but the *status quo* with regard to overtime exemptions is preserved.

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## DEALERSHIP QUESTIONS

By: Kenneth S. Wilson, JD

### **What should a dealership do if outside Union organizers solicit your employees?**

There is nothing to prevent outside organizers from soliciting your employees during their free time off premises. Generally an employer cannot be forced to allow non-employee union solicitations or distributions on the employer's property. Hence, there are restrictions if organizers enter your dealership to solicit union support. If an organizer is there for a bona fide retail business purpose, he or she should be treated like any other customer. However, the organizer cannot meet with employees for any organizing purpose. The organizer should be informed that employees are working, and the organizer should leave the premises. If the organizer enters areas of the dealership that are not open to the public, again, the organizer should be treated as any other individual and asked to leave. If the organizer refuses to leave, do not physically attempt to remove the individual. Request the individual to leave the premises and indicate that if they do not comply, the police will be called.

### **What should a dealership do if confronted by solicitation by organizers who are the dealership's employees?**

Solicitation of union support by employee organizers during "work time" on company premises may be restricted. However, such solicitation is permissible during non-working time; example: breaks, lunch or coffee breaks in non-working areas.

Great care should be taken when drafting anti-solicitation rules as the National Labor Relations Board scrutinizes them closely and you are advised to contact your labor attorney for advice before adopting one. Moreover, care should also be taken to enforce any non-solicitation rule consistently. Adopting or enforcing a nonsolicitation rule for the purpose of combating union organizing is unlawful. Evidence of wrongful intent *may* be found when an employer adopts an anti-solicitation rule at the onset of an organizational campaign against his or her facility.

Similarly, a rule restricting the right of off-duty employees to return to non-working areas of the dealership to solicit support for a union is presumptively invalid. The presumption may be rebutted by showing that such a rule is necessary to maintain production, discipline, or safety. Again, all dealers are advised to contact their labor counsel before adopting or implementing such a restriction.



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