



**Don't Miss
the 2019 WMDA/CAR
Auto Repair Summit &
Round Table
on April 30**

see page 4

**There's Still Time
to Register for the
Ford Electronic Control
Diagnostics Training Class
on April 17 & 18**

see page 9



ALSO IN THIS ISSUE

April Tech Tip see page 5

2019 Training Schedule..... see page 10

CAR Talk see page 6

News from Washington see pages 12-15

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KIRK'S KORNER

Legislative Update

by Kirk McCauley
Director of Member Relations & Government Affairs

DISTRICT OF COLUMBIA – WMDA/CAR MEMBERS

April 1st was the day you should have started tracking your payroll as is required for Paid Family Leave (PFL). Your business most likely already does, but you need to review the attached link to the Department of Employment Services (DOES) to make sure you are meeting requirements. On July 1st, your first payment is due, 0.62% of gross pay for the past 3 months. As far as I know, there are no exceptions for businesses that have employees, even non-profits.

You should consult with your payroll service provider and **click on LINK #1 below** to check for any other requirements.

FEDERAL – E-CIGARETTES – FDA

Below is an article from NACS about urging retailers to weigh in on the sale of e-cigarettes. The Food and Drug Administration (FDA) has proposed a ban on retailers selling e-cigarettes while allowing them to be sold online and in vape shops. You need to act now! WMDA/CAR has already sent in a Letter of Protest.

Allowing vape shops and online retailers (where age verification is a maybe at best) and excluding convenience stores and service stations from selling the same product is gross mismanagement by FDA. Ban the product altogether if you will, but do not discriminate against retailers in our industry.

NACS – RESPOND TO FDA PROPOSED E-CIGARETTE BAN BY APRIL 15

The restrictions likely will be finalized and implemented over the next few months, meaning that brick-and-mortar retailers will be unable to sell flavored e-cigs other than tobacco, menthol or mint, unless minors are restricted from entering the store or if those items are sold in a separate location in the store that minors are prohibited from entering.

As proposed, the FDA's plan sets a dangerous precedent. The proposal threatens to ban the sale of flavored e-cigarette products in convenience stores and focuses enforcement on the c-store industry, while favoring the sale of these products in vape shops and on the internet. Tobacco products are a major driver of traffic into convenience stores. In 2017, e-cigarette sales totaled over \$1.1 billion. Banning the convenience industry from selling e-cigarettes will harm adult smokers who purchase e-cigarettes in lieu of other tobacco products.

While NACS will be submitting comments on the industry's behalf, it urges its members to reach out to the FDA as well. Members are encouraged to share their personal stories about how the proposed ban would affect their stores and inform the FDA about the measures stores already take to verify the age of their customers and ensure that they comply with federal laws. **Click on LINK #2 below.**

U.S. DEPARTMENT OF LABOR – WAGE AND HOUR DIVISION (WHD)

The Department of Labor announced a proposed rule that would make more than a million workers eligible for overtime.

Does this regulation affect you and your business? Go to the website and find out. If it does, you have until May 7 to submit comments. WMDA/CAR will submit comments about the proposed rule, but nothing is better than comments from the employers that are affected. No one tells your story better than you! **Click on LINK #3 below.**

DELAWARE NEWS

Age 21 Tobaccos and E-cigarette is working its way through the Delaware House and Senate and looks like it might pass. I will update further when I have a clearer picture.

The Delaware Department of Natural Resources and

LINK #1 – https://does.dc.gov/sites/default/files/dc/sites/does/page_content/attachments/PFL%20Employer%20FAQ.pdf

LINK #2 – <https://www.federalregister.gov/documents/2019/04/02/2019-06323/youth-tobacco-cessation-science-and-treatment-strategies-public-scientific>

LINK #3 – <https://www.dol.gov/whd/overtime2019/>

Environment Control (DNREC) – Division of Air Quality and Tank Management, has come out with a new set of proposed gasoline vapor controls at gas stations and proposed Underground Storage Tank (UST) regulations. They have two public workshops scheduled for April 16th.

Normally, best business practice when you are changing regulation that has a substantial financial impact would be to have stakeholder meetings to go over proposed regulations. In this instance, best practice was ignored and regulations are going straight to a public workshop where emotions will rule the day and not facts and costs.

I hope DNREC will cancel these meetings as we have asked, and talk with the people they affect. We are asking that of DNREC, in our response to this sneak attack on business.

MARYLAND LEGISLATIVE UPDATE

The Maryland House and the Senate agreed on amendments to the Minimum Wage Bill, HB166. Working with legislators, our small business group was able to come up with a more reasonable time period and other amendments, not good but a substantial improvement. The governor vetoed HB166/SB280 and legislators overrode the veto the next day and the new minimum wage law will take effect June 1, 2019.

1. Original bill starts 1/1/20 and was at \$15.00 1/1/23
 - For 15 and over employees amended bill starts 1/1/20 and gets to \$15.00 1/1/25
 - For 14 and under employees amended bill starts 1/1/20 and gets to \$15.00 7/1/26
2. Consumer Price Index (CPI) is amended out
3. Under 18 years of age you can pay 85% of minimum wage
4. Board of Public Works can temporarily suspend raises in minimum wages if economy has a downturn under specific conditions, up to one year.
5. Eight pages of penalties, fines for nonperformance up to \$10,000 dollars, presumption of guilt, all gone from this bill.

Additionally:

- **Overtime/Managers bill HB1040 died in Economic Matters Committee!** This is the one that would put manager's salary at \$900 a week or a base salary of 46,800 a year.

- **Workforce Data Act SB493/HB1128 died in Finance and Economic Matters** and would have required employers to send exact locations where employee worked every day if not at business address, hourly wage and job title - every quarter to DLLR.

- **Gas price Clarity Act HB1285/SB453 was also killed in both Economic Matters and Finance** and would have required you to post your highest price on street sign for regular gas.

- **HB1169/SB895 "Age 21 tobacco" has passed on both House and Senate floor** and they are disagreeing on one amendment for military to buy tobacco at 18 with military ID. I think they will work out their disagreement soon and bill will pass on to the governor. Bill will change how a retailer sells tobacco or electronic devices with added enforcement authority to health department:

- (1) Alters the definition of "tobacco product" to include electronic smoking devices (ESDs), renames electronic nicotine delivery systems (ENDS) to be ESDs, and makes related changes.
- (2) Raises the minimum age, from 18 to 21, for an individual to purchase or be sold tobacco products.
- (3) Authorizes the Maryland Department of Health (MDH) to conduct unannounced inspections of specified retailers.
- (4) Specifies signage requirements for specified retailers.
- (5) Alters restrictions pertaining to the sale of tobacco products through vending machines.
- (6) Makes other revisions to provisions of law pertaining to the distribution of tobacco products to minors and possession of tobacco products by minors.

Update as of 4/4/19, bill has passed enrolled – HB1169 Amendment was agreed on by both House and Senate and military exemption was left in, bill now goes to the governor.

I will give you a full report and score card after the session is over on April 8th. ♦



YOU DON'T WANT TO MISS THE 2019 WMDA/CAR AUTO REPAIR SUMMIT & ROUND TABLE

Tuesday, April 30, 2019 • 3:00 p.m. – 7:00 p.m.

The Hawthorn Center, 6175 Sunny Spring, Columbia, MD 21044

EMPLOYMENT LAW ISSUES AND UPDATES



Christine V. Walters
JD, MAS, SHRM-SCP, SPHR
Independent Consultant, FiveL Company

States and local jurisdictions are working at a frantic pace, enacting new laws affecting employment policies, practices and procedures. Join this fast-paced, 10,000 ft. fly-by as we review some of the latest and local trends impacting you:

- **Joint Employment** – What is on the horizon? When and how can a repair facility, convenience store, service station or other related business be joint employers? What difference does it make?
- **Drug/Substance Use & Testing** – How do you ban illegal drugs use when federal, state and local laws use different definitions? When can you test an applicant or employee? How can you test an employee and what samples are permissible? What can you test employees for? Illegal drugs? Prescribed medications? Alcohol?
- **Physical Exams** – Like above, when can you test employees and for what?

WHAT'S NEW ON THE LEGISLATIVE FRONT?



Kirk McCauley
WMDA/CAR Director of Member Relations
and Government Affairs

Kirk will address the new minimum wage and how this might affect apprenticeships, entry level employees, shuttle drivers, and clean up people. How are you paying managers and are you legal with raises in minimum wage for managers? ARE WE LEGAL? Ask yourself... do you really know?

AUTO REPAIR SUMMIT ROUND TABLE

The technician shortage is expected to grow to 26,000 by the end of 2019! How do we deal with this crisis? Who is our competition for new hires? These are just some of the questions that will be discussed at the WMDA/CAR Auto Repair Summit Round Table.

Shop owners also will have the opportunity to ask questions and discuss their concerns in order to gain valuable tips and insights that will help them improve the profitability of their businesses.

SEATING IS LIMITED, SO BE SURE TO REGISTER TODAY!

REGISTRATION INFORMATION

Shop Name _____	Phone _____
Attendee #1 _____	Email _____
Attendee #2 _____	Email _____
Attendee #3 _____	Email _____

All registered attendees are eligible to win an XBOX-S in the door prize drawing!

REGISTRATION FEE \$49.95 PER PERSON

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Debra Webster at 301-390-0900, ext.101



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Card Holder Signature _____	CVV Code* _____

- ☐ Checking this box represents my electronic signature

* The CVV Code is the last 3 digits found on the back of your credit card.

APRIL TECH TIP

Finding shop tools during the work day can be quite frustrating at times. Here are a few recommendations of how to fix tool search problems:

- Post a simple planogram at each technician's work station with the exact location of the tools.
- Inventory tools once a month to make sure they are returned to the proper location.
- Make designated spots for larger tools such as flush machines, A/C machine, welder, smoke machine, etc.
- Mark on the wall or the floor where the equipment belongs.

These practices will help techs easily find tools and equipment and use their time more efficiently. Time is money. Time spent looking for tools is wasted time. Save time and money by organizing today!



EXAMPLE OF PLANOGRAM

Cabinet 1	Cabinet 2	Cabinet 3	Cabinet 4
Cleaning Supplies	Aluminum AC line repair kit, J-44551 GM Suction Screen Installer, J-45268 ACR2000 Flush Adapters, AC Sealant Detection Kit, AC Flush Tool.	Raybestos ABS and Brake Pressure Test Kit, Brake Lines Flare Tool.	Pipe Spreader, Induction Nut Heater
	Shelf 1 AC Tools	Brakes Shelf 1 Exhaust	Shelf 1 Fuel Tools
	ProMaxx Ford Exhaust Manifold Stud Template, Cylinder Leak Down Tester, Hemi 5.7 Harmonic Pulley 2009 to present (2016?) 3.5 Chrysler 1995-2009, Chevy Cruz Timing Belt Tool, Compression Gauge, Cam Shaft and Crank Shaft Seal installer kit, Ford Triton M14 x 1.25 Spark Plug Repair Kit, GM 3.0 Timing Belt Kit (Opel engine), Ford Cam Tools Master Kit	Stant Fuel Cap Test and Adapters, Snap-on Vantage Power Graphing Meter, Snap-on EETH Infrared Thermal Imager, Carter CV1000 Fuel Pump Circuit Tester, ATD-5608 Quick change Automatic Transmission to Engine oil Pressure Tester, Tealman 0600 Chassis Ear squeak and rattle finder, Blue Point Wireless Chassis Ear, Exhaust Back pressure Gauge,	Ford Escape left side axle bushing removal and installer and adaptors. Transmission Pressure gauges
	Shelf 2 Engine Tools	Shelf 2 Diagnostic Tools	Transmission Repair Shelf 2 Maintenance
	Chrysler Cam Tool Master Set, Volvo Cam and Upper End Tools, Master Alternator Pulley Service Tool Set, 9070 Chrysler 5.7 Hemi Rocker arm tool, Ford (303-463,303-1416,303-507) Harmonic pulley alignment tool. 2.0L EcoBoost Timing Kit. Ford 2.3L Harmonic Alignment Tool. Acura/Honda Harmonic Balancer Holder.	K-D Portable Ignition System, Lang Power Steering Rack and Pinion Pressure tester, OTC CAN Breakout Box, Gates Pulley alignment laser, TA500 Smart Tach & COP Ignition Analyzer, Snap on Compression Gauge, Snap-on Boroscope	Mercedes Benz-BMW Fan Clutch Service set, Waekon Cooling system Analyzer, Domestic/Asian Cooling System Adapter kit, Stant Cooling system pressure tester, KD Deluxe Cooling System Pressure Tester, Airlift Cooling system vacuum,
	Shelf 3 Engine Tools	Shelf 3 Diagnostic Tools	Shelf 3 Cooling System Tools
	Heavy and Light Duty Porta Power	Ryobi Hammer Drill, Makita Cordless Drill and 2 sets of Drill Bits.	ATD Ball Joint Press, Snap on Ball Joint Press & Adapters, Slide Hammer
	Shelf 4 FRAME TOOLS	Shelf 4 MISC TOOLS	Shelf 4 Steering & Suspension

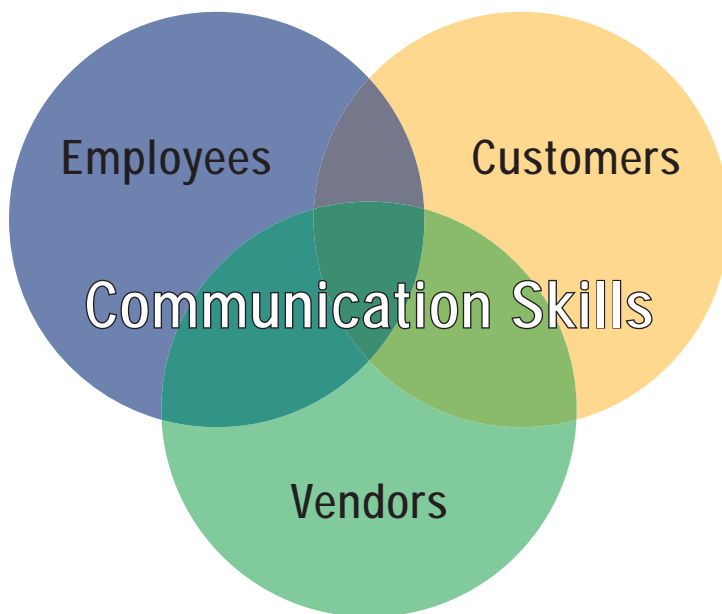


CAR TALK

The Value of Effective Communication

by Sandi Weaver
BA Auto Care, Inc.

The hardest part of our jobs is the people. Whether its employees, customer or vendors, dealing with people is hard. By all the people we interact with everyday having different personalities and different opinions, how can we make everyone happy and feel appreciated? I'm not an expert by any means, but I'd like to share what works for me and what I've seen others do that works for them.



Let's start with employees. Employees are our biggest asset and often, the ones we let down the most. It's hard to balance all the personalities of the technicians, service advisors and support staff. Each person we employ is valuable to us and has different strengths and weaknesses, especially technicians. One of the biggest ways to improve productivity and overall morale is communication. It's so important to not only communicate to your staff, but it is essential to listen, truly listen, to each person in your employ. Listening is not something us "bosses" excel at, but it can make a world of difference to how employees feel and how they treat our customers.

Another is setting expectations. This is a tough one and I will be the first to say I am lousy at setting expectations. I've found that having one-on-ones with each employee helps, but also setting deadlines for when I expect certain things to be done. All this needs to be orally communicated and also written down, kept in the employee's file, and given to

the employee. This cuts down on "you didn't tell me that" or "I didn't understand what you said." It doesn't eliminate it completely, but it helps tremendously. When employees feel heard, understood and know what is expected of them, they have something to reach for and excel at.

Next up are customers. We all deal with customers day in and day out. Most of the time we get it right, we know how they want us to communicate with them and they know what to expect from us. However, with new customers or customers who have lost trust in us, it's a little harder.

We had a new customer call to inquire about the cost of replacing a window regulator in a 2008 Saab. We quoted the price to remove the door panel and said once we get the door panel off, we'd be able to give him an estimate. He pressured us to give him a price. Our service advisor gave a price and said "give or take, we won't know for sure until we have the door panel off." The customer translated this as plus or minus \$100 even though the "give or take" amount was not given. I don't feel our service advisor did anything wrong but the customer did. To make a long story short, it makes no difference who is right. What matters is how the customer feels about the experience he had at our shop. When I asked what he felt was fair, his reply was, "I don't care about the 3-year, 36,000-mile warranty, take that off and take \$100 and I'll be happy." It's hard to swallow taking money off a bill you rightfully earned, but \$100 for a good customer experience is nothing. When he left, he told me that I completely restored his faith in us, plans to bring his other vehicles to us, AND he will write us a good review. This is priceless. My point is, swallowing your pride and giving the customer what they want can make all the difference in the world.

Lastly, let's discuss vendors. Vendors can be VERY, VERY persistent. As a manager, my staff is trained to drill anyone who wants to speak with me or the owner. This can be a great thing when they know who to keep from speaking with you, but can also backfire when it's someone you want to speak with or someone you don't know you want to speak with.

Just last week I'd been waiting for a call from a credit card company we were looking to switch to. I had let the front office know we were switching and told them the name of the company. I expected (back to setting expectations) them to



transfer the call to me when the company called. Little did I know they would be asking for the owner, my father. Since my father is hardly at the shop anymore, my staff told the Rep “he doesn’t have any set hours but is usually here in the morning.” After four plus days of this company calling, someone finally came back to me annoyed they were calling so many times

and asked if I would speak to them. Dumbfounded, I said “yes, I’ve been waiting for their call” (I put on the application I was the point of contact AND I told everyone I was waiting for this call).

This is not the only time I’ve missed speaking to someone worth speaking with. When PPC Lubricants first signed on as an Endorsed Supplier with WMDA/CAR, they were also kept from speaking with me. Boy was I disappointed when I found out how much money we could have saved by switching to them months before we actually did!

Saying all this doesn’t mean you should take the time to talk with everyone who walks through the door, but sometimes taking a minute or two to see who is calling on you can make a big difference to your bottom line.

What do all three of these have in common? They all require good communication. When we communicate better, we build better relationships and empower each other. ♦



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FEATURED CLASSIC CAR

1981 Chevrolet Camaro

Owner: CAR Member Kenneth Quasney of Auto Sense in Millersville, MD



1981 Chevrolet Camaro

This little beauty may look stock, but looks can be deceiving. She sports a 383 stroker .498 lift Crane Cam, Roller rockers attached to all Aluminum Pro Comp Heads. The bottom end is a complete balanced lower rotating assembly. She is fueled by a 750 cfm Holley double pump sitting on top of an Elderbrock Airgap intake manifold. Estimated at 415 horse power.





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REGISTER NOW!

Ford Electronic Control Diagnostics Training Class

Presented by EAST Training
Enhanced Automotive Systems Technology, Inc.



APRIL 17 & 18, 2019

Course 223 – Ford Electronic Control Diagnostics

Class will be held at Auto Sense, 8209 Cloverleaf Drive, Millersville, MD 21108 (410-761-1599).

Food will be served at 5:30 p.m. Class meets for 4 hours each day from 6:00 p.m. to 10:00 p.m.



Class Description

Understanding the Ford EEC system diagnostics – see how the EEC system evolved and where it is going. This course picks up where the OBD-II course left off. We will cover system Evolution – EEC-I, II, III, MCU. Diagnostic Capabilities, DLC connectors, Diagnostic tools and Equipment, Definition of system tests, Self tests, KOEO, KOER. Continuous monitoring, FMEM, Adaptive strategies, Re-learn Procedures, Code terminology- Slow codes, Fast codes, Fault codes. Diagnostic test flow, Scan data. This is a hands-on class. Bring your scan tool.

REGISTRATION FORM

Attendee #1 _____ Attendee #2 _____
Attendee #3 _____ Attendee #4 _____
Business _____ Contact _____
Address _____ City/State/Zip _____
Phone _____ Fax _____ Email _____

REGISTRATION FEES

Member Rate \$199.00 per Technician Total number of Technicians _____ x \$199.00 = **Total Amount Due \$** _____

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Name on Card _____ Card # _____
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Signature _____ Billing Zip Code _____

**3 EASY WAYS
TO REGISTER**

MAIL Completed Registration Form and Check to WMDA at the address shown above.
FAX Completed Registration Form with Credit Card information to 301-390-3161.
CALL Debra Webster at 301-390-0900, ext. 101.



2019 WMDA/CAR TRAINING SCHEDULE

Presented By EAST Training
Enhanced Automotive Systems Technology, Inc.

Wednesday & Thursday – May 8 & 9, 2019

235 Evaporative Systems OBD-II Monitoring

Auto Sense, 8209 Cloverleaf Dr., Millersville, MD

Enhanced and Non-enhanced evaporative systems will be included on Asian, European, and domestic vehicles. Includes comprehensive coverage of operational theory, system components, and component monitoring strategies on systems with and without leak detection pumps. Evaporative system diagnosis and DTC repairs will be covered. Fuel cap testing principles and procedures will also be included. The latest Natural Vacuum Leak Detection systems are covered.

Wednesday & Thursday – October 9 & 10, 2019

131 Electronics in the Modern Automobile

Hillmuth Automotive Columbia, 6810 Oak Hall Lane, Columbia, MD

Application of electronic components in the automobile. Semiconductors, barrier voltage, diodes, for rectification, circuit protection, current control, zener diodes for voltage regulation. LED's, transistors NPN, PNP, Darlington pairs, SCR's (Silicon Controlled Rectifiers), open collector transistors – construction function and testing. Resistors and condensers in automotive circuits. Several types of automotive electronic circuits will be evaluated and explained. Schematics will be presented describing construction of several useful shop diagnostic tools, which can be assembled using knowledge learned in this course. Students are asked to bring their DVOM/DMM.

Wednesday & Thursday – October 23 & 24, 2019

131B Electronics in the Modern Automobile Update

Hillmuth Automotive Columbia, 6810 Oak Hall Lane, Columbia, MD

This course builds on Electronics Module 1. We will cover additional electronic components and systems used in the automobiles of today and tomorrow. We will delve deeper into the use of semiconductors – transistors, photoelectric devices – photocells and photoresistive components. We will be constructing more complex circuits on our electronic trainer boards. We will cover transistor gain and build circuits to demonstrate and measure gain. Case studies will be included which will demonstrate how your new found knowledge of transistor operation will allow you to diagnose and actually repair failed components. We will explain and demonstrate the use of Logic probes and Logic pulsers. This is a hands-on class. Students are asked to bring their DVOM/DMM.

PLEASE NOTE: Wednesday/Thursday classes meet 4 hours each day from 6:00 p.m. to 10:00 p.m. Food will be served at 5:30 p.m. The Saturday WMDA/CAR Training Day class meets for 6 hours from 9:00 a.m. to Noon and from 1:00 p.m. to 4:00 p.m. Lunch is served at Noon.

FOR MORE INFORMATION: Visit www.wmda.net or email Debra Webster at dwebster@wmda.net or call 301-390-0900, ext. 101.

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email: mnatale@petromg.com

SAVE THE DATE

FOR THE 2019 WMDA/CAR EXPO, BULL ROAST & AWARD PRESENTATIONS

FEATURING INDUSTRY ACKNOWLEDGEMENTS &
THE HARRY T. MURPHY CUSTOMER SERVICE CONTEST

Martin's West
6817 Dogwood Road
Baltimore, MD

Tuesday,
October 15, 2019
2:00 p.m. – 9:00 p.m.



Schedule of Events

TABLETOP EXPO

2:00 p.m. - 6:00 p.m.

LIGHT LUNCH (Expo floor)

3:00 p.m. - 5:00 p.m.

COCKTAIL RECEPTION (Expo floor)

5:00 p.m. - 6:00 p.m.

BULL ROAST & AWARD PRESENTATIONS

6:00 p.m. - 9:00 p.m.



The WMDA/CAR Expo

is designed as a place
to meet with exhibitors,
learn about the latest products
and services, develop new
business opportunities,
network,
and build lasting relationships.



LEGISLATIVE UPDATE

OSHA Enforcement Update

by Roy Littlefield IV

Recently, WMDA/CAR took part in an Occupational Health and Safety Administration (OSHA) roundtable meeting hosted by the Small Business Administration (SBA). At the meeting, we received an update about OSHA enforcement.

OSHA inspections have been a huge issue for WMDA/CAR members. OSHA is constantly conducting thousands of inspections on the industry and issuing severe fines. This remains a big concern for members.

To review some of the statistics from the meeting, last year OSHA conducted 31,202 inspections nationwide. This was a similar number to the previous year. Of those inspections conducted, only 28% of sites were in full compliance. The average fine per violation in 2018 was \$5,016; that number being almost double from the year before.

We have learned that OSHA is rarely giving breaks on fines and are issuing large sums for small violations. We are seeing warnings used very rarely.

WMDA/CAR recommends you do all you can to stay in full compliance to avoid unnecessary fines.

Luckily in Maryland, staying in full compliance is easier than you may think. As you are aware, Maryland has a state OSHA known as Maryland Occupational Safety & Health (MOSH). Maryland Occupational Safety & Health (MOSH) offers a free consultative service designed to help employers recognize and control potential safety and health hazards at their worksites, improve their safety and health program, assist in training employees, and possibly qualify for a one-year exemption from routine OSHA inspections.

The Federal Occupational Safety and Health Act of 1970 allows for Cooperative Agreements between states and the federal Occupational Safety and Health Administration

(OSHA) to provide consultative services to employers. This service is made available at no cost to employers to assist them in establishing effective occupational safety and health programs. The overall goal is to prevent the occurrence of injuries and illnesses which may result from exposure to hazardous workplace conditions and from hazardous work practices. The principal assistance will be provided at the employer's worksite, but offsite assistance may also be provided.

MOSH and the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) have had Cooperative Consultation Agreements since 1976. This service, which is jointly funded by the Workers' Compensation Commission and the U. S. Department of Labor, Occupational Safety & Health Administration (OSHA), is primarily targeted for smaller businesses (less than 250 employees per establishment or 500 employees nationwide) in high hazard industries. It is a confidential service in which your company's name, and any other information you provide, and any unsafe or unhealthy working conditions found, will not be reported routinely to the OSHA inspection staff.

So that you are aware: Under the agreement with Consultative Services, the employer promises to correct within a reasonable time all hazards identified by the consultant. This commitment is made in advance. The employer also must agree to post the list of hazards that accompanies the consultant's report. If an employer

refuses to correct or verify correction of a serious hazard, the Program Manager may refer the matter to a MOSH compliance inspector. However, this is a rare occurrence in this program.

To find out more about the program, visit this website: <https://www.dllr.state.md.us/labor/mosh/volcsurveyrequest.shtml> ♦





EDITORIAL

New Proposed Overtime Rules

by Roy Littlefield

On March 7, the Department of Labor (DOL) issued a new proposed rule that would modify the exemptions to the Fair Labor Standards Act (FLSA) overtime rules for certain white-collar employees (executive, administrative, professional, and computing positions) and highly compensated employees.

This is the DOL's second attempt to change the overtime rules in recent years. As you may recall, the Obama Administration issued final rules on the same subject that were set to go into effect on December 1, 2016 and that, among other things, would more than double the minimum salary required for employees to qualify under the white-collar exemptions. Then, just a few days before the rules were to go into effect, a federal district court judge issued a nationwide injunction preventing the rule from going into effect on the grounds the scope of the new rule exceeded the DOL's authority. The Obama Administration appealed

the decision, but then President Trump was sworn into office before the DOL's argument on appeal was presented. The Trump Administration chose not to defend the Obama-era overtime rules, but instead limited their argument to asserting that the DOL did have the authority to issue such rules. The Trump DOL then went back to the drawing board and issued a Request for Information in the summer of 2017, seeking comments in preparation for a new rule. The proposed rules are the product of this effort.

Similar to the Obama-era efforts, the new Proposed Rule present changes to the regulations that govern how employers can structure their relationship with their employees, which in turn can impact a business's bottom line. In general, the FLSA requires employees be paid one and a half times their regular rate of pay for all hours worked over 40 hours in a given workweek. Under the FLSA, there



are, however, certain exemptions. Employees who fall under one of these exemptions do not have to be paid overtime.

The Proposed Rule focuses on two general types of FLSA exemptions – the “white collar” exemption and the “highly-compensated worker” exemption.

WHITE COLLAR EXEMPTION

Under the FLSA (which itself is not changed by the Proposed Rules), the white-collar exemption exempts from overtime certain employees in executive, administrative, professional, computing or outside sales roles. In order to qualify for the white-collar exemption, the employee must be paid a minimum salary (as set by regulation) on a regular basis and have primary duties that meet certain requirements set forth in the regulation.

Because of the injunction that the Trump Administration did not challenge, the Obama-era regulations never went into effect. The regulations that are currently in place are from 2004. Under these regulations, to qualify for the white-collar exemption, an employee must be paid a salary equivalent to at least \$455 per week (approximately \$23,660 per year). There is a slight difference in the rules on how employees in computer related occupations can be compensated, which we will not address here. If implemented today, the

Proposed Rule would increase the salary requirement to \$679 per week (approximately \$35,308 per year). Interestingly, this salary threshold is almost exactly halfway between the current threshold and the threshold under the Obama Administration's final rules (which was \$921 per week or approximately \$47,892 per year).

Like the Obama Administration rules, the Proposed Rules would change the treatment of nondiscretionary bonuses and incentive payments for the purposes of the rules. Under the preexisting rules, non-discretionary bonuses and incentive payments do not count towards meeting the minimum salary threshold. If the Proposed Rules are implemented as proposed, employers will be able to satisfy up to 10% of the weekly salary requirement through non-discretionary bonuses and incentive pay provided that certain conditions are met.

HIGHLY COMPENSATED WORKER EXEMPTION

The other exemption which the DOL focuses heavily on in the Proposed Rule is the highly compensated worker exemption.

In order to qualify for the highly-compensated worker exemption, an employee must be paid a minimum salary, which is set by regulation and which is higher than the minimum salary set for the white-collar exemption. To be

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exempt as highly-compensated, the employee must also have primary duties that include office or non-manual work and must regularly perform at least one of the covered duties identified for white collar exempt employees. In short, if an employee is paid a high enough salary to satisfy the highly-compensated exemption, there are less rigorous requirements imposed to determine what the employee's primary duties must be to qualify for the exemption than there are for the white-collar exemption.

Currently, the minimum salary threshold for a highly-compensated worker is \$100,000 per year. If implemented today the Proposed Rule would increase this to \$147,414 per year, which is actually significantly higher than the \$122,148 per year that would have been sent under the Obama Administration's final rules.

FUTURE UPDATES

When the Obama Administration rolled out its final rules, there was much ado over the fact that the regulations provided for an automatic increase of the thresholds every three years. The new version of the Proposed Rules does not include an automatic update. The DOL does however appear to be contemplating a future need for updates (after all it has now been 15 years since the thresholds were increased) and has sought comments whether the rule should include a regular schedule for future rulemakings to update the thresholds (so that businesses know when changes might be coming and workers don't have to wait 15 years for an update – though arguably many businesses would be happy for them to take fifteen years before they increased the amounts!).

PROGRESSING TOWARDS FINAL RULES

There is still much for the DOL to do before the Proposed Rules become final, including receiving and assessing public

comments. The earliest we'd expect to see the final version of these rules is 2020, and once the final rules are announced there will be additional time before the regulations will go into effect.

SSDA-AT and WMDA/CAR played an active role in submitting comments on the Obama-era overtime rules and intend to do the same with the new proposed rules. We encourage our members to share their thoughts and concerns on the rules with us so that they can be incorporated into this effort. ♦

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