

The

Ten Worst

**things that can happen
to you in the BHPH
business and what you
can do to prevent
them.**

by

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- 1. Bad Car**
- 2. Bad Repo**
- 3. Bad Paperwork**
- 4. Child hit on lot**
- 5. Pedophile**
- 6. Computer Wipe Out**
- 7. Sexual Harassment
Wrongful Discharge**
- 8. 2 Tier Pricing**
- 9. Employee taking information**
- 10. The Unknown. Tomorrow ?**

1. Unsafe car

Situation: A family comes in to buy a car. You happen to be out of town. A new salesperson delivers the car. Blocks away from your business the customers are in an accident. They say that the brakes failed on the car. That resulted in a terrible tragedy for two of the children. Everyone was injured in both vehicles.

You call in and learn about the problem. You don't know the car very well. You bought it at the auction on a red light. Your mechanic was going to look it over. A new junior mechanic that has worked for you a short time and been a problem employee was to have checked the car. He didn't. You are angry and fire him over the phone. The conversation is full of curse words from him.

The investigation shows that the car was indeed dangerous. The steering was bad; the brakes were down metal to metal on 3 wheels. What actually caused the brakes to completely fail was a rusted brake line that broke. The exhaust was defective and leaking. The turn signals worked, but the brake lights didn't. The wipers didn't work nor the horn. Three of the six seat belts were defective or hidden under the back seat from when the car was detailed.

The customer has retained a high profile "shark" attorney. This attorney has talked with the disgruntled mechanic who you fired. After that happened the mechanic received an anonymous voice message that there was "a lot of money" involved in this deal. The injured family is planning on buying a new Chevy truck with their settlement. They will sell him one like the one they are going to buy for \$1000 as a gesture of appreciation. The disgruntled mechanic is now prepared to say "that the dealer sold cars like that all the time. The dealer knew and didn't care. He just wanted to make a lot of money".

Your insurance company points out to you that your garage keeper's liability doesn't cover an illegal act. Selling a dangerous car falls under that category. They recommend you retain your own counsel and refuse to pay the claims.

You get a lawyer who informs you that the "Shark" lawyer is going to seek punitive damages and possibly try to get the case classified as a "Class Action".

(That means you have to defend every car you ever sold) Your lawyer requests what written procedures you have in place that prevent something like this from happening. Your answer is that everything is verbal. Your senior mechanic knew very well that you would never sell a dangerous car. He had a dental appointment the day the car came through and the new problem employee mechanic was to have “looked the car over”. Your salesperson evidently pushed the new mechanic to “get the car on the lot”.

Your lawyer tells you the following:

1. This is going to cost a lot of money in legal fees.
2. You are very likely going to lose. Your insurance is not going to cover the claims.
3. Your life’s savings are in the business and all of that will likely be lost.
4. You suffer the personal toll of guilt and responsibility for what happened to the children.
5. The District Attorney contacts you and your attorney and says they are opening a criminal complaint that will go to a grand jury.
6. The newspaper has picked up on the story as well as a local TV station. Your family is calling asking you how this could have happened.

Background:

In Oklahoma for many years we had safety inspection law that was fair and only required a basic safety inspection by state licensed inspectors. Dealers could have their own employees licensed. The reason for this law was many years ago a woman in winter in downtown Oklahoma City left her two children in the car while she went in to get a Christmas present. She left the car running because it was cold outside. She was delayed in the store. The vehicle had a leaking exhaust and there was a tragedy. Oklahoma did away with that law, which was a loss to the public as well as the dealers.

How to protect yourself:

The form on the following page becomes a key control document in your procedures. It is also your company policy of only showing and selling safe vehicles being implemented. This is a critical document! It needs to be in your car jacket permanently. You shouldn't offer a car for sale until this is completed and "in the file".

Food for thought:

1. A Policy is what you want to accomplish.

2. A Procedure is what is going to be done to accomplish and document a Policy.

BOTH HAVE TO BE WRITTEN AND COMMUNICATED AND RE-COMMUNICATED TO YOUR PEOPLE TO MAKE THEM HAPPEN.

SAFE and SOUND

Vehicle: _____

Stock# or Last 6 of VIN: _____

Safety:

Wipers: _____

Horn: _____

Brakes: _____

Seat Belts: _____ (check all)

Headlights: _____ (dim and bright)

Turn Signals: _____

Brake Lights: _____

Flashers: _____

Exhaust (no leaks) _____

Brakes: _____

Parking Brake: _____

Steering: _____

Tires: _____ (20% or better tread)

Performance:

Mileage start road test: _____

Mileage end road test: _____

Heater: _____

Defrost: _____

Air Conditioner: _____

Other:

Comments: _____

I drove and inspected this vehicle and found it to be SAFE & SOUND.

By: _____

Date: _____

(DO NOT OFFER A VEHICLE FOR SALE OR ALLOW ONE TO BE DELIVERED THAT IS NOT SAFE!)

What else you can do to protect yourself:

1. Make this form a part of your employee policy and procedures manual. Sit down with each employee when they are hired and review the employee and policy manual in detail. Have the employee sign they have received your policy and procedures manual. Be sure they have a complete copy for themselves. Have the employee initial every page as you discuss it with them.
2. Each year conduct an employee performance review with each of your employees and at that time have the employee re-sign and re-date your policy and procedures manual.
3. The best way to communicate with a customer is to use a closing video. In it you state **“if there is any safety equipment that is missing or not working; or any safety concerns contact the Manager and DO NOT take delivery of the vehicle.”** If you don’t use a closing video, you can use an “Additional Terms and Conditions” form that states this along with other things, such as “no grace period on payments”. Make it part of your closing documents.

Last; protecting you from a human cost.

The car business and in particular the BHPH business has been good to many of us. The last thing in the world you would want on your conscience is that someone, maybe a child got hurt because your business sold or allowed to be test driven a vehicle that wasn’t safe. There’s not enough tea in China to erase the personal loss that you would experience.

Plus, as an independent business person you know what a sleepless night is all about. You worry about something. Sometimes you can’t pinpoint what it is that has you concerned. I guarantee that you will sleep better if you implement this policy and procedure making it a 100% - “No Variance” policy in your business.

2. Bad repo

[Note: This applies to many states but not all. If your state or the state you are recovering the vehicle in is not a “self-help” state then your repossessions must go through the courts and be replevined by law enforcement. The law that applies is typically where the vehicle is located when repossessed]

Situation: You have used the same repo guy for years. There has never been a problem. You’ve always told him, “Keep it cool – no rough or edgy stuff – follow the rules”

But, you don’t know what happens in another person’s world. The repo guy has been ill. He’s hired someone to do the repos for him. Somebody that somebody he knew that knew somebody that would work cheap and said he had a lot of experience.

The vehicle was assigned for repo. The collector didn’t flag the account. The cashier saw the payment come in by mail. The collector was off attending something at her child’s school. The cashier receipted the payment not knowing the account was assigned for repo. The payment brought the account current.

The repo man’s helper is doing the repos this weekend. He has a little bit of a drinking problem so he’s got a bottle of booze to help him pass the time. He finds the car at the person’s house. It is late, but he doesn’t get paid unless he gets the car, so he’s going to get the car no matter what.

The customer hears the noise at 2:00 a.m. in the driveway. They think the car is being stolen. Her boyfriend, who has anger issues, heads out the front door with a baseball bat. There is a confrontation. Pretty soon the kids wake up and are out front also.

The customer can’t prove she paid the account current because she made the past due payments by mail and check. (She’s never had a bad check with the dealer before) The repo guy doesn’t know who he should call. He just knows he is going to take the car so he gets paid. The conflict gets physical with the

customer's boyfriend. The repo guy's stun gun puts the boyfriend down. The repo guy jumps back in his rig to take off hurriedly. One of the children gets to close and the customer's vehicle goes over the child's foot as the police are pulling up.

The next day you find out about all that's happened. You feel confident because you've had the same repo guy for years. He has insurance (you think) and he signed a contract ten years ago to not do anything wrong when getting a repo. (You think it was ten years ago, but you don't know where that file would be).

You meet with your lawyer and find out:

- a. The contract with your repo guy will not give you the legal protection of "agency". That legal protection was lost by court ruling when 2 repo guys in Texas had a bad repo years ago. The customer jumped inside of her van thinking that would prevent the repo men from taking the vehicle. (it should have) But they were pissed off so they took the van with her in it and dropped it at their repo storage yard where there were two very BAD dogs that kept the woman inside the van for about 24 hours. That also resulted in a kidnapping criminal charge.

{Remember this little footnote on the law: the law changes without new laws being passed. (That's why a regional firm like Tom Cook's offers advantages. They are big enough that they keep up with these rulings nationwide. A small local firm can't afford to do that. It changes as the courts modify the legal interpretation as the result of events. If you are guilty of being a "bad" person, or even a "good" person doing or condoning a "bad" thing they will find some law that you are guilty of. However, being good and doing good isn't enough. You MUST DOCUMENT IT!}

- b. The account was current when your cashier took the payment. Accounts that are assigned for repo must have an account "hold" placed on them so payments cannot be receipted. Once the account is in default, you have the right to not accept payments and seek your legal remedies. What you don't have is the right to take the money and then repo the

- car. That applies also if you have a work out plan with the customer that you have agreed to, but they are contractually past due.
- c. Turns out your repo guy has no insurance. Even if he did they wouldn't pay. Most insurance policies have a provision that if you deliberately break the law there is no coverage. Your insurance company denies any claim you might make because you told them that you don't repo cars but hire outside vendors to do so.
 - d. The dreaded 6:00 news breaks the story of the child with the broken foot, the repo guy who was drunk, had no driver's license, and was on parole and a multiple felon of violent crimes. Your car lot is the closing picture.
 - e. Everything that happens from here out goes from horrible to MORE HORRIBLE!

How you protect yourself:

- a. Have a written contract with every vendor that is renewed annually. Include in your file a copy of their current insurance.
- b. Be sure that your contract states very clearly that you are not authorizing them to break the law in any way. Be sure the repo guy has a phone number that he can contact someone in collections or yourself 24 hours a day. Be sure you personally have his phone number on your cell. His drivers also. State very clearly in writing, "if the act of repossessing the vehicle results in the disruption of the peace or puts anyone at risk of injury or violence they are to retreat and leave the vehicle with the customer."
- c. Meet with the repo guy annually. I recommend January 2nd of every year. (*put in on your Annual Checklist). Have him re-sign the contract and re-date it every year. Hand him a letter from you and have him sign for it that restates in simple English, "no trouble, no violence, nobody to get hurt, no breaking locks or laws to get a vehicle". If the police come don't argue. Do exactly whatever the police say to do. Don't assume

- every customer is a liar. Check the serial number of the car before you leave in it. (footnote story later) Have your collector and cashier sit in on the meeting. Know exactly who it is that is going to be getting the cars.
- d. Put on your June 1st calendar to send that same letter with the new date on it. Ask the repo guy to sign a copy, date it and send it back to you. The thicker this file gets the safer you are.
 - e. Understand that repossessing a vehicle is an inherently dangerous process. The customer doesn't know if it is being stolen. At the best they are in a bad place in their life and the last thing they need is for you to come get the car. Have some understanding and a little compassion. Its good business and its good for the business of life. You will sleep better with this in place.

Footnote:

- How to repo a car from a THUG. We had a repo once on a one year old Cadillac. The customer was a pimp whose nickname was "Sweets". He had a long criminal record of violence and had done time for a gun related arrests in California. We heard rumors that he had the car partially bulletproofed. I hired the best repo guy I knew to get the car. Here's what I learned:
 - Never try to repo a bad guy's car out of a bar or nightclub's parking lot at night. The reason is that there is someone posted in the parking lot to look for police or other bad guys coming to call.
 - Thugs drink beer. Thugs watch football. Thugs don't buy beer. They send their girlfriend to the grocery store in the middle of the ballgame to get the beer. That's when you get the car.
 - What actually happened on this particular deal is that the repo guy found out from a police friend that "Sweets" ate lunch every day at the same restaurant by himself. It was in an upscale area. Lunch was really breakfast for Sweets because his business hours didn't end until around 2:00 in the morning. When he had lunch he hadn't picked up any associates (extra Thugs) yet. That's where we got the car. He was driving a new one he paid cash for by the end of the day and didn't

retaliate. I am sure he would have killed somebody in a parking lot in the middle of the night for it.

- **Footnote: VIOLENCE:** I was a young guy and we had a customer that was a Huge guy with a tough reputation. I was dumb enough to volunteer to get the car. I found him at a McDonalds and approached him in the parking lot as he was about to get in the car. At first he was mad as hell! But I understood he was having a terrible day and gave him a little sympathy. He started crying and told me how much he loved that car. A little compassion goes a long way in a tense situation!
- **Footnote VIOLENCE:** Motorcycles are much more dangerous to repo than vehicles. I met a guy who had the repo contract for Harley credit for 5 states. After losing one driver and having another shot up he bullet proofed the back of his wrecker cabs.
- **Footnote VIOLENCE:** One of the dumbest things I ever did. I used my size, 6'6" to try to intimidate a 5 foot 90 pound young mother whose brother's car I repo'd. He was a truck driver and trying to take care of his sister. He had endorsed his paycheck and sent to her by Fed Ex. It was in the car along with the baby car seat (only a mother knows how critical a child's car seat is) when we got the car. She thinks I am going to steal her brother's paycheck and her child's car seat. She is desperate. I didn't understand because life had been generous enough to me that I couldn't relate. I told her I wouldn't release anything in the car until her brother called me. She said that wouldn't do. I said maybe she ought to call a lawyer and then I made my big mistake! I tried for the only time in my life to intimate someone with my size by taking a step towards her. She surprises the hell out of me when she takes a big step towards me! Now we are so close that any closer and we might have children together. She is almost literally standing on my shoes. She looks up at me and says, "Mister, maybe you better call an ambulance. You're going to need one!" Somehow this situation defused itself a bit. Her brother called. We applied enough of his check to bring the account current

and let the young woman go. I never saw her again. The point to this is violence can happen in a moment and a little understanding helps.

Footnote: I was responsible for about 25,000 repossessions during my career. We did have one very bad violent experience. It can happen in a minute. Can you believe that when I talked to the son (of a father – son duo) he was in the training room of the New York Jets. He said that the only reason they beat up the repo guy was because they didn't have their guns to shoot him. Their guns were in the car. He also said that actually they thought they had killed him or they would not have stopped. My repo guy knew they were “bad guys” so he had a Deputy Sheriff follow him. That Deputy was so scared that he was waiting for backup and watched the whole thing. Why in the hell he didn't turn his siren and lights on I will never know. My repo guy got a brand new set of teeth. When I saw him in the hospital and asked him if I owed him anything he said “lunch”. He had my business forever after that.

Footnote: Our word “Thug” comes from a 13th century tribe from India that killed people from behind with a scarf. They were called on the street the “Stranglers”, but their real name was “Thugs”.

Footnote: Be sure that your repo agent knows to check the VIN number before they repo the car. I got a call from a very nice medical doctor from India who also happened to have a Ph.D. Our agent repossessed his car because it was the same make, model, and color as the one we were looking for. It was on the same street so he assumed our customer was hiding it there. The Doctor was very gracious. We detailed his car for him later.

3. Bad Paperwork

Situation: You garnish a customer's wages for a repo deficiency. They hire a hungry lawyer (there are more of those around than you think). Turns out your paperwork is all messed up. You didn't go to any of the NABD conventions or workshops. You didn't have a state auto dealers association that might have kept

you current. Everything you did was wrong. From the credit application to the contract to the notice of sale was wrong.

You really have no defense. The lawyer gets a “class” certified. You hire the best lawyers but it’s way too late. The ugly truth is whether you like it or not as the owner you are the chief compliance officer. There is no way around it. You can’t delegate this.

Charles Kock the enormously successful business person from Wichita says that every CEO has to be 100% responsible for technology and compliance. It doesn’t matter if you like it or not. You cannot effectively delegate something because you don’t like it.

How you protect yourself:

Go to NABD and work. Study. Learn. Ask. Pay for legal advice BEFORE you get into trouble. It’s a whole lot cheaper. The hungry lawyer isn’t going to go away. Have at least one day a year that is fully committed to compliance and safety issues for everyone in your organization. Have a annual and semiannual checklist for your managers and yourself.

Footnote: I love to fly. There’s a lot to be learned from flying. One of the things is the use of checklists. On any check ride for any size aircraft the one thing you can do to fail is not use a checklist. The aviation people have learned that’s number one.

4. Child hit by vehicle on lot

Situation: Customers have small child. The parents aren’t watching where their child is. The child wanders off. You have one employee who is a frustrated NASCAR “want to be”. He drives fast on the lot. The sunlight is in his eyes and he is driving too fast and something terrible happens.

No point going in to what happens next. It's all horrible from here.

How you protect yourself:

- a. Have a sign both inside your sales lobby and outside on the building that says, "Parents are responsible for the safety of their children".
- b. Have in your personnel policy and procedures a provision that the speed limit on the lot is 5 mph and to be careful to watch for children. Say it in plain English. Big letters. Big enough the judge or more importantly the jury can read them.
- c. Have a speed limit sign somewhere on your lot that says, "5 mph – Watch out for children".
- d. If you have a big lot consider having a few speed bumps installed.

Footnote: I wish I was smarter than this, but when I was a young salesperson at a Ford dealership I used to drive around the lot too fast. Probably out of boredom. One time a couple was looking at a car with another salesperson on the lot. Their child was no taller than the fenders on the cars. That child must have been twenty yards away from them when he popped out right in front of me. I slammed on the brakes. It scared me so badly that after 40 more years on car lots, I still drive very slowly and watch out.

5. Pedophile

Situation: You have an employee that you didn't do a background check on. You might have hired them because someone else knew them. A customer has a child who they are not watching. Or you ask this employee to drive someone home that has children with them. It can be any situation where this person is alone with a child or has control of someone's child. Something Horrible happens.

You are going to be sued and you are going to lose. You are going to feel bad about this for the rest of your life. Things are not going to get much worse than this happening.

How you protect yourself:

- a. Run a background check on every employee BEFORE they come to work for you.
- b. When you do an annual review with your employees have a provision that states if they have been convicted of a crime within the last year they must disclose it.
- c. In your employee policy and procedure have a simple English provision that “employees are not to place themselves in a position where they are with a child without the parents or guardians being present.” “Further, state that when a customer or their child is using the restroom that employees are not to enter the restroom.”
- d. Place a sign on the door of the customer’s restroom. “Children must be monitored by parent or guardian”
- e. Video cameras inside your building are inexpensive and worth it. Be sure their view doesn’t place anyone in an awkward position of view.

Footnote: Yes, this nearly happened to my business. We didn’t run background checks. One day the repo clerk had the shop lot guy drive her back to the main office. He brought up a topic of conversation that made her very uncomfortable. She came to me with it. At first I thought he had made a pass at her. I am so glad that I took the time to listen and asked her exactly what he said. When she told me what he said it scared the hell out of me! I had him sent home and ordered a background check. Sure enough, he was a horrible man that had done horrible things to his own children.

We see these things in the news and the offender we think was wearing a sign that said “pedophile” on them. But they don’t. They look like everyone else. They are horribly sick people. They exist.

6. Computer Wipe Out

Situation: There is a fire in the closet or computer room where your computer server is located. You are not worried because you have back up tapes and there is a backup feature that your DMS provider offers that you think your bookkeeper enrolled your business in.

You actually did have the DMS provider do backups. You have had in previous years, but when you gave that speech about cutting costs your bookkeeper thought this would be one place to cut. She thinks she saved \$200. She actually put your business at risk. She's taking one of the two back up tapes home with her almost every week anyway. (when she remembers)

You send the backup tape to your DMS provider so they can program a new server. They call and say the tape is blank. As a matter of fact the last two years of year end tapes are bad. You learned at a meeting that the dealer should ask for a year end backup tape and take it home with him. Good idea. Good that you did it. You just didn't check to be sure the data was there.

Customers are raising hell about their payments. You have financials but not enough detail to reconstruct the accounts. You hire a specialized accounting firm. But the job is going to be tough and expensive. As luck would have it the IRS notifies you that they have some audit / review questions. All you have is your monthly financials.

How you protect yourself:

- a. Have (2) back up sources. One has to be offsite. Use the backup service your DMS provider offers. Verify in writing that they have the real data.

- b. Obtain for yourself a least a year end back up on some electronic device.
- c. Also, have a physical print out made of your accounts receivable and inventory to keep with your annual back up at your home. As a reminder I kept them in my closet where I got dressed every morning and could see them instead of my office at home.

Footnote: You will sleep better if you see the backup every day.

Footnote: Yes, this happened to me. We went for what turned out to be over a year with backup tapes that were blank. Thank heavens when we had a hard drive crash they were able to recover the data. We did have lots of print outs. However merely one day of not being able to pull up a customer's account will give you an idea of how big a problem this can be.

7. Sexual Harassment / Wrongful Discharge

Situation: Completely out the blue you get notice from the EEOC (Federal Equal Employment Opportunity Commission) that a new female employee is accusing you of sexual harassment and a "hostile work environment".

The allegation this woman has made include physical contact, unwanted advances, everything. You have no proof since you have a private office; it's her word against yours. To put that in perspective; that's the word of a young single mom against a middle aged rich (all juries think all car dealers are rich and not honest) car dealer.

How you protect yourself:

- a. Have a professionally prepared Employee Policy and Procedures manual that clearly addresses the issue.
- b. Have a simple English policy that states very clearly that sexual harassment or “hostile work environment” will not be tolerated. Make it specific. Dirty jokes don’t belong at work. No calendars in the shop with half naked women on them. No looking at dirty pictures on the internet by bored salespeople.
- c. This policy should be reviewed every year. Your attorney or UTube can provide you with a training video that deals with this issue.
- d. You must support this personally or it will not happen!
- e. If you are a man, you don’t understand how much of this women are exposed to and how hurtful it is. You have to have a zero tolerance policy. You need a formalized way for an employee to make a written complaint and what it needs to contain. Also, the reasonable time frame a complaint will be accepted. (3 business days, not 6 months) The second worst thing you can do is not treat a complaint confidentially and seriously. If you fire someone over making a complaint you need to be sure that you can prove that the reason for termination had nothing to do with the sexual harassment complaint. (don’t take a chance) Your policy needs to outline who the complaint should go to, (typically your attorney) if the complaint is against you.
- f. Have doors with glass installed on every office, especially yours.
- g. Don’t meet with employees alone. Definitely never after business hours. Business is business. Respect is Respect.

Footnote: I have a brother in law who is an enormously successful scholar in addition to being a Catholic priest. At the Abby and University where he lives thirty years ago the Abbot had a meeting about sexual harassment and child

abuse. He said he was giving everyone a gift. Every single office in the Abbey and the College would get a glass door. While they had a policy about these issues, the glass door was a simple positive step. Do it for yourself. You might be faced with a complaint someday by a troubled person or simply a bad person. If you end up in front of a jury a picture of that glass door is going to be worth a fortune.

Another Footnote: I was a board member of an insurance company once. The President was a friend. He was older than me and I think part of the issue was that he was from another generation. The board asked for sexual harassment employee training. (We had had a number of internal sexual harassment complaints). He hired a consulting company to come in and put on an all-day video training program. As a director I wanted to support the issue so I attended. At the end of the day the President made a dirty joke to close the meeting. I nearly fell over.

Now this guy wasn't a bad person. I know his personal conduct was beyond reproach. I know his wife of forty some years would have killed him. But he didn't understand. He didn't understand that this issue is real for many women and sometimes men. (Yes I have had that type of complaint in the work place also). You are the leader. Don't ruin it with a dumb joke or gesture. **Be proud that any friend's daughter, sister or wife would be comfortable in your business environment.**

Footnote: If you insist on thinking that getting things cheap is making you money, buy discount parachutes for your parachute hobby. Don't hire a "cheap" lawyer. Your customer won't. There is no such thing as "cheap" legal work. There is only a good legal investment or a poor one.

Footnote: Something many people do not know is that Churches are exempt from the EEOC laws and also parts of the Civil Rights Act.

Wrongful discharge

The number one issue for "wrongful discharge" is no written performance reviews or disciplinary write ups in the employee's personnel file. Almost as bad

is something in the file that forms the basis for a discharge that the employee does not have a copy of and didn't sign that they acknowledged the document.

How you protect yourself:

- a. You **MUST** have a lawyer written personnel policy that is not older than five years old. Any "simple English" statements, (which I recommend) need to be approved by your attorney.
- b. You **MUST** read it yourself and understand it. If you have to. treat yourself like a grade school student. Get a ruler and read it line by line. What you don't understand ask your lawyer about. You have to do this before an employee signs it. The worst place and time to read it is in a courtroom while the jury is out deciding your financial fate.
- c. Every employee **MUST** sign it and **MUST** receive their own copy **BEFORE** they go to work.
- d. Every employee MUST have a written annual review where their Manager or hopefully the Manager and / or Owner sit down with them and communicate in an atmosphere of mutual respect. Make the review as specific as you can. Don't use general words that don't have a specific meaning. Don't point out areas of improvement needed without specific time frames and follow up. If someone's performance is putting their job at risk, TELL THEM IN WRITING IN PLAIN SIMPLE LANGUAGE that a jury would understand.
- e. Remember, Respect is the Foundation of Every Successful Human Relationship. (I have a free booklet you can download at my website juliankcoding.com or juliancoding.com by that title)
- f. After you have the review, give the employee "some space".
- g. If you don't do anything else, do this one thing: LISTEN. YOUR EMPLOYEES AND YOUR CUSTOMERS KNOW MORE ABOUT YOUR BUSINESS THAN YOU DO!, UNLESS YOU LISTEN.
- h. The employee must sign the review document as well as you. This needs to be confidential from all other employees and that employee's family. Your copy of all employee files needs to be in your office, in a fireproof

filing cabinet and only you need to have a key. (A backup key at home or with your lawyer is a good idea).

Footnote: Keep the personnel files and the liens in a locked, fireproof safe in your office. Yes, I have had employees steal both their personnel files and the lien releases on their vehicles.

Footnote: Be careful in every area of employee rights. I had two women who sued the company and me for firing them for being pregnant. One had a very well documented file and I had notified her in writing before she was pregnant that she was underperforming and would lose her job unless her work improved in specific ways.

The other girl was a repo clerk. She was dressed like an Amish woman at the trial. I knew that one of the underlying issues was that she wasn't sure her husband, who had a violent marriage with her, was the Father of her child. She was scared. He turned down free health insurance coverage I offered when I terminated her saying that "if they didn't have health insurance and something went wrong with the baby that they would have a Million Dollar baby". That gives you an idea what kind of person he was.

Turns out that unknown to me she was hitting on our repo agent and showing him pictures of herself in Victoria's Secret type clothing. Her lawyer ran across that by mistake on cross examination and I could see the trial was over. The jury was out for 15 minutes.

However, the legal fees were \$84,000. That was twenty years ago. I'm sure we lost more than that dealing with the situation instead of selling cars and collecting payments.

Footnote: GUNS / Violence

You must have a zero tolerance for violence in the workplace.

Don't assume that the "gun" issue relates only to a robbery!

Let me share a story with you about guns. My employer / partner had this wonderful office building that was very luxurious. It was empty (had been his private financial people's office and so he let us have it. (Don't get fancy offices. It distorts reality) People entering the building would walk by my office or my controller's office. One day a man I didn't know walked by and went into the accounting office next door to mine. In only a minute he walked out. There was something about it that was odd so I got up to see the woman that worked in the office next door. She had her face in her hands crying and was shaking. I guessed at the rest. I got my Controller and we came into her office for me to talk to her. I knew she was going through a bad divorce but didn't know a lot about her. I asked if that was her ex-husband and she said yes. I asked if she wanted us to call the police and she said no. He came by and walked into her office to let her know he could get to her anytime. I asked if she had a restraining order and she said she did but it was no protection.

To my Controller's surprise I asked her if she carried her gun into work? (We had a NO GUN policy). She said she did and that it was in her purse and her purse was within reach 24 / 7. I told her that we couldn't have her bringing a gun into the work place. However, we would start locking the front and back doors informing people not to let him in. We wrote him a letter telling him we would call the police if he showed up again. We had her file a police report for the visit he paid her. I gave her my parking spot right in front of the front door. She discretely put her gun the trunk every morning on the way into work and got it out of the trunk on the way out. We often escorted her to her car even though it was only 10 feet from the door.

My suggested rule for your employees is: NO GUNS AT WORK FOR ANY REASON. But listen and learn as you go through the day. Many women are the victim of violence. A restraining order won't stop a bullet. What gave me some insight was that my wife used to go to a very fine dress shop where one day....a crazy ex-husband came in with a gun, walked right behind his ex-wife, fired one

fatal shot and left. He even walked and didn't run out. He never spoke a word and was gone in seconds.

I make these comments both as a business person trying to avoid a huge liability and also as a person who wouldn't want to see anyone hurt. If you think a woman is at risk, get her to seek help from her family or the police. Chances are she needs some money. That's a good area you can help with. Don't get involved in someone's personal life.

Remember, the issue of Guns in the Workplace is a lot bigger than you trying to protect your dealership from being robbed. Much worse than being robbed is the liability that comes to you as the owner if your employee does anything with a gun. Don't be dumb and not think that bullet is going to go through a couple of walls or people before it stops. The rights of an individual to protect themselves and others from mortal danger are in place. BUT THEY ARE VERY RESTRICTED IN THEIR SCOPE!

Also, you must take reasonable precautions to protect your employees who handle cash or take cash to the bank. You need a written policy on this issue.

8. 2 Tier Pricing

Yes, this has happened to me. Some of the guys in the Used Car Hall of Fame are there because they are rich and smart. The rest of us got in because we made a lot of mistakes. (You might remember that Babe Ruth held the strike out record all the years he held the home runs record)

Situation: You have a written "No Two Tier Pricing Policy" that every salesperson and sales manager has signed. It's been years since they signed it or you discussed it with them. The salesperson has never heard of the CFPB. A customer of yours didn't make their payments. You repo'd them and started garnishing their wages. They went to a very smart, very hungry lawyer. The lawyer said I have a great idea. I will hire a private detective to go on that lot and talk to the salesperson

you did. The private detective will be wired to record the conversation and we will see if the dealership uses Two Tier Pricing.

You get a phone call. It's that lawyer. He wants you to give your old customer his car free and he would like a new Cadillac Escalade for himself. If you don't the lawyer is going to:

- a. Sue, and try to get a class certified.
- b. Notify the CFPB.
- c. Go to the media, including a social media attack group.
- d. Notify your State's Attorney General. (Who is getting ready to run for Governor. (every District Attorney is thinking about running for Attorney General and every Attorney General is thinking about running for Governor)
- e. File a Federal Trade Commission complaint.

You suggest that he go to hell. He says before you say that; please listen to this recording of YOUR salesperson offering to come off on the price "at least a couple of thousand for Cash". You listen and it is your salesperson. It's your best salesperson. When you call him all he has to say is "Boss I didn't want to miss a car deal".

You call your lawyer. He tells you that you are in deep trouble in more than one way. He or she suggests that you go Cadillac Escalade shopping.

How you protect yourself:

- Have a written "No 2 Tier Policy" signed by each salesperson, manager and anyone who represents you to the public.
- Introduce the phrase "Same Price Cash or Credit" to your sales process. Have signs made for sale offices and the lobby. Remember, big enough for the judge and jury to read.

- If you have enough wholesale units, put in a low overhead cash lot that focuses on Craig's list. (Remember the car needs to pass Safe & Sound. That has nothing to do with As Is) I think that is a Great idea!
- Don't every put a "Cash Price" sticker on your lot units. How do you think that will look to the judge and jury?
- Sell all wholesale cash units without any warranty. It's not much of a defense, but the jury will understand that without a warranty a vehicle is worth less whether it is sold cash or credit.

9. Employee taking information

Situation: You have a theft, but it's a different one than you have ever had before. Someone inside your organization has stolen information. And it's going to cost..... YOU!

- Employee checks credit information without authorization on her ex-husband's new girlfriend. She was somehow able to get a SS number and DOB. She is also regularly checking ex-husband's credit. Ex-husband and girlfriend get married in Las Vegas over the weekend and apply to buy a home on Monday. Their credit is turned down because your dealership has pulled their credit fifty six times in the last 90 days. (Yes, I have had this happen)
- Janitor or any employee finds someone on the darker side of the internet who will buy confidential credit information. They pay \$20 in cash per identity. They get this information out of your trash cans at night. One of your potential customers is arrested and charged with credit card fraud. It turns out that they did nothing wrong. It is an internet scammer who created a false identity from the information that was obtained at your dealership but not properly destroyed. (A little lesson. The CIA, FBI and a lot of Private Investigators working for edgy lawyers have learned over the years that

someone's trash tells everything, and I mean everything about them) What went out in your trash today? **Go Look! Then share what you find with all your employees.**

- **Footnote:** During one of our most profitable years ever we had a local TV station that was doing "dumpster diving" and got our financial statements. Want to know how much TV advertising I bought on that station to get the statements back and the story killed? A LOT!

It doesn't take much to see that you are in a whole lot of trouble. This is a mess. The credit bureau isn't going to change the credit score or record without a court order. Everyone is going to get to see a judge up close. That crook on the internet, well he accesses some of your prospects or customer's email accounts and the list of scam created identities now goes to all the people they know. They also are damaged and want to meet the judge. (Preferably at your financial hanging)

The CFPB and Credit Acts have specific rules about how you were supposed to shred information. There are also other specific steps your organization must take to keep information confidential. You have no written policy. You don't have an annual "compliance" day. You don't even have a dedicated and named "compliance officer".

Solution:

1. Know the law. No excuses. **Or, frankly sell your business.** Do something you are interested in.
2. Implement the law. That means live the law. Walk the talk. Be the leader, the teacher and the enforcer. You don't have to do this. McDonalds is hiring every day. You'll be ready to get back in the car business after payday.
3. Communicate the law and reason for the law to your employees: People will follow instructions much better if they understand not only what the

law is but the reason for it. The government didn't pass these laws to give BHPH dealers a bad time. They did it to protect the rights of the individual Americans to their right to privacy. It's a pretty big issue. A lot of good people have been hurt. You or your employees wouldn't want their private information put in the trash or left on top of desk for a stranger to read. Neither would you. If you are going to Respect someone, you are going Respect their privacy and demand they Respect yours.

Footnote: It's easy to be pissed off at the government for some of their stupid laws. Your employees will follow you example, good or bad. They will also follow your attitude. Remember the old saying, "Your spouse will never forget what you say and your kids will never remember what you say; but WILL REMEMBER EVERYTHING YOU DO." It is a whole lot better to be thankful that you give to live in the greatest nation this world has ever produced and be as positive as you can about the laws and often the good intentions behind them. Your employees will have the same attitude you display.

Footnote: Yes, this one happened to me also. Had an employee running credit reports daily on ex-husband's girlfriend to see what she was buying. The ex-husband's girlfriend was mad as hell when she got me on the phone! The Credit Bureau didn't think it was funny either. The lady was kind enough to let me correct the problem. (Don't forget, most people are good people, but that doesn't really reduce your risk. Watch out for a negative internal attitude in yourself because a few bad apples exist in the world. If you do, they have won the moral battle)

10.The Unknown?

Situation: The Unknown? Boy this one is tough! But it is not impossible to deal with. You never know what opportunity or trouble tomorrow is going to bring. The only thing you know for sure is that the headline of tomorrow's newspaper says CHANGE COMING! CHANGE COMING!

- a. Attend the NABD convention. When you are there, work don't play. If you want to play in Las Vegas stay a few extra days. Otherwise consider it work. Read the material. Ask Stupid questions. (the person next to you wanted to ask the question but was too shy. There are no rewards for shyness in the car business.) Listen, listen, and listen. If you listen carefully enough to Ken Shilson every year I guarantee you it is like reading tomorrow's newspaper. I don't think Ken realizes this. That's actually not surprising. I think if you were exposed to all the information that he is getting from around the country, Capitol Hill, the top lawyers, all the financial data, etc. and you had his years of financial expertise and training you would get enough information that a sense of intuition would develop within you also.
- b. Ask other dealers and other friends in any business what they see as the unknown risks of tomorrow?
- c. Read. Fred Smith the founder and head of Fed Ex I understand reads about 20 magazines monthly. What is fascinating is that his secretary changes the magazines every 6 months. Most of them have absolutely nothing to do with the Fed Ex business. They are anything from Wooden Sailboats to Sewing, to Cabinet Making. HE IS LOOKING FOR IDEAS. Ideas have a universal language.
- d. Listen. The most important person in business you can listen to is your customer. Did you know that at IBM every executive has to

have at least one account that he or she is personally responsible for? Once when halfway across the Atlantic with a jet load of other executives headed to an important meeting the President of IBM had the pilot turn around because his personally assigned customer had a problem. He got off the plane and the by now tired executives got to make the same flight all night long. **If you aren't listening to your customers you are probably listening to the sound of your own voice. That's a poor place to try to learn anything.**

- e. Technology. You don't have to stay current on this subject. You can live in a cabin in the woods until the shortwave radio doesn't get any more signals because everyone left the planet once they found out about an incoming meteor. In other words: YOU HAVE TO FOLLOW AND LEARN ABOUT TECHNOLOGY CHANGES OR YOU ARE GOING TO GET HIT IN THE HEAD BY A BIG ROCK GOING VERY FAST!

Footnote: Malcom Gladwell's research has shown that the pebble that David used to knock Goliath out was from a sling shot maybe 5 feet long and hit with the impact energy of a modern 9 mm bullet. (David actually killed Goliath by cutting his head off. If you end up in court and the opposing counsel has a sword that's what it is for.)

A closing thought:

You and I and the people in the car business are some of the luckiest people in the world. Do you realize how lucky you are to be born under that American flag? **In the Buy Here Pay Here business we get to help people.**

When people have asked me over the years what I do for a living I tell them, “I am in the car business helping people that need a reliable car.” Now when I ran this wonderful dealership group (which was a lot of fun) I never said, “At our Porsche, Cadillac and Infiniti dealerships we sell cars to people with too much money and too big an ego. At our Hummer dealerships we sold off road vehicles to middle age plus guys with beer bellies that couldn’t climb 2 flights of stairs much less a rock wall (which every Hummer dealership had in it)”

Our customers in the Buy Here Pay Here business are no less the Creator’s miracle than we are. If you and I were in their situation would we have done as well as they have? 90% of our BHPH customers have more integrity than 90% of the hedge fund managers I would wager.

The vehicles we self-financed and were able to provide them with did things like this for them:

1. Got them to work and the kids to school. Took some of them to Church.
2. Took their sick Mother in Law on the driving vacation she had always wanted.
3. Took their daughter to the prom. (Now that’s a good reason for a GPS if the daughter or worse her boyfriend is driving)
4. Took the kids to the doctor or the emergency room.
5. Took the kids to ball games and Scouts and a list of other activities they would not have been able to enjoy.
6. Took them to the best stores with the best prices to save money.
7. Took them or their children to night school or a weekend community college.

8. Took them on a date with the person that wished they had met (and so did Heaven) 15 years ago.
9. Took their family home safely on a dark, stormy night.
10. IMPROVED THE LIFE OF AN ENTIRE FAMILY!!

**BE PROUD OF WHAT
YOU DO!**

Respectfully,

Julian K. Coddling

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