WVADA
WEST VIRGINIA AUTOMOBILE DEALERS ASSOCIATION

May Newsletter

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Last week the Small Business Administration and the Treasury Department issued a Paycheck Protection Program (PPP) Loan Forgiveness Application (CLICK HERE), along with detailed instructions and worksheets.

Dealership PPP borrowers will use the application to apply to their lender for forgiveness of costs properly incurred and payments properly made in conjunction with their eight-week forgiveness-covered period. Applications for PPP loan forgiveness generally will be made after (and maybe well after) a borrower's eight-week covered period; unless the forgiveness reduction provisions of the PPP are not at issue for a particular dealer, it is expected that forgiveness applications will not be filed until after June 30, 2020.

The new application, instructions and worksheet provide clarity on several, but by no means all, PPP loan forgiveness issues. For example, the new documents do not address the question of whether any floorplan interest payments will be forgivable. However, and importantly, SBA is expected to soon issue rules and guidance to further assist PPP loan forgiveness applicants and their lenders. NADA intends to issue comprehensive guidance and conduct a webinar on PPP loan forgiveness after the expected SBA rules and guidance are issued.

The application, instructions and worksheets are designed to reduce compliance burdens and to simplify the forgiveness application process by including:

- An alternative option for calculating payroll costs using an "alternative payroll covered period" that aligns with a borrower's regular payroll cycle.
- Flexibility to include eligible payroll and non-payroll expenses paid or incurred during a borrower's eight-week covered forgiveness period.
- Step-by-step instructions on how to perform the calculations required by the CARES Act to confirm eligibility for loan forgiveness.
- Borrower-friendly implementation of the statutory exemptions from loan forgiveness reductions, including a "safe harbor" based on rehiring employees by June 30, 2020.
- Addition of a new exemption from the loan forgiveness reduction for borrowers who have made good-faith, written offers to rehire workers that were declined or who have other former employees who departed under certain conditions.
- A description of many of the documents that will need to be submitted in support of a forgiveness application.

PPP loan forgiveness will vary with the facts and circumstances of each individual loan and borrower. Consequently, NADA encourages dealership PPP borrowers to provide the application and accompanying documents to their legal and accounting advisors for careful review. (Again, note that additional forgiveness guidance will be forthcoming.) Considering the May 18, 2020, safe harbor deadline, borrowers with loan amounts of $2 million or more may wish to have these documents reviewed by their expert advisors sooner than later. Please (CLICK HERE) for NADA's Certification Clarification.

DMV Update: Dealer Salesman License Extension

Any current salesman license that expires in March, April, May, or June will be extended until August 1, 2020. However, new hires that need a salesman license, will need to complete the application and apply ASAP. Once the DMV receives the application and the TSA clearance, that individual will need to make an appointment at their closest regional office to take the Salesman License Test.

West Virginia dmv
Keeping West Virginia on the move.

The SBA has issued **PPP Guidance on Laid-Off Employees Who Refuse to Be Rehired.** Businesses that received Paycheck Protection Program (PPP) loans can

exclude laid-off employees from loan forgiveness reduction calculations if the employees turn down a written offer to be rehired, according to the new guidance, which also warned that employees who reject offers of reemployment may find themselves ineligible to continue receiving unemployment benefits.

Click here for NADA's recently revised CARES Act FAQ, which addresses this matter in Q&A number 40.

U.S. Small Business Administration

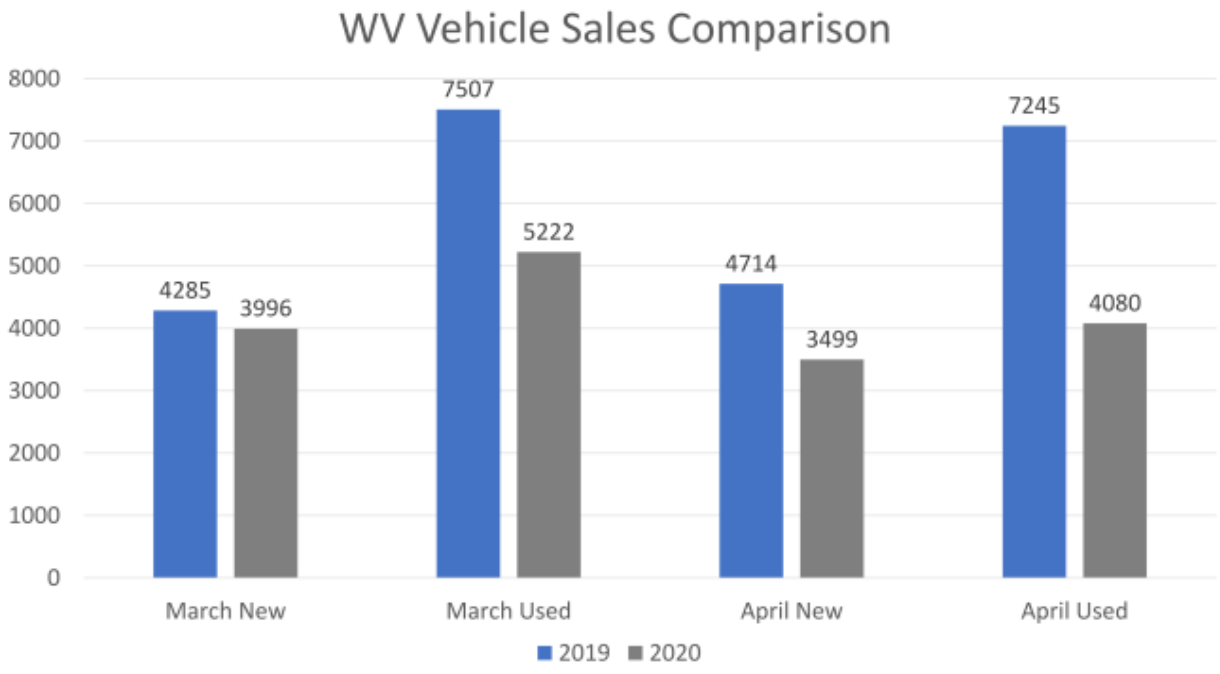
WV Business Received More Than $1.7 billion in PPP Funding

According to the most recent news reported by the SBA District office in WV,15,972 West Virginia small businesses will benefit from receiving $1,766,029,138 in PPP funding. For an average loan size of $110,571 for WV businesses.

Nationwide, more than 4.3 million PPP loans were issued amounting to more than $513 billion. The average loan size nationwide is $118,000.

WV New Vehicle Registrations Down 30%, Used Down 56% in April

West Virginia vehicle registrations were down by 30% in April, falling to just 3,499 new vehicles registered. Used vehicles were down by 56% in April with a difference of 3,165 compared to April 2019.



EEO-1 Component 1 Data Collection Update

In light of COVID-19 public health emergency, and consistent with delays in Federal reporting requirements across the government and other actions taken to relieve employers of unnecessary burdens during this crisis, the U.S. Equal Employment Opportunity Commission (EEOC) has delayed the opening of the 2019 EEO-1 Component 1 Data Collection to a time when the agency anticipates that filers will have resumed more normal operations. The survey collects employment data organized by race, ethnicity, gender, and job category. The EEO-1 report is generally due by May 31, but the EEOC is delaying the process this year due to the public health emergency and the difficulty employers may have in compiling the necessary information.

The EEO-1 Component 1 Data Collection is currently waiting authorization from the Office of Management and Budget (OMB). The EEOC has decided that any EEO-1 Component 1 Data Collection that occurs will not take place until 2021. The EEOC expects to begin collecting the 2019 EEO-1 Component 1 along with the 2020 EEO-1 Component 1 in March 2021 and will notify filers of the precise date once the surveys are available.

The opening of the 2019 and 2020 EEO-1 Component 1 Data Collections, as well as the new deadline date, will be announced by posting a notice on the EEOC home page at www.eeoc.gov and sending a notification letter to eligible EEO-1 filers. When the collections open, the EEOC will provide online resources to assist filers with their submissions and the EEOC Employer Data Team Helpdesk will be available to respond to filer inquiries and to provide additional filing assistance (including, for example, guidance on processing mergers and acquisitions and other corporate changes).

Suggested Policies and Leave Forms

Below are polices and forms created to help provide guidance during this unprecedented time. We are committed to providing guidance and timely communication, please do not hesitate to contact Johnnie Brown with any questions about how to finalize or use the below forms or policies.

PULLIN, FOWLER, FLANAGAN, BROWN & POE PLLC
ATTORNEYS AT LAW

- Emergency Paid Sick Leave Policy
- Emergency Paid FMLA Expansion Policy
- Emergency Paid FMLA Leave Request Form
- Emergency Paid Sick Leave Form

-Johnnie Brown: Pullin Fowler, Flanagan, Brown and Poe

BUSINESSES CAN REQUIRE CUSTOMERS AND EMPLOYEES TO WEAR MASKS DURING THE COVID-19 PANDEMIC

May 22, 2020

By: Justin M. Harrison

Inexplicably, wearing face masks during the COVID-19 pandemic has become controversial. We see viral videos of people claiming that their rights have been violated. Several instances have been reported where retail customers are challenging requirements to wear masks when patronizing a business. We see examples of customers stating that "the ADA prohibits you from requiring me to wear a mask." This begs the question: Can a business require its employees and customers to wear face masks? The short answer is yes, especially during the COVID-19 pandemic.

The Americans with Disabilities Act ("ADA") and the West Virginia Human Rights Act ("WVHRA") prohibit employers and places of public accommodation (e.g., businesses) from discriminating against individuals with disabilities. Moreover, both statutes require businesses to accommodate employees and customers with disabilities. There are exceptions to these requirements, however. For example, businesses are not required to provide accommodations to someone if their medical condition presents a direct threat. That person is not protected by the nondiscrimination provisions under the ADA or the WVHRA. Based on guidance issued by the Centers for Disease Control ("CDC"), the Equal Employment Opportunity Commission ("EEOC") recently recognized that the COVID-19 pandemic satisfies the "direct threat" standard.[1] This is significant because the EEOC is the federal agency that is responsible for enforcing the ADA.

Let's review some examples to see how the direct threat standard plays out.

Scenario 1: An Employee claims they have a disability that prevents them from wearing a mask. This triggers the Employer's obligation to participate in the interactive process. The Employer is not automatically obligated to relieve the Employee of the requirement to wear a mask, but the Employer is entitled to inquire about the nature of the disability, obtain confirmation of it from the Employee's providers, and then communicate with the Employee about the request and/or alternatives. These steps may not be necessary, however, because if all alternatives involve exposing the Employee to customers or co-workers, without any protection during the COVID-19 pandemic, then this likely satisfies the direct threat standard as recognized by the EEOC. There is no duty to accommodate an employee in this situation because they are no longer protected under the ADA or the WVHRA. At this juncture, an Employer might choose to place the Employee on an unpaid leave of absence or temporarily reassign the Employee to another job, although there is no requirement to do either because the employee is no longer entitled to the statutory protections.

Scenario 2: Customer reports to your place of business and objects to any requirement to wear a mask. You can ask the customer if they have a disability or medical condition that prevents them from wearing the mask. If the customer responds "yes," then you should have some additional dialogue with the customer to see if there are alternative methods to servicing the customer. Under normal circumstances, whether a customer poses a direct threat is usually determined on a case-by-case basis that requires individualized inquiry. With the COVID-19 pandemic, however, businesses are arguably on stronger footing to decline service to a customer who refuses to follow safety protocols that were put in place to stymie the spread of COVID-19. The recent example of the Costco manager calmly offering to provide alternative service to the patron who refused to wear a mask is the ideal way to respond to this situation.

The COVID-19 pandemic has created a dynamic legal environment for businesses to provide goods and services in a safe manner. Federal, state and local guidance continues to evolve, but while the EEOC continues to recognize COVID-19 as a "direct threat," then businesses can require employees and customers to wear masks for the safety of everyone.

[1] See: **https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws**.

WVADA Convention – Has Been Rescheduled!

***Please see below WVADA's 2020 Convention Forms**

The Greenbrier Resort

WVADA 87th ANNUAL FAMILY CONVENTION

SAVE THE DATE

September 11 - 14

OPEN REGISTRATION NOW - AUGUST 28TH

REGISTER BY JULY 1ST TO RECEIVE A 10% DISCOUNT

Friday: Evening -Welcome Reception & Casino Night
Saturday: Day - Golf Scramble OR Scavenger Hunt
Evening - Block Party
Sunday: Day - Sporting Clay Tournament OR Bowling
Evening - Chairman Dinner/Reception

For more information visit our website at www.wvcar.com

Forms for WVADA 2020 Convention:

- WVADA Registration Form

- [Greenbrier Room Reservation Form]
- [Exhibitor Registration Form]

WVADA Welcomes New Associate Members

REALCORP

With more than 150 years of corporate real estate advisory experience, Realcorp provides real estate solutions for a wide variety of corporate and private clients. Working within every major industry from retail, office, developement and manufacturing, our dedicated corporate real estate advisory group matches in-depth solutions.

KRIST DOOR SERVICE

Krist Door Service has been in business for 25 years and is located in Chapmanville, WV. Krist Door sales, services and repairs garage doors, openers and operators. They do business in WV, Eastern Kentucky, and parts of Virginia. They provide a 24 hour emergency service.

ROCKET Chassis SINCE 1991 MARK RICHARDS RACING,INC.

Rocket Chassis is more than just a company that builds Dirt Late Model race cars. It gives customers everything they need to be successful – from an expansive network of more than 30 dealers across the United States and in Australia to a huge inventory of parts and components to superb service to vast in-house technical knowledge.

Federated Insurance Claim of the Month

It's Our Business to Protect Yours
FEDERATED INSURANCE

Federated Insurance's Claim of the Month — Could it happen to you?

An auto dealer allowed a weekend test drive for a customer that had insurance and a driver's license. That weekend, while the customer was showing the vehicle off for some friends, he lost control and crossed the center line, striking an oncoming vehicle and killing the driver.

CLAIM AMOUNT: $2.5 Million

Because allowing a weekend test drive is considered above and beyond, the dealer could be held negligent by entrusting a vehicle to a customer for a longer-than-normal period of time. Avoid such a risk by standardizing your test drives.

- Prohibit overnight or weekend test drives. Ask yourself, "Is it really worth the risk?"
- Designate a route or set of routes that offer the safest available conditions.
- Require that a staff member accompany all test-drivers to ensure routes are followed and that the driver operates the vehicle safely.
- Create a test-drive policy that is read and signed by all sales staff members — management included — that outlines allowable drive durations and acceptable routes.

Even though you and your staff members are not operating vehicles on test drives, your business is still responsible for the vehicles it owns. Create and follow a set of policies that reduces the chance that one of your vehicles is involved in a potentially deadly crash.

Federated Mutual Insurance Company is recommended by 19 state and national auto dealer associations for customized insurance programs and value-added risk management services, such as Federated's Shield Network®, the Risk Management Resource Center, and the Federated Employment Practices Network®. Visit federatedinsurance.com or contact your local marketing representative for resources you can use to create or enhance your own risk management program.

This article is for general information and recommendations for risk prevention only and should not be considered legal or other expert advice. The recommendations herein may help reduce, but are not guaranteed to eliminate, any or all risk of loss. All products and services not available in all states. Qualified counsel should be sought with questions specific to your circumstances and applicable laws.

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JUNE 11TH – FREE WEBINAR ~ A LASTING LEGACY: Planning for a time when you're no longer running your business can be overwhelming.

A Lasting Legacy: Planning for a time when you're no longer running your business can be overwhelming. Let Federated Insurance help you get started. Join us for a business succession and estate planning conversation. We will discuss how you can avoid frustration, taxation, and litigation when the time comes to exit your business. Gain some peace of mind by learning the basics of business succession and estate planning"

On June 11th Federated's recommended estate and succession planning attorney, will be hosting a webinar. This webinar will begin at4:00 PM and will last 45-60 minutes. To register for this complimentary webinar all that is needed is your email, name, and

business. Please contact Nate Hoyle at Nthoyle@Fedins.com to register.

WVCAR

On April 1, 2020, WV Governor Jim Justice announced that ***West Virginia's Primary Election*** will be ***delayed until June 9th***, past the anticipated peak of the coronavirus outbreak.

WVCar is the West Virginia Automobile and Truck Dealers Political Action Committee, and your support is vitally important in order for us to have a voice at our state capitol in Charleston. WVCar is the best platform for our message to be heard by legislators and signify our value in West Virginia communities.

The goal of WVCar PAC is to bring all voices through WVADA to Charleston to make certain our positions are protected and strengthened. Please take the time to contribute to ensure that our voice, as dealers, is heard!

Check out our new **WVCar website** and make your contribution directly through the site or by clicking **HERE**, to fill out the form and submit either a personal check or your credit card information to WVADA.

A special thank you goes out to all of our members who have already donated:

CHAMPIONS CLUB

Paul Astorg
Bill Cole
Hal Green
Nick Green
Joey Holland
Jonathan Lerose
Rodney Lerose
Chris Miller
Matt Miller
Bob Moses
Jason Moses
Steve Moses
Fred Parsons
Roberta Robinson-Olejasz
Suzanne Moses-Persinger
Keith Powell
Charlotte Pyle
Jim Robinson
Fred Timbrook

GOLD PROMOTERS

TR Hathaway

SILVER ADVOCATES

BRONZE SUPPORTERS

Tommy Cole
Ginger Fato
Tim Matheny
Dennis Sheets
Richard Stephens
Stephen Talbott
Wally Thornhill
Don Warner
Paul White

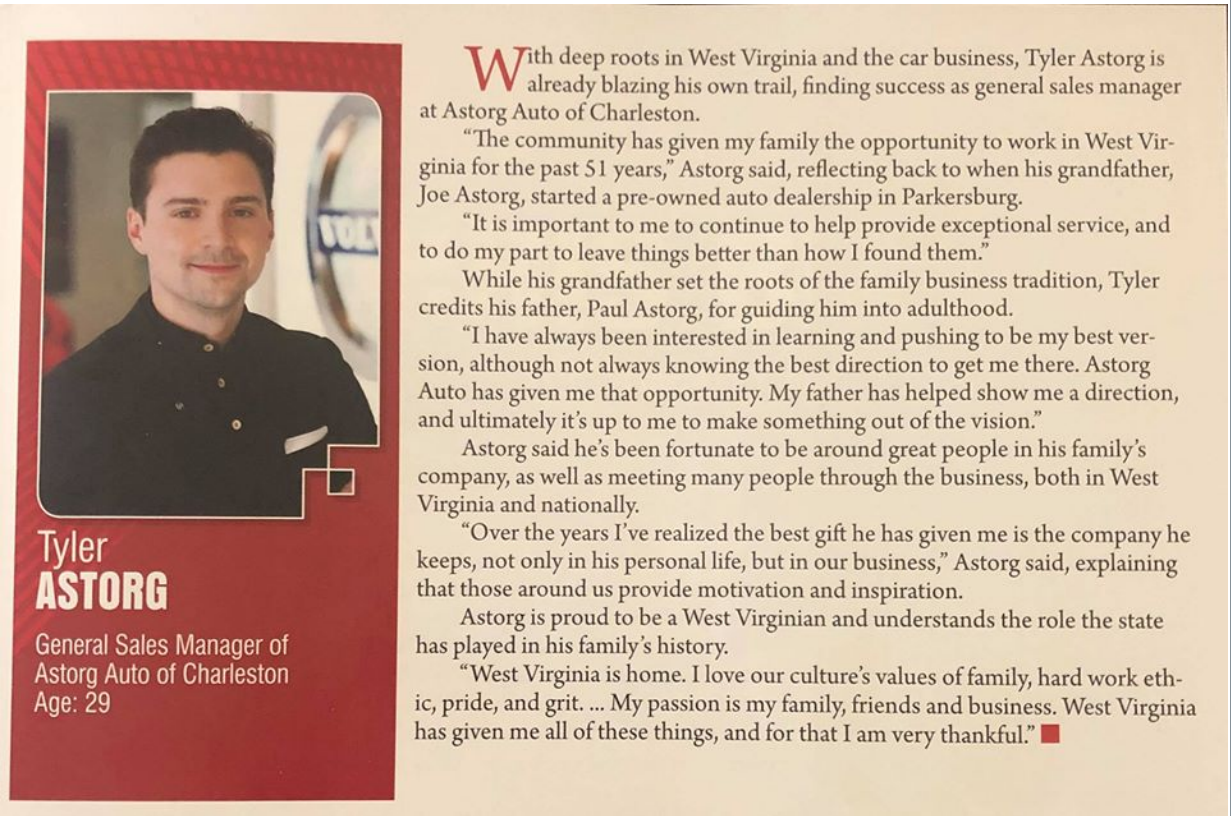
PATRONS

Sydney Thornhill Brown
Guy Chicchirichi
Mac McClinton
Dan Wharton

In The Community

In May McClinton Chevrolet and Mitsubishi presented the [Children's Home Society of WV - Parkersburg Site] with their matching donation check for $1,000! Thank you to everyone who helped raise money for this outstanding organization.

They visited the CHS and got to see what they're doing to help families during this pandemic. It's truly great work. We know this money will help a lot of families in the MOV now.



Tyler
ASTORG
General Sales Manager of Astorg Auto of Charleston
Age: 29

With deep roots in West Virginia and the car business, Tyler Astorg is already blazing his own trail, finding success as general sales manager at Astorg Auto of Charleston.

"The community has given my family the opportunity to work in West Virginia for the past 51 years," Astorg said, reflecting back to when his grandfather, Joe Astorg, started a pre-owned auto dealership in Parkersburg.

"It is important to me to continue to help provide exceptional service, and to do my part to leave things better than how I found them."

While his grandfather set the roots of the family business tradition, Tyler credits his father, Paul Astorg, for guiding him into adulthood.

"I have always been interested in learning and pushing to be my best version, although not always knowing the best direction to get me there. Astorg Auto has given me that opportunity. My father has helped show me a direction, and ultimately it's up to me to make something out of the vision."

Astorg said he's been fortunate to be around great people in his family's company, as well as meeting many people through the business, both in West Virginia and nationally.

"Over the years I've realized the best gift he has given me is the company he keeps, not only in his personal life, but in our business," Astorg said, explaining that those around us provide motivation and inspiration.

Astorg is proud to be a West Virginian and understands the role the state has played in his family's history.

"West Virginia is home. I love our culture's values of family, hard work ethic, pride, and grit. ... My passion is my family, friends and business. West Virginia has given me all of these things, and for that I am very thankful." ■

Congratulations to Tyler Astorg of Astorg Auto of Charleston for being nominated for the 2020 Generation Next 40 under 40! You can read the article of Tyler in The

State Journal on page 5!

Astorg Auto EST 1967
of Charleston

NADA Updates CARES Act FAQs

NADA updated its CARES Act FAQs to reflect new loan forgiveness elements in the Paycheck Protection Program. NADA encourages dealers to review all items carefully and in particular:

- Question 20: How will the Small Business Administration review a borrower's good-faith certification?
- Question 35: What portion of the PPP loan is forgivable?
- Question 38: What could jeopardize loan forgiveness (non-qualifying costs)?
- Question 39: Is there anything else that could jeopardize the ability to have the loan forgiven?