

NOZZLE & WRENCH

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KIRK'S CORNER

Anti-Gouging: Retailers Be Aware – Action has Started

...anti-gouging laws apply to everything we sell including but not limited to gas, diesel, auto parts, service, medical supplies, soda pop, fried chicken... it includes everything an essential business sells from products to services.



By Kirk Mccauley,
Director Of Member
Relations &
Government Affairs

The governors of Maryland and Delaware and the mayor of the District of Columbia have broad power after declaring a state of emergency. In this case we are talking price gouging laws they all have enacted. We are now seeing some notices from the Attorney General asking dealers to explain their prices. They are acting on consumer complaints by asking dealers to send proof that a certain price on a certain day complied with the law.

In a lot of these cases I am sure they are looking at the low-ball seller, than at a location that must survive off his margin and calling, texting or emailing in a complaint to the A.G. office. Fines for gouging range from \$1,000–\$10,000.

These three jurisdiction anti-gouging laws apply to everything we sell including but not limited to gas, diesel, auto parts, service, medical supplies, soda pop, fried chicken and I will stop there, because it includes everything an essential business sells from products to services.

All three jurisdictions allow a 10% mark up over the previous margin of profit. If your wholesale cost of product increases you can add the increased cost and your normal profit margin plus 10% if you choose. Normal cost is the margin in previous months or in Maryland's case, March 5th as seen in complaints. I will put a link to each executive order and I urge you to read for all the details.

I don't want to labor this point but price also includes when price is falling you have to follow it down which can get complicated when you have gas in ground or product on shelf bought at different price up or down from current price. You must keep documentation on dates and costs on products and services. Next paragraph is what a letter from Maryland Attorney General office said in part:



Continues on page 4

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Even if you are not gouging it takes a lot of time and money and resources to prove you are not and those that are innocent never make the headlines...

Continued from page 1

“Unless you can provide an explanation with supporting documentation showing compliance with the Anti-Gouging Order and provide evidence of amended pricing for this product, and confirm that you are not charging prices for any other goods or services covered by the Anti-Gouging Order that would increase your profits more than 10% over your pricing structure prior to State of Emergency which was declared on March 5th, 2020”. Letter went on to say if we have not received explanation or confirmation that you are complying with Order by a certain date, we will turn the matter over for appropriate enforcement action.

As you can see this action opened a path to ALL products and services this retailer was selling. This is what's wrong with anti-gouging laws in general. Even if you are not gouging it takes a lot of time and money and resources to prove you are not and those that are innocent never make the headlines, only the one charged, guilty or not that get the press coverage.

Price control links to MD, DE and DC is below:
Maryland order: <https://tinyurl.com/MDgouging>
Delaware order: <https://tinyurl.com/DEgouging>
D.C. Order: <https://tinyurl.com/DCgouging>

Unemployment Insurance Fraud

I have been getting calls from repair facilities and service stations/convenience stores about calling employees back to work unsuccessfully. Employers are being told no; I am making more on unemployment than I was working. Employees are collecting state unemployment and Federal Pandemic Unemployment Compensation (FPUC). FPUC provides an extra \$600 per week on top of state unemployment. FPUC is a provision in the federal CARES act.

Here is the problem; the employee is committing fraud if he is called back to work and declines because he is making more money on unemployment. This is fraud by state law and federal law with a few exceptions. Here are some Q&A questions from Department of Labor.

Question: I was furloughed by my employer, but they have now reopened and asked me to return to my job. Can I remain on unemployment?



Answer: No. As a general matter, individuals receiving regular unemployment compensation must act upon any referral to suitable employment and must accept any offer of suitable employment. Barring unusual circumstances, a request that a furloughed employee return to his or her job likely constitutes an offer of suitable employment that the employee must accept.

While eligibility for PUA does not turn on whether an individual is actively seeking work, it does require that the individual be unemployed, partially employed, or unable or unavailable to work due to certain circumstances that are a direct result of COVID-19 or the COVID-19 public health emergency. In the situation outlined here, an employee who had been furloughed because his or her employer has closed the place of employment would potentially be eligible for PUA while the employer remained closed, assuming the closure was a direct result of the COVID-19 public health emergency and other qualifying conditions are satisfied. However, as soon as the business reopens and the employee is recalled for work, as in the example above, eligibility for PUA would cease unless the individual could identify some other qualifying circumstance outlined in the CARES Act.

Question: One of my workers quit because he said he would prefer to receive the unemployment compensation benefits under the CARES Act. Is he eligible for unemployment? If not, what can I do?

Answer: No, typically that employee would not be eligible for regular unemployment compensation or PUA. Eligibility for regular unemployment compensation varies by state but generally does not include those who voluntarily leave employment. Similarly, to receive PUA,



an individual must be ineligible for regular unemployment compensation or extended benefits under state or federal law, or pandemic emergency unemployment compensation, and satisfy one of the eligibility criteria enumerated in the CARES Act, as explained in Unemployment Insurance Program Letter 16-20. There are multiple qualifying circumstances related to COVID-19 that can make an individual eligible for PUA, including if the individual quits his or her job as a direct result of COVID-19. Quitting to access unemployment benefits is not one of them. Individuals who quit their jobs to access higher benefits and are untruthful in their UI application about their reason for quitting, will be considered to have committed fraud.

Bottom line is there are legitimate reasons for collecting unemployment benefits but quitting to access unemployment benefits is not one of them. Individuals who quit their jobs to access higher benefits and are untruthful in their unemployment application about their reason for quitting, will be considered to have committed fraud.

Department of labor website link is below and is worth looking at for the Q&A alone.
<https://tinyurl.com/dol-faq>

Legislative update

I fully expect the governor to veto HB732 and HB932. HB732 would increase tobacco tax to \$3.75 per pack of cigarettes, electronic smoking device increase up to 53%. HB 732 also puts tax on digital advertising

HB 932 puts a tax on just about everything that is downloaded or streamed, newspapers, movies, songs, live events, pictures, games, magazine and much more.

Now is not the time to pick Marylanders pockets and I think the governor will come to same conclusion. The governor has until May 6th to veto or they will pass without signature.

Economic Injury Disaster Loan (EIDL) and Paycheck Protection Program loan (PPPL)

WMDA had an exceptionally good webinar on PPPL and EIDL put on by the law firm Gordan Feinblatt LLC. Four attorneys went thru a power point presentation and then went overtime to answer questions that were sent. Swapna put the presentation link online the next day for those that missed the initial presentation and she did a phenomenal job of managing the webinar.

By the time you read this hopefully you will have confirmation of your PPP loan

and or your EIDL. I am sure money will have dried up by then. Hopefully, there will be another funding round but that is up in the air and not a sure thing. Those of you that had hard time dealing with your bank or credit union should be considering changing that relationship now and take your money to an institution that is willing to bend over backwards for you. Some of the stories I heard from dealers and repair shops were not good as far as helping them obtain loans. Banks and credit unions were the ones that approved or disapproved loans and then they were sent to SBA or commence to process. If the bank sits on their hands instead of all hands on deck you might have been left out. The first time is on them, if you let it happen twice its on you.

Call me if you have any question or drop me an email.
kmccauley@wmda.net. ■

Community Activism

By Brian England

Recently Kirk helped a group of Columbia business by writing to the Howard Hughes Corporation about some local issues related to covenant enforcement. We valued Kirk's help and it's a great example of the association supporting its members.

Responding to large corporations and developers that have a special relationship with the local planning department and county administrations can be time consuming, frustrating and expensive.

In Columbia we have been able to delay the development of a mega gas station, car wash and convenience store for over 6 years! And we still have "a few cards up our sleeve"! The reason we have been so successful is that we have a local zoning expert, the Howard County Citizen Association and the Columbia Association on our side. These relationships are critical because this is where the knowledge is. Knowing what's going on with development in the very early stages is very important if you are going to be effective.

Here are 5 things you can do to be proactive in your jurisdiction.

1. Subscribe to local development tracker, in Howard County the Columbia Association has one.
2. Sign up for development notifications from the local zoning authority.
3. Join a local civic association go to meetings and learn how things work in your county.
4. Attend Planning and Zoning Board meetings, find out who are the key players (zoning attorneys that support developers and large out of town corporations).
5. Review campaign contributions, find out what local elected administrators and councilors have received large amounts of campaign money from developers and big out of county corporation.

Obviously this requires a lot of time and effort but it's much better than seeing a development underway that is going to seriously effect your business.

It pays to be proactive. ■

Knowing what's going on with development in the very early stages is very important if you are going to be effective.

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1:00 p.m. Registration & Continental breakfast
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EVENT TO BE DECIDED

Team and individual golf awards. Refreshments will be available on the course. WMDA/CAR will assist in pairing individual registered golfers to make a foursome if requested.



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25 Easy Ways to Adapt to New Expectations

The COVID-19 pandemic has caused sudden and potentially permanent changes to consumer behavior. We have witnessed a massive shift to consumers interacting with local businesses digitally and a spike in 'No Touch Retail'. We have compiled a list of 25 easy and innovative tactics you can quickly apply to your business to quickly adapt.

Offer mobile payment options and/or accepts payments over the phone.

Show support for your customers by offering special discounts or offers such as waiving the installation fee on in-stock tires, free leveling kit with the purchase of tires & wheel package, or free towing to your shop with any auto service.

1. Offer Contact-Free Mobile Tire Installation.
2. Start an email newsletter to stay in touch with your current customers.
3. Offer to pick up vehicles from your customers' work or home.
4. Enable your customers to fully complete their transaction online with eCommerce.
5. Allow customers to stay in their vehicles while services are provided.
6. Offer reduced price or free service to first responders and essential employees.
7. Launch a Touchless Drop-Off and Pick-Up process including digital forms to schedule service.
8. Contact any warranty customers that are coming due for service and encourage them to schedule service.
9. Work with your customers virtually – whether it's via email, text, chat, or over the phone.
10. Ensure all techs are wearing gloves and washing their hands after each service.
11. Sell discounted gift cards so people visit your shop after the crisis subsides.
12. Ensure all vehicles are disinfected before and after each service. Don't forget to sanitize car keys prior to vehicle pick-up!
13. Create DIY videos for your customers. Teach them how to check their air pressure or tread depth.
14. Ensure your shop's hours are updated digitally including on your website, Facebook, Google My Business listing, and Yelp.
15. Ensure financing options are clearly visible on your website.
16. Identify customers you have not seen in a while. Reach out to them, let them know that you realize they depend on their vehicles, & remind them scheduled services and repairs that are due should not be overlooked.
17. Offer video conferencing through Skype, FaceTime, or Zoom so customers can get that "face-to-face" feel without being there in-person.
18. Run Facebook or other social media ads so your community knows your shop is open for business.
19. Share a blog update about any extra precautions you have put in place.
20. Reach out to your community and offer your services to keep food and deliveries on the road.
21. Ensure all contact points – phones, keyboards, water fountains, door handles, restrooms, etc. – are constantly sanitized throughout each day.
22. Do not cut your marketing budget.
23. Use your logic mind to make decisions not your emotional or anxious mind. ■



Identify customers you have not seen in a while. Reach out to them, let them know that you realize they depend on their vehicles, & remind them scheduled services and repairs that are due should not be overlooked.

This article was created by the team at Net Driven. Learn more about Net Driven digital marketing solutions by visiting www.netdriven.com.



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HANG IN THERE...

By James L. Parsons, Jr. from Lynott, Lynott & Parsons, P.A.

Now that we are a couple of months into the coronavirus economic shutdown, I wanted to expand on two of the topics that were covered in last month's issue of Nozzle and Wrench: the Payroll Protection Program and leasing issues.

The Payroll Protection Program

If you were fortunate enough to have received funds under this program, it is important that you follow all of the SBA Guidelines to make sure that your loan is forgiven.

To be fully forgiven, at least 75% of the funds must be used for payroll costs. Up to 25% of the funds may be used for rent, utilities, and interest on mortgages. The funds have to be spent during the 8 week period after the loan is disbursed into your account. You will owe money when your loan is due if you use the loan amount for anything other than payroll costs, mortgage interest, rent, and utilities during the 8 week period after getting the loan.

In addition to using the funds for the permitted expenses referenced above, to get the entire amount of the loan forgiven, you must also meet two criteria. First, the number of full-time employees cannot decline from average monthly levels during 2019 or during the past 12 months. If you started your business in the second half of 2019, you can use average headcounts from January 1, 2020 to February 29, 2020. Second, your loan forgiveness will also be reduced if you decrease salaries and wages by more than 25% for any employee that made less than \$100,000 annualized in 2019. You have until June 30, 2020 to restore your full-time employment and salary levels for any changes made between February 15, 2020 and April 26, 2020.

To request loan forgiveness, you will need to submit an application for loan forgiveness to the lender that is servicing your loan after the 8 week payment period expires. Your application will need to include documentation verifying the number of full-time equivalent employees and pay rates, as well as the payments for eligible mortgage interest, rent, and utilities. You will have to certify that the documents are true and that you used the forgiveness amount to keep employees and make eligible mortgage interest, rent, and utility payments. Your lender will have to make a decision on the loan forgiveness within 60 days.

The SBA has provided recent guidance concerning the certification made in connection with the application for the loan:

[A]ll borrowers must assess their economic need for a PPP loan under the standard established by the CARES Act and the PPP regulations at the time of the loan application. . . .

[B]orrowers . . . must certify in good faith that their PPP loan request is necessary.

Specifically, before submitting a PPP application, all borrowers should carefully review the required certification that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” Borrowers must make this certification in good faith, taking into account their *current business activity* and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner *that is not significantly detrimental* to the business.

While this guidance does not necessarily mean that you will have to prove that you could not obtain funding elsewhere, you may have to show that your certification was reasonable at the time that you made it. It is therefore important that you document the factual basis for your certification with the information that was available to you at the time that the certification was made. You will also have to document the expenses for which the funds are used, the number of your employees during the relevant period, and the level of salaries and wages for your employees. The SBA has stated that it will be reviewing all loans in excess of \$2 million, but even loans under that amount could be subject to a review based upon the certification requirement. Keeping organized records and having them ready to submit with your application will put you in the best position to ensure that your “loan” is forgiven.

Lastly, while the coronavirus relief law provides that PPP loan forgiveness is not counted

If you were fortunate enough to have received funds under this program, it is important that you follow all of the SBA Guidelines to make sure that your loan is forgiven.



as taxable income, the IRS has issued recent guidance that the payment of the permitted expenses under PPP will not be tax deductible. It remains to be seen whether Congress will override the IRS's position on this issue by passing a law authorizing the deductions. The situation is in a state of flux, and you should consult with your tax advisor to guide you moving forward.

Lease Issues

In last month's article, I recommended that if you are leasing the property where your business operates, you should reach out to your landlord to try to negotiate a rent reduction and/or abatement during the period of the pandemic crisis. As a rule, lease disputes are generally determined by the terms of the lease, but the COVID-19 crisis has generated concerns by both landlords and tenants about the payment of rent. Questions have arisen as to the landlord's ability to enforce a tenant's obligation to pay rent, and whether a tenant has the right to abate or defer rent.

For starters, you should carefully review your lease. Your lease may include a "force majeure" clause that provides you as tenant with certain rights if you are unable to use or access your leased premises based on such things as an "act of God" causing damage or destruction, a governmental action, or upon a default by the landlord. However, even if the COVID-19 crisis qualifies as a force majeure event, rent is still likely due. Typically, force majeure clauses excuse performance by the parties, but not payment of rent. If the COVID-19 pandemic and the governmental shutdowns qualify as force majeure events under the terms of your lease, this may relieve you or your

landlord from performing certain obligations, such as providing access to the property or operating the property during specific hours or in other ways. However, rent is still likely due, without reduction or abatement, unless the language of the force majeure clause in your lease specifically excuses payment of rent. It remains to be seen how or when the government and the courts will ultimately approach these issues.

As a practical matter, even if your landlord has the right to refuse a rent abatement, it may be in your landlord's best interest to agree to one if doing so allows your business to stay open and operating. Your landlord may present you with a rent abatement or rent reduction proposal on a "take it or leave it" basis, or there may be an opportunity to negotiate. If negotiations are permitted, you will need to balance your immediate needs vs. long-term recovery. Your landlord will likely be aware that refusing such a reduction or abatement could result in the landlord receiving no rent and being faced with additional costs of eviction (once the ban on commercial evictions is lifted), the uncertainty of collecting rent arrearages, and having to market and relet your premises while the property is vacant. These factors may provide strong incentives on the part of your landlord to "reach a deal" with you.

All of this leads to the conclusion that, unless you are fortunate enough to be insulated from this crisis (and very few are), you should have a candid business discussion with your landlord to try to reach an agreement to defer the payment of rent in conjunction with a repayment plan or abate it entirely for the duration of the

crisis. The amount of reduced or deferred rent could be paid back gradually during the remainder of the lease, or from monies received as rent relief from the government, or the lease could be extended to account for the months of reduced or deferred rent. Any rent reduction or deferment should be set forth in a written agreement. In exchange for a rent abatement, your landlord may require that your security deposit be applied toward upcoming rent payments with the understanding that the security deposit will need to be replenished once the crisis is over.

As you have these discussions with your landlord, keep in mind that the non-payment of rent (or a rent abatement) may have an impact upon your landlord's ability to cover the debt service (i.e. the mortgage) on their property. Your landlord may have debt service coverage ratios and/or other loan covenants that might be breached as their rent rolls decline. The right to make lease modifications may have even been assigned to your landlord's lender (or prohibited by their lender) and such modifications without the lender's consent may trigger a loan default. Any modification to rent may be unenforceable if the lender has not consented and ultimately becomes the owner of the property. It is hoped that lenders and other mortgage holders will be flexible, as defaults on loans secured by leased properties may give rise to larger issues requiring monetary relief from the state and/or federal government.

Hopefully, between the forgiven payroll protection plan funds and rental assistance, you will be positioned to weather the storm while we wait for it to pass and for calm seas and brighter skies to prevail once again. ■

Hopefully, between the forgiven payroll protection plan funds and rental assistance, you will be positioned to weather the storm while we wait for it to pass and for calm seas and brighter skies to prevail once again.

Government Affairs Report



By Roy Littlefield IV

Last month and currently, our government affairs efforts at WMDA/CAR working through SSDA-AT have been consumed with the COVID-19 crisis and doing all we can to get the most current and accurate information to our members in these trying times.

It makes it difficult right now to influence legislation when we have no face to face lobbying power, and congressional members have become difficult to reach. We have relied on contacts in many congressional offices and a variety of coalitions we are involved with to stay informed with the

latest information.

We are working very closely with several tax attorneys, the SBA, and SESCO to get our members the most up to date information.

We worked extensively throughout the month to keep our member businesses open as some were hit with wrongful cease and desist orders. In all instances, we were able to overturn local enforcement and open the tire shops back up. SSDA-AT members are essential businesses that keep trucks on the roads and the vehicles of emergency personnel serviced. Many members have stepped up and implemented COVID-19 procedures including pick up and drop off for repairs including sanitation.

SSDA-AT signed onto a variety of letters with several other Washington based associations in April aimed at providing aid to businesses during these difficult times. SSDA-AT signed onto a joint trades COVID-19 business and employees fund letter. SSDA-AT also signed onto an SBLC PPP additional funding letter. These efforts were successful in securing more funds. SSDA-AT additionally, signed onto a Paycheck Protection Program letter for the CARES Act of 2020 amendments necessary to provide COVID-19 disaster relief for critical infrastructure businesses to preserve the U.S. economy and promote a fully functional restart. The full versions of these letters were seen in the weekly legislative updates.

We will continue to help our members on a daily basis with any issues they face in navigating new legislation and regulations in addition to keeping them open and providing the essential documents to do so. ■



We worked extensively throughout the month to keep our member businesses open as some were hit with wrongful cease and desist orders. In all instances, we were able to overturn local enforcement and open the tire shops back up.



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Trade Associations Like WMDA-CAR are Also a Necessity!

In addition to our lobbying to secure additional loan money, our efforts to assist members included a country-wide consensus that service stations and automotive repair facilities, and their suppliers, would be allowed to remain open as essential service providers.



By Roy Littlefield

In this pandemic, Associations like WMDA-CAR and SSDA-AT are being put to the test. Phones are ringing, emails are filling inboxes, and websites are being updated.

We are making every effort to get back the same day to everyone who reaches out to us. SSDA-AT is a national association representing state and regional associations, who in return represent service stations and auto repair facilities. WMDA-CAR pays your membership in SSDA-AT. So we are also hearing from your counterparts across the United States.

On Days like April 27, 2020, when new Federal funding small business loans again became available to help small businesses, we get bombarded. After extensive lobbying for the loans, for the second time it was a rough rollout and we were overwhelmed with questions and concerns. Glitches and delays negatively impacted the approval process. By mid-afternoon on that first day, the Small Business Administration reported that it had processed more than 100,000 PPP loan applications through over 4,000 leaders. And we continue to get questions on the five major bills Congress passed; and how those laws affect our members. We offered a webinar to explain and answer questions on those bills, and 1200 plus small business aftermarket owners registered for the 90 minute question and answer session.

Many members have told me that they applied for business loans under the first Coronavirus Aid, Relief, and Economic Security Act (CARES) and were able to get the PPP loans before money ran out, however the application process was (and is again) daunting. Other members complained that money had run out before their applications were processed.

In addition to our lobbying to secure additional loan money, our efforts to assist members included a country-wide consensus that service stations and automotive repair facilities, and their suppliers, would be allowed to remain open as essential service providers.

We have been working in numerous industry related association coalitions. Most Congressional and Regulatory offices on the Federal and State levels are closed to the public, so we have had to adjust our lobbying efforts. Through these industry coalitions, we are speaking with one strong voice to reach as many decision makers as possible. We are active! But it is a different kind of active for us.

One of the many issues we are addressing as a coalition, has to do with proposed new state workers comp regulations. We are seeing that states are starting to make COVID-19 rules for workers compensation programs that could have far-reaching impacts on employers in terms of workers comp experience rates and overall liability.

Pushbacks and a lawsuit in Illinois has caused the State to pullback and revisit their emergency rule. Minnesota passed a law to create a presumption for workers comp





claims that involved COVID-19 claims. On the positive side, California is proposing to manage the situation without adding employer liability.

SSDA-AT has signed on to a letter to State Workers Comp Commissions, to the National Conference of State Legislators, and to the National Association of Insurance Commissioners spelling out our concerns.

Working together, exchanging information, and sharing experiences – especially in challenging times – is a major part of what belonging to trade associations, like SSDA-CAR and SSDA-AT, is all about.

We have all worked tirelessly to understand new laws and regulations, to explain new procedures, and to support members. A large number of Association members have turned to us with questions, concerns, requests; and we have expanded our social media outreach, increased the number of legislative email newsletters, developed a unique COVID-19 website resource page for guidance, and answered every email we have received and returned every telephone call.

We are appearing on industry webinars and developing our own

unique webinars, we are working with the industry trade press, and we are working with industry state and regional associations nationwide to help our members survive the pandemic.

Every day we are hearing from many small business members in the automotive/service/fuel industry who express great concern about how they will keep their doors open; how they will keep their business.. They are doing everything they can to make it work, but there is a lot of concern out there. Some are struggling with slumping sales, some with too little business in their service bays, and many with payroll demands and employee morale.

I have had the good fortune to have represented the automotive and commercial aftermarkets since 1979. We have been through a lot together – legislative and regulatory lobbying issues on the City, State, and Federal levels. We have planned and executed conventions and trade shows together. We have been interviewed on television and radio. In short, we have been in the trenches and we have taken on some major undertakings. But I can say that over the past two months I have never seen this level of contact between the

Association and its members. You needed information and we needed to supply it understand it, and clearly explain it. Mr. Bill Hanvey, President and CEO of the Auto Care Association (ACA), a coalition association with which we have a close working relationship, said, “We have heard time and time again from people that have reached out to us to say “Thank Goodness you’re around. Thank goodness you have our back.” He added that our collective efforts have bolstered the perceived importance of trade associations. I had always known that you are essential to the motoring public. In this crisis, I have come to see that your trade association is essential to you. ■



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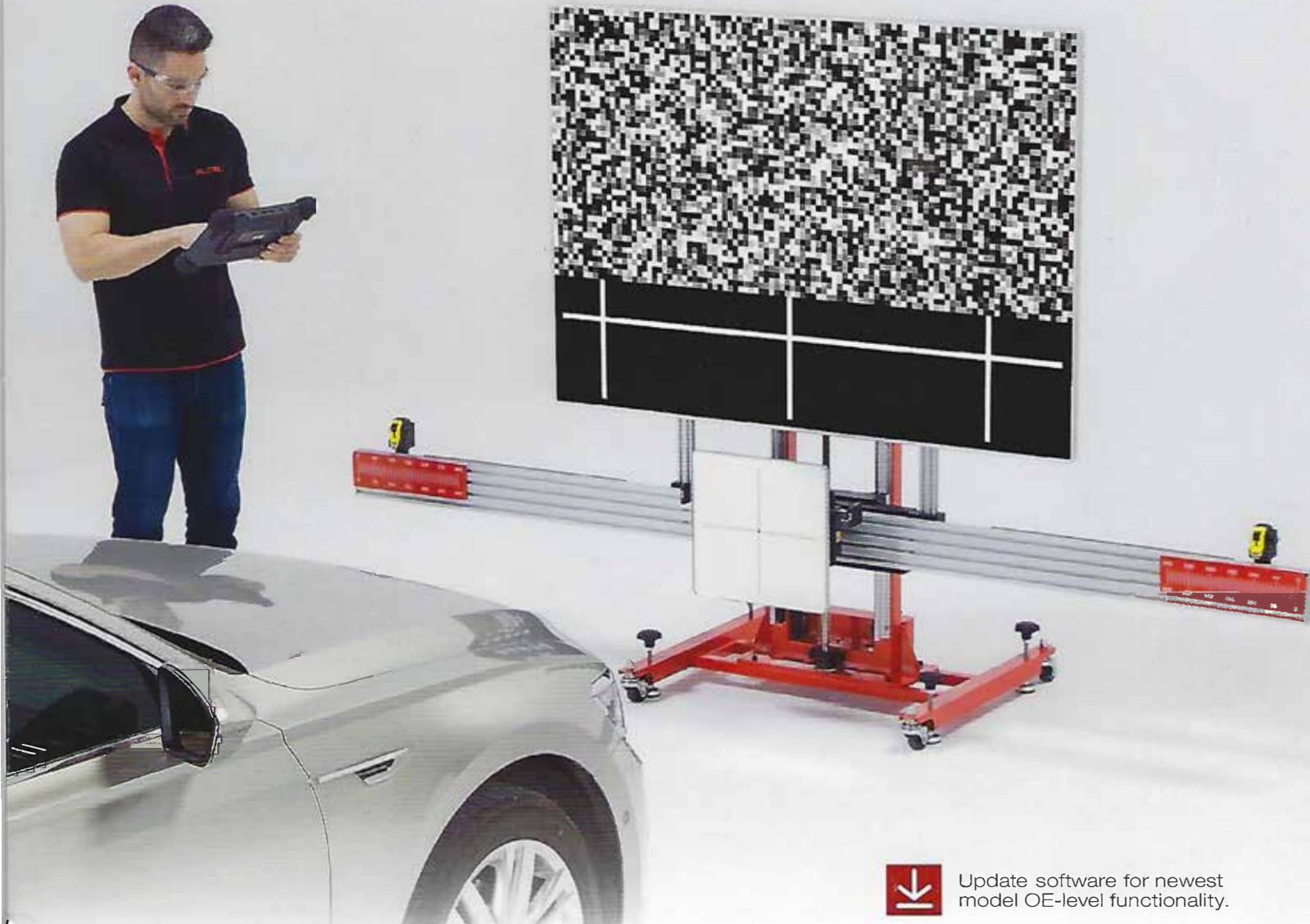
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