



# The Supreme Court Will Decide Service Advisor's Exempt Status

Insights

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Dealerships will soon get a decisive ruling from the U.S. Supreme Court about an issue that has become a thorn in the side for many dealers. The issue: whether Service Advisors are exempt from overtime requirements under Section 13(b)(10)(A) of the Fair Labor Standards Act (FLSA), which exempts “any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers.”

## History Of The Continuing Controversy

Historically, the “salesperson” exemption has included Service Advisors. Beginning in 1973 with a federal appellate decision in *Brennan v. Deel Motors, Inc.*, and continuing as recently as 2013 with the Montana Supreme Court’s decision in *Thompson v. J.C. Billion, Inc.*, courts have uniformly held that Service Advisors are exempt from overtime under Section 13(b)(10).

However, the U.S. Department of Labor’s (USDOL) track record in this area has been inconsistent. At times in the past, it has said that Service Advisors could qualify for the exemption; at other times, it has said that they could not. At one point, USDOL issued an interpretive provision where it took the position that Service Advisors did not fall within the exemption. But after several courts nevertheless applied the exemption, USDOL said that it would no longer dispute the issue.

In April 2011, however, USDOL changed course and deleted the controlling regulation, stating that the change reflected its view that the exemption should be limited “to salesmen who sell vehicles and partsmen and mechanics who service vehicles,” and that Service Advisors did not fall within this description (read [more](#) and [more](#)).

In *Navarro v. Encino Motorcars, LLC*, the 9th Circuit Court of Appeals (hearing cases arising out of federal courts in California, Washington, Oregon, Nevada, Arizona, and several other Western states) deferred to USDOL’s most recent interpretation of the exemption and became the first court to hold that Service Advisors are not exempt from overtime pursuant to the “salesperson” exemption (read [more](#)).

## SCOTUS Will Issue The Final Word

On January 15, 2016, the U.S. Supreme Court announced that it would take the matter under consideration and will clarify the issue for dealers once and for all. The Court will hear an appeal of

the *Navarro* case, and its decision is expected by June 2016.

The Court's decision will apply to all dealers throughout the country. In the event the Court somehow finds that Service Advisors are not exempt from overtime under the "salesperson" exemption, you should be prepared to explore alternatives. In particular, you should revise Service Advisor pay plans to satisfy the "commission-paid" exemption, which is also available to dealers in most states.

Fisher Phillips will issue a Legal Alert to summarize the Supreme Court's ruling on the day the case is decided. To ensure you are on the distribution list, please sign up [here](#).

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