



## "It's Always Something!"

Insights

2.01.11

[Dealership Update, No. 1, February 2011]

As *Saturday Night Live's* Roseanne Rosannadanna used to say: "It's always something!"

Just when you think you have everything under control, some new problem or challenge comes along. It is that way with many things and the law is no exception. The federal-wage hour law, called the Fair Labor Standards Act (FLSA), was passed in 1938, so you would think that in the last 70+ years, the courts and the Department of Labor have resolved every issue once and for all.

Unfortunately, that is not the case.

As most dealers know, the FLSA contains a number of exemptions from overtime that dealerships rely on. One important exemption, which has been in the law since 1966, exempts from overtime:

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 the ultimate purchaser.

During the 1960s and 1970s the courts and the Department of Labor fleshed out this provision and came to agree that Congress intended the provision to be a little broader than it reads. For example, they agreed that service writers, while not specifically named in the statute, performed duties that were so closely associated with the named groups of employees that they, too, should be considered exempt from overtime.

Since the 1960s, the courts and the Department of Labor have consistently interpreted the term "partsman," to mean any individual whose primary duty is stocking, issuing or requisitioning parts.

[1]

Enter federal District Court Judge Wexler in the Eastern District of New York. Judge Wexler is presiding over a lawsuit brought by two former parts employees against their former employer, a truck dealership, seeking unpaid overtime. *McBeth et. al. v. Gabrielli Truck Sales Ltd.*

During their employment, the employees performed counter and warehouse duties, and the company considered them as falling squarely within the "partsman" exemption. So the employer

moved for summary judgment, asking the judge to dismiss the case on the grounds that parts employees at a truck dealership are covered by the "partsman" exemption from overtime.

The judge disagreed. Relying on the rule that exemptions must be "narrowly construed" and that the employer bears the burden of proving that the employee *exactly* meets the definition spelled out in the statute, he found the employer failed to meet the first part of the test which he read as applying only to parts employees who were "primarily engaged in *selling or servicing ... trucks....*" [Emphasis added]

The judge reasoned that, according to the language in the statute, a parts employee would be exempt from overtime only if he or she actually sold or serviced trucks. The partsmen in the *Gabrielli* case worked the parts counter or in the warehouse (as most partsmen do) and never performed actual repair work and certainly never sold a truck. Therefore, the judge ruled that they were not exempt from overtime.

The good news is that the employer has requested that the judge reconsider his decision or allow an appeal, pointing out that the judge's ruling is contrary to other courts' decisions and has the potential to strip thousands of partsmen of their long-recognized exemption from overtime. It is likely that the judge will either withdraw the opinion or it will be overturned on appeal. The bad news is that this case is now out there on the Internet and in published law books. So until it is withdrawn or overruled, who knows how many dealerships will be sued by aggressive attorneys using the case as authority for their claims on behalf of partsmen.

### **Our Recommendation**

For now, do nothing. Keep your fingers crossed that Judge Wexler will be persuaded to withdraw his opinion. Then it will be as if nothing ever happened. Even if the decision stands, it is binding only in the Eastern District of New York and technically only on the parties before him. However, that decision left unchanged is almost certain to spark litigation against dealerships anywhere in the United States.

Can they win? That's unlikely. Can it cost you money? Absolutely. Wage-hour cases, even baseless ones, are expensive to fight and they are rarely covered by insurance. While you are waiting to see how this comes out, you may want to check your partsmen and ensure that they are all keeping accurate time records and that they are all receiving at least the federal minimum wage for all hours worked.

*For more information contact the author at [jdonovan@laborlawyers.com](mailto:jdonovan@laborlawyers.com) or 404-231-1400.*

---

**[1] CAUTION:** If your dealership is in AK, CA, CT, HI, IL, MA, ME, MN, MT, NV, NJ, NM, NY, ND, RI, VT or WA, you may not be able to use the "partsman" exemption at all because your state law either does not contain the exemption or defines it differently than the federal law does. If you are unsure about its availability or scope, please give us a call and we will walk you through the requirements.

about its availability or scope, please give us a call and we will walk you through the requirements.