



Service Writer Update

Insights

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In April 2011, President Obama's Labor Department (DOL) announced that it was reverting to a position it had abandoned back in 1987. The DOL is again saying that service writers and service advisors are *not* exempt from overtime. The only problem with their "new" position is that it has been rejected by every federal court that has considered the question and, of course, the courts make the law, not the DOL.

However, favorable court decisions exist in only about fifteen states and those decisions are not binding on the other states. In an effort to prevent the DOL from attempting to enforce their position in those jurisdictions where courts have not yet ruled, Congress added a provision to the DOL's funding legislation for 2012 which stated that the DOL could not use any of the appropriated money to enforce their new position on service writers. Will DOL actually listen?

Yes, they actually did! We are aware of one investigation where the DOL investigated a service writer's complaint that he was not paid overtime. The DOL initially sided with the service writer. However, after checking with "higher ups" in the DOL, they closed their investigation and took no action. That's the good news.

The bad news is that all bets are off after December, 2012. So a prudent dealership will use this time to get its house in order. All you need to do to protect your dealership is to make sure that your service writers receive the majority of their compensation in the form of "commissions," ideally a percentage of the parts and labor hours they sell. Many service advisors are already paid that way and many others can qualify by just tweaking their pay plans a little. Then even if the service writer exemption is challenged at your dealership, your service writers will still be exempt from overtime under the other exemption.

Dealerships should also recognize that "internal" service writers are not exempt from overtime and never have been because they are not selling parts and service to customers. So for those employees, it is critical that they be set up as "commission-paid" employees or paid overtime.

Do it now. Do not wait until December. If you would like information on how your service writer/service advisor pay plans should be structured, let us know.

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