



Are Your Pay Practices Still Compliant?

Insights

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By now you have likely heard about [a recent Supreme Court decision](#) and [a change in federal wage and hour regulations](#) that have a direct impact on the retail automotive industry. The good news is that the Supreme Court decision is a win for those in the industry (at least for now) and that compliance with the changes in the wage and hour regulations should not be difficult, relatively speaking.

Service Advisors and The Sales Exemption

This year, the U.S. Supreme Court was asked to decide whether service advisors were exempt from overtime under federal law based on the same overtime exemption that applies to salespersons (and techs and parts persons). Last year, the federal appeals court for the 9th Circuit ruled that the “sales” exemption did not apply to advisors. Other federal appeals courts had already ruled that it did. In part to resolve this conflict and create a consistent interpretation of the law, the Supreme Court agreed to hear the case and break the tie, so to speak.

In its [June 20, 2016 opinion](#), the Court vacated the 9th Circuit’s ruling, rendering the appeals court decision enforceable. Consequently, dealerships can again rely upon the sales exemption as a basis for treating service advisors as overtime exempt under federal law, assuming that all other requirements are met, including the collection and maintenance of accurate time records.

Unfortunately, the Supreme Court’s decision may not be the end of this controversy. The Court did not conclude the exemption absolutely applies to advisors. Instead, the Court vacated the decision because it disagreed with the basis on which the 9th Circuit made its decision. The Court remanded the case back to the appeals court for a second review with specific instructions to consider the issue without giving deference to the U.S. Department of Labor’s (USDOL’s) position on this issue.

For the time being, you may continue to rely upon this exemption for purposes of federal wage and hour law compliance. As in all situations, you must also ensure compliance with state law. As a safety net, dealerships that have not already taken this step may want to pay their advisors in a manner that qualifies their advisors for the “commission-paid” exemption to overtime.

The White Collar Exemptions

In May 2016, the USDOL released a new rule that will significantly increase the minimum salary requirement for those workers who qualify for the “white collar” exemptions from overtime. Currently, “executive,” “administrative,” and “professional” employees are exempt from overtime if

they are paid a salary or guarantee of at least \$455 per week, which annualizes to \$23,660. Under the new rule, which will take effect on December 1, 2016, this amount will increase to \$913 per week, or \$47,476 per year.

The good news is that, at most dealerships, the only “white collar” employees are department managers and some office or staff employees who are also paid a salary and treated as exempt from overtime. For most dealers, these are the only employees who will be affected by the USDOL’s revised rules.

Between now and December 1, every dealership will need to review the compensation of each of its employees who are paid a salary and treated as exempt from overtime. You should analyze each employee’s pay plan including each of its components: salary, draw, commissions, and bonuses. Then you should determine if any changes will be necessary and, if so, how those changes can be made. While most changes will involve little or no increase in labor costs, they could be critical to avoiding legal liability and attorneys’ fees.

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