



Don't Forget About Minimum Wage And Recordkeeping!

Insights

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No doubt last month's *Navarro* ruling in the Supreme Court was a big win for retail automotive. That decision affirmed that the same federal *overtime* exemption that applies to a "salesman, partsman, and mechanic" also applies to service advisors who are engaged in selling. In other words, service advisors who qualify for this federal exemption are not entitled to overtime pay.

The *Navarro* decision, however, does not relieve you of all of your obligations under the Fair Labor Standards Act (FLSA). You still need to maintain accurate time records for persons eligible for the exemption and to ensure that these employees receive at least minimum wage for all hours worked.

Time Records

Under the FLSA, employers are required to maintain accurate records of all hours worked for every employee not specifically exempt from the recordkeeping requirement. Since the exemption at the heart of *Navarro* is for overtime only, you are required to maintain accurate time records for service advisors, just as you must for the other job positions eligible for the exemption (salespersons, mechanics, and parts counterpersons).

The majority of dealerships now record time electronically (if they can get employees to use the system). Most of those systems allow managers to override or change entries or input missed "punches." Be aware that excessive use of the override feature could raise suspicions about the accuracy of the records. The absence of accurate time records not only violates federal law, but also creates an avoidable dispute were an employee to challenge pay practices.

Minimum Wage

The FLSA also requires dealerships to pay most employees *at least* minimum wage for all hours worked. Dealerships make this determination by dividing the employee's total compensation earned in the workweek by the total number of hours worked. If, using the current federal hourly minimum wage of \$7.25, the calculation reveals that the employee earned at least that amount for all hours worked, your dealership is in compliance with this federal obligation.

If the test reveals that the employee did not earn at least minimum wage, your dealership must make up the difference with supplemental pay. Remember: in states with a minimum wage higher than the federal minimum wage, most dealerships substitute the state minimum wage when running this compliance "test."

For purposes of satisfying the federal minimum wage requirement for employees otherwise eligible for the overtime exemption, the type of compensation paid does not matter. You can pay employees eligible for this exemption on an hourly basis only, or commissions only, or a salary only, or any combination of these. You also can include other incentive payments, such as bonuses, in determining whether you have met your minimum wage obligations. All that is required is that the employee receive at least minimum wage for hours worked in the appropriate period.

Conclusion

Ensuring compliance with the FLSA's recordkeeping and minimum wage obligations reduces the risk of compliance issues. A thorough FLSA compliance audit should further reduce those risks. And, with all the recent attention on dealership pay issues, there may be no better time than now to conduct that compliance audit.

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