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SUPREME COURT INTRODUCES "FAIR" READING OF FLSA EXEMPTIONS

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If you're not an auto dealer and you missed last month's Supreme Court decision in *Encino Motorcars, LLC v. Navarro*, we forgive you. After all, a ruling on the correct application of the "salesman" exemption to service advisors under Section 213(b)(10) of the Fair Labor Standards Act (FLSA) doesn't appear to be of immediate interest to anyone outside the dealership industry.

However, tacked to the end of a thoughtful discussion on the rules of statutory construction, Justice Clarence Thomas' majority opinion contains sweeping language potentially altering the FLSA exemption analysis for all employers across the country.

BRIEF BACKGROUND

Again, if you're not in the auto dealer industry, you don't need to know much about the details of the case (but if you are, read our alert here). All you really need to know is that the FLSA has contained language since 1966 confirming that "any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles" is considered exempt from overtime. For many years, the U.S. Department of Labor (USDOL) permitted service advisors—those employees at a dealership who evaluate a customer's concerns, determine the service needs of the vehicle, and sell supplemental services—to be considered exempt under this definition.

But in 2011, the USDOL changed its mind and announced that service advisors would no longer be considered exempt. That led to a seven-year battle in the courts, culminating in the April 2, 2018 employer victory at the

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Supreme Court (where the dealership was represented by attorneys from the Fisher Phillips Automotive Dealership Practice Group). The 5-4 majority decision determined that service advisors are also primarily engaged in servicing automobiles and should be considered exempt from overtime because, as Justice Thomas reasoned, "if you ask the average customer who services his car, the primary, and perhaps only, person he is likely to identify is his service advisor."

WHAT DO EMPLOYERS NEED TO KNOW ABOUT THIS DECISION?

Luckily for employers across all industries, the Court did not stop there. The justices took issue with one of the positions taken by the plaintiffs: that courts and the USDOL have long instructed that "exemptions to the FLSA should be construed narrowly," thereby tilting the playing field in favor of employees in any wage and hour action involving FLSA exemptions.

The Court's opinion swept aside this principle. According to the Court, "the FLSA gives no 'textual indication' that its exemptions should be construed narrowly." Therefore, as Justice Thomas wrote for the majority, "there is no reason to give them anything other than a fair (rather than a 'narrow') interpretation." As a result, courts can no longer simply rely on the familiar "exemptions-should-be-construed-narrowly" crutch to deny exempt status. Rather, as the Court concluded, the USDOL and lower courts across the country must now give exemptions "a fair reading" under the law.

It's important to note that the *Navarro* decision does not mean that exemptions will now be construed *broadly*. Instead, courts and agencies have been instructed to look at the FLSA exemptions through a neutral lens. This is still good news for employers. As a result, you will want to revisit the exemption status of your employees with your legal counsel to determine if any alterations are now justified.

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