The Final Word: Service Advisors Are Exempt From Federal Overtime Laws

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It's finally over; we can now say definitively that service advisors employed by automobile dealerships are exempt from federal overtime requirements. If you haven't been following this story … what have you been doing?

Over the past five years, the exempt status of service advisors has been in constant flux. However, a dealership represented by attorneys from the Fisher Phillips Automotive Dealership Practice Group convinced the U.S. Supreme Court in early April to put the matter to bed once and for all, winning the case that confirms service advisors are not entitled to overtime premium pay under the federal Fair Labor Standards Act (FLSA).

How Did We Get Here?
First, a history lesson. The FLSA was amended in 1966 to include an overtime exemption for:

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 ultimate purchasers. (29 U.S.C. § 213(b)(10))

In 1970, the U.S. Department of Labor (USDOL) published its interpretation of the exemption, specifically stating:

Employees variously described as service manager, service writer, service advisor, or service salesman who are not themselves primarily engaged in the work of a salesman, partsman, or mechanic as described above are not exempt under section 13(b)10. This is true despite the fact that such an employee's principal function may be diagnosing the mechanical condition of vehicles brought in for repair, writing up work orders for repairs authorized by the customer, assigning the work to various employees and directing and checking on the work of mechanics. (29 C.F.R. §779.372(c)(4))

The federal courts disagreed with the USDOL's interpretation. In 1973, the 5th Circuit Court of Appeals held in *Brennan v. Deel Motors, Inc.* (also handled by Fisher Phillips) that service advisors were actually sales representatives selling parts and services to customers, and were therefore among the employees whom Congress intended to include within the overtime exemption. Over the following years the USDOL and individual employees filed and lost several lawsuits seeking unpaid

overtime for service advisors, with the courts holding that the position was exempt (*see Walton v. Greenbrier Ford, Inc.* and *Dunlop v. North Bros. Ford., Inc.*).

These consistent federal court decisions caused the USDOL to change its position. In 1987, the agency amended its Field Operations Handbook to state:

Employees variously described as service writers, service advisors, service managers, or service salesmen whose primary duty is to record the condition of a vehicle and write up a report indicating the parts and mechanical work needed have been construed as within the exemption in Sec. 13 (b)(10)(A) by two appellate courts (5th and 6th Circuits) and two district courts (in the 8th and 10th Circuits). Consequently, WH will no longer deny the OT exemption for such employees. (USDOL Field Operations Handbook, § 24L04(k) Insert # 1757 (October 20, 1987))

Now that everyone was on the same page, the matter seemed resolved. But as Lee Corso would say, "Not so fast, my friend."

More than two decades later, in 2008, the USDOL announced its intent to finally update the Code of Federal Regulations to confirm service advisors' exempt status. However, before it could follow through with the announcement, a new president took office. In 2011, under the direction of the Obama administration, the USDOL abruptly reversed course and returned to its pre-1987 position that service advisors are not exempt from overtime.

Supreme Court Issues The Final Word

The USDOL's reversal sparked a wave of new litigation over the exempt status of service advisors, an issue that everyone had assumed was settled. One of those cases was *Encino Motorcars v. Navarro*, a case that has experienced its own share of twists and turns. Initially, a federal court in California dismissed the case, applying decades of precedent and holding that service advisors are not entitled to overtime premium pay under federal law. The decision was then appealed to the 9th Circuit Court of Appeals (with jurisdiction over federal cases arising from California, Washington, Nevada, Arizona, Oregon, Alaska, Hawaii, Idaho, and Montana), which relied on the USDOL's most recent change in position to reverse the lower court, resulting in a shocking 2015 decision—service advisors were now not considered exempt "salesmen" under the FLSA.

The U.S. Supreme Court took up the matter from there, shortly after Justice Antonin Scalia's death, at a time when it did not have a full complement of justices. Rather than reach a final determination on the merits, the Supreme Court simply ruled that the 9th Circuit's rationale was flawed and asked it to reconsider. In 2017, after reviewing its own decision, the 9th Circuit again concluded that service advisors are not exempt from overtime under federal law.

At the request of the dealership, the Supreme Court took up the case one more time to set the record straight. In early April, the Supreme Court gave the final word on the matter, stating unequivocally: "We conclude that service advisors are exempt from the overtime-pay requirement of the FLSA

because they are 'salesm[e]n . . . primarily engaged in . . . servicing automobiles.'" Absent an act of Congress, this matter is settled once and for all.

What Does This Mean For Dealers?

Now that we've finished "Legal History of Service Advisors 101," let's get to the important stuff: what does this mean for dealers? Simply put, the Supreme Court's decision tells automobile dealerships that they do not have to pay service advisors overtime premium pay under *federal law*.

That may not, however, be the end of the story as it pertains to your dealership. While service advisors are exempt from overtime under federal law, several states have laws or regulations that impose additional overtime exemption requirements. You should therefore consult with legal counsel to confirm that you are complying with any existing state or local requirements applicable to the location of your dealership.

Additionally, federal law only exempts service advisors from overtime premium pay. You are still required to pay your service advisors at least the state or federal minimum wage, whichever is higher, for all hours worked, and they must keep an accurate record of their hours worked, preferably by clocking in and out when they begin and end work each day.

Conclusion

The *Encino Motorcars* case is a significant victory. The Supreme Court's decision ratifies more than 40 years of established pay practices for the approximately 100,000 service advisors employed at dealerships throughout the United States, and brings clarity to what had been a muddled situation. Now that the Supreme Court has spoken, all dealers can rest easy.

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