![Fisher Phillips logo](fP Fisher Phillips)

FISHER PHILLIPS TAKES CASE TO U.S. SUPREME COURT: ASKS HIGH COURT TO SETTLE CIRCUIT SPLIT ON OT PAY

Publication
Oct 19, 2015

Attorneys Karl Lindegren, Todd Scherwin and Colin Calvert are representing a client before the U.S. Supreme Court and the case was featured in *Law360* on October 19, 2015. The article "Fisher Phillips Takes Case to U.S. Supreme Court: Asks High Court to Settle Circuit Split on OT Pay" discussed how the U.S. Supreme Court could settle a circuit split over whether the Federal Labor Standards Act exempts service advisers at car dealerships from receiving overtime pay.

A March ruling by the 9th Circuit that Encino Motorcars LLC's service advisers should be eligible for overtime pay because of language in a U.S. Department of Labor interpretive regulation runs counter to previous findings by the 4th and 5th Circuits, according to the Sept. 30 petition for writ of certiorari that attorneys prepared for the dealership.

Even though the FLSA's "plain language" states that "any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles" is exempt from the act's overtime requirements, the 9th Circuit chose to rely on a DOL regulation that holds that service advisers are not exempt from receiving overtime because they do not "personally service vehicles," the dealership noted.

The dealership alleges that decades of legal precedent holds that the service advisers are salespeople who are paid by commission — not by the hour — based on the amount of vehicle servicing work they convince customers to purchase, not on the number of hours they are on the floor.

Related People

Colin P. Calvert
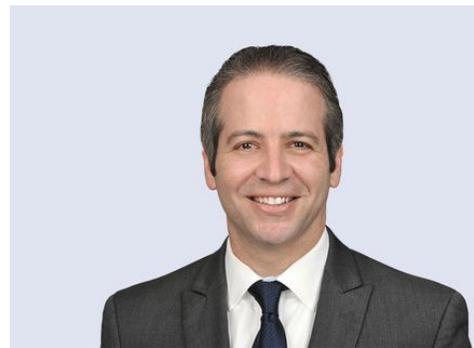Partner

949.798.2160

Karl R. Lindegren
Partner

949.851.2424

The Fisher Phillips attorneys are joined by Paul Clement, Jeffrey Harris and Susan Iyer of Bancroft PLLC in representing Encino Motorcars LLC in this case.

To read the full article, please visit *Law360* [subscription required].

Todd B. Scherwin

Regional Managing Partner

213.330.4450