



A "Fair" Reading of FLSA Exemptions: The Supreme Court Holds that Service Advisors Are Exempt from Federal Overtime Laws

Insights

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If you're not a car dealer and you missed the Supreme Court's decision last week in *Encino Motorcars, LLC v. Navarro*, we forgive you. After all, at first blush, the decades-long battle over application of the "salesman" exemption to service advisors under Section 213(b)(10) of the federal Fair Labor Standards Act (FLSA) should not concern anyone outside the dealership industry.

However, tacked to the end of a thoughtful discussion on the rules of statutory construction, the distributive canon, and the disjunctive meaning of the word "or," Justice Clarence Thomas' majority opinion contains sweeping language potentially altering the analysis of FLSA exemptions generally.

The History of Service Advisors and Their Status Under the FLSA

For those interested in a detailed history of service advisors' exempt status under the FLSA, we encourage you to read our prior reports that map the long road from the 2011 change, through the contrary cases that followed it, to our ultimate destination: the *Encino Motorcars* decision.

However, to make a long story short(er), the FLSA was amended in 1966 to include an overtime exemption for

[A]ny 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) opined that the exemption did not apply to service advisors, or dealership employees whose "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, uniformly holding that service advisors are "salesm[en] . . . primarily engaged in . . . servicing vehicles" within the scope of the exemption. As a result, in 1987, the USDOL stated that it would "no longer deny the OT exemption for" service advisors.

Then, more than two decades later, the USDOL changed its mind. In 2011, the USDOL announced that it would revert to its pre-1987 position and take the stance that service advisors are entitled to overtime premium pay. The USDOL's reversal sparked a wave of new litigation over the exempt status of service advisors, including the *Encino Motorcars* case.

The Supreme Court Weighs In

The history of *Encino Motorcars* contains almost as many twists and turns as the history of the service advisors' exempt status generally. Initially, the United States District Court for the Central District of California dismissed the case, following decades of precedent holding that service advisors are not entitled to overtime premium pay under federal law. The case was 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, in reliance on the USDOL's 2011 reversal in position, held that service advisors are not exempt "salesmen" under the FLSA. The United States Supreme Court then took up the matter but, rather than reaching a final determination on the merits, simply ruled that the rationale behind the appellate court's decision was flawed. On remand, the 9th Circuit again concluded that service advisors are not exempt from overtime under federal law.

The Supreme Court was therefore forced to take the case one more time and set the record straight. After decades of argument, the Court made it official: service advisors employed by automobile dealerships can qualify for the Section 13(b)(10) exemption from federal overtime.

The Court rested its decision on the plain language of the statute, which it explained, "has long been understood to cover service advisors." In what reads like an English grammar exercise in sentence diagraming, the Court began with the first, less controversial, premise: service advisors sell vehicle-services to customers, and thus, are salesmen. The Court next determined that service advisors also are primarily engaged in servicing automobiles 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." As a result, the Court concluded that service advisors are "salesm[e]n . . . primarily engaged in . . . servicing vehicles" within the scope of the exemption.

A "Fair" Interpretation

The Court did not stop there. Any wage-hour attorney is familiar with the cautionary refrain from courts and the USDOL that "exemptions to the FLSA should be construed narrowly." Apparently, that warning was unfounded. According to Justice Thomas' opinion, "the FLSA gives no 'textual indication' that its exemptions should be construed narrowly," so "'there is no reason to give [them] anything other than a fair [rather than a "narrow"] interpretation.'" Following *Encino Motorcars*, courts can no longer simply rely on the familiar crutch "that exemptions to the FLSA [should] be construed narrowly" to deny an employee exempt status. Rather, courts must "give the exemption . . . a fair reading" under the law.

The Bottom Line

For car dealers, the *Encino Motorcars* case means that service advisors can meet the Section 13(b)(10) exemption from overtime premium pay under federal law. For everyone else, the case suggests that courts now might look at the FLSA exemptions through a different, neutral, lens. Importantly though, the holding is not that exemptions should be *broadly* construed instead. We would caution employers to consult with legal counsel if considering the Supreme Court's rejection of the "narrowly construed" principle with respect to other exemption classifications.

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