



USDOL Still Barred From Challenging "Service Writer" Exemption

Insights

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Readers will recall that, in April 2011, the U.S. Labor Department declined to adopt an interpretation proposed in 2008 that would have acknowledged the federal Fair Labor Standards Act overtime-exempt status of employees doing the typical work of service writers, service advisors, *etc.* in automobile dealerships and truck dealerships. Prospects were that USDOL would reverse an enforcement policy of two decades' standing and would begin challenging the FLSA Section 13(b)(10)(A) overtime exemption as applied to these workers.

However, Congress's 2012 Department of Labor Appropriations Act specifically prohibited USDOL from using any appropriated funds for this purpose. Later comments by a U.S. Wage and Hour Division investigator led us to conclude that, unless Congress renewed this limitation in 2013 appropriations, dealerships should anticipate USDOL attacks on their treating these employees as being overtime-exempt.

Although the 2013 appropriation does not *expressly* refer to such a restriction, we conclude that the prohibition has been extended. Among other things, Division F, Section 1105 of the recent appropriation calls for the continuation through September 30, 2013 of "the requirements, authorities, conditions, limitations, and other provisions" of the 2012 law. Another example is Section 1104's statement that money allocated for 2013 may not be used to "initiate or resume any project or activity for which appropriations, funds, or other authority were not available" during the federal government's 2012 fiscal year.

Even if USDOL is unable to pursue such claims, current or former service writers or similar employees remain free to argue against overtime-exempt status in their own FLSA lawsuits. And, as we said previously, employers embroiled in these lawsuits should be alert for any signs that USDOL is extending background assistance to these individuals.