Courts Aren't Buying USDOL's "Service Writer", "Service Advisor" Comments

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In April 2011, the U.S. Labor Department disavowed its 24-year-long acknowledgment that the federal Fair Labor Standards Act's Section 13(b)(10)(A) overtime exemption applies to automobile-dealership employees doing the typical work of service writers, service advisors, *etc*. Instead, USDOL seemed to embrace the view that the absence of a literal reference to these kinds of employees in Section 13(b)(10)(A)'s "salesman, partsman, or mechanic" formulation meant that they are subject to the FLSA's overtime requirement.

USDOL said what it did despite the fact that, since the 1970s, five federal courts had looked at the same language and ruled the other way. In fact, as of April 2011, every reported court decision to consider the issue determined that dealership employees who are selling service and parts to customers are within the exemption. These courts concluded that this outcome was entirely consistent with Congress's intent.

Now, two additional rulings have continued this trend, including that these newest ones have done so notwithstanding USDOL's comments.

In *Navarro v. Mercedes Benz of Encino* (link to reproduction below), Fisher Phillips persuaded the U.S. District Court for the Central District of California to dismiss an FLSA overtime claim brought by several Service Advisors. After evaluating USDOL's April 2011 statements, the court concluded that those views are "unreasonable" and unworthy of deference. Instead, the court said, "Service Advisors . . . are functionally equivalent to salesmen and mechanics and are similarly responsible for the 'selling and servicing' of automobiles." It ruled that the Service Advisors were exempt from FLSA overtime.

A few days later, the Montana Supreme Court concluded that the words of Section 13(b)(10)(A) itself demonstrate that it applies to the kind of work done by Service Advisors, Service Writers, and the like. In *Thompson v. J.C. Billion, Inc.* (link to reproduction below), the court determined that USDOL interpretative material "conflicts with the plain wording of [Section 13(b)(10)(A)] by defining employees who are exempt from overtime as 'salesman' more narrowly than the statute does." The court determined that "a plain, grammatical reading of [Section 13(b)(10)(A)] makes clear that the term 'salesman' encompasses a broader category of employees than those only engaged in selling

vehicles," and that, "under a plain reading, the statute clearly exempts 'any salesman . . . primarily engaged in servicing . . . automobiles."

These decisions further bolster the decades-old proposition that the exemption applies to a dealership employee whose primary duty is to do such things as greet customers and obtain information regarding their service or repair concerns; diagnose the mechanical condition of the vehicle; attempt to sell appropriate diagnostic or repair services; provide estimates for services or repairs; write orders for work authorized by the customer; assign the work to various employees; direct and check on the work of mechanics; and communicate with customers regarding the status of their vehicles. Only time will tell whether USDOL will continue to swim against the tide of these court rulings.

Navarro v. Mercedes Benz of Encino.pdf (397.31 kb)

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