



Enforcement Push Coming On "Service Writers", "Service Advisors"?

Insights

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Readers will recall our April 2011 [newsletter](#) and [blog post](#) regarding the U.S. Labor Department's having declined to recognize the overtime-exempt status of vehicle-dealership employees typically called "service writers", "service advisors", or "service salesmen". In so doing, USDOL appears to have revived its previously-abandoned interpretation that the federal Fair Labor Standards Act's Section 13(b)(10)(A) does not apply to employees whose role is to diagnose the mechanical condition of or to determine service needed by a vehicle, to assign service work to employees, to monitor their progress and results, and otherwise to take responsibility for the service work.

Dealerships across the nation were understandably alarmed by the prospects that USDOL would resume challenging the exempt status of these employees for the first time in almost 24 years. However, Congress's 2012 USDOL appropriation prohibited the agency from devoting any of its funding to such efforts.

A U.S. Wage and Hour Division investigator recently told a dealership that its service writers are non-exempt, but that USDOL is temporarily precluded from doing anything about it. The investigator said that USDOL will "enforce the law" in this respect once it is able to do so.

We take from this that, unless Congress renews its limitation in the 2013 USDOL appropriation, the Wage and Hour Division fully intends to attack the Section 13(b)(10)(A)-exempt status of these kinds of employees. Employers who are unwilling to entrust things to the political process in a presidential-election year might want to consider implementing a pay plan meeting the requirements for the FLSA's Section 7(i) overtime exception for commission-paid employees of a retail or service establishment. We have summarized this provision in an earlier [post](#).