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Supreme Court Clarifies FLSA Exemption for Sales, Service Advisors, Partsmen, and Mechanics

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The U.S. Supreme Court recently gave relief to automotive, tractor, and aircraft dealerships, clarifying that service advisors are – like salesmen, partsmen, and mechanics – exempt from payment of overtime under the Fair Labor Standards Act (FLSA).

The FLSA provides various exemptions from its overtime requirement

The FLSA governs payment of wages to employees, addressing minimum wage, overtime, timekeeping requirements and other related requirements. Under the FLSA, employers are required to pay overtime, time-and-a-half to employees for each hour over 40 hours of work in a week unless those employees fall into certain exemptions. The most common exemptions cover executive, administrative and professional employees. There are other available exemptions for outside sales employees, software developers and employees in artistic and creative positions.

There has been recent confusion over the application of the auto salesperson exemption to service advisors

Congress initially exempted all car dealership employees from the overtime-pay requirement, but it later narrowed that exemption to apply to the following positions:

> *[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 C.F.R. § 213(b)(10)(A).

Service advisors – employees at car dealerships who consult with customers about their servicing needs and sell them servicing solutions – were not specifically listed in the exemption. In 1978, the Department of Labor (DOL) issued an opinion letter stating that service advisors are exempt in most cases. After that, Congress did not change the exemption despite other FLSA exemption amendments. For over 30 years, auto dealerships relied on this ruling in classifying service advisors as exempt. However, in 2011 the DOL reversed course and issued a regulation that interpreted the exemption's application to "salesman, partsman and mechanic" positions to exclude service advisors. 29 C.F.R. §779.372(c).

Service advisors file a FLSA class action, prompted by DOL's 2011 regulation

This regulatory change prompted service advisors employed by Encino Motorcars, LLC, a Mercedes-Benz dealership in California, to bring a class action seeking to recover overtime (of at least 15 hours per week) and treble damages and attorneys' fees under the FLSA. The District Court for the Central District of California dismissed the complaint; but on appeal, the Court of Appeals for the Ninth Circuit reversed, deferring the DOL's 2011 regulations under *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

The case went to the the Supreme Court, which remanded, holding that the DOL's regulation was not entitled to administrative deference because "the 2011 regulation was issued without the reasoned explanation that was required in light of the Department's change in position and the significant reliance interests involved." In holding that DOL's explanation was insufficient, the Court cited "decades of industry reliance on the Department's prior policy." On remand, the Ninth Circuit held that exemptions to the FLSA should be narrowly construed so that although a service advisor is a "salesman" in a "general sense," Congress did not intend for this exemption to apply to service providers.

Supreme Court holds the service advisors fall under the FLSA exemption

On April 2, 2018, the Supreme Court, in a 5-4 decision, again reversed the Ninth Circuit, and it held that a service advisor, who sells services for vehicles, is "obviously a salesman" and is therefore exempt from the FLSA's overtime requirements. The majority explained that because the term "salesman" is not defined in the statute, the Court gave the term its ordinary meaning. Additionally, the Court concluded that service advisors are also "primarily engaged in… servicing automobiles" because they are integral to the servicing process; meet customers; listen to their concerns about their cars; suggest repair and maintenance services; sell new accessories or replacement parts; record service orders; follow up with customers as the services are performed; and explain the repair and maintenance work when customers return for their vehicles. The Court explained that the phrase "primarily engaged in…servicing automobiles" must also include some individuals who do not physically repair automobile themselves, but who are integrally involved in the servicing process." It concluded that the "description applies to partsmen and service advisors alike."

Supreme Court provides no administrative deference to the DOL nor does it narrowly construe FLSA exemptions in its ruling exemption applies

Critically, the Court rejected the principle invoked by the Ninth Circuit and in other FLSA jurisprudence that exemptions to the FLSA should be construed narrowly. The Court reasoned that because the FLSA gives no textual indication that its exemptions should be construed narrowly, there is no reason to give them anything other than a fair interpretation.

This is a significant jurisprudential shift, effectively modifying precedent. The Court's holding is likely to have broad implications for cases involving other FLSA exemptions; the Court specifically alluded to the FLSA's many exemptions and pronounced that "exemptions are as much a part of the FLSA's purpose as the overtime-pay requirement." Although employers still bear the burden to prove an employee is properly classified as exempt, application of the Court's "fair reading" standard almost certainly eases the employer's burden.

Conclusion

Vehicle dealership service advisors, like other salesmen, partsmen or mechanics, are clearly exempt from the FLSA's overtime requirements. And the case may have broader implications to the application of FLSA exemptions in other industries, because the Supreme Court's decision reevaluated former principles requiring narrow construction of the FLSA and consistent application of administrative deference to the DOL's regulations. We will keep you apprised of any new developments following this case.

In the meantime, if you have questions on this or other related matters, please contact Nexsen Pruet's Employment and Labor Law practice.
