

Everything must go? Dealership's Service Advisors not Exempt from Overtime

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Classifying employees as exempt or non-exempt can prove to be an arduous task for some employers. For others, however, the classification is easy, particularly where the state or federal authorities expressly spell out the employees at issue. That still proved problematic for one California employer, however. As demonstrated by this week's Ninth Circuit opinion, even seemingly obvious classifications are not always so.

In *Navarro v. Encino Motorcars, LLC*, No. 13-55323 (9th Cir. March 24, 2015), the car dealership employed a group of employees called "service advisors." These employees were supposed to stand in the service area of the dealership, and meet and greet car owners as they entered. The service advisors would then discuss with the customer their car issues and needs, evaluate the situation, and ultimately make recommendations regarding what services and/or repairs the customer might need. The service advisors were paid on a commission basis only, and were deemed exempt from overtime pay pursuant to the employer's understanding of the Fair Labor Standards Act, which had an express exemption for salesmen, partsmen, or mechanics.

The service advisors filed suit against the employer, seeking unpaid overtime wages. The district court agreed with the employer and dismissed the claims on the grounds that the service advisors fell within the Fair Labor Standards Act's exemption.

As you might imagine, this is where things get tricky. The service advisors were not car salesmen, obviously, and were not conducting the repairs themselves. So were they properly classified?

In considering this question of first impression, the U.S. Court of Appeals for the Ninth Circuit found **that the service advisors did not fall within the exemption**. The court looked to the statute itself and found that while there is no definition for "salesman," "partsman," or "mechanic," it could not conclude that "service advisors such as [these] are 'persons plainly and unmistakably within [the FLSA's] terms and spirit.'" Service advisors sell services for cars, and do not sell cars themselves, nor do they work on the cars.

Despite the fact that this determination was contrary to similar results reached by the Fourth and Fifth Circuit Courts of Appeal, the court found that the Department of Labor's regulations created a narrow definition for the

term “salesman” such that if it intended to include persons who sold services for cars, it would have included them in the definition.

The lack of a definition rendered this exemption difficult to decipher and therefore ambiguous, however, the Ninth Circuit refused to interpret the exemption broadly enough to encompass this unique group of employees.

When determining an employee’s status, employers must take caution to ensure that the job description and the reasonable expectations of the employee and the employer are weighed against the federal and state exemptions to ensure proper classification. This case certainly serves as a reminder that even when the classification seems apparent, that isn’t always the case.

With questions, contact Hinshaw’s San Francisco office.

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