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## Supreme Court Avoids Deciding Whether Car Dealership Service Advisors Are Exempt From Overtime Pay

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The U.S. Supreme Court rejected the Department of Labor's (DOL's) 2011 rule that stated that “service advisors” at car dealerships are not exempt under the Fair Labor Standards Act (FLSA), but declined to take the final step by declaring them exempt under the FLSA. Instead, the Court sent the case back to the Ninth Circuit Court of Appeals to analyze whether service advisors are exempt under the applicable FLSA provision without regard to the DOL's 2011 regulation. *Encino Motorcars, LLC v. Navarro*, 579 U.S. \_\_\_\_ (2016).

### Duties of Service Advisors

At issue are the “service advisors” in a car dealership's service department. These advisors typically greet the car owners who enter the service area, evaluate the service and repair needs of the vehicle owner, recommend services and repairs that should be done on the vehicle, and write up estimates for the cost of repairs and services before the vehicle is taken to the mechanics for service.

While service advisors do not sell cars, and they do not repair or service cars, they are essential in the sale of services to be performed on cars in the Service Department. Consequently, the issue is whether they fall within the FLSA exemption for salesmen, partsmen, or mechanics. The case before the Court involved numerous service advisors who sued their employer alleging, among other things, that the dealership failed to pay them overtime wages.

### DOL Had Flip-Flopped On Exempt Status

In 1970, the DOL took the view that service advisors did not fall within the salesman/mechanic exemption and should receive overtime pay. Numerous courts deciding cases challenging the DOL's earlier interpretation, however, rejected the DOL's view and found service advisors exempt. After the contradictory rulings, the DOL changed its position, acquiescing to the view that service advisors were exempt from overtime pay. In a 1978 opinion letter, as confirmed in a 1987 amendment to its Field Operations Handbook, the DOL clarified that service advisors should be treated as exempt.

After more than 30 years operating under that interpretation, the DOL flip-flopped again in 2011. After going through a notice-and-comment period, the DOL adopted a final rule that reverted to its original position that service advisors were not exempt and were entitled to overtime. It stated that it interpreted the statutory term “salesman” to mean only an employee

who sells automobiles, trucks, or farm implements, not one who sells services for automobiles and trucks, as service advisors do.

Dealerships were understandably unhappy with the final rule and continued to challenge the DOL's position in court. As cases went up on appeal, the Fourth and Fifth Circuit Courts of Appeals ruled that the DOL's interpretation was incorrect. The Ninth Circuit disagreed, ruling instead to uphold the agency's interpretation. Those contradictory decisions led the Supreme Court to take on the issue in the Encino Motorcars case.

### **Court Punts On Exempt Status**

Instead of actually interpreting the FLSA provision itself, the Supreme Court sent the case back to the Ninth Circuit to conduct that analysis without deference to the DOL's 2011 regulation. In a 6-to-2 decision, the Court ruled that the DOL's rule was not entitled to any weight or deference as the DOL had failed to provide a reasoned explanation in 2011 for changing its long-standing position that service advisors were exempt under the FLSA provision. Pointing out that the car dealership industry had long relied on the 1978 position that supported exempt status, the Court stated that the DOL would have had to analyze and explain why the statute should be interpreted to exempt dealership employees who sell vehicles but not dealership employees who sell services.

In his dissent, Justice Thomas, joined by Justice Alito, wrote that he disagrees with the Court's "ultimate decision to punt on the issue before it." He stated that the Court should have examined the FLSA's statutory text itself to determine whether service advisors are exempt. The dissenting Justices would have ruled that service advisors are "salesmen primarily engaged in the selling of services for automobiles" and thus, are exempt from overtime pay.

### **Best Practices For Dealerships**

It is estimated that as many as 18,000 auto dealerships in the U.S. may be affected by this issue. Because the majority decision does not resolve the exempt status for service advisors, dealerships are left with a piecemeal approach based on court rulings in their respective jurisdictions. Dealerships are advised to consult with their employment counsel to analyze whether their compensation practices for their service advisors comply with the law in their state.

If you have questions about this ruling, please contact the author at [BMumaugh@hollandhart.com](mailto:BMumaugh@hollandhart.com), or the Holland & Hart attorney with whom you typically work.