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Legal Sidebar

No Overtime for Auto Service Advisors after Court's "Fair Reading" of the FLSA

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The Supreme Court concluded recently that car dealership employees who discuss service options with customers are exempt from the Fair Labor Standards Act's (FLSA) overtime pay requirement. In *Encino Motorcars, LLC v. Navarro*, the Court determined that these so-called "service advisors" fell within the statute's exemption for "any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles[.]" While the Court's decision would seem to affect only a small group of employees, it is notable for what it said with regard to interpreting the FLSA.

Justice Thomas, writing for the majority, rejected the long-followed principle that the FLSA's exemptions should be construed narrowly to promote the statute's remedial purpose. The majority maintained that the exemptions are entitled to nothing more than a "fair reading" because the FLSA "gives no 'textual indication' that its exemptions should be construed narrowly . . ." Application of this new fair reading standard could result in a greater number of employees being deemed exempt from the FLSA's overtime pay requirement. A dramatic increase in exempt workers could prompt Congress to consider an amendment to the FLSA that perhaps identifies the exemptions with more specificity or prescribes a new standard for evaluating the exempt status of employees.

The FLSA requires the payment of overtime compensation at a rate of not less than one and one-half times an employee's hourly rate for hours worked in excess of a 40-hour workweek. Section 13 of the FLSA identifies numerous employees who are exempt from this requirement. In addition to the automobile salesmen, partsmen, and mechanics discussed in *Encino Motorcars*, individuals employed as seamen, specified agricultural workers, and certain computer employees are also exempt. Workers employed in a bona fide executive, administrative, or professional capacity arguably comprise the largest category of exempt workers.

Since 1945, the Supreme Court has characterized the FLSA as "humanitarian and remedial legislation" designed to ensure "a fair day's pay for a fair day's work." In *A.H. Phillips, Inc. v. Walling*, the Court declined to find employees working in the warehouse and central office of an interstate grocery store chain exempt from the statute's overtime pay requirement. While the store chain attempted to characterize the employees as within the FLSA's now-repealed section 13(a)(2) exemption for "any employee engaged in any retail or service establishment the greater part of whose selling or servicing is in

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intrastate commerce," the Court maintained that these workers performed duties in a wholesale environment that was distinct from the retail establishment contemplated by the exemption.

The Court explained in *A.H. Phillips* that any exemption from humanitarian and remedial legislation must be narrowly construed and give due regard to the law's plain meaning and congressional intent: "To extend an exemption to other than those plainly and unmistakably within its terms and spirit is to abuse the interpretative process and to frustrate the announced will of the people." After reviewing the terms used in section 13(a)(2) and the exemption's legislative history, the Court distinguished the warehouse and central office workers from other employees who should be exempt under that section. The Court reasoned that the terms used in section 13(a)(2) indicate that only those employees engaged in a retail or service establishment that operates primarily in local commerce are to be exempt.

Moreover, the Court noted that Congress's interest in exempting only those workers regularly engaged in local retailing activities was supported by section 13(a)(2)'s legislative history. This history showed a congressional understanding that local retail concerns "do not sufficiently influence the stream of interstate commerce to warrant imposing the wage and hour requirements on them." The exemption guaranteed that the employees of small retail establishments would be exempt from the FLSA's requirements. Unlike these kinds of employees, the warehouse and central office workers in *A.H. Phillips* were like the employees of an independent wholesaler that dealt constantly with incoming and outgoing interstate shipments.

In subsequent decisions, the Court has continued to interpret the FLSA's exemptions narrowly. In *Mitchell v. Kentucky Finance Co.*, for example, the Court concluded that the employees of a company making personal loans were not exempt from the FLSA's overtime pay and recordkeeping requirements. The company argued that it was a retail or service establishment within the meaning of section 13(a)(2), and that its employees should be exempt from the relevant requirements. Citing the exemption's legislative history, however, the Court determined that personal loan companies and other financial institutions were not meant to be covered by section 13(a)(2). The Court emphasized that the FLSA's exemptions are to be narrowly construed, and noted that businesses that were meant to have an exemption were specifically provided one by the statute.

In *Encino Motorcars*, the majority applied the ordinary meanings for the terms used in section 13(b)(10)(A) of the FLSA to conclude that the service advisors were exempt "sales[men] . . . primarily engaged in . . . servicing automobiles." After considering dictionary definitions for the terms "salesman" and "servicing," the majority determined that the service advisors were salesmen who sold services for their customers' vehicles. The majority maintained that service advisors are "integral to the servicing process," noting their various duties, such as listening to customer concerns, and suggesting repair and maintenance services. The majority acknowledged that service advisors do not physically repair vehicles, but it contended that the phrase "primarily engaged in . . . servicing automobiles" "must include some individuals who do not physically repair automobiles themselves but who are integrally involved in the servicing process."

In reaching its decision, the majority indicated that it was not persuaded by the FLSA's legislative history or the principle of construing the statute's exemptions narrowly. The majority also declined to apply the distributive canon of statutory construction that would "match" salesmen with the selling of automobiles, and partsmen and mechanics with the servicing of automobiles. Applying this canon, the service advisors would not be exempt because they were not salesmen primarily engaged in selling automobiles. Instead, noting the exemption's use of "or" to join "selling" and "servicing," the majority maintained that the exemption could cover a salesman primarily engaged in either activity. Here, the service advisors were salesmen servicing automobiles.

In rejecting the narrow construction principle, the majority criticized the premise that the FLSA's remedial purpose should be pursued at all costs. At the same time, however, the majority cited the

statute's numerous exemptions and contended that they "are as much a part of the FLSA's purpose as the overtime-pay requirement." In a dissenting opinion written by Justice Ginsburg and joined by Justices Breyer, Sotomayor, and Kagan, the minority questioned the majority's position, noting that "it unsettles more than half a century of our precedent." The minority also maintained that the Court's decision enlarged an FLSA exemption beyond Congress's enumeration and contradicted prior decisions that viewed the particularity of the exemptions as precluding their expansion.

As lower courts begin to apply the fair reading standard established by *Encino Motorcars*, it appears possible that some employees who currently receive overtime pay may be deemed exempt from the FLSA's overtime pay requirement in the future. Based on the majority's application of the standard, it seems that an examination of whether an employee is covered by an exemption will not necessarily be informed by the FLSA's legislative history or by the Supreme Court's prior FLSA decisions, at least to the extent those decisions may have construed an exemption narrowly.

Bills that would amend the FLSA have been introduced in the 115th Congress, but none address the exemption of service advisors or the possibility of more workers being deemed exempt as a result of *Encino Motors*. Nevertheless, some in Congress have shown an interest in preventing the misclassification of workers as independent contractors, a designation that denies individuals the protections available only to "employees," such as those prescribed by the FLSA. If it determines that application of the fair reading standard has resulted in the exemption of employees who probably should remain eligible for overtime pay, Congress may decide that some kind of amendment of section 13 is warranted.

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