



News & Types: Employment, Labor & Benefits Update

U.S. Supreme Court Announces New Standard for Interpreting FLSA Exemptions

4/11/2018

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Practices: Employment, Labor & Benefits, Litigation

EXECUTIVE SUMMARY

Rejecting a ruling by the United States Court of Appeals for the Ninth Circuit and nearly fifty years of prior court decisions, on April 2, 2018 the United States Supreme Court held that federal courts interpreting the scope of exemptions under the Fair Labor Standards Act (FLSA) should no longer construe exemptions narrowly and should instead give the exemptions “a fair reading” as being “as much a part of the FLSA’s purpose as the overtime-pay requirement.” Although the interpretation and application of exemptions under state laws will not necessarily be affected, this new rule regarding how to interpret the federal exemptions will lead to increased litigation, as employers will challenge existing precedent and seek to balance the interpretation of overtime exemptions.

Encino Motorcars, LLC, an automobile dealer in California, was sued in 2012 by the customer service advisors in its service/repair department, who claimed they were owed overtime pay as non-exempt employees under the FLSA. The FLSA exempts from its overtime and recordkeeping requirements “any salesman [sic], partsman [sic], or mechanic primarily engaged in selling or servicing automobiles, trucks or farm implements” for a dealer whose primary business is selling such products at the retail level.

The plaintiffs’ duties included meeting with customers in the service department, listening to the customers’ concerns, suggesting repair and maintenance services, selling replacement parts, recording repair orders and following up with customers. Indeed, service advisors at car dealers were long considered to be exempt under the FLSA, based on prior court decisions and the Department of Labor’s regulations. However, in 2011 the Department of Labor adopted a new rule that excluded service advisors from its interpretation of “salesman”, which is not defined anywhere in the Act, prompting the service advisors to sue Encino Motorcars the following year.

The Court of Appeals for the Ninth Circuit, which includes California and eight other states, held that the Act was ambiguous, that service advisors were not exempt because they were neither “selling” nor “servicing” cars

and that its conclusion was further supported by the Department of Labor's 2011 rule and the traditional principle, adopted in many court cases over decades, that the FLSA exemptions should be construed narrowly.

In a June 2016 decision, the Supreme Court invalidated the Department of Labor's 2011 rule on the grounds that it lacked sufficient explanation and was not, therefore, entitled to any deference from the courts.

On April 2, 2018, in a 5-4 decision authored by Justice Clarence Thomas, the Supreme Court rejected the Ninth Circuit's conclusion regarding the relatively limited car dealer exemption, but – far more importantly – also rejected the traditional principle that FLSA exemptions should be narrowly construed, which often resulted in a pro-employee interpretation of the exemptions and the Department of Labor's regulations. In overturning a guiding principle that has been used for decades and in countless court decisions, the Supreme Court bluntly stated “We reject this principle as a useful guidepost for interpreting the FLSA” and instructed the lower courts to give the exemptions a “fair reading” based on the language used by Congress in the Act itself. Although the Court noted that the FLSA has a “remedial purpose”, which traditionally is used by courts as a basis for broadly interpreting the scope of a law, the Court pointed out that the FLSA contains more than two dozen exemptions, which “are as much a part of the FLSA's purpose as the overtime-pay requirement.”

By overturning a guiding principle that has been used by the courts in interpreting the scope of the FLSA's executive, administrative and other exemptions, the impact of this decision will be felt far beyond the limited circumstances of this particular lawsuit. Instead of narrowly construing the exemptions in favor of employees, this decision opens the door for employers to challenge even long-standing precedent and argue that a “fair reading” includes giving equal weight to the exemptions as part of the FLSA's overall approach to overtime pay.

Action Steps: Employers should regularly review the duties and job descriptions of all positions to ensure that the written descriptions match the actual duties and to determine whether the positions are exempt or non-exempt. New case law will likely develop as a result of the *Encino Motorcars* decision, so HR professionals must stay current in their knowledge of this area. It is critical to also consider any applicable state overtime laws, which can apply in addition to the FLSA, and which often include either different exemptions or different interpretations by the state courts and departments of labor.