Basic FLSA Principles for Auto Dealerships

The Fair Labor Standards Act (FLSA) is the federal law that provides detailed requirements for the basic minimum wage and overtime pay, and applies to employers who have at least $500,000 in gross sales per year and/or have employees engaged in interstate commerce. In the absence of a special exemption, most employees must be paid minimum wage and overtime for all hours worked in excess of 40 each week. State laws may set a different standard for overtime, for example, overtime in excess of 8 hours a day.

One of the most important decisions a dealership can make is the determination of whether an employee is subject to overtime requirements or whether the employee is in a position that is exempt from overtime. Misclassifying an employee as exempt can result in a DOL audit, lawsuits and civil fines, all of which carry potential significant financial consequences. To avoid these, it is critical that dealerships understand the exemptions that may apply to their workforce.

Speaking broadly, there are two main categories of dealership employees who may be exempted from the overtime requirements under the FLSA.

- Employees who are paid on a commission basis under section 207(i) of the FLSA; and

- Salesman, parts-man, or mechanics “primarily engaged in the business of selling such vehicles or implements … to ultimate purchasers” who are exempt under section 213(b)(10).

Section 207(i) Commissioned Sales Exemption:

In order to satisfy the exemption for commissioned employees three conditions must be met: 1) the employee must be employed by a retail or service establishment, 2) the employee’s regular rate of pay must exceed one and one-half times the applicable minimum wage for every hour worked in a work-week in which overtime hours are worked, and 3) more than half the employee’s total earnings in a representative period must consist of commissions. This exemption has also been interpreted to include finance and insurance products salespeople employed by dealerships.

Section 213(b)(10) exemption for salesman, partsman, or mechanics “primarily engaged in the business of selling such vehicles or implements . . . to ultimate purchasers.”
The second exemption requires close attention to how the enumerated positions are defined in the regulations and have been interpreted by the Department of Labor (DOL).

According to the DOL regulations: a "salesman" is an employee who is employed for the purpose of, and who is primarily engaged in, making sales or obtaining orders or contracts of sale for vehicles. In addition to performing exempt work, at least half the employee’s compensation must originate from a sales commission program. This exemption will cover almost all salespeople, but it is important to note that it does not include salespeople primarily engaged in leasing. The DOL regards the leasing of vehicles as not including sales to ultimate purchasers, even if there may be an option to buy at the expiration of the lease.

Also included in the exemption are employees whose primary job duty is requisitioning, stocking and dispensing parts; these employees are considered “partsman.” Most parts personnel will fit into this category.

Finally, “mechanics” are also exempt under section 213(b)(10). “Mechanics are defined as employees doing mechanical work in the servicing of an automobile, trailer or truck.” The definition does not include those who primarily perform work such as washing or cleaning, tire changing or lubrication. Generally speaking, fully-trained technicians will qualify as mechanics, but detail staff will not. In addition, many lube technicians (if that is their primary duty) and will not be exempt because the work is not considered to be “mechanical.”

The other, more controversial category of employees are those who fall into the “service writer” category. Service managers, service advisors, and service salespeople have all been considered to fall within the larger classification of “service writers.” A service writer is generally a dealership employee whose primary duty is to do such things as: greet customers and obtain information regarding their service or repair concerns; record the condition of a vehicle and diagnose any problems; attempt to sell repair services to cure the diagnosed problem; provide estimates for the repair services, and writer orders for work authorized by the customer; assign work to mechanics and communicate with the customer the status of repairs.

In April, 2011, reversing ruling issued under a prior administration, the current DOL adopted final regulations which indicated in the comment section that it was the DOL’s opinion that service writers do not qualify for FLSA overtime exemption under section 213. This opinion, however, is not dispositive, as courts ultimately get the final say on
the interpretation of statutes and regulations. Importantly, for nearly thirty years courts have generally accepted that service writers are exempt from the FLSA.

For now, auto dealerships should carefully monitor the developing case law in this area. The DOL may take a more active role in investigating misclassifications in auto dealerships; or, conversely, the DOL may be loath to bring actions against employers to avoid having case precedent not in its favor. Auto dealerships should consult with their own counsel for further compliance advice and for assistance through any DOL initiated proceedings. Finally, auto dealerships may also have additional overtime obligations under state law, and the FLSA exemptions may not be the same.