



**U.S. Department of Labor
Wage and Hour Division**



January 5, 2018

FIELD ASSISTANCE BULLETIN No. 2018-1

MEMORANDUM FOR: Regional Administrators
Deputy Regional Administrators
Directors of Enforcement
District Directors

FROM: Bryan L. Jarrett
Acting Administrator

SUBJECT: Nonenforcement Policy with respect to service advisors and the Section 13(b)(10)(A) exemption under the FLSA

This Field Assistance Bulletin (FAB) provides guidance regarding the Wage and Hour Division's (WHD) nonenforcement policy with respect to service advisors. Until further notice, WHD will not assert that service advisors who are employed by a nonmanufacturing establishment primarily engaged in the business of selling automobiles, trucks, or farm implements to ultimate purchasers do not meet the overtime pay exemption under Section 13(b)(10)(A).

Multiple appellate courts have held that the exemption in Section 13(b)(10)(A) covering "any salesman ... primarily engaged in selling or servicing automobiles" applies to employees whose primary duty is to record the condition of a vehicle and prepare a report indicating the parts and mechanical work needed. See *Walton v. Greenbrier Ford, Inc.*, 370 F.3d 446 (4th Cir. 2004); *Brennan v. North Bros. Ford, Inc.*, No. 40344, 1975 WL 1074 (E.D. Mich. Apr. 17, 1975), *aff'd sub. nom. Dunlop v. North Bros. Ford, Inc.*, 529 F.2d 524 (6th Cir. 1976) (Table); *Brennan v. Deel Motors, Inc.*, 475 F.2d 1095 (5th Cir. 1973).¹ The Ninth Circuit, however, has held that such employees do not fall within the exemption. See *Navarro v. Encino Motorcars, LLC*, 845 F.3d 925 (9th Cir. 2017). The U.S. Supreme Court has agreed to review the Ninth Circuit's decision. See *Encino Motorcars, LLC v. Navarro*, No. 16-1362, 86 U.S.L.W. 3147 (U.S. Sept. 28, 2017).

WHD is currently reconsidering the policy regarding application of 13(b)(10)(A) to service advisors and anticipates the Supreme Court will decide the issue in *Encino*. Until the Supreme Court addresses this issue and WHD issues further guidance, WHD will not enforce the position that service advisors are not

¹ These employees are variously described as service writers, service advisors, service managers, or service salespersons.

salespersons within the definition of 29 C.F.R. § 779.372(c)(1).² Therefore, WHD will not assert that service advisors do not meet the overtime pay exemption under Section 13(b)(10)(A).

Questions about this FAB should be directed to the Division of Enforcement Policy and Procedures, Fair Labor Standards Act Branch, through regular channels.

² Under § 779.372(c)(1), a salesman as used in Section 13(b)(10)(A) is an employee who is employed for the purpose of and is primarily engaged in making sales or obtaining orders or contracts for sale of the automobiles, trucks, or farm implements that the establishment is primarily engaged in selling.