

"Service Writers" And Similar Workers: Good News/Bad News

December 27, 2011 by John E. Thompson

Various news items published last Friday afternoon intimated that a part of the 2012 federal omnibus appropriations law now exempts automobile-dealership service writers and similar employees* from the federal Fair Labor Standards Act's overtime requirements. Those reports appear to have been mistaken so far as we can tell, but the spending provision *does* contain at least some good news in this respect.

As we [noted previously](#), in April the U.S. Labor Department decided against acknowledging the FLSA Section 13(b)(10)(A) overtime-exempt status of dealership employees doing the typical work of service writers, service advisors, *etc.* DOL thus revived its previously-disavowed interpretation that "[e]mployees variously described as service manager, service writer, service advisor, or service salesman who are not themselves primarily engaged in the work of a salesman, partsman, or mechanic as described above *are not exempt* under section 13(b)(10)." 29 C.F.R. § 779.372(c)(4)(emphasis added).

Section 113 of Friday's "Department of Labor Appropriations Act, 2012" says, "None of the funds made available by this Act may be used by the Secretary [of Labor] to administer or enforce 29 CFR 779.372(c)(4)." This directive does not change the Section 13(b)(10)(A) exemption itself, but the provision does preclude DOL from devoting any of its 2012 funding to efforts to "administer or enforce" this service-writer interpretation.

However, Section 113 does not prevent current or former service writers or similar employees from pushing DOL's service-writer interpretation in support of their own FLSA overtime lawsuits. Whether and to what extent DOL officials might explore the limits of Section 113's "administer or enforce" language by offering background assistance to any such individuals remains to be seen. Employers facing lawsuits of this kind should certainly be alert for signs that DOL is doing so.

* At least one such report erroneously referred to "service technicians".