

Repair Shop Mechanics Found Exempt From Overtime



Mark Broth, Esquire

In an important decision for independent repair shops, the Seventh Circuit Court of Appeals has ruled that auto mechanics compensated on a flat-rate basis are exempt from federal overtime requirements.

The federal Fair Labor Standards Act (FLSA) generally requires employers to pay overtime to non-exempt employees who work more than 40 hours in a seven (7) day pay period. An FLSA exemption for auto, truck, trailer, aircraft, and farm implement dealers (but not motorcycle dealerships) eliminates the overtime requirement for persons employed as salespersons, parts employees, service writers, and mechanics. As this exemption is only applicable to businesses that are

primarily engaged in sales, it is not available to businesses whose primary function is vehicle repair.

However, under a separate FLSA exemption, employers in the retail or service industries do not have to pay overtime for employees who are compensated on a commission basis. In *Yi v. Sterling Collision Centers*, the Seventh Circuit Court of Appeals was asked to consider whether technicians compensated on a "flat rate" basis should be considered to be paid on a commission basis and exempt from overtime. In finding that flat rate is a form of commission payment, the Court noted that, when an employee is paid commissions, the employee receives a percentage of the sale price. The Court noted that flat-rate compensation systems, by which technicians receive a set rate for each booked hour, is just another version of a commission, in that the employee is ultimately receiving a percentage of the amount charged to the customer regardless of the actual number of hours worked.

Many non-dealer repair shops have long used flat-rate systems to

compensate their technicians, often without paying overtime. While the Department of Labor has not aggressively policed this practice, those shops have been at risk for claims of unpaid overtime. This decision should serve to reduce that risk. While the Seventh Circuit does not include New England (New Hampshire, Maine, Massachusetts, and Rhode Island are in the First Circuit), it is likely that the Department of Labor will be guided by the *Sterling Collision* decision throughout the country.

(Mark Broth is with the law firm of Devine Millimet, a Silver Association Partner. You may call 695-8582 to access Devine Millimet's free Employment Law Hotline.)



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