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Some workers exempt from overtime policy



LABOR & EMPLOYMENT

ROBERT
DOREN

The Federal Court of Appeals recently ruled that auto mechanics paid on a flat-rate system are exempt from the overtime requirements of the Fair Labor Standards Act, or FLSA.

The court found that the flat-rate system used in the auto-repair industry is akin to a commission system for FLSA purposes. This article will further explore the reasoning behind the exemption and how employers can utilize it in their workplace.

The FLSA

The FLSA sets the federal minimum-wage and overtime policies. The law requires that employees covered by the FLSA be paid one-and-a-half times their hourly wage for any hours worked in excess of 40 hours per week.

However, there are a number of exemptions to the overtime requirement, including one for retail and service employees.

The FLSA provides that an employer does not have to pay overtime to a retail or service employee if: (1) the employee's regular rate of pay exceeds one-and-one-half times the minimum hourly rate, and (2) more than half his or her compensation for a representative period (not less than one month) represents commissions on goods or services.

The flat-rate pay system

Generally, a flat-rate pay system in the auto-repair industry works as follows: The employer determines (usually based on industry standards) how long a certain repair will take to complete. This is known as the booked time. The booked time is then multiplied by the employee's hourly wage rate. (The customer pays a higher hourly "cost of labor.")

The mechanic assigned to the repair is then paid for the entire booked time, regardless of how long the repair took the mechanic to complete. Thus, the mechanic pockets the difference between the booked time and the amount of time actually worked on the project. Say, for example,

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that a windshield needs to be replaced. The booked time for the repair is two hours and the worker's hourly rate is \$15 an hour, for a total of \$30.

Under a flat-rate system, if the mechanic assigned to the job completes the repair in one hour, the mechanic is paid the entire \$30 and also pockets the extra \$15.

The courts have spoken . . .

In *Yi v. Sterling Collision Centers Inc.*, the Federal Circuit Court of Appeals for the 7th Circuit found that a flat-rate pay system is a commission system under the FLSA.

In this case, the mechanics worked in teams to complete repairs. Accordingly, the employer paid each team member based on the proportion of hours he had worked on the repair. Once the employer calculated the actual time worked on the repair, that proportion of the booked time was multiplied by the individual's hourly rate.

For example, two employees worked on a windshield booked for two hours, but it was completed in one. Employee A worked for 45 minutes, and employee B worked 15 minutes. A would be credited for 3/4 of the booked time, and B would be credited for 1/4 of the booked time. If the employer paid A \$15 an hour and B \$10 an hour, then A would be paid \$22.50 for the job, and B would be paid \$5. The court reasoned that because mechanics work in teams and contribute various levels of skill and ability, it was necessary for the employer to use a commission-based system.

What it means for employers

The court recognized a commission system in a context that is not ordinarily thought of as commission-based. Therefore, retail employers have been given an additional avenue to avoid overtime liability.

Among the retail establishments included in the regulations are auto dealers, shops, stores, restaurants/diners, hotels, cemeteries, coal yards, dance halls, embalming establishments, farm-implement dealers, funeral homes, massage establishments, public parking lots and garages, public baths, reducing establishments, taxidermists, theaters and undertakers.

While the Department of Labor's list is expansive, it is not complete, and the following industries and occupations may also be considered retail: security alarm sales and/or installation; cable, telephone, and/or DSL sales and/or installation; delivery; towing; tool sharpening and repair; home computer and technology servicing and/or training; and animal care and grooming.

Thus, employers in these or other retail industries or occupations may establish a pay system which is exempt from having to pay employees overtime. Retail employers who do not already utilize a "commissioned" system may want to consider restructuring their payment scheme, in order to qualify for the retail commission exemption and potentially avoid overtime liability.

However, employers must keep in mind that in order for an employee to qualify under the retail commission exemption, the employee must be in a recognized retail or service occupation, be paid at least one and a half times the current minimum wage and have more than half of the



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compensation from commissions on goods and services. The employer must also continue to maintain hourly records for such employees to prove that they receive one and a half times the minimum wage.

Robert Doren is a
managing partner
of Bond
Schoeneck & King
PLLC 's Buffalo
office and can be
reached at
rdoren@bsk.com.

Other Stories:

Conference to look at pro bono realities

BY JODI SOKOLOWSKI
BuffaloLaw Journal

A three-day conference this month hopes to bridge the gap between the idealistic benefits of pro bono work and the realities of doing it.

The conference, "Private Lawyers and the Public Interest: The Evolving Role of Pro Bono in the Legal Profession," will be held April 24-26 in downtown Buffalo and at the University at Buffalo Law School.

Called the first of its kind by conference organizers, the gathering of national and local experts will bring together scholars and practitioners to examine the opportunities and limitations of pro bono work, addressing both legal education and practice, exploring new approaches to providing legal help to those who can't afford it.

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Court denies appeal for teen who blamed Zoloft for crime

BY MARK SHERMAN
Associated Press

WASHINGTON— The Supreme Court refused Monday to review a 30-year prison sentence for a teen who was 12 when he killed his grandparents.

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FCC: Verizon didn't violate privacy laws

BY DIBYA SARKAR

Associated Press

WASHINGTON— Federal regulators determined Friday that Verizon Communications Inc. did not violate consumer-privacy laws when it tried to keep customers who wanted to cancel Verizon and switch to cable providers for voice services.

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Appeals court delays trial of 10 nurses who quit jobs

BY FRANK ELTMAN

Associated Press

GARDEN CITY — The trial of 10 nurses accused of endangering sick patients by quitting their jobs in a labor dispute was postponed Friday when an appeals court said it will consider a defense request to drop the charges.

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Hospital worker charged with stealing patient info

BY VERENA DOBNIK

Associated Press

NEW YORK— A man who worked in the admissions department at a prestigious Manhattan hospital has been charged with stealing and selling information on nearly 50,000 patients.

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Ex-husband must pay support for AID baby

BY MICHAEL VIRTANEN

Associated Press

ALBANY— An upstate New York man is the legal father and must pay child support for the baby his ex-wife conceived through artificial insemination with another man's sperm near the end of their marriage, an appeals court ruled Friday.

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Federal patent court won't rehear Dish Network appeal

ALVISO, Calif. (AP) — A federal appeals court in Washington, D.C., says it will not reconsider a victorious ruling it handed to TiVo Inc. in its patent dispute with Dish Network Corp.

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