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# FLSA Overtime Exemptions: SCOTUS takes its thumb off the scales of justice

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When it comes to exemptions from overtime under the Fair Labor Standards Act, courts have traditionally plopped a big thumb on the scale against employers: the exemptions have been construed "narrowly" in favor of a right to overtime. If the relevant language was ambiguous, or its application to the job in question debatable— as is often the case when courts struggle to apply laws and regulations crafted for a bygone industrial era to the modern workplace—no exemption would be found.

But that may be changing.

In ***Encino Motorcars, LLC v. Navarro***, the Supreme Court held 5-4 that "We reject this principle as a useful guidepost for interpreting the FLSA. . . . Because the FLSA gives no 'textual indication' that its exemptions should be construed narrowly, 'there is no reason to give [them] anything other than a fair (rather than a "narrow") interpretation.'" Justice Clarence Thomas' opinion noted that the FLSA contains "over two dozen" exemptions, that the exemptions "are as much a part of the FLSA's purpose as the overtime-pay requirement," and that "[w]e have no license to give the exemption[s] anything but a fair reading."

The dissenters, in an opinion written by Justice Ruth Bader Ginsburg, defended the rule of narrow construction, but their defense was, at best, anemic. The dissent noted that the Court has, in the past, held that the "particularity" of FLSA exemptions "preclude[s] their enlargement by implication." Fair enough. New exemptions should not be created by implication. But when the arguments for and against application of an exemption are equal, the court should not presume against application of the exemption.

The practical upshot of the *Encino Motorcars* decision is that the tiebreaker should be the burden of proof that applies in all civil cases—preponderance of the evidence (more than 50-50), with the burden on the plaintiff. Employers should not be subjected to a special rule in FLSA cases. If the arguments for and against exemption are equally strong or weak, then the employee challenging his or her "exempt" classification has failed to prove by a preponderance of the evidence that he or she was misclassified and is entitled to overtime pay.

At issue in *Encino Motorcars* was the "exempt" classification of service advisors at a car dealership. Section 213(b) of the FLSA exempts "any

salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles . . . ." Service advisors sell, but they sell mechanic service rather than cars, and they are not mechanics themselves. The advisors argued that they fall into a gap in 213(b): they are not "salesm[e]n . . . primarily engaged in selling . . . automobiles," and they are not "partsmen, or mechanic[s] primarily engaged in . . . servicing automobiles." In response, the dealer argued that they are plainly "salesm[e]n . . . primarily engaged in . . . servicing automobiles . . . ."

Both sides' arguments make sense. It is not crystal clear from the statutory language whether a "salesman of servicing" falls inside or outside the scope of the exemption. Applying the rule of narrow construction, the U.S. Court of Appeals for the **Ninth Circuit** had **found that the position was non-exempt**. But the Supreme Court majority rejected the rule of narrow construction in favor of a rule of "fair reading," and held that the tie was broken by the simple and indisputable fact that "[s]ervice advisors are integral to the servicing process."

A wide swath of FLSA case law is built on the principle that exemptions are to be narrowly construed. The era of the "Rule of Fair Reading" may augur substantial change in that case law.




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