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THE SKILLED MECHANIC EXEMPTION CAN SAVE THE AUTO EMPLOYER LOTS OF MONEY

By Mark E. Tabakman

A few months ago I defended a member of the New Jersey Gasoline C-Store Automotive Association (NJGCA) from an overtime claim filed by a mechanic who worked for him. The mechanic, who claimed he worked 50 hours per week, sought overtime. We defended on the basis of a not-too-well-known exemption from overtime under New Jersey law, called the “skilled mechanic exemption,” and we won. There are significant lessons to be learned from this case, lessons that affect almost any automobile employer who employs and utilizes mechanics in their business.

The Fair Labor Standards Act (the federal wage hour law) and the New Jersey State Wage and Hour law establish a general minimum hourly wage for those employees who are within its coverage and not exempt from its requirements. Except for child labor restrictions, these laws do not impose any flat limitation on the number of hours that may be worked, but rather seek to limit the hours by imposing additional pay (i.e., overtime).

Under federal and state law, a number of categories of employees are labeled as “exempt,” meaning they are not entitled to overtime, regardless of the number of hours they may work in a single week. The so-called “white-collar” exemptions specify that executive, administrative, professional, outside sales and computer employees are exempt from the minimum wage and overtime pay laws. In the automobile industry, under New Jersey law, there exists the skilled mechanic

exemption, which exempts from overtime workers who fall within its parameters.

First, the employer must either be a nonmanufacturing (of automobiles/trucks) employer primarily engaged in the selling of new/used cars or must be in the business of automobile or truck repair. Second, the employee must perform certain kinds of duties.

Under the New Jersey Administrative Code, a “skilled mechanic” is defined as:

1. A mechanic who is a specialist performing all repairs and who works on the total automobile and on various automobile makes and models; or
2. A mechanic who is responsible for work on certain parts of the vehicle, for example, transmission mechanic, brake mechanic, engine mechanic, air-conditioning mechanic.
 - a. The term “skilled mechanic” does not include: a mechanic or helper who works on limited sections of an automobile and performs minor tasks such as lubricating, tire changing, brake service or oil changing.

Note that a tire changer, oil changer and/or someone doing routine “repairs” or maintenance does not fall into the exemption. Significantly, just giving an employee the title or label of skilled mechanic does not make him or her one. The Department of Labor (or a court) will look at the actual duties performed and not at the title, glorified as it may be. It certainly helps if the

employee has certifications from recognized institutions that attest to the employee's higher level of expertise. It is especially important to understand that all employees are, under the law, *presumed* to receive overtime. It is the employer's burden to show that the employee falls into one of the legally recognized exemptions. In this vein, the "best" evidence is documentary evidence (e.g., certifications).

These certifications are extremely important because they are evidence of the employee's own efforts and accomplishments and he or she will be (obviously) unable to refute or even question. Indeed, in the case I handled, the employee was quite proud (almost boastful) of his certifications and skill as a mechanic, although he had no idea that this pride in his accomplishments would lead to the rejection of his overtime claim.

There also is a required compensation element to the exemption. Employees must be paid at least the minimum wage, now \$8.38 per hour. Moreover, and most importantly, the employee must also meet **both** of the following conditions: 1) the employee must receive a flat rate or an incentive rate; and, 2) the employee must be guaranteed a basic contractual rate (at least \$8.38 per hour) separate from and exclusive from the flat/incentive rate and this basic contractual rate must include payment of 1.5 times the hourly rate for all *actual* hours of work exceeding 40 in a work week.

The Takeaway

I recommend that employers in these industries (and there must be many of you in the NJGCA) look closely at the actual duties performed by your mechanics. If the duties fit within the parameters outlined above, then look at the mode of compensation for these employees. If the employees are not receiving the flat rate and the appropriate contractual rate, then you must ensure that this changes.

The most important recommendation is that, even if all of these things are true, you must prepare an agreement, a simple, one-pager, that incorporates the elements of the exemption, setting forth the pay rates, what those rates represent and a short blurb specifying the "skilled" nature of the employee's duties. Get the employee to sign off on the document, giving him or her one copy and save another copy in the employee's personnel file. Then, you secure better protection from a claim.

Remember—you cannot guarantee that an employee (or former employee) will not sue you, but following these guidelines and drafting the legally correct document will put you in the best position to triumph!

For more information about this alert, please contact Mark Tabakman at 973.994.7554 or mtabakman@foxrothschild.com or any other member of the firm's Labor & Employment Department.



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