

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
Wage and Hour Division
WASHINGTON, D.C. 20210

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This is in further reference to your letter regarding the application of section 13(b)(10) of the Fair Labor Standards Act to certain service employees of automobile dealerships.

Section 13(b)(10)(A) of the Act provides a complete overtime pay exemption for "any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers". This section provides an individual employee exemption to employees employed in the specified occupations. Our present position is that employees variously described as service writer, service advisor, service manager, or service salesman whose primary duty is to record the condition of a vehicle and write up a report indicating the parts and mechanical work needed for restoration may qualify for this exemption provided the majority of their sales in dollar volume (over 50%) is for non-warranty work. The exemption would not apply to any such service writer where the majority of his or her service sales is for warranty work.

This position represents a change from the position set forth in section 779.372(c)(4) of our Interpretative Bulletin, Part 779, where it is stated that service writers are not exempt under section 13(b)(10). We recognize, however, that service writers in certain circumstances can be properly regarded as engaged in selling activities. This would not be true in the case of warranty work, since the selling of the warranty is done by the vehicle salesman when the vehicle is sold, not by the service writer.

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The employee pay plan you present, if the employee meets the non-warranty sales test for exemption from section 7 of the Act, appears to meet the minimum wage requirements of section 6. You state that these employees are paid on a commission basis and that the pay period and commission computation period cover 1 month. You will multiply the commission payment by 12 and divide by 52 to get the amount of commission allocable to a single week. The commission for a single week is divided by the total number of hours worked in that week. If this figure is less than the minimum wage, the difference is made up at this point--thus assuring that the employee receives at least the statutory minimum for each hour worked during each week of the monthly pay period.

Sincerely,

/s/ Xavier M. Vela

Xavier M. Vela
Administrator