



WHD-OL-1967-0114

August 29, 1967

Name*

This is in reply to your letter of May 26, 1967, which concerns the application of the exemption provided in section 13(b)(10) of the amended Fair Labor Standards Act to certain employees employed by an automobile dealer.

Section 13(b)(10) of the amended act (effective date February 1, 1967) provides an exemption from only the overtime pay requirements for "any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trailers, trucks, farm implements, or aircraft if employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles to ultimate purchasers." In determining whether an employee is primarily engaged in the business of selling such vehicles, the term primarily shall be regarded as meaning more than 50 percent of the employee's worktime or the establishment's gross annual dollar volume as the case may be.

The term mechanic means any employee doing mechanical work such as get ready mechanics, automotive, truck, farm implement or aircraft mechanics, body or fender mechanics, used car reconditioning mechanics, and wrecker mechanics. The term mechanic does not include employees primarily performing such nonmechanical work as lubricating, cleaning, washing, painting, polishing and dispatching vehicles. Such activities are not the work of a mechanic except when performed by a mechanic as an incident to his primary duties. For example, a mechanic, as an incident to the replacement of wheel bearings, may also pack the bearings with grease while installing the new bearings. Such incidental work performed by a mechanic would not be counted as disqualifying in determining whether the section 13(b)(10) exemption is applicable. In any specific case the exempt or nonexempt status of an employee must be determined on the basis of whether the actual work performed meets the statutory requirements and the employee's title or class specification is of no significance in determining whether such requirements are met. We shall answer your questions in the order in which they were presented.

The employee when you designate as a lubrication man would not qualify for the exemption if more than 50 percent of his time is spent performing lubrication work such as greasing cars, changing oil and oil filters, packing wheel bearings and changing tires as this work is not the work of a mechanic under section 13(b)(10). On the other hand, if the employee spent more than 50 percent of his working time changing mufflers and tailpipes or performing other mechanical work he would be exempt under this section as a mechanic.

As stated above the term mechanic does not include an employee primarily engaged in painting vehicles so that if the employee you refer to as a body painter spends more than 50 percent of his time matching paint and painting vehicles he would not qualify for exemption under this section. If more than 50 percent of the employee's time is actually spent in performing the other duties

you enumerate such as the mechanical work of repairing or replacing body and trim parts in preparing damaged or worn vehicles for repaint jobs rather than in painting he would be exempt under this section as a mechanic.

Employees variously described as service manager, service writer, service advisor or service salesman who are not themselves primarily engaged in the work of a salesman, partsman or mechanic would not qualify for exemption under section 13(b)(10). The service writer you mention spends his time writing service and parts orders for lubrication, brake, muffler and tailpipe jobs and other minor and major repair jobs, and in some instances is directly responsible for selling automobiles. None of the service writer's duties are the work of a mechanic or partsman. The work of selling automobiles performed by this employee, in some instances, is the only work which itself is exempt within the terms of section 13(b)(10). Thus, this employee would not qualify for exemption under this section unless he were primarily engaged in the work of selling cars.

Should you have further questions about the application of the act you may find it more convenient to consult the WHPC Divisions' Regional Office at Room 331, 1371 Peachtree Street, N.W. Atlanta, Georgia 30309 or the Field Office at 505 New Federal Building, 500 Zack Street, Tampa, Florida 33602 where all possible advice and assistance will be available.

Sincerely yours,

Frederick J. Glasgow
Administrator

*Note: The actual name(s) was removed to protect privacy in accordance with 5 U.S.C. § 552(b)(7).