

FLSA-663

June 8, 1988

This is in further response to your letter concerning the application of section 13(b)(10)(A) of the Fair Labor Standards Act (FLSA), to an employee employed as a warranty service salesperson. We regret the delay in responding to your inquiry.

The Wage and Hour Division of the Department of Labor enforces FLSA, the Federal law of most general application concerning wages and hours of work. This law requires that all covered and nonexempt employees be paid not less than the minimum wage of \$3.35 an hour and not less than one and one-half times their regular rate of pay for all hours worked over 40 in a workweek.

Section 13(b)(10)(A) of FLSA provides an exemption from the overtime pay provisions of section 7 of FLSA for "... any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if he is employed by a non-manufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers...."

This exemption is discussed in more detail in sections 779.371 and 779.372 of Regulations, 29 CFR Part 779 (copy enclosed). As used in section 13(b)(10)(A), a salesman is an employee who is employed for the purpose of and is primarily engaged in making sales or obtaining orders or contracts for sale of the vehicles which the establishment is primarily engaged in selling. Work performed incidental to and in conjunction with the employee's own sales or solicitations, including incidental deliveries and collections, is regarded as being within the exemption.

You state that the service salesperson in question sells extended warranties to purchasers of automobiles. The employee is not engaged in selling automobiles, but is responsible for meeting with customers and closing sales on extended warranties for automobiles already sold by other service salespersons.

Therefore, it is our opinion that the employee you have in mind who is engaged in selling extended warranties does not qualify for overtime pay exemption contained in section 13(b)(10)(A) of FLSA since this person is not engaged in the actual sale of automobiles. Such an employee must be paid in accordance with the monetary provision of FLSA, including its overtime pay provisions.

We trust that the above is responsive to your inquiry.

Sincerely,

Paula V. Smith
Administrator