Supreme Courts Rejects "Narrow" Reading of Overtime Exemptions

By Paul Evelius

PAUL EVELIUS, ESQ.
pevelius@wcslaw.com
410-659-1302

In its April 2, 2018 decision in *Encino Motorcars v. Navarro*, the U.S. Supreme Court has strengthened the exemptions to federal overtime requirements, enhancing the primary employer's defense to claims brought under the Fair Labor Standards Act ("FLSA"). While the FLSA generally requires an employer to pay overtime wages when an employee works more than 40 hours in a week, it excludes, or "exempts," certain categories of employees from that entitlement if they meet salary and duties' tests.

In *Encino Motorcars*, the employees seeking overtime pay were "service advisors" - dealership employees whose jobs were to "soothe" customers into purchasing parts and services. Denying liability, the dealership asserted that service advisors fall with the FLSA's exemption for "any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles." A federal appeals court concluded that this exemption did not apply, reasoning in part that the FLSA's exemptions should be construed "narrowly." The Supreme Court firmly rejected that conclusion and rationale. It held that a natural reading of the relevant FLSA provision brings service advisors within the exemption. More importantly, the Court clarified that all of the FLSA's exemptions should be read fairly, not narrowly.

In other words, The Court concluded that "a service advisor is obviously a 'salesman'" and that "service advisors are also 'primarily engaged in … servicing automobiles.'" Although service advisors do not physically repair automobiles, the Court held that the language should not be so narrowly constrained.

This case should serve as a reminder that when companies have job titles and job descriptions which do not neatly fit within the statutory definitions of the FLSA, they should seek legal guidance to determine whether the employees are properly categorized and properly paid.

Forcing Employees to Practice the Onionhead Religion at Work, or any Religion for that Matter, is Unlawful

By Laura Rubenstein

LAURA RUBENSTEIN, ESQ.
lrubenstein@wcslaw.com
410-659-1347

United Health Programs of America, Inc. and its parent Cost Containment Group, Inc ("CCG") is a small wholesale company that provides discount medical plans. In 2007, CCG hired the CEO's aunt, who had developed a program called Onionhead, to help improve workplace culture and morale. CCG described Onionhead as a multi-purpose conflict resolution tool to "harness happiness." The aunt, employed by CCG as a consultant and fully supported by CCG's upper management, spent substantial time in the company's offices implementing the religious activities at the workplace and had a role in employee hiring and firing.

Employees of CCG alleged that Onionhead and Harnessing Happiness required them to do things like use candles instead of lights to prevent demons from entering the workplace; conduct chants and prayers in the workplace; and respond to emails relating to God, spirituality, demons, Satan, and divine destinies. Many employees were terminated either because they rejected Onionhead's beliefs or because of their own non-Onionhead religious beliefs, while other employees who followed

Onionhead were given a less harsh discipline. Victims said the religiously-infused atmosphere created a hostile work environment for them, and the jury unanimously agreed.

Three employees filed charges of discrimination in 2011 and 2012, the EEOC ultimately filed suit in 2014 on behalf of the three employees and an additional seven employees that it discovered during its investigation.

The jury awarded $5.1 million in compensatory and punitive damages to the 10 individuals. The majority of this award constituted punitive damages, which were awarded to punish the employer's behavior which it deemed especially harmful or egregious. EEOC Trial Attorney Charles Coleman, Jr., said, "this case featured a unique type of religious discrimination, in that the employer was pushing its religion on employees. Nonetheless, Title VII prohibits religious discrimination of this sort and makes what happened at CCG unlawful. Employees cannot be forced to participate in religious activities by their employer."

This case is one of the more extreme situations that illustrates a simple lesson – keep religion out of the workplace. Forcing religious practices on your workforce can violate Title VII of the Civil Rights act of 1964 which forbids employers from coercing employees to engage in religious practice at work or firing or taking other adverse action against those who oppose such practices. Religion, like politics, can be a delicate topic and result in arguments, misinformation and misunderstanding. It's often best not to discuss in the workplace.

Laura, aren't there exceptions for religious institutions and accommodations?

Yes! It's important to point out that it is not unlawful when a school, college, university, educational institution or institution of learning hires and employs employees of a particular religion if such school, college, university, or other educational institution or institution of learning is owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion. For example, a Catholic school can require that its teaching staff be Catholic.

In addition, like other forms of harassment, Title VII prohibits employers from disparate treatment based on an individual's religious beliefs. Unlike other prohibitions, Title VII requires an employer, once on notice that a religious accommodation is needed, to reasonably accommodate an employee whose sincerely held religious belief, practice, or observance conflicts with a work requirement, unless doing so would pose an undue hardship. Under Title VII, the undue hardship defense to providing religious accommodation requires a showing that the proposed accommodation in a particular case poses a "more than de minimis" cost or burden. Note that this is a lower standard for an employer to meet than undue hardship under the Americans with Disabilities Act (ADA) which is defined in that statute as "significant difficulty or expense."
