



Overtime Pay for Auto Mechanics: Yes or No? It Depends.

The Fair Labor Standards Act (FLSA) mandates that employers pay their employees a minimum wage and provide overtime pay for hours worked above 40 per week. However, there are dozens of exemptions to the general minimum wage and overtime pay requirements.

Employee classification is extremely important: an exempt employee is not entitled to overtime pay, whereas a non-exempt employee must receive overtime pay. Improper classification can lead to Department of Labor audits or wage and hour lawsuits.

The NFIB Legal Center often answers questions about whether auto mechanics are exempt from the FLSA's overtime pay requirements. Below are two common exemptions applicable to auto mechanics.

Automotive Dealer Exemption

One common exemption from the FLSA is for automotive dealers, including service advisors and mechanics. This exemption, found in [29 U.S.C. § 213\(b\)\(10\)\(A\)](#) reads:

(b) Maximum hour requirements

The provisions of [overtime pay requirements] shall not apply with respect to –

(10)(a) 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 exemption applies only to mechanics who work at automotive dealerships. The last part of the sentence makes this clear: “if he is employed by a nonmanufacturing establishment **primarily engaged in the business of selling such vehicles**[.] (emphasis added)”

Mechanics working at independent automotive repair shops would not be exempt from overtime pay under (b)(10)(A).

Commissioned Employees in Retail or Service Establishments

A separate overtime pay exemption, located at [29 U.S.C. § 207\(i\)](#), exempts from overtime pay any employees in retail or service establishments that meet certain conditions.

Under this exemption, a mechanic may be exempt from overtime pay if they:

1. work in a retail or service establishment,
2. are paid 1.5 times the required minimum wage, and
3. receive over half their compensation in a certain period (not less than one month) from commissions.

Retail or Service Establishment

A retail or service establishment is an entity where at least 75% of its annual dollar volume of sales of goods or services is not for resale.

What is resale?

- A. Repairing cars for other garages or used car dealerships are considered sales for resale.
- B. Repairing privately owned cars, whether paid for by insurance or the customer, are not sales for resale and are considered retail sales.

The establishment must also have a “retail concept,” meaning it sells goods or services to the general public, does not take part in the manufacturing process, or serves the everyday needs of the community.

Federal regulations suggest that an automotive repair shop would qualify as having a retail concept, based on it “provid[ing] the general public its repair services . . . for the comfort and convenience of such public in the course of its daily living.” [29 C.F.R. § 779.318\(a\)](#).

Commissions

In addition to working in a retail or service establishment and being paid 1.5 times the minimum wage, an employee must also receive at least half of their compensation from commissions in order to qualify as exempt from overtime pay under the retail or service establishment exemption.

For auto mechanics, whether half their compensation comes from commission depends on how the mechanic is paid.

- **Flat rate:** The mechanic is paid per job, typically a set percentage of what the facility charges a customer for a certain service.
- **Flag/Book rate:** The mechanic is paid based on the number of hours an industry guide, or the shop, determines it takes to complete a certain job, such as an oil change or tire alignment.
- **Hourly pay:** The mechanic is paid for each hour worked, regardless of how many jobs they complete.
- **Salary:** The mechanic is paid an annual amount, regardless of how many hours per week they work or the number of jobs completed.

An hourly pay or salary pay model would not satisfy the commissions prong of the exemption. Mechanics paid an hourly rate or by salary would not be exempt from overtime pay under the retail or service establishment exemption.

Less clear is whether flat rate or flag/book rate payment methods qualify as commission based.

The Department of Labor [operational handbook](#) on the retail or service establishment exemption states that auto mechanics paid by “comput[ing] an employee’s compensation on the basis of percentage of the charge to the customer” represents commissions, as does compensation for “a flat rate hour for the work he or she performs.” Sections 21h04(a)(d).

A Department of Labor [response letter](#) indicates that payment methods tied to the number of vehicles serviced (such as flat or flag rate payment), instead of clocked hours worked, qualifies as commissions.

While many courts seem to agree with these materials, a few have determined that a payment method must be proportional to the costs to customers for a given sale or service, in order for that payment method to qualify as commissions. For example, one court held that a flat rate method where employees earn a “predetermined amount for each task they complete and that this amount does not

fluctuate in tandem with the amount charged to customers” did not qualify as commissions under the retail or service establishment exemption.

Additional information on commissions can be found in the Department of Labor’s regulations on the subject, located at [29 C.F.R. §§ 779.410-421](#).

For more information on the Retail or Service Establishments exemption generally, see the Department of Labor [fact sheet](#) on the 207(i) exemption.

To summarize, whether an auto mechanic is exempt from overtime pay is a fact-intensive inquiry depending on the type of entity the mechanic works at, the sales or services provided by that entity, and how the mechanic is paid.

Small businesses are best served by working with a wage-and-hour attorney for employee classification. Misclassification can result in operational and financial difficulties.

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