

Applying Multiple Defenses, Federal Court Rejects Motorcycle Mechanic's Overtime Claim

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Identifying two separate bases for finding a motorcycle mechanic ineligible for overtime under the **FLSA**, Judge Federico A. Moreno granted summary judgment to the Ducati dealership where the mechanic worked, Ducati Miami. *Henriquez v. Total Bike, LLC*, 2013 U.S. Dist. LEXIS 179592 (S.D. Fla. Dec. 20, 2013).

In challenging his exempt status, Henriquez first alleged that Total Bike did not qualify as an automobile dealer for purposes of **29 U.S.C. § 213(b)(10)**, which exempts mechanics, partsmen and salesmen of qualifying establishments from overtime, because it sold only motorcycles which, Plaintiff urged, were not “automobiles” within the meaning of that statutory provision. Judge Moreno rejected this argument observing that “[b]oth automobiles and motorcycles are commonly and historically identified as private self-propelled vehicles that transport private persons/passengers, distinguishing them here serves little purpose.”

Plaintiff also challenged Ducati Miami’s assertion that he was compensated in compliance with the FLSA pursuant to [29 U.S.C. § 207\(i\)](#). Conceding that he made more time-and-one-half the minimum wage and that Ducati Miami was a retail establishment (the first two prongs of the 7(i) defense), Plaintiff alleged that the payments he received were not *bona fide* commissions and thus the requirement that more than 50% of his income come from commissions was not met. Judge Moreno also rejected this argument, citing the 7(i) rulings in two earlier appellate opinions regarding automotive repair compensation practices – *Yi v. Sterling Collision Centers, Inc.*, 480 F.3d 505 (7th Cir. 2007) and *Klinedinst. v. Swift Investments, Inc.*, 260 F.3d 1251 (11th Cir. 2001) – finding that Defendant compensated Plaintiff based on the “total number of billed hours for the job [multiplied] by the member’s commission rate, referred to in the industry as the mechanic’s flat rate’ . . . which was the equivalent of paying Plaintiff approximately 43% of the labor component of the price of the service or repair charged to the customer.” These payments qualified as *bona fide* commissions because they were “based on a percentage of fees charged to the customers.”

Even where there are multiple defenses from the overtime requirement of the FLSA, employees continue to bring expensive challenges. Employers must be mindful of compliance if they hope to successfully defeat those challenges.

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