

# Commissioned finance managers are still exempt from overtime

Last year's overtime regulations prompted many retail-industry employers to review their compensation structures. But, as the case below shows, if you're a retailer and have commissioned employees on staff, it's likely that those employees still aren't eligible for overtime pay.

Why? Such employees are covered by a long-standing FLSA rule (section 207(i)), which says that retail- and service-industry employees are exempt from overtime pay if they earn more than half of their compensation from commissions (and if their regular rate of pay is at least 1.5 times the minimum wage).

**Recent case:** Several finance and insurance (F&I) managers at three Oregon and Washington auto dealerships sued for overtime pay. Their incomes mostly came from commissions paid when they persuaded car buyers to buy extended warranties and insurance.

A lower court sided with the managers. But the 9th Circuit Court of Appeals ruled for the dealerships, citing the FLSA section that says commissioned employees at retail and service establishments aren't eligible for overtime. (Gieg, et al., v. DRR, et al., No. 03-35619, et al., 9th Cir., 2005)

## Complying with the OT rules

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