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Q&A: Epstein Becker's Paul DeCamp on Supreme Court's FLSA ruling

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(Reuters) - A U.S. Supreme Court decision on Monday about whether workers at car dealerships known as a service advisers qualify for an exemption to overtime requirements under federal wage-and-hour law involved a small category of workers, but the court's ruling that the Fair Labor Standards Act's exemptions should not be construed narrowly could benefit employers in virtually every industry, said Paul DeCamp, co-chair of Epstein Becker & Green's national wage-and-hour practice.

In its 5-4 ruling in Encino Motorcars v. Navarro, the high court reversed the 9th U.S. Circuit Court of Appeals and ruled that service advisers are covered by an overtime exemption for salesmen, mechanics and partsmen engaged in selling or servicing cars in the FLSA.

The 9th Circuit in its 2017 ruling had cited longstanding precedent calling on FLSA exemptions to be narrowly construed. But the Supreme Court rejected that principle, saying it was based on a "flawed premise" about the FLSA being focused on remedying wage-and-hour violations above anything else.

Writing for the majority, Justice Clarence Thomas noted the FLSA has many exemptions that are as much a part of the law as its overtime requirements. "We thus have no license to give the exemption anything but a fair reading," Thomas wrote.

DeCamp, former head of the U.S. Labor Department's Wage and Hour Division in the George W. Bush administration, spoke to Reuters about the ruling on Tuesday, saying it could have ripple effects in other parts of federal wage-and-hour litigation.

Questions and answers have been edited for length and clarity.

REUTERS: Justice Ruth Bader Ginsburg said in dissent the majority disposed of more than 50 years of precedent in one paragraph. How important is the holding that scrapped the principle of construing FLSA exemptions narrowly?

DECAMP: This is a very big deal. When Justice Ginsburg noted in her dissent that the case law goes back half a century, she's actually understating it. This principle of narrowly construing FLSA exemptions goes back to 1945, when the court decided A.H. Phillips Inc v. Walling. By the time we got to the 1950s and 1960s, the court was accepting it as a well-settled principle.

REUTERS: And this had been something that all circuit courts accepted without any disagreement?

DECAMP: I wouldn't say there had been disagreements so much as philosophical objections to the principle of narrow construction. For example, there is some case law in the 7th Circuit suggesting the Supreme Court really intended the narrow construction principle to be a tie-breaker more than anything else. So if a case was exactly in equipoise, then you

might rule in favor of the worker as a result of this narrow construction principle. Whereas most other courts viewed this rule as a much stronger presumption - a heavy judicial thumb on the scale, as it were.

REUTERS: How do you think taking that "judicial thumb" off the scale will affect FLSA litigation?

DECAMP: I don't think that people are going to sue or not sue for overtime because of the ruling yesterday. But I do think we'll see a different type of playing field for the arguments about how exemptions should be construed. The way it used to be, virtually all of the advantages in FLSA litigation lay with the plaintiff side because of this strong presumption of nonexempt status. Then that drove other things. For example, the 6th Circuit uses a clear and convincing evidence standard for proving exempt status driven by the narrow construction principle. Now that principle is gone and the courts have been instructed by the Supreme Court to read the exemptions fairly and not narrowly. The courts will also have to consider whether some other rules, perhaps even for conditional certification, need to be revisited.

REUTERS: How would the rules for certification be affected by a change in how courts interpret exemptions?

DECAMP: In a lot of aspects of FLSA litigation, courts ground themselves in the principle that exemptions are to be narrowly construed when they aren't quite sure what to do. For example, at the conditional certification stage, courts often refuse to consider evidence that members of the potential opt-in class actually are performing exempt duties. The Encino Motorcars ruling might cause courts to apply a more exacting standard or at least be more willing to entertain evidence of exempt activity.

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