

Wage and Hour Update

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Narrow Construction of FLSA Exemptions:

Encino Motorcars, LLC v. Navarro, 138 S.Ct. 1134 (2018)

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5-4 decision

Majority (J. Thomas)

- ▶ No 'textual indication'
- ▶ Flawed premise: FLSA pursues remedial purpose at all costs
- ▶ Fair reading

Dissent (J. Ginsburg)

- ▶ Overturns 70-year old precedent
- ▶ Court "rejects" without acknowledging

Practical effect?

2018 Amendment to FLSA - Tipped Employees



H.R. 165 Spending Bill – March 23, 2018

- ▶ Resolved circuit split and court disagreement with DOL regulations
- ▶ Tip-credit, Tip-pool requirements
- ▶ Amendment: Even employers that *do not* take a “tip-credit” —may not require its employees to share their tips with the employer, including its managers or supervisors.
- ▶ But for employers that pay the full minimum wage, forced tip-sharing with *non-tipped employees* is permissible so long as those individuals are not supervisors or managers.

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