

# SCOTUS Ruling Reinforces FLSA Overtime Requirements and Exemptions

03.02.2023

In its most recent employment decision, the Supreme Court rejected an employer's efforts to avoid paying overtime to a highly-compensated oil rig employee, finding that the employee's daily pay rate did not satisfy the "salary basis test" required by the Fair Labor Standards Act (FLSA).

The February 22, 2023 ruling serves as a stark reminder to employers that high compensation does not automatically make an employee salaried, while also providing a detailed analysis on the regulatory framework of the FLSA. The decision could have significant implications for employers with highly compensated employees paid on a daily or hourly basis in that the employees' job position and the compensation arrangement must meet the FLSA statutory and regulatory requirements for employees to be exempt from overtime requirements.

## Background of the case

Helix Energy Solutions Group (Helix) employed Michael Hewitt on its offshore oil rig from 2014-2017. Hewitt worked intervals of 28 days on and 28 days off. Hewitt typically worked 12 hours a day, seven days a week. Helix paid Hewitt once every two weeks at a *daily rate*, meaning that Hewitt's paycheck amounted to the daily rate multiplied by the number of days he worked during that two week schedule. Hewitt typically earned over \$200,000 annually pursuant to this arrangement.

Hewitt believed that this arrangement entitled him to overtime pay under the FLSA. Helix, however, insisted that Hewitt was exempt from the FLSA's overtime standards because he was a bona fide executive employee. Helix generally acknowledged that the only question was whether Hewitt was paid on a "salary basis" pursuant to the "main salary-basis provision" set out in 29 C.F.R. § 541.602(a). § 602(a) provides that an employee is paid on a "salary basis":

1. "If the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed" and
2. "Subject to [certain exceptions], an exempt employee must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked."

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Helix argued that Hewitt was paid on a salary basis under § 602(a) because Helix paid Hewitt on a weekly or less frequent basis (Helix paid Hewitt once every two weeks), and Hewitt's paychecks always contained the minimum pay required for a salary under then-FLSA regulations. However, Hewitt was not paid the full salary for any week in which he performed work. He was only paid for days worked within a workweek.

### **The Supreme Court's reasoning**

The Supreme Court embarked on a thorough analysis of FLSA regulations as well as the dictionary meaning of "salary" to find that Hewitt was not paid on a salary basis under § 602(a). Specifically, it emphasized the language in § 602(a) requiring that an exempt employee receive the full salary in a workweek "without regard to the number of days or hours worked." By paying Hewitt at a fixed rate multiplied by the number of days he worked, Hewitt was paid with regard to the number of days he worked.

The Supreme Court further denied Helix's frequency-based interpretation of § 602(a), referring to other FLSA regulations for the proposition that the basis of an employee's pay means the methodology and rate used to determine how the employee is paid, not how often the employee is paid.

Helix attempted to save its position by appealing to the policy concerns should Hewitt be entitled to overtime, such as windfalls and significantly increased industry costs. The Court, citing Congress's clear intent to allow highly compensated employees to receive overtime, as well as the inevitable consequences of non-highly compensated employees being unable to receive overtime, overruled this, as well.

### **What does this mean for employers?**

The primary takeaway for employers is that employees are not exempt from the FLSA's overtime requirements simply because they are highly compensated. They must meet all compensation and duties requirements under the FLSA to be exempt. Even employees compensated at or above the FLSA's "highly compensated executive" amount (currently \$107,432 per year) must meet all of the requirements of the FLSA exemptions, including at least a weekly salary, in order to avoid overtime requirements. Daily pay rates will not suffice.

The case is titled: *Helix Energy Sols. Grp., Inc. v. Hewitt*

Please contact a member of the Brooks Pierce Labor and Employment team for assistance on any of these issues.

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