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US Supreme Court: Highly Compensated Oilfield Workers Entitled to Overtime

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In a closely watched case,[1] the United States Supreme Court held today that a tool pusher in the oil & gas industry, who was paid a day rate of at least $963.00 per day, was ***not*** exempt from the overtime provisions of the Fair Labor Standards Act ("FLSA"). While the highly paid tool pusher was otherwise exempt under the FLSA's Highly Compensated Exemption (the "HCE rule")[2] based upon his duties and annual compensation, he was not paid a "salary" as defined by the U.S. Department of Labor ("DOL") regulations. Further, his daily rate of pay did not comply with the applicable "reasonable relationship test." Accordingly, he was due overtime pay. The decision can be accessed ***here***.

The DOL's general rule, 29 C.F.R. § 541.602(a), for executive, professional and administrative exemptions provides that an employee may be exempt from receiving overtime pay if the employee (1) is paid on a salary basis, (2) receives a certain minimum salary amount, and (3) performs duties that meet the duties test of one of the exemptions. To be paid on a salary basis, an employee must "regularly receive[] 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." *Id.*

Writing for the 6-3 majority, Justice Elena Kagan concluded that the way Hewitt was paid—"so that he receives a certain amount if he works one day in a week, twice as much for two days, three times as much for three, and so on"—did not comply with the salary basis prong of the overtime exemption because "[t]hat section applies solely to employees paid by the week (or longer)." *Hewitt* at 8. Accordingly, he could not be properly classified as exempt from overtime.

Justice Kavanaugh, in a dissenting opinion, argued that Hewitt met the "salaried" requirement since his daily "predetermined" rate ($963 per day) was higher than the weekly minimum required by the regulations, and that amount was not subject to reduction because of variations in the quality or quantity of work performed. "Hewitt was guaranteed $963 for any day he worked. Therefore, he was guaranteed at least $963 for any week that he worked." *Hewitt*, Kavanaugh dissent, at 3. Justice Kavanaugh concluded his dissent, which was joined by Justice Alito, by questioning the DOL's regulations on salary, and asserting that those regulations may be inconsistent with the FLSA.

The DOL regulations provide an alternative for otherwise exempt employees to be paid on a hybrid day rate/guaranteed salary method, but the regulation has very specific requirements. 29 C.F.R. § 541.604(b) states that an employee whose pay is "computed on a daily basis" must meet the following criteria to satisfy the salary basis test:

An exempt employee's earnings may be computed on an hourly, a daily or a shift basis, without losing the exemption or violating the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly required amount paid on a salary basis regardless of the number of hours, days or shifts worked, and a reasonable relationship exists between the guaranteed amount and the amount actually earned.[3]

Helix argued that this "reasonable relationship" test was inapplicable to employees who are classified as exempt under the HCE rule. The Court rejected Helix's argument that the HCE rule was a stand-alone rule and that the "reasonable relationship" test was inapplicable to a highly compensated employee. Dispelling the notion that there was a unique definition or interpretation of "salary" for highly compensated employees, the Court stated: "There is of course a difference between the HCE and general rules; it just has nothing to do with the salary-basis requirement." *Hewitt* at 16. Instead, that difference, the Court noted, involves the duties standard, which is more flexible in the HCE rule.

Simply stated, to pay exempt employees a day rate, Helix was required to meet the reasonable relationship test, and the manner of compensation paid to Hewitt did not meet this test. The Court found that Hewitt was not guaranteed at least a minimum weekly amount, regardless of hours, days or shifts worked, and that a reasonable relationship did not exist between the guaranteed amount (e.g., one day's pay) and the amount actually earned (which ranged based on the number of days worked in a workweek).

In *Hewitt*, the Court confirmed that employees who are exempt under the HCE rule must either (1) be paid in accordance with the salary basis requirement in Section 602(a), or (2) be paid a daily rate that complies with the requirements of Section 604(b), including the reasonable relationship test.

Specifically rejecting the policy and operational consequences of the decision, or the "windfalls" for high earners, the Court concluded that even the most formidable policy arguments cannot overcome what the Court viewed as a clear textual directive. Indeed, the decision has a significant impact on FLSA collective action litigation in the oil and gas industry and beyond.

Those choosing the "hybrid" guaranteed salary/day rate method of compensation set out in Section 541.604(b) must be particularly thoughtful in communicating and documenting the employee's "guaranteed salary" and then monitoring to assure continued compliance with the reasonable relationship test.

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1. *Helix Energy Solutions Group, Inc., et al. v. Hewitt*, No. 21-984, (Feb. 22, 2023).

2. The Highly Compensated Exemption states that an employee with a total annual compensation of at least $107,432 (as of January 1, 2020) who customarily and regularly performs one or more exempt duties of an executive, administrative or professional employee is exempt from overtime. 29 C.F.R. § 541.601(a). The regulation additionally states that total annual compensation must include at least a certain minimum amount per week (currently $684) "paid on a salary basis."

3. The Department of Labor suggests that the reasonable relationship test is satisfied if the additional amounts do not exceed approximately 50% of the guaranteed weekly minimum. Dep't of Labor, Opinion Letter FLSA2018-25 (Nov. 8, 2018).