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U.S. Supreme Court Holds Employees Paid on a Day-Rate Basis Entitled to Overtime

The United States Supreme Court recently held that paying an employee on a “day-rate” basis, even when that day rate was significantly higher than the applicable weekly threshold, does not satisfy the salary-basis test under the white-collar exemptions to the Fair Labor Standards Act (FLSA). This case has the potential to significantly impact energy sector employers and others who pay employees who might otherwise be exempt on a “day-rate” basis. The Court’s ruling in [Helix Energy Solutions Group, Inc., et al. v. Hewitt](#) is of significant importance because even highly compensated employees may be eligible to receive overtime payments if their compensation structure solely rests on a day rate.

The FLSA’s “White-Collar” Exemptions

As a general rule, the FLSA requires employers to pay covered employees overtime pay at no less than one-and-one-half times their regular rate of pay for all hours worked over 40 in a workweek. The FLSA exempts certain employees from overtime pay provided that certain criteria are met. Among those exemptions are the executive, administrative, or professional employee exemptions, commonly referred to as the “white-collar” exemptions.

To qualify for these exemptions, three requirements must be met: (1) the employee must be paid on a “salary basis”; (2) the employee’s salary must be at least \$684 per week; and (3) the employee must perform the required duties associated with the exemption. In order to meet the salary-basis test, an employee must regularly receive a predetermined amount of compensation each pay period on a weekly, or less frequent, basis that is not reduced because of variations in the quality or quantity of the employee’s work. See 29 C.F.R. § 541.602(a) (“Section 602(a)").

The Lawsuit

Michael Hewitt worked as a tool-pusher and supervisor on an offshore oil rig from 2014 to 2017. He regularly worked 84-hour weeks for 28 days at a time. He was paid between \$963 and \$1,341 per day and his annual earnings exceeded \$200,000—well above the \$455 per week salary threshold required for the white-collar exemptions at that time (it is now \$684 per week). Believing that Hewitt’s salary and duties squarely fell within the requirements of the bona fide executive exemption, the company, Helix Energy Solutions Group, did not pay him for any overtime.

Hewitt sued the company, seeking to recover unpaid overtime. The district court in Texas originally rejected his argument and stated he was properly classified as exempt. Hewitt appealed this ruling to the Fifth Circuit Court of Appeals, which sided with him. The Fifth Circuit reasoned that the salary-basis test requires an employee to be paid the same amount of salary on a weekly basis or less frequently, irrespective of the days worked in that workweek. Because Hewitt’s pay varied by the number of days worked in a workweek, the Fifth Circuit concluded that it did not meet the regulatory definition of a “salary” for purposes of the white-collar exemptions.

The Supreme Court’s Decision

In a 6–3 decision authored by Justice Kagan, the U.S. Supreme Court upheld the Fifth Circuit’s ruling, finding that the employee’s pay structure did not meet the “salary basis” test of the white-collar exemptions. This holding entitles Hewitt to seek overtime for any hours worked in excess of 40 in any workweek.

The Court held that Section 602(a) “embodies the standard meaning of the word ‘salary,’” and “demand[s] that an employee receive a fixed amount for a week no matter how many days he has worked[.]” The Court further held that “nothing in that description fits a daily-rate worker, who by definition is paid for each day he works and no others.” In other words, “[a] daily-rate worker’s weekly pay is always a function of how many days he has labored. It can be calculated only by counting those days once the week is over—not, as § 602 requires, by ignoring that number and paying a predetermined amount.”

The Court rejected the company's argument that, as long as an employee was paid on a weekly (or less frequent) basis according to some predetermined rate that exceeded the required weekly amount, the salary basis was met.

Key Takeaways

While this case has significant implications for all employers, those in the energy industry are likely to be the most impacted by this ruling in light of that industry's regular use of day rates instead of salary rates to compensate workers, including highly paid employees on oil-field or offshore jobs.

Any employer who pays its employees via a day rate but does not pay them for overtime hours should carefully review its pay practices and exempt classifications. For more information, please contact the authors of this article or any attorney in Frost Brown Todd's [Labor & Employment Practice](#) or [Energy Industry Team](#).

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