

## Helix Supreme Court Decision Finds That Daily Pay Rate Employee Making Six Figure Income Can Collect Overtime Under FLSA



# Employment

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On February 22, 2023, the Supreme Court of the United States issued a decision in *Helix Energy Solutions Group, Inc. v. Hewitt* finding that a daily-rate worker who earned over \$200,000 annually was not exempt from the Fair Labor Standards Act's ("FLSA") overtime requirements. The Court held that under the applicable regulation, an employee is paid on a "salary basis" if the employee receives a fixed amount per week no matter how many days he has worked. This case clarifies the definition of the "salary basis" test, particularly for highly compensated employees paid on a daily basis and provides important guidance for employers with high-earning employees.

In *Helix*, the employee, who worked as an oil rig supervisor, filed an action against his employer seeking overtime pay under the FLSA. The employee was paid on a daily rate, working about 84 hours per week, and earned over \$200,000.00 annually. The employer argued that the employee was exempt from the overtime requirement of the FLSA because he qualified as "a bona fide executive" under 29 U. S. C. §213(a)(1). In this case, the exemption for executives would apply if the employee was compensated on a "salary basis." The trial court agreed with the employer, finding the employee was paid on a salary basis and exempt. However, the Court of Appeals for the Fifth Circuit reversed, finding that the employee was not paid on a salary basis and therefore, was not exempt from the

FLSA overtime requirement. SCOTUS agreed with the Court of Appeals, holding that a daily-rate worker who earned over \$200,000 annually was not exempt from the FLSA overtime requirements, where the employee had not been paid the minimum weekly salary requirement.

Under the FLSA, employers are required to pay their employees a minimum wage and overtime pay for hours worked in excess of 40 hours per week, unless the employee is exempt from these requirements. One exemption under the FLSA is for employees who meet the salary basis test, which means they are paid a predetermined and fixed weekly salary that is not subject to reduction based on variations in the quality or quantity of work performed. To qualify for the exemption, an employee must meet both the salary basis test and the duties test, which determines whether the employee's job duties are administrative, executive, or professional. The salary threshold for the exemption is currently \$684 per week, or \$35,568 per year under 29 CFR §§ 541.100 and 541.601(b)(1).

The FLSA regulations also exempt workers known as highly compensated employees (HCEs). To qualify as an HCE, an employee must earn at least \$107,432 annually and “the employee customarily and regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative[,] or professional employee” under 29 CFR § 541.601(a)(1).

The final regulation at issue was 29 CFR § 541.604, which deals with “Minimum guarantee[s] plus extras” (Section 604). Section 604 provides in relevant part:

An employer may provide an exempt employee with additional compensation 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. Thus, for example, an exempt employee guaranteed at least \$684 each week paid on a salary basis may also receive additional compensation of a one percent commission on sales.

Section 604 goes on to say that such compensation may be “computed on an hourly, a daily[,] or a shift basis.” (id., subd. (b).)

The issue before the Supreme Court was whether the HCE exemption applied to employees who were paid on a daily basis. The Court held that the HCE exemption can apply to employees paid on a daily basis, but only if the employees receive at least the minimum weekly salary amount on a salary or fee basis, which the employee in this case did not.

This means that the HCE salary threshold applies to employees who are paid on a daily basis, but their daily pay can only count toward meeting the salary threshold if they are guaranteed a minimum salary or fee amount each week. The Court reasoned that this interpretation is consistent with the purpose of the HCE exemption, which is to provide a streamlined exemption for highly compensated employees who perform duties that are similar to those of other exempt employees.

The *Helix* decision affects employers who have classified non-salaried high earners as exempt HCEs. To comply with the FLSA, employers in this paradigm should review employees classified as HCEs to determine whether the employer is in compliance with the FLSA. Failing to comply with the FLSA will result in liability for overtime wages and other damages for employers.

If you have any questions about how these new cases affect your liability as an employer, please contact [Amy Habib Rittling](#) (716.853.5100 x1276), [Robert Riegel, Jr.](#) (904.660.0020 x1550), [Brittany Mills](#)(904.660.0020 x1547), or any other member of our [Employment Practice](#) team.

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