

Supreme Court Holds Highly Paid Employee Not Overtime Exempt Due to Daily Rate Pay

Article By:

Andrew P. Burnside

Steven F. Pockrass

Zachary V. Zagger

On February 22, 2023, the Supreme Court of the United States ruled that a former oil rig employee who was paid a daily rate that totaled more than \$200,000 annually is entitled to overtime pay under the Fair Labor Standards Act (FLSA).

In the 6–3 decision in [*Helix Energy Solutions Group, Inc. v. Hewitt*](#), the high court rejected arguments that the former employee was properly classified as exempt from overtime requirements under the FLSA because of his managerial duties and relatively high compensation, instead focusing on whether he was paid on a “salary basis” under the applicable regulations issued by the U.S. Department of Labor (DOL). In a dissenting opinion, Justice Brett Kavanaugh suggested, as he did [during oral arguments](#), that the DOL regulations are inconsistent with the FLSA.

The decision in the closely watched case is important for employers because it underscores the significance of the salary basis requirement contained in the DOL regulations. With some limited exceptions, the regulations contain a “salary basis” requirement, a salary threshold requirement, and a job duties requirement—all of which must be met to treat an employee as exempt from the FLSA’s overtime requirements. The ruling raises particular concern for the oil and gas industry and the way that it recruits, staffs, and compensates employees for lengthy workweeks for work performed on oil rigs and at remote oil and gas work sites.

Background

An oil rig “toolpusher,” an oil field term for a rig or worksite supervisor, filed suit against his former employer Helix Energy Solutions Group, alleging that he was improperly classified as an exempt employee and therefore not entitled to overtime pay. The toolpusher worked twenty-eight day “hitches” on an offshore oil rig where he would work daily twelve-hour shifts, often seven days per week, totaling eighty-four hours in one week. During his “hitches,” the toolpusher was paid on a daily-rate basis, without overtime compensation, earning between \$963 and \$1,341 per day, which worked out to more than \$200,000 annually. If the toolpusher worked a single day in a workweek, he would

still earn at least \$963 for that week.

Helix had argued that the toolpusher fell under the DOL's exemption for highly compensated employees found in 29 C.F.R. §541.601. At the time of the toolpusher's employment, the highly compensated employee (HCE) exemption applied to employees whose primary duties included performing office or non-manual work; who customarily and regularly performed at least one duty of an exempt executive, administrative, or professional employee; who were paid at least \$455 per week on a "salary or fee basis"; and who earned at least \$100,000 annually. (Those respective threshold salary and total compensation amounts have since been increased to \$684 per week and \$107,432 annually.)

Salary Basis

In its decision, the high court stated that the "critical question" in this case was whether the toolpusher was paid on a "salary basis" as determined under requirements in the DOL regulation found in 29 C.F.R. §541.602(a). That regulation states that an employee is paid on a "salary basis" when 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."

Helix had argued that in any week in which the employee performed any work, his minimum guaranteed amount was well above the \$455 per week threshold, so his compensation met the functional requirements of being paid on a salary basis.

In rejecting this argument, the court stated that §541.602(a) "applies solely to employees paid by the week (or longer)" and the test is "not met when an employer pays an employee by the day" as Helix paid the toolpusher. Although another DOL regulation, 29 C. F.R. §541.604(b), allows an employee's earnings to be computed on an hourly, daily, or shift basis without violating the salary basis requirement, that regulation states that the arrangement must include a guarantee of at least the minimum weekly required amount paid on a salary basis and that there be a reasonable relationship between the guaranteed amount and the amount actually earned.

Writing for the court, Justice Elena Kagan stated that "[i]n demanding that an employee receive a fixed amount for a week no matter how many days he has worked, §602(a) embodies the standard meaning of the word 'salary' which generally refers to a 'steady and predictable stream of pay.'" Justice Kagan stated that even a "high-earning employee" who is compensated on a "daily rate—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" is "not paid on a salary basis, and thus entitled to overtime pay."

Dissenting Opinions

In dissent, Justice Neil Gorsuch, pointed out that the initial focus of the case was on the interplay between the HCE exemption and §541.604(b), which contains the reasonable relationship requirement, rather than whether the toolpusher was paid on a "salary basis" under §602(a). Gorsuch argued that the case should therefore be dismissed "as improvidently granted."

Justice Kavanaugh argued in a separate dissenting opinion, joined by Justice Alito, that an employee who "performed executive duties" and was paid well beyond the HCE thresholds should "not legally [be] entitled to overtime pay under the regulations." Kavanaugh further argued that the DOL regulations, which focus not only on an employee's job duties and how much an employee is paid, but also on "how an employee is paid," are inconsistent with the FLSA and would not stand scrutiny

if raised in another case.

Key Takeaways

The Supreme Court held that an employee whose day rate far exceeded the minimum weekly salary threshold, but who was not paid on a “salary basis” as defined by the FLSA regulations, was entitled to overtime pay. This decision could open the door to more claims from highly paid employees over whether they are properly classified as exempt. Still, the issue of whether the regulations are inconsistent with the FLSA remains open.

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