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Reminder: High-Earning Exempt Professionals Must Be Paid a "True Salary - A Steady Stream of Pay"

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On 22 February 2023, the U.S. Supreme Court ruled that a high-earning professional must be paid on a salary basis to be exempt from overtime rules.

Under the Fair Labor Standards Act (FLSA), an employee is exempt from overtime requirements if the employee meets three distinct tests: (1) the employee must earn a predetermined and fixed salary, (2) the employee must earn a present salary minimum, and (3) the employee's job duties must meet certain criteria. In a 6–3 decision for *Helix Energy Solutions Group v. Hewitt,*[1] the Supreme Court held that a high-earning professional is not properly classified as a "highly compensated employee" exempt from the FLSA's overtime pay guarantee when they are paid a daily rather than fixed weekly rate.

Michael Hewitt (Hewitt) worked for Helix Energy Solutions Group, Inc. (Helix) from 2014 to 2017 on an offshore oil rig, generally working 84 hours a week while on the vessel. Helix paid Hewitt on a daily-rate basis—ranging from US$963 to US$1,341 per day—with no overtime compensation. Helix calculated Hewitt's paychecks by multiplying his daily rate by the number of days he worked in a pay period, which earned Hewitt over US$200,000 annually.

Hewitt initiated a lawsuit against Helix in the Southern District of Texas, seeking overtime pay under the FLSA. The district court ruled in favor of Helix on summary judgment, finding that Hewitt was paid on a salary basis because his daily rate was above the minimum weekly requirement and therefore guaranteed that he would exceed the salary theshold (then US$455) in any week in which he performed work. On appeal, the majority of a divided U.S. Court of Appeals for the Fifth Circuit sitting *en banc* disagreed, holding that Hewitt was not paid on a salary basis because Hewitt's daily rate did not satisfy the salary basis test.[2]

Justice Elena Kagan delivered the opinion for the majority, pinpointing that the question is "whether a high-earning employee is compensated on a 'salary basis' when his paycheck is based solely 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."[3] The majority held that the fluctuation in weekly pay meant that the employee is not paid on a salary basis and, therefore, is entitled to overtime pay.

The decision serves as a reminder to employers to fully comply with the FLSA regulations, including paying exempt employees a predetermined salary. Although Hewitt was compensated well over US$200,000 annually (thus meeting the minimum weekly requirement for the highly compensated employee exemption), he was not paid on a salary basis because a “true salary—a steady stream of pay” cannot vary much and is an amount that the employee may rely on “week after week.”[4] For example, using the daily-rate approach, when Hewitt worked one day in a pay period, his paycheck amounted to US$963. On the other hand, when Hewitt worked all 14 days in a pay period, his paycheck amounted to US$13,482. The fluctuation was an indication that Hewitt was not truly compensated on a salary basis.

Helix underscores the importance of seemingly technical requirements of FLSA’s white-collar exemptions. Employers should review their pay practices to ensure that they are paying high-earning professionals a “true salary” that is a “steady stream of pay.”[5]

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[1] Case No. 21-984, 598 U.S. ___ (2023).

[2] 29 C.F.R. § 541.604(b).

[3] 598 U.S. __, at *1.

[4] *Id.* at *5.

[5] *Id.*

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