

In Fair Labor Standards Act Case, Supreme Court Holds That Employees Paid A Daily Rate Are Not Compensated On A “Salary Basis”

Client Alert | February 22, 2023

Decided February 22, 2023 *Helix Energy Solutions Group, Inc. v. Hewitt*, No. 21-984 Today, the Supreme Court held that an offshore oil rig supervisor who was paid nearly \$1,000 for each day he worked was not exempt from the Fair Labor Standards Act because he was not paid a predetermined amount per week and thus was not compensated on a “salary basis” in accordance with applicable regulations.

Background: The Fair Labor Standards Act (“FLSA”) generally requires employers to pay time and a half to employees who work more than 40 hours in a week, but exempts certain bona fide executive, administrative, and professional employees from its overtime pay requirement. Implementing regulations specify that the exemption requires, among other things, that exempt employees be paid on a “salary basis,” meaning that they are paid on a weekly or less frequent basis and receive a predetermined amount for each pay period in which they perform any work. Michael Hewitt was employed as a supervisor on an offshore oil rig and worked 84-hour weeks for 28 days at a time, for which he was paid on a daily basis. He later sued his employer for overtime pay under the FLSA. The Fifth Circuit, sitting en banc, held that Hewitt was not paid on a “salary basis” and thus was entitled to overtime pay because he was not exempt under 29 C.F.R. § 541.602(a).

Issue: Whether highly compensated executive employees who are paid at daily rates are paid on a “salary basis.” **Court’s Holding:** A highly compensated executive employee who is paid at a daily rate is not paid on a “salary basis” and thus is not exempt from the FLSA under 29 C.F.R. § 541.602(a).

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“The question here is whether a high-earning employee is compensated on a ‘salary basis’ when his paycheck is based solely on a daily rate...We hold that such an employee is not paid on a salary basis, and thus is entitled to overtime pay.”

Justice Kagan, writing for the Court

What It Means:

- The Court held that under the regulations, 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. The Court rejected the employer’s argument that Hewitt was paid on a salary basis because he was paid at least \$963 (the daily rate) in any week in which he worked, because this was not a flat, predetermined amount fixed independently of the number of days Hewitt worked.
- The Court stated that employees paid on a daily or hourly basis can still be exempt from the FLSA’s overtime pay requirement if their employers also guarantee a weekly amount of pay that is more than \$455 “regardless of the number of hours, days or shifts worked,” and “a reasonable relationship exists between the

guaranteed amount and the amount actually earned.” 29 C.F.R. § 541.604(b).

- The impact of the Court’s ruling may be limited because most employees who perform executive duties and who qualify as “highly compensated employees” under the Department of Labor’s regulation are paid a fixed salary, not one based on a daily rate. The Court’s decision addressed only executive employees, but the regulation also covers administrative and professional employees.
- The Court declined to reach an argument, first raised on appeal and endorsed by Justice Kavanaugh in dissent, that the Department of Labor’s regulations were inconsistent with the FLSA’s statutory exemption for workers “employed in a bona fide executive . . . capacity.” 29 U.S.C. § 213(a)(1). In dissent, Justice Kavanaugh explained that the FLSA’s exemption “focuses on whether the employee performs executive duties,” so “it is questionable whether the Department’s regulations—which look not only at an employee’s duties but also at how much an employee is paid and how an employee is paid—will survive if and when the regulations are challenged as inconsistent with the Act.” This issue could be the subject of future litigation.

The Court’s opinion is available [here](#).

Gibson Dunn’s lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

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