

NEW U.S. SUPREME COURT RULING: AN EMPLOYEE MAKING \$200,000 CAN ESTABLISH OVERTIME ELIGIBILITY UNDER THE FLSA

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The United States Supreme Court ruled that an oil rig supervisor, who makes over \$200,000 annually, is in fact properly classified as “non-exempt” under the Fair Labor Standards Act (“FLSA”) because his weekly paycheck is calculated solely by a daily rate. The Court’s 6-3 decision establishes that the term “salary basis” excludes employees who receive paychecks calculated solely based on a daily rate, even if the employee is considered “highly compensated.”

Employers should promptly review their payroll practices to determine whether this new ruling will modify any of their employees’ classifications under the FLSA.

The FLSA and the “Highly Compensated Employee”

The FLSA requires employers to pay overtime at the rate of time and a half to covered employees who work more than 40 hours in one week. However, bona fide executive, administrative, and professional employees, who are paid on a salary basis, are exempt from this requirement.

The Supreme Court’s February 22, 2023 holding in *Helix Energy Solutions Group, Inc. v. Hewitt* addresses this exemption for bona fide executives who are “highly compensated.” An employee must earn an annual compensation of at least \$107,432.00 in order to be considered “highly compensated.”

To establish bona fide exempt executive status, a highly compensated employee must receive his or her earnings on a “salary basis,” and regularly perform at least one of the following duties traditionally characteristic of an executive employee: (1) managing the enterprise, (2) directing other employees, or (3) exercising power to hire and fire. “Salary basis” is defined as an employee’s regular receipt of a predetermined amount of the employee’s compensation, which is not subject to reduction because of variations in the quality or quantity of the work performed. In contrast, an employee whose salary is calculated using a daily rate receives a paycheck that varies based on the number of days he or she works during the given pay period.

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The Limit to the “Highly Compensated Employee” Exemption under *Helix*

The Supreme Court’s decision establishes that even if an employee meets the “highly compensated” threshold, he or she can still qualify as non-exempt under the FLSA if the employee’s paycheck is based solely on his or her daily rate of pay, as opposed to a predetermined, fixed portion of his or her salary. In other words, even such a “highly compensated employee” will be classified as non-exempt.

In *Helix*, the Court assessed whether an employee viewed by his employer as a bona fide executive under the “highly compensated employee” exemption, was accurately classified as exempt. The employee was a supervisor on one of the company’s oil rigs, and regularly worked seven days in one week at a daily rate that averaged from \$963 to \$1,341. Due to the number of days worked, the employee’s total annual compensation exceeded \$200,000. However, his weekly paycheck was not based on a fixed salary, but varied week-to-week based on the amount of days he worked.

The Supreme Court ruled that such a high-earning employee is not compensated on a “salary basis” when his paycheck is based solely on a daily rate, regardless of his or her total annual compensation. In other words, even if an employee earns \$107,432.00 or more annually, and performs one of the traditional executive duties, that employee will still be considered non-exempt if his or her paycheck varies based on the days actually worked in the given pay period. Merely paying an employee the minimum amount required to be considered “highly compensated” does not result in an exemption if the employee is not paid on a salary basis.

Key Takeaways for Employers

Employers should understand that the *Helix* ruling establishes that an organization must either pay otherwise exempt employees on a salary basis or must pay such employees overtime when they work over 40 hours in a week.

Employers need to review promptly their FLSA employee classifications and payroll practices in light of this new ruling. If you have any questions or concerns, please contact [Peter C. Godfrey](#) (716.848.1246), [Glen P. Doherty](#) (518.433.2433), [Kinsey A. O’Brien](#) (716.868.1287), [John M. Godwin](#) (716.848.1357), [Charles H. Kaplan](#) (646.218.7513) or any other member of Hodgson Russ’s [Labor & Employment Practice](#).