

Insights

\$200,000 Plus Overtime??? When a Highly Compensated Employee Remains Non-Exempt

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Last week, the U.S. Supreme Court upheld an appellate court determination that Michael Hewitt, an oil rig “toolpusher,” was entitled to overtime compensation despite having earned in excess of \$200,000 per year. Mr. Hewitt’s employer classified him as exempt from overtime pursuant to the “highly compensated employee” exemption. Mr. Hewitt challenged that exemption, claiming that he should have been paid overtime for hours worked in excess of 40 in any given work week. The U.S. Supreme Court agreed. *Helix Energy Sols. Grp., Inc. v. Hewitt*, U.S., No. 21-984 (2023).

The Fair Labor Standards Act (“FLSA”) addresses, in relevant part, (1) minimum wage requirements, (2) overtime pay requirements, and (3) exemptions from minimum wages and overtime. Non-exempt employees are entitled to overtime pay if they work more than forty (40) hours in a given work week. Exempt employees, who are not entitled to overtime pay, typically must be paid a fixed salary of at least \$684 per week and satisfy the “duties test” for the executive, administrative, professional and/or certain computer employee exemptions. Exempt employees are not entitled to overtime pay, even if they work more than forty (40) hours in a week.¹

The *Helix* decision focused on the governing overtime pay exemptions for “highly compensated employees.” According to the U.S. Department of Labor, which enforces the FLSA, an otherwise non-exempt employee can be exempt from overtime if the employee earns total annual compensation of \$107,432 or more, *which includes at least \$684 per week paid on a salary or fee basis*, provided that (A) the employee’s primary duty includes performing office or non-manual work; and (B) the employee customarily and regularly performs at least one of the exempt duties or responsibilities of an exempt executive, administrative or professional employee, even if the employee might not otherwise satisfy the “duties test” for any of the foregoing overtime exemptions. 29 CFR § 541.601.

Here, the case turned on Mr. Hewitt’s “day rate” pay structure. Helix paid Mr. Hewitt \$963 if he worked one day a week, double that same amount if he worked two days a week, and so on, resulting in compensation well in

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excess of both the \$684 weekly salary basis threshold for exempt employees and the \$107,432 threshold for highly compensated employees. The dispute centered on whether Mr. Hewitt nonetheless earned a “salary” for purposes of the exemption.

Mr. Hewitt argued that payment by the day cannot qualify as a salary unless the employer guarantees at least the minimum weekly-required amount, provided the guaranteed amount has a reasonable relationship to the amount actually earned. Helix argued that because Mr. Hewitt’s daily rate was so high, it met the literal definition of being paid on a salaried basis. Specifically, by working just one day a week, Mr. Hewitt earned the minimum weekly “salary” for the exemption. The high court disagreed, finding that a day rate, no matter how high (or low) that rate might be, is not a “salary” for purposes of the overtime exemption for highly compensated employees.

The Court engaged in an interesting exchange of ideas during oral argument, including the following, as captured by Charlotte Garden at SCOTUSblog:

Several justices questioned Helix’s premise that a day rate could be a salary. Justice Ketanji Brown Jackson led the questioning on this point, focusing in part on the practical importance of a salary. She pointed out, for example, that “the regularity of a predetermined amount is how people pay mortgages.” In a related vein, Justice Sonia Sotomayor emphasized that being paid a salary usually means greater control of one’s schedule, so that a salaried “employee who wanted to take a Friday afternoon off wouldn’t be penalized” in their pay.

But other justices’ questions implied that they conceptualized salary differently. For example, Justice Clarence Thomas [who joined in the opinion of the Court] observed . . . that “you certainly don’t normally think of someone making \$200,000 a year as a day laborer.”

The takeaway: employers who seek to classify employees as exempt from overtime, whether under the traditional exemptions or via the “highly compensated employee” exemption, are encouraged to seek counsel to discuss the appropriate FLSA classification for those employees. As always, Lowndes attorneys are well-versed in FLSA classification matters and are available to assist employers with compliance with federal and state wage and hour laws.

¹ There are other exemptions to the minimum wage and maximum hour (overtime) requirements of the FLSA that are not pertinent to the issues in Helix.