

> Client Alert

U.S. Supreme Court Upholds Fair Labor Standards Act “Salary Basis” Requirement

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If you require any additional information regarding compliant FLSA classification of workforce members, other wage and hour issues or any additional labor and employment law questions, please feel free to contact any of the attorneys listed below.

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On February 22, 2023, the United States Supreme Court issued a decision in the matter of *Helix Energy Solutions Group Inc., et al. v. Michael J. Hewitt*, upholding the ruling of the Fifth Circuit Court of Appeals that a highly compensated worker (“HCW”) must be paid on a “salary basis” in order to be considered exempt from overtime under the Fair Labor Standards Act (“FLSA”). At issue was whether the employer, Helix Energy Solutions Group Inc. (“Helix”) violated the FLSA by treating Hewitt, an oil rig worker earning more than \$200,000 on an annualized basis, as exempt from overtime compensation while still compensating him based on a daily rate.

The FLSA’s Salary Basis Requirement

Most exemptions to the FLSA’s overtime requirement focus on an employee’s duties, but each exemption still requires that the exempt worker be paid a guaranteed minimum of \$684.00 per week on a “salary basis.” Under the FLSA’s enabling regulations set forth in 29 CFR § 541.602(a),

An employee will be considered to be paid on a “salary basis” . . . if 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, which amount is not subject to reduction because of variations in the quality or quantity of the work performed.

Under the FLSA’s “Minimum Guarantee Plus Extras” rule, 29 CFR § 541.604(b), salaried professionals may be paid on a shift or day basis without losing their exempt status so long as “the employment arrangement also includes a guarantee of at least the minimum weekly required amount paid on a salary basis” and “a reasonable relationship exists between the guaranteed amount and the amount actually earned.” As such, the employee’s weekly salary must still be guaranteed and cannot fluctuate based on the quality or quantity of work performed. As noted by way of example in the regulation:

. . . for example, an exempt employee guaranteed compensation of at least \$725 for any week in which the employee performs any work, and who normally works four or five shifts each week, may be paid \$210 per shift without violating the \$684-per-week salary basis requirement. The reasonable relationship requirement applies only if the employee’s pay is computed on an hourly, daily or shift basis.

The FLSA still permits employers to take lawful deductions from an overtime-exempt employee's salary for limited reasons, including when an employee is absent for one or more full days for personal reasons other than illness or accident, or when an employee works a reduced or intermittent work schedule under the Family and Medical Leave Act (FMLA).

Application to Highly Compensated Workers

In contrast to other exemptions, the HCW exemption features a relaxed duties test and instead places emphasis on the requirement that high earners make at least \$107,432 annually. In the *Helix* case, the employer paid Hewitt more than \$200,000 on an annualized, daily rate basis, without guaranteeing a minimum weekly salary. While Hewitt was highly compensated, his weekly salary fluctuated depending on the number of days he worked per week. The employer thus argued that under the highly compensated worker rule, it was only required to pay Hewitt a minimum \$684 per week in order to maintain Hewitt's overtime-exempt status, without respect to the variations in Hewitt's pay based on the fluctuating weekly volume of work.

The Supreme Court, however, rejected *Helix's* argument, affirming that payment of a daily rate, no matter how high, does not constitute payment on a "salary basis" under Section 604(b), noting that if such was the case, workers earning daily rates far less than Hewitt could be denied overtime pay. The Court further rejected the Employer's argument that despite variations in Hewitt's weekly pay based on the number of days worked, his compensation still satisfied the salary basis requirement because each of his bi-weekly paychecks exceeded the \$684 weekly minimum.

The U.S. Department of Labor, which submitted an *amicus* brief supporting the Department of Justice's position in *Helix*, lauded the Court's decision, stating that "given the regulations' text and long history, it should have been no surprise that daily-rate pay does not qualify as payment on a 'salary basis.'"

Employer Takeaways

Employers should continue periodically to audit the duties performed by employees to ensure that employees classified as overtime-exempt properly satisfy applicable requirements under the FLSA, both as to standard exemptions and the HCW exemption. Employers should also review their payroll practices to ensure that employees designated as overtime-exempt are paid on a salary basis, with a minimum guaranteed weekly salary that does not vary based on the quality or quantity of work.

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The Morrison Cohen LLP Labor & Employment Team is available to provide legal advice and consultation related to compliant FLSA classification of workforce members, other wage and hour issues and any additional labor and employment law questions you might have.