

# SCOTUS: \$200K Per Year And Employee Still Entitled To Overtime Pay

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## Practices

Employment & Labor Law

## Article

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On Feb. 22, 2023, the U.S. Supreme Court weighed in on overtime exemptions under the Fair Labor Standards Act (FLSA) and held that a highly compensated employee was entitled to overtime pay because he was paid a day rate and not a guaranteed weekly salary.

In *Helix Energy Solutions Group v. Hewitt*, a rig worker filed suit against his former employer seeking retroactive overtime pay, arguing that he was not exempt from the FLSA's overtime requirements based on his daily pay arrangement. The Supreme Court agreed. This case serves as a reminder to employers that high pay does not disqualify employees from the FLSA's overtime requirements.

### FLSA Exemptions

Under the FLSA, an employer generally must pay employees at least minimum wage for all hours worked and overtime pay at not less than time and one-half the regular rate of pay for all hours worked over 40 in a workweek unless an employee is exempt from these requirements.

An employee may qualify for an exemption when s/he works in a "bona fide executive, administrative, or professional capacity" as defined by Department of Labor (DOL) regulations.

These exemptions require an employer to satisfy three tests: (1) payment on a "salary basis"; (2) the "salary level" must meet at least a specified minimum; and (3) the employee must perform certain duties (executive, administrative, professional or outside sales work) as his or her "primary duties."

### "Salary Basis" Not Met By Daily Rate



In *Helix*, the Court found that the rig worker satisfied the salary level test and the job duties test for executives, which requires that an employee manage the business, direct the work of at least two full-time employees, and have the authority to hire or fire (only one of these three criteria must be met for highly compensated employees). Thus, whether the rig worker was exempt hinged on whether the method of his pay qualified as a “salary basis.”

The employee was paid on a “daily-rate basis, with no overtime compensation”; his paycheck amounted to his daily rate multiplied by the number of days he worked in the pay period. During the course of his employment, the rig worker’s day rate ranged from \$963 to \$1,341.

In evaluating the salary basis test, the Supreme Court held that despite the rig worker’s high compensation, his day rate payment arrangement did not constitute a “salary” under the FLSA and, as a result, the employee was non-exempt and should have been paid overtime. In reaching this conclusion, the Court explained that the standard meaning of the term “salary” “connotes a steady and predictable stream of pay, week after week after week.”

In short, to qualify for an exemption under the FLSA, an employee must be paid the salaried amount on a weekly basis, not by the day or hour. The Court further stated that the “whole point of the salary basis test is to preclude employers from paying workers neither a true salary nor overtime.”

It is clear after *Helix* that employees paid on a day or hourly rate will never qualify for an FLSA exemption, and will always be subject to the FLSA’s overtime requirements.

## Lessons for Employers

→ High pay does not disqualify from FLSA’s overtime pay requirements.

Despite the fact that the rig worker in *Helix* was highly compensated and earned more than \$200,000 per year, he did not meet the salary basis test to qualify for an exemption based on his pay arrangement. To satisfy the salary basis test for purposes of the FLSA, an employee must be paid a fixed, predetermined amount for a workweek, regardless of the amount of time worked. A daily rate does not qualify.

→ Employers must apply the exemption criteria properly as misclassifying someone as exempt can be costly.

Wage and hour laws have substantial damages provisions. Employers should ensure strict compliance with the requirements of wage and hour laws and regulations. Even if the employee and employer agree on a certain pay arrangement, the employer is still subject to the FLSA and its requirements. In *Helix*, the Supreme Court interpreted the law and regulations technically and rigidly, and did not provide much room for flexibility in compliance.

→ Employees must satisfy all three tests (salary basis, salary level, and primary duties) to qualify as overtime exempt.



If you have any questions about the FLSA or other employment law topics, Nexsen Pruet's employment and labor law team stands ready to assist. We regularly advises employers on FLSA issues, including questions about compliance and exemptions.