

NOW & NEXT

Labor & Employment Alert

FEBRUARY 28, 2023

The *Helix Energy Solutions Group, Inc. v. Hewitt* Case

By Robert H. Pepple

The United States Supreme Court decided on a case that clarifies the “salary basis” test for highly compensated employees.



What's the Impact

- / Under the Fair Labor Standards Act, employers are required to pay their employees a minimum wage and overtime pay for hours worked in excess of 40 hours per week.
- / One exemption under the FLSA is for employees who meet the salary basis test, which means they are paid a predetermined and fixed salary.
- / This decision provides important guidance for employers who have HCEs who are paid on a daily basis.

On February 22, 2023, the United States Supreme Court decided *Helix Energy Solutions Group, Inc. v. Hewitt*, a case that clarifies the definition of the “salary basis” test, particularly for highly compensated employees paid on a daily basis. This decision provides important guidance for employers with high-earning employees that earn compensation under non-traditional “salary” paradigms.

Background

This newsletter is intended as an information source for the clients and friends of Nixon Peabody LLP. The content should not be construed as legal advice, and readers should not act upon information in the publication without professional counsel. This material may be considered advertising under certain rules of professional conduct. Copyright © 2023 Nixon Peabody LLP. All rights reserved.

Under the Fair Labor Standards Act (FLSA), employers are required to pay their employees a minimum wage and overtime pay for hours worked in excess of 40 hours per week, unless the employee is exempt from these requirements. One exemption under the FLSA is for employees who meet the salary basis test, which means they are paid a predetermined and fixed salary that is not subject to reduction based on variations in the quality or quantity of work performed. To qualify for the exemption, an employee must meet both the salary basis test and the duties test, which determines whether the employee's job duties are administrative, executive, or professional. The salary threshold for the exemption is currently \$684 per week, or \$35,568 per year. (See 29 CFR §§ 541.100, 541.601(b)(1).)

The FLSA regulations also exempt workers known as highly compensated employees (HCEs). To qualify as an HCE, an employee must earn at least \$107,432 annually and meet a relaxed version of the duties test (i.e., "[T]he employee customarily and regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative[,] or professional employee") (See 29 CFR § 541.601(a)(1).)

The final regulation at issue was 29 CFR § 541.604, which deals with "Minimum guarantee[s] plus extras" (Section 604). Section 604 provides in relevant part:

An employer may provide an exempt employee with additional compensation without losing the exemption or violating the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly[]required amount paid on a salary basis. Thus, for example, an exempt employee guaranteed at least \$684 each week paid on a salary basis may also receive additional compensation of a one percent commission on sales.

(*id.*, subd. (a)). Section 604 goes on to say that such compensation may be "computed on an hourly, a daily[,] or a shift basis." (*id.*, subd. (b).)

The Supreme Court held that "daily[]rate" workers can qualify as paid on a salary basis—but *only if* the compensation scheme satisfies the "special rule" of Section 604, including the minimum weekly guarantee. Because it was undisputed that Hewitt's compensation had no such minimum guarantee (i.e., it was a pure day-rate paradigm), the court concluded that Hewitt, although highly paid, was not exempt from the FLSA.

The Helix Energy Solutions Group, Inc. v. Hewitt case

Helix Energy Solutions Group, Inc. v. Hewitt involved a group of offshore drilling platform managers who were paid on a daily basis and classified as HCEs. Hewitt himself earned over \$963 per day (which equated to more than \$200,000 annually), but there was no weekly or other minimum salary guarantee. Hewitt filed a collective action against Helix, alleging that he, and those like him, were improperly classified as exempt from overtime pay.

The issue before the Supreme Court was whether the HCE exemption applied to employees who were paid on a daily basis. The Court held that the HCE exemption can apply to employees paid

on a daily basis, but only if the employees receive *at least* the minimum weekly salary amount on a salary or fee basis, which Hewitt did not.

In other words, the Court clarified that the HCE salary threshold applies to employees who are paid on a daily basis, but their daily pay can only count toward meeting the salary threshold if they are paid a minimum salary or fee amount each week. The Court explained that this interpretation is consistent with the purpose of the HCE exemption, which is to provide a streamlined exemption for highly compensated employees who perform duties that are similar to those of other exempt employees.

Implications of the *Helix Energy Solutions Group, Inc. v. Hewitt* decision

The *Helix Energy Solutions Group, Inc. v. Hewitt* decision provides important guidance for employers who have HCEs who are paid on a daily basis. To qualify for the HCE exemption, these employees must now be paid at least \$684 per week on a salary or fee basis, regardless of their daily pay rate.

Employers who do not comply with this requirement may face liability for unpaid overtime wages and other damages. On the other hand, HCEs who are paid on a daily basis and do not receive at least the minimum weekly salary amount on a salary or fee basis may be entitled to overtime pay.

In conclusion, the *Helix Energy Solutions Group, Inc. v. Hewitt* decision clarifies the “salary basis” test for HCEs paid on a daily basis and underscores the importance of complying with FLSA requirements. Employers who have questions about how to classify their employees should consult with an experienced employment law attorney to ensure compliance with the FLSA and other applicable wage and hour laws.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

Robert H. Pepple

213.629.6140

rpepple@nixonpeabody.com
