

# THE U.S. SUPREME COURT WEIGHS IN: *HELIX ENERGY SOLUTIONS V. HEWITT* AND FLSA OVERTIME COMPENSATION ISSUES

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## PRESENTATION ROADMAP

- Brief overview of FLSA Exemptions and overtime requirements.
- Walk through of *Helix Energy Solutions v. Hewitt*.
- Impact of decision on FLSA overtime issues moving forward.

# FLSA 101

The federal Fair Labor Standards Act (“FLSA”) requires employers to pay covered employees the minimum wage and overtime compensation unless they are exempt.

- Adopted in 1938, established a standard workweek, minimum wage requirements, and outlawed oppressive child labor practices.

Various exemptions from these requirements for “white collar” positions:

- Executive
- Administrative
- Professional
- Computer Professional
- Outside Sales; and
- Highly Compensated Employees (HCEs)

See 29 U.S.C. § 213(a)(1) (Section 13(a)); and 29 C.F.R. Part 541

## EXEMPTIONS – SALARY BASIS TEST

**Salary Basis Test:** Must be paid on a salary or fee basis at a rate at least equal to standard salary level of \$684 per week.

- **“Main” salary basis regulation, 29 C.F.R. § 541.602(a):** “Salary basis” generally means the employee receives each pay period, on a weekly or less frequent basis, a predetermined which is not subject to reduction because of variations in the quantity or quality of work performed. Employee must receive full salary for any week in which any work is performed.
- **Another important salary basis provision, 29 C.F.R. § 541.604(b):** An exempt employee’s earnings may be computed on an hourly, a daily or a shift basis, without losing the exemption or violating the salary basis requirement, if
  - [(i)] the employment arrangement also includes a guarantee of at least the minimum weekly required amount paid on a salary basis regardless of the number of hours, days or shifts worked, and
  - [(ii)] a reasonable relationship exists between the guaranteed amount and the amount actually earned.

## SALARY BASIS TEST FOR HIGHLY COMPENSATED EMPLOYEES

FLSA regulations contain a **special rule for HCEs**,  
who are exempt if:

1. The employee must earn **total annual compensation** of \$107,432 or more (which includes **at least \$684 per week** paid on a salary or fee basis);
2. Employee's **primary duty** includes performing office or non-manual work; and
3. Employee must **customarily and regularly perform** at least one of the exempt duties or responsibilities of an exempt executive, administrative, or professional employee.

See 29 C.F.R. § 541.601

## FLSA VIOLATIONS

- Employee may seek to recover back wages (unpaid minimum wage and overtime) **PLUS** an equal amount of liquidated damages, and attorney fees and court costs. 29 U.S.C. § 216(b) & (c).
- If a willful violation, employer may be subject to civil money penalties for each violation.

***HELIX ENERGY SOLUTIONS GROUP, INC. V.  
HEWITT, 143 S.CT. 677, 686-90 (FEB. 22, 2023)***

- Supreme court provides clarification of the Highly Compensated Employee FLSA exemption.
- Let's review how the Court got there.

## BACKGROUND FACTS

- Michael Hewitt worked as a “tool-pusher” on an offshore rig for Helix Energy.
  - Reported directly to the ship superintendent (*i.e.*, he’s second in command).
  - Supervised at least 13 people per shift.
- On 28 days (12 hour days, 7 days/week (84 hours per week)) then off 28 days.
- Paid on a daily-rate basis. Earned over \$200,000 annually.
  - Did **NOT** receive overtime compensation.
  - Daily rate ranged over course of his employment.
- Paychecks issued every two weeks (based on daily rate x # of days worked)
  - Never made less than \$455/week (the “magic number” for the salary basis test at the time).



## HEWITT FILES SUIT

- Hewitt was terminated in 2017 for “performance issues” and sought legal counsel regarding his termination.
- Hewitt’s lawsuit filed in August 2017:
  - As a day-rate worker, entitled to overtime compensation.
  - Despite meeting HCE exemption requirements by earning a high annual salary (200k +) and having supervisory responsibilities.
  - Hewitt also sought class certification on behalf of all other similarly situated day-rate workers.

## COMPETING MSJS IN DISTRICT COURT

- **Hewitt's argument:** Helix Energy failed to guarantee a weekly rate of pay by paying him based on the quantity of days worked. Argued this method doesn't meet salary basis test as required to meet the FLSA exemption.
  - *Note: Employer has burden of proof (by a preponderance of evidence) that an exemption to the requirements of FLSA is met.*
- **Helix Energy's argument:** The HCE exemption is met! Hewitt is highly paid employee: *every day* he made more than the weekly minimum rate under the HCE salary test.
- **What does the District Court decide?**
  - Hewitt meets the HCE salary basis standard under FLSA.
  - **29 C.F.R. § 602** does not require a guaranteed number of days, but requires employee be paid a predetermined amount not to fall below the magic number during any week in which he works. Method here met the standard, according to the district ct.

**HEWITT APPEALS TO  
THE FIFTH CIRCUIT COURT OF APPEALS**

## **Fifth Circuit Court of Appeals reverses.**

- *En banc* decision.
- Circuit Court's focus is on the **text** of FLSA.
- Holding: while a daily-rate worker *can* be exempt from overtime, Helix Energy failed to guarantee Hewitt made a minimum weekly wage that is reasonably related to the amount actually earned.
- Helix Energy seeks *writ of certiorari*.

## THE SUPREME COURT WEIGHS IN

### Supreme Court agrees – upholds 5th Circuit decision.

- Although Hewitt earned over \$200K annually, he did not meet the HCE exemption and, instead, was entitled to overtime compensation.
- The “critical question” is whether Hewitt was paid on a salary basis, either under **Section 541.602(a)** or **541.604(b)**
- Helix Energy acknowledged compensation paid did not meet **Section 604(b)**’s requirements.
  - Hewitt was not guaranteed weekly amount that was “reasonably related” to the amount actually earned.

## THE SUPREME COURT WEIGHS IN

- Court determines **Section 602(a)** does not apply to employees who are paid a daily-rate.
- Salary basis is defined by the text of the regulation itself.
  - Regardless of the (high) amount earned, Helix Energy did not satisfy FLSA's salary basis test because employee must be paid a set amount each week regardless of hours worked.
  - Focus on the harmony of FLSA provisions: **Section 602** cannot mean two different things depending on whether or not the employee is an HCE.
  - Ct rejects employer's overtime "windfall" argument.

## KEY TAKEAWAYS

- Even a highly compensated worker does not ***automatically*** qualify for the FLSA exemption.
  - Employers beware!
  - Conduct a careful review to make sure the salary basis test (and duties test) is met.
- Decision is particularly important for industries where day rates are often used.
  - Oil and Gas workers - history of day rate pay arrangements given specific nature of the industry
  - Don't forget about other types of day shift workers
- Unanswered questions may lead to additional litigation.

## QUESTIONS?

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