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Supreme Court Rules in Favor of Six Figure Oil Rig Worker in Overtime Dispute

Client Alert

2.28.2023

On February 22, 2023, the Supreme Court issued its long-awaited decision in *Helix Energy Solutions Group, Inc. v. Hewitt*. This case tested the parameters of the Fair Labor Standards Act (“FLSA”), the federal statute that governs payment of overtime, and its exemptions. As detailed below, *Helix Energy* serves as a warning for employers seeking to avoid liability under the FLSA to not only routinely evaluate how your workforce is properly classified with regard to exemptions from overtime, but also examine how they are paid.

Underlying Facts

Michael Hewitt worked on an offshore oil rig for Helix Energy, routinely working 84 hours a week while on the vessel. Helix paid Hewitt on a daily-rate basis, paying Mr. Hewitt a set amount per day. Under this model, Mr. Hewitt earned over \$200,000 annually. Importantly, Helix did not pay any overtime compensation to Mr. Hewitt. Helix asserted that Mr. Hewitt was exempt from the FLSA, including its overtime requirements, as a “highly compensated” employee found in 29 C.F.R. §541.601. Mr. Hewitt disagreed.

General Legal Requirements

Generally speaking, an employee is exempt from receiving overtime if the employee meets three distinct tests: (1) the “salary basis” test, which requires that an employee receive a predetermined and fixed salary that does not vary with the amount of time worked; (2) the “salary level” test, which requires that preset salary to exceed a specified amount; and (3) the job “duties” test. Additionally, the regulations contain a special rule for “highly compensated” employees who are paid total annual compensation of \$107,432 or more. A highly compensated employee is deemed exempt from overtime under Section 13(a)(1) if: (1) the employee earns total annual compensation of

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\$107,432 or more; (2) the employee's primary duty includes performing office or non-manual work; and (3) the employee customarily and regularly performs at least one of the exempt duties or responsibilities of an exempt executive, administrative or professional employee.

Regardless of whether the employee earns more or less than \$107,432/year, the employee must be paid on a "salary basis." Being paid on a "salary basis" means an employee regularly receives a predetermined amount of compensation each pay period on a weekly, or less frequent, basis. 29 C.F.R. § 541.602(a), regardless of the number of hours worked. The predetermined amount cannot be reduced because of variations in the quality or quantity of the employee's work. This "salary basis" test was key in *Helix Energy*.

The Supreme Court's Holding

The Supreme Court ultimately decided that Helix did not pay Mr. Hewitt on a "salary basis." In so doing, the Court rejected the employer's argument that the employee's compensation met the functional requirements of being paid on a salary basis because his guaranteed minimum was above the \$455.00 per week threshold. The Court found that meeting the "salary threshold" did not mean that the employee was being paid on a "salary basis." Justice Elena Kagan stated that "[i]n demanding that an employee receive a fixed amount for a week no matter how many days he has worked, §602(a) embodies the standard meaning of the word 'salary' which generally refers to a 'steady and predictable stream of pay.'" The Supreme Court found that by definition, a daily-rate worker is paid for each day they work and no others. Therefore, a daily-rate work is not being paid on a "salary basis" because the employee's compensation changes based on the number of days worked.

Lessons for All Employers

Helix Energy is a good reminder that simply because your employee earns over \$100,000 does not mean that they are actually considered to be exempt under the FLSA. The employee must be paid on a "salary basis" (i.e. they are paid the same amount as long as they perform some work in a given week). And it is important to remember that employees are not exempt from overtime merely because they are paid on a salaried basis. They must also perform job duties that fall into one of the exempt categories, and meet all other exemption requirements. While *Helix Energy* involved a dispute over the "highly compensated" employee exemption, it is equally relevant to other exemptions that utilize the salary basis test. Employers should take heed from *Helix Energy* and ensure that any employees classified as exempt truly meet the eligibility requirements and compensation requirements of the FLSA exemption. Failure to do so could be costly.

If you have any questions about the FLSA, classification of your employees as exempt, or any other Labor & Employment issue, please contact your Butzel Labor & Employment Attorney.

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