

**LEGAL UPDATES**

Employment Law Updates

## Salary Or Not A Salary? SCOTUS Clarifies The “Salary Basis” Requirement For Exempt Employees

What does it mean to pay an employee on a “salary basis”? Last month, the U.S. Supreme Court clarified the answer to that question in *Helix Energy Solutions Group, Inc. v. Hewitt*

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Many employers know that employees generally must be paid on a “salary basis” to be properly classified as exempt from overtime pay. However, what does it mean to pay an employee on a “salary basis”? Last month, the U.S. Supreme Court clarified the answer to that question in *Helix Energy Solutions Group, Inc. v. Hewitt* (“*Helix*”), holding that a supervisor’s “daily rate” of pay, under which he earned over \$200,000 annually, did not qualify as a “salary” under the Fair Labor Standards Act (“FLSA”).

The FLSA requires covered employers to pay overtime to non-exempt employees who work more than 40 hours in a workweek. Employees who qualify for the so-called “white-collar” exemptions (applicable to executive, administrative and professional positions) are exempt from overtime, however, if they are paid on a “salary basis” and satisfy additional requirements. Employees are paid on a “salary basis” if they are paid a predetermined and fixed weekly (or longer) amount that is not subject to reduction because of variations in the quality or quantity of work performed. Thus, absent certain exceptions, an exempt white-collar employee must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked.

In the *Helix* case, Michael Hewitt, an offshore oil rig supervisor, typically worked 12 hours a day, seven days a week, for a total of 84 hours in a workweek. He worked this schedule for 28 days on the oil rig and then he had 28 days off work before reporting back. Hewitt earned a daily rate ranging from \$963 to \$1,341 per day over the course of his employment, with no overtime compensation. He received a paycheck every two weeks that amounted to his daily rate multiplied by the number of days he worked during the pay period.

The U.S. Supreme Court held that the daily rate pay structure did not compensate Hewitt on a “salary basis” under the FLSA because Hewitt received “a certain amount if he work[ed] one day in a week, twice as much for two days, three times as much for three, and so on.” A “true salary,” however, is “a steady stream of pay, which the employer cannot much vary and the employee may thus rely on week after week.” Thus, to satisfy the “salary basis” test, the amount of Hewitt’s weekly pay could not fluctuate depending on the number of days he worked.

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The *Helix* decision demonstrates that employees are not exempt from the overtime premium requirement merely because they are highly paid. A highly compensated employee whose pay is (or may be) reduced for time not worked during the workweek is not paid a salary. Thus, when an exempt employee works at all during the workweek, generally they must be paid their entire weekly compensation; to do otherwise jeopardizes the exempt classification all together.

## What Should Employers Do Now?

- **Review your exempt employee classifications for compliance.** As the *Helix* decision demonstrates, employers who classify employees as exempt pursuant to any of the “white collar” exemptions should ensure that they are paying those employees on a bona fide salary basis, remembering that the minimum salary cannot be pro-rated based on the employee’s days or hours of work, and that non-salary compensation does not count toward satisfying the “salary basis” test.
- **Beware of California’s higher minimum salary level.** The current minimum salary level for the white-collar exemptions under the FLSA is \$684 per week, or \$35,568 annually. California has a higher minimum salary level, however. Currently, state law requires employees to earn an annual salary of no less than \$64,480 to meet this threshold for the exemption.
- **Remember the “duties” test.** The “salary basis” and minimum salary level requirements are only two of the three requirements for the white-collar exemptions. Employees must also perform certain duties specific to the executive, administrative, or professional exemption to qualify for the exempt status. Simply providing a job title as “manager” or “executive” is not sufficient.

If you have questions regarding exempt versus non-exempt classifications or any other issue related to employment law, please contact one of our attorneys.