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Wage & Hour

Supreme Court Finds Highly Compensated Supervisor Entitled to Overtime Pay Under the FLSA

In a recent opinion (*Helix Energy Sols. Grp., Inc. v Hewitt),* the Supreme Court held that a highly compensated supervisor paid on a daily-rate basis was not an executive exempt from the Fair Labor Standards Act's (FLSA) overtime pay requirement because he was not paid on a salary basis.

Hewitt, an offshore oil rig supervisor, filed the action against his former employer, Helix Energy Solutions Group, seeking overtime pay under the FLSA which guarantees overtime pay to covered employees when they work more than 40 hours in a workweek. Hewitt was paid on a daily-rate basis from 2014 to 2017 and earned over $200,000 annually. Hewitt typically worked 12 hours a day, seven days a week during a 28-day period. Hewitt then had 28 days off before reporting back to the vessel. Helix asserted Hewitt was exempt from the FLSA because he qualified as a "bona fide executive."

To qualify for the executive exemption, an employee must meet certain tests relating to the employee's job duties and be paid on a salary basis of not less than a set amount per week. The critical issue addressed by the Court was whether Hewitt was paid on a salary basis under the regulation setting forth the salary basis requirements (29 CFR § 541.602(a)). Under that regulation, an employee is paid on a salary basis only if the employee receives the full salary for any week in which the employee performs work without regard to the number of days or hours worked. Hewitt was paid only for the days he worked and while his salary exceeded the required minimum pay, he was not paid a guaranteed weekly salary. The Court noted in its opinion that a "true salary" is "a steady stream of pay, which the employer cannot vary, and the employee may thus rely on week after week." Because Hewitt was not paid on a salary basis, the executive exemption requirements were not met, and he was entitled to overtime pay.