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Employers Must Pay Highly-Compensated Employees On A Salary Basis For FLSA's Exemptions

By Leslie Abbott, Zach P. Hutton & Shera Kwak

The U.S. Supreme Court, in *Helix Energy Solutions Group Inc. v. Hewitt*, held that a highly-paid employee who received a daily rate, rather than a fixed weekly salary, did not qualify as exempt under the Fair Labor Standards Act (FLSA). The Court rejected the employer's contention that employees who earn enough wages to qualify for the "highly compensated employee" duties test need not be paid on a salary basis to qualify as exempt. The Court held the employee was owed retroactive overtime compensation. Therefore, employers who pay daily rates or similar compensation to employees classified as exempt under the administrative, executive, and professional exemptions from overtime should closely review their pay structures to ensure compliance with the FLSA.

Background

The plaintiff, Michael Hewitt, received pay on a daily-rate basis, which ranged from $963 to $1,342 per day over the course of his employment, with no overtime compensation. Hewitt received paychecks every two weeks, which included his daily rate times the number of days he worked in that pay period. Hewitt often worked 12 hours a day, seven days a week, and earned over $200,000 annually. Hewitt sued his employer, seeking overtime pay. The Supreme Court granted review to decide whether the pay structure qualified him for exemption under the FLSA.

The Supreme Court Holds That The Salary Basis Test Applies To Highly Compensated Employees And Is Not Satisfied When An Employee Receives A Daily Rate

The Supreme Court held that even high-earning employees must be compensated on a "salary basis" in order to qualify for the FLSA white collar exemptions. Further, an employee paid a rate per day "is not paid on a salary basis, and thus is entitled to overtime pay."

The Court noted:

> From as early as 1940, the [Department of Labor's standard for exempt status] has comprised three distinct parts. . . . The first is the "salary basis" test—the subject matter of this case. The basic idea . . . is that an employee can be [exempt] only if he receives a "predetermined and fixed salary"—one that does not vary with the precise amount of time he works. The second element is the "salary level" test: It asks whether that preset salary exceeds a specified amount. And the third is the "duties" test, which focuses on

> the nature of the employee's job responsibilities. When all three criteria are met, the employee . . . is excluded from the FLSA's protections.

The FLSA regulations provide that an employee satisfies the salary basis requirement "if the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed." 29 CFR § 541.602(a).[1]

The company argued the salary basis test did not apply to employees who earned enough to qualify for the relaxed duties test applicable to "highly compensated employees." *See* 29 CFR § 541.601. The Supreme Court rejected that contention, holding that the highly compensated employee rule "refers to the salary-basis (and salary-level) requirement in the same way that the general rule does."

Moreover, the Court held, daily-rate pay does not satisfy the salary basis requirement because "[a] daily-rate worker's weekly pay is always a function of how many days he has labored [and] can be calculated only by counting those days once the week is over—not . . . by ignoring that number and paying a predetermined amount." Salary "connotes a steady and predictable stream of pay, week after week after week." Therefore, the Court concluded, the salary basis test "is not met when an employer pays an employee by the day."

The company also argued that the salary-basis component of the regulations is an "impermissible extrapolation from the statutory exemption for workers 'employed in a bona fide executive capacity.'" However, the Supreme Court declined to address this, pointing out that the company failed to raise this argument in the courts below.

Practical Considerations

In light of this decision, employers who pay daily rates or similar compensation to employees classified as exempt should closely review their pay structures. Additionally, employers should keep in mind that the minimum weekly salary required for exempt status can vary by state.

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If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

Los Angeles

Leslie L. Abbott
1.213.683.6310
leslieabbott@paulhastings.com

San Francisco

Zach P. Hutton
1.415.856.7036
zachhutton@paulhastings.com

New York

Emily R. Pidot
1.212.318.6279
emilypidot@paulhastings.com

San Diego

Ray W. Bertrand
1.858.458.3013
raymondbertrand@paulhastings.com

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[1] Another regulation, 29 CFR § 541.604(b), allows employees whose compensation is "computed on an hourly, a daily or a shift basis" to qualify as exempt under limited circumstances where the "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 a reasonable relationship exists between the guaranteed amount and the amount actually earned." However, the Court of Appeals for the Fifth Circuit concluded that Hewitt's compensation did not satisfy those conditions, noting that even the company did not purport to have met them.