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Supreme Court Decision Impacts FLSA's Overtime Rules

By: [Leah Lively](#) and [Jack Darrington](#)

All employers should be aware of the recent decision by the United States Supreme in *Helix Energy Solutions Group Inc. v. Hewitt* dealing with exemptions under the Fair Labor Standards Act ("FLSA"). The Hewitt court held that a well-compensated employee paid a daily rate, rather than a fixed weekly or monthly salary, was not exempt from the FLSA and its rules regarding overtime pay.

Helix Energy Solutions paid Michael Hewitt a daily rate ranging from \$963 to \$1342 per day. Hewitt earned over \$200,000 annually. While Hewitt received paychecks every two weeks, his paycheck amounted to his daily rate multiplied by the number of days he worked in the pay period. Hewitt often worked 12 hours per day, seven days a week.

Employees must be compensated on a "salary basis" to qualify for the FLSA's white-collar exemptions. The Supreme Court agreed to hear Hewitt's case to determine whether the daily pay structure met the "salary basis" test, thus exempting Hewitt from the FLSA's requirement for overtime pay for hours worked over 40. The answer was "no."

The Supreme Court held that when an employee is paid a given rate per day, that employee "is not paid on a salary basis, and thus is entitled to overtime pay." From the Court's decision, "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 Court further explained that a salary "connotes a steady and predictable stream of pay, week after week." Consequently, an employee does not receive a salary "when an employer pays an employee by the day." The Supreme Court ordered Helix Energy Solutions to pay Hewitt retroactive overtime wages.

Salary based compensation is only one part of the "salary basis" test; another part requires that employees earn above a certain amount weekly. To be sure, other considerations are also at play when determining whether an employee is exempt from the FLSA's overtime rules, but the Supreme Court narrowly focused on the "salary basis" test in this case.

Employers who pay daily rates to employees currently classified as "exempt" should closely evaluate their pay structures to ensure compliance with this new decision. Suits for overtime pay are common and carry attorneys' fees for prevailing plaintiffs; and employers are wise to periodically evaluate pay structures to ensure compliance with state and federal law.

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Leah Lively

Shareholder
(503) 226-8638
llively@buchalter.com



Jack Darrington

Attorney
(801) 401-8689
jdarrington@buchalter.com

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