

## ***U.S Supreme Court Upholds Overtime Pay for Employee Earning Quarter of a Million Dollars***

By [Harvey R. Linder](#)  
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On February 22, 2023, the United States Supreme Court issued its decision in [Helix Energy Sols. Grp., Inc. v. Hewitt](#), U.S., No. 21-984, 2/22/23. In a 6-3 decision, the Supreme Court sided with an oil rig supervisor who sued for overtime pay even though his daily rate already earned him close to a quarter-million dollars a year.

The high Court upheld a Fifth Circuit U.S. Court of Appeals decision (September 2021) that former Helix Energy Solutions Group Inc. (“Helix”) worker Michael Hewitt was not exempt from the Fair Labor Standards Act’s overtime requirement because the company paid him a day rate and not a guaranteed weekly salary.

Mr. Hewitt worked for the offshore oil and gas operator between 2015 and 2017. As a *toolpusher*, a senior position requiring experience in various drilling crew positions, he was paid over \$200,000 annually. Mr. Hewitt had an operations managerial-type role on the rig, working in a mostly administrative capacity, and regularly supervising 12-14 workers. His schedule consisted of working 12-hour days for 28 days in a row.

Helix ultimately fired Mr. Hewitt for alleged performance issues. Mr. Hewitt quickly responded by suing the oil company for failing to pay him and other employees required overtime. Helix claimed Mr. Hewitt was exempt from overtime pay.

Writing for the majority, Justice Elena Kagan stated that the day-rate basis on which Mr. Hewitt was paid, “so that he receives a certain amount if he works one day in a week, twice as much for two days, three times as much for three, and so on” does not count as a salary basis so as to exempt him from the FLSA’s overtime protections.

The case has significant implications for the energy industry because of its practice of using day rates instead of salary rates to compensate workers, including highly paid employees on oil-field or offshore jobs. The essence of the controversy is the nature of the employment relationship and the FLSA’s implementing regulations governing overtime pay exemptions for highly compensated executives, administrative, and professional employees.

To be exempt, executives must be paid on a salary basis, meaning their pre-determined pay must be “calculated on a weekly, or less frequent basis” and not tied to the hours worked per week. They also must earn at least \$100,000 annually and have a minimum pay threshold of \$684 per week.

The FLSA regulations also say workers paid on an hourly, daily, or shift basis can be classified as salaried, thus overtime exempt, as long as their employer guarantees “at least the minimum weekly-required amount” despite the number of hours, days, or shifts worked. Helix argued that, because Mr. Hewitt was an executive who received more than the minimum weekly pay, and whose compensation never changed, he was exempt from overtime. However, Helix never offered him a minimum weekly guaranteed pay, so his day rate earnings cannot be classified as a “salary”.

In 1938, the U.S. Congress enacted the Fair Labor Standards Act to protect workers and ensure they were paid fair wages. The FLSA included provisions for child labor, minimum wage, and overtime compensation. Since Congress’ goal was to protect working conditions for blue-collar workers, the overtime requirements in the FLSA contained exemptions. These exemptions apply to executive, administrative, or professional workers. To determine if employees qualify for these exemptions, the government created a “duties” test that outlines the general duties an employee must meet. These include, *inter alia*, management responsibilities and hiring capabilities. The exemptions also take into consider an employee’s compensation. Highly compensated employees earn at least \$100,000 annually and at least \$455 per week on a salary basis while performing the duties of executive, administrative, or professional employees. Mr. Hewitt was not paid on a salary basis, so, therefore, he did not qualify for the exemptions (from overtime) under either test.

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