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# U.S. Supreme Court Finds Employee Making \$200,000 Is Entitled to Overtime Pay

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The U.S. Supreme Court recently held that a rig oil worker paid at a daily rate that amounted to \$200,000 annually was entitled to overtime pay because he was not paid on a “salary basis” as required by the Fair Labor Standards Act (FLSA).

The court’s decision in *Helix Energy Solutions Group, Inc. v. Hewitt* – while limited in context to employees paid a daily rate – serves as an important reminder about the “salary basis test” and the U.S. Department of Labor’s (DOL) anticipated revisions to the minimum salary threshold necessary to qualify for a “white collar” exemption under the FLSA.

## ***Hewitt’s Holding: Being Paid at a Daily Rate Is Not a “Salary Basis”***

In *Hewitt*, the employer argued that the plaintiff was exempt from overtime under one of the FLSA’s white collar exemptions. For a white collar exemption to apply, the employee must have exempt job duties *and* be paid a set salary each week (i.e., one that is not subject to reduction based upon the quantity of work), known as the salary basis test. Under the FLSA, variations in that weekly salary that were tied to hours worked would not meet the salary basis test.

Hewitt was paid more than \$200,000 per year, leading his employer to argue he should be considered exempt from the FLSA’s overtime requirements. However, at trial Hewitt introduced evidence that he was paid based upon a daily rate and that his pay was dependent on the number of days he worked. Because Hewitt was paid by the day he actually worked, the court held that his compensation structure did not satisfy the salary basis test under the regulations.

Moreover, the court rejected the employer’s argument that Hewitt should be considered a “highly compensated employee” under FLSA overtime regulations. Under those regulations, if an employee is (1) paid a salary and (2) earns more than \$107,432 annually, then the employee is deemed highly compensated and need only to have some exempt job duties. The court said there is a difference between whether an employee satisfies the “salary- *basis*” test and the “salary-*level*” test.

Before an employee can demonstrate that a salary level satisfies the regulation, the court indicated that a threshold question is whether the employee was paid on a “salary *basis*.” In *Hewitt*, as the employee was paid a day rate, he was not paid on a salary basis. Thus, the amount of his compensation was irrelevant.

## **When Will the DOL’s Minimum Salary Threshold Be Raised?**

The U.S. DOL has indicated for some time that it intends to issue new overtime regulations raising the minimum salary threshold required to qualify for the white collar exemptions from overtime pay. Under the current rule, an employee must, in addition to other requirements, be paid at least \$684 per week to qualify for the exemption. Some commentators anticipate the agency will raise this threshold significantly.

In January 2023, the DOL released a regulatory agenda that indicated it would issue new proposed overtime rules in May 2023. As of the date of this article, the DOL has not issued proposed regulations changing the salary threshold.

*If you have any questions about the impact of Hewitt or about the anticipated DOL regulations on overtime pay requirements, please contact a member of Gould & Ratner's [Human Resources and Employment Law Practice](#).*