



## Supreme Court Confirms High-Wage Earner Paid Daily Rate Is Entitled To Overtime

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Perhaps not surprisingly, last week in a 6-3 decision, the U.S. Supreme Court in [Helix Energy Solutions Group, Inc. et al., v. Hewitt](#) held that, despite earning more than \$200,000 per year, an employee earning a daily rate is not exempt from overtime pay under the Fair Labor Standards Act (FLSA). The court analyzed whether the plaintiff fell within the “bona fide executive” exemption to the FLSA, finding that he did not because he was not paid on a “salary basis.”

The majority noted on multiple occasions that the FLSA requires time-and-a-half pay for work over 40 hours a week, even for workers whose compensation far exceeds minimum wage.

The decision affirmed the U.S. Court of Appeals for the Fifth Circuit ruling that the plaintiff is entitled to overtime. Here is why. The bona fide executive exemption has three parts and the parties agreed that two of three were satisfied – the salary level test and the duties test. The parties disputed the final part, the salary basis test, because the plaintiff was paid at least \$963 per day (and up to \$1,341 per day).

The Supreme Court explained the applicable regulation provides an employee is paid on a salary basis where the employee “receive[s] the full salary for any week in which [he] performs any work without regard to the number of days or hours worked.” Because the plaintiff was paid a daily rate, and could earn more or less depending on the days worked, the court

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determined the plaintiff's pay did not fit the regulation's definition of a salary basis. The plaintiff's compensation was not a fixed weekly amount, as described by the regulations, according to the court.

The court rejected the plaintiff's argument that he satisfied the test because his paycheck came every two weeks and exceeded the salary level of \$455 per week (the then-applicable salary level). The court reasoned Helix's interpretation of payment on a "weekly basis" as meaning the frequency of payment was not a natural reading of the regulation. Rather, it explained the "basis" of payment referred to the unit or method for calculating pay, such as by the hour, the day, or the week.

The court further rejected Helix's policy concerns, including the potential "windfall" to high earners, noting that Congress "has repeatedly rejected efforts to categorically exempt all highly paid employees from overtime payment." The court explained how Helix could come into compliance with the salary basis test by either providing a weekly guarantee payment that approximates what the employee usually earns, or by converting the compensation to a straight weekly salary.

There were two dissenting opinions and the one penned by Justice Brett Kavanaugh, joined by Justice Samuel Alito, bears noting for a couple of reasons. First, Justice Kavanaugh explains that he believes the salary basis test was satisfied because the regulations require minimum "predetermined amount" calculated on "a weekly or less frequent basis," which must exceed \$455 per week. And because the plaintiff's predetermined day rate was higher than the \$455 per week floor, Justice Kavanaugh reasoned that Helix satisfied the salary basis test. Second, Justice Kavanaugh noted the regulations themselves may be inconsistent with the FLSA, stating he did not understand why it matters for assessing executive status whether an employee is paid by salary or otherwise. Expect this argument to gain traction, with management-side attorneys potentially challenging whether these regulations are consistent with the goal of the FLSA to protect low-wage employee.

The Supreme Court's decision serves as an important reminder to employers that employees who are high earners are not automatically exempt from overtime wages. All parts of the test for exemption must be satisfied – salary level (amount), salary basis (consistent unit), and duties (i.e. executive or administrative). Otherwise, overtime wages must be paid, regardless of how much the employee earns.