

# Electronic Alert

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## Supreme Court Weighs in on Salary Basis Requirement for Exempt Employees

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On February 22, 2023, the United States Supreme Court found that an employee who earned more than \$200,000 a year was entitled to recover overtime pay under the Fair Labor Standards Act (FLSA). In *Helix Energy Solutions Group, Inc. v. Hewitt*, the Supreme Court examined whether the employer had properly classified the employee as exempt.

### Facts of the Case

The employee in this case worked on an offshore oil rig for Helix Energy Solutions Group for 28 days on, followed by 28 days off. When he was on the rig, he typically worked 12 hours a day, 7 days a week, roughly 84 hours a week.

The employee was paid on a daily-rate basis every two weeks. His daily rate changed over time during his employment, but ranged between \$963 to \$1,341 per day. His pay was calculated by multiplying his daily rate by the number of days he worked in the pay period. Under this compensation scheme, the employee earned more than \$200,000 a year. The employer classified him as “exempt” under the executive exemption test, so the employer did not pay him any overtime.

### “Salary Basis” Test

To qualify for the executive exemption, which is one of the three commonly referred to “white collar” exemptions under the FLSA, an employee must satisfy three separate tests: (1) “salary basis” test, (2) “salary level” test, and (3) “duties” test. If even one test is not met, the employee does not qualify for the exemption. The employee argued he was entitled to overtime because his compensation structure did not meet the salary basis test.

An employee is considered to be paid on a “salary basis” under § 602(a) of the FLSA “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.” Section 602(a) also states that “an exempt employee must receive the full salary for any week in which the employee performs any work *without regard to the number of days or hours worked.*”

### Takeaways for Employers

The Supreme Court ultimately agreed with the employee, finding that the employer failed to pay him as required by the salary basis test under § 602(a). Accordingly, he did not qualify as an exempt employee and was entitled to overtime pay. The Court reasoned that even though the employee was

paid on a bi-weekly basis, his pay was calculated using the number of days actually worked—meaning his pay was calculated *with* regard to the number of days he worked—in direct conflict with the rule.

Employers can have daily-rate workers satisfy the salary basis test and qualify for an exemption from overtime. Under § 604(b) of the FLSA, “if the employment 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,” the employee meets the salary basis test. In this case, the employer admitted it did not meet the requirements in § 604(b), so it was not applicable.

The Court also discussed whether the employee could have been exempt under the FLSA’s “highly compensated employee” exemption, however, the Court found that exemption is still subject to the salary basis test.

This case is a great reminder that employers should make sure they are familiar with the salary basis requirements for their exempt employees.

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