



## U.S. SUPREME COURT DECIDES HIGHLY COMPENSATED EMPLOYEES CAN RECEIVE OVERTIME

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**A high-earning employee making as much as \$200,000 per year can still be entitled to overtime compensation, per the United States Supreme Court in a recent decision in *Helix Energy Solutions Group, Inc. v. Hewitt*. The vast majority of employers assume that if an employee is making a healthy six-figure income that entitlement to overtime is not part of the equation when calculating that person's compensation. We now know that may not be the case, as discussed in the Supreme Court's surprising ruling.**

### **How Did We Get Here?**

The Fair Labor Standards Act, which governs federal wage law, says that "highly compensated employees," those making over \$107,432 per year in total compensation, which includes at least \$684 per week in salary, are exempt from overtime compensation as long as they perform at least one exempt duty, such as supervising two or more employees or exercising administrative authority. These employees need not perform all of the exempt duties under either the administrative, executive or professional exemptions to qualify; instead, they need only perform at least one. Total annual compensation may include other payments, such as nondiscretionary bonuses and commissions.

As all employers know, failure to pay overtime to a nonexempt employee entitles that employee to overtime pay equal to 1.5 times their regular rate of compensation, plus in some instances liquidated damages. In the case of highly compensated individuals, that overtime figure can be a significant number, particularly if multiplied by many highly compensated workers claiming unpaid overtime from the same employer.

### **The Helix Energy Solutions Decision**

Helix Energy relied on the “highly compensated employee” exemption in the payment of certain categories of its employees who were paid primarily on a “day rate basis,” something common in the energy industry. The plaintiff in the lawsuit, Hewitt, made in excess of \$200,000 per year based on this day rate calculation. Specifically, Hewitt was paid at least \$963 per week if he worked any amount of time in one day during the workweek, substantially more than the \$684 weekly minimum guarantee required by the FLSA. In addition, he received other compensation based on incentives and production.

The Supreme Court sided with Hewitt, finding that a nonexempt employee paid exclusively with a day rate cannot satisfy the salary basis test, even if that day rate exceeds the FLSA’s minimum salary amount. In other words, “A day rate is not a salary, no matter how much it is.”

### **What Should Employers Do in Response to this Decision?**

- As a first order of business, take a close look at which employees you have categorized as exempt or nonexempt to determine if they are properly categorized to ensure all nonexempt employees are receiving overtime pay.
- Evaluate the manner in which you are paying your workers. For salaried employees, does the amount of their salary meet the FLSA’s minimum requirements? Even if it does meet the standard, ensure that any other compensation paid to the exempt employees does not exceed more than 1.5 times their base salary.
- Per the Helix decision, review the compensation for your highly compensated workers (\$107,432 or greater) to determine if their pay is exclusively comprised of compensation that is not salary based. If so, you will need to establish a weekly guarantee for those workers in excess of \$684 per week.

If you have any questions regarding this new ruling, please contact partners [Jay Wallace](#) or [Brent Hockaday](#).

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