FP SCOTUS Predictions: How Will Supreme Court Rule on a $200,000 Employee's Claim for Overtime Pay?

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Imagine this scenario: You pay an employee a substantial daily rate — which works out to more than $200,000 a year. Still, the employee claims they're entitled to overtime pay because they were paid a daily — rather than weekly — rate. Is such a highly compensated employee eligible to receive overtime premiums under the Fair Labor Standards Act (FLSA)? That's exactly what the Supreme Court was asked to decide in a case involving a worker who was paid a guaranteed daily rate of at least $963, which is higher than the FLSA's weekly salary threshold. At the heart of this case are a few fairly simple questions: When does an employee earn enough money that the law simply does not require the employer to pay overtime? Does it really matter how the employee is paid if they earn more than $200,000 a year? The federal appellate courts are divided on the answers, and a SCOTUS ruling awarding OT pay could be extremely costly — even if the employer thought its practices were compliant with the FLSA. A decision in favor of the employer, however, could give you more flexibility in determining the pay models that work best for your business. How will SCOTUS rule? Read on for a discussion of the case and our predictions in light of recent oral arguments.

What is This Case About?

Here's a quick review of the relevant overtime rules: Generally, employees must be paid 1.5 times their regular rate for all hours worked beyond 40 in a workweek. To qualify for a "white-collar" exemption to the FLSA's overtime rules, an employee must be paid on a salary basis of at least $684 a week and perform certain duties.

Employees who earn at least $107,432 a year are considered "highly compensated" — but they are not automatically exempt. They still must meet a reduced duties test and earn "at least $684 per week paid on a salary or fee basis," according to the Department of Labor (DOL). (*Note: At the relevant time in this case, the weekly salary threshold was $455, and the highly compensated exemption applied to employees earning at least $100,000 a year.*)

The facts of the *Helix Energy Solutions Group, Inc. v. Hewitt* case are straightforward. An oil rig worker was paid a minimum daily rate of $963 (which works out to more than $200,000 a year) and was treated as exempt from overtime. The employee argues, however, that he was not exempt from receiving overtime pay because he did not receive a weekly salary.

The employer, Helix Energy Solutions, relied on the "highly compensated employee" exception and made the following arguments:

- The employee was guaranteed at least $963 if he worked any amount of time in one day during the workweek, which serves the same purpose as the minimum guarantee provided by a weekly salary; and
- The minimum guarantee of $963 is more than enough to meet the $684 weekly amount (and the prior weekly minimum of $455) required under the FLSA.

In short, this is a battle about what really is a "salary" and if a daily minimum guarantee can be a salary — with some subtle but significant nuances.

Helix initially won the case at the district court level, but the employee struck back with a win from the 5th U.S. Circuit Court of Appeals. But the battle continues since the Supreme Court agreed to weigh in.

How Could the SCOTUS Decision Impact Employers?

There is currently a split among the federal circuit courts on the issues being decided by the Supreme Court. Employers with employees who are highly compensated but paid on a day rate, shift rate, or similar method need to pay close attention.

- If the Supreme Court agrees with the 5th Circuit's majority, employers will need to guarantee a substantial portion of employees' weekly pay (on a salary basis) in order to satisfy the highly compensated employee exemption.
- Alternatively, if the 5th Circuit is overturned, employers should have a lot more leeway to rely more on pay structures that offer hourly, daily, or shift pay for exempt employees.

Did the Justices Show Their Cards at Oral Argument?

So, can you guarantee an employee only a day rate if their average weekly pay is nearly $5,000? Will this still meet the regulatory requirements of the highly compensated employee exemption? We're still waiting for a SCOTUS decision, but oral arguments often provide significant insight into how each Justice views the case — and their questions can help predict how the case might be decided.

For example, during oral arguments in this case on October 12, Justice Jackson repeatedly questioned the employer's attorney about the importance of a guaranteed amount so employees can try to accurately predict how much money they will make each week, month, and year.

On the other hand, Justice Thomas took issue with an employee who makes $200,000 or more being eligible for overtime, questioning whether that fits within the purpose of the FLSA's overtime provisions.

FP SCOTUS Prediction: Expect a Win for Employers

Based on the oral argument, we think a majority of the Supreme Court Justices will rule in favor of Helix Energy Solutions and conclude that the employee was exempt from overtime pay. But we should note that the ruling might be based on some of the unique facts that exist in this case.

Most significantly, the employee in question received a day rate of $963. So, if this employee worked any portion of any day in a workweek, then he received more than the current minimum salary requirement for the week. This could be viewed as meeting the minimum salary guarantee (even though his rate was said to be paid on a daily basis).

If the Supreme Court concludes that this was a guaranteed amount sufficient to satisfy the applicable weekly minimum guarantee, then the decision likely will focus on whether the FLSA's "reasonable relationship" test should be applied to highly compensated employees. This test applies when traditional exempt employees — those that make less than the highly compensated threshold — are paid a salary but receive additional compensation for the hours that they work. The guaranteed rate must bear a reasonable relationship to the total amount actually earned.

We think the Court will adopt the employer's argument. We expect a majority of the Justices to conclude that employees who are paid more than $107,432 annually do not have to show that the minimum guaranteed weekly payment or salary is reasonably related to their total weekly compensation, so long as they are guaranteed to earn at least $684 in each week that they perform work.

If our prediction is correct, it is likely that the majority — which will probably include Justices Roberts, Thomas, Kavanaugh, Barrett, Alito, and Gorsuch — will make it easier for employers to classify employees as exempt from overtime under the FLSA when they receive a minimum guarantee (whether through a day rate, salary, or otherwise) of at least $684 per week, so long as their total compensation each year is at least $107,432.

Justices Jackson, Sotomayor, and Kagan — based upon their lines of questioning — appear prepared to dissent. We expect them to find that even those who earn well over $100,000 are subject to the reasonable relationship test, and thus, must earn a substantial portion of their pay in the form of their guaranteed salary.

FP Predictions: The Breakdown

How will the Court decide? Here's what we expect to see from the Justices:

- **Patrick Dalin:** 5-4 in favor of the employer with Justice Thomas writing the majority opinion (holding that this employee meets the exemption), and Justice Kavanaugh writing a concurring opinion expressing skepticism that the statute permits a salary test to be used as a requirement for the exemption (see more on that below).

- **Marty Heller:** 6-3 in favor of the employer with Justice Thomas writing the majority, and Justice Gorsuch writing a concurring opinion.
- **Corina Johnson:** 6-3 in favor of the employer with Justice Thomas writing the majority, and Justice Jackson writing a dissenting opinion.

A Bold Prediction

We do have a bold prediction based on the questioning at oral argument. One or more of the Justices in the majority could potentially write a concurring opinion finding that the regulations to the FLSA — to the extent that they require a minimum salary level in order to be exempt under the white-collar exemptions — are an impermissible exercise in regulatory action outside the scope of the statutory confines of the FLSA. In other words, they could assert that the DOL doesn't have the authority to establish a salary threshold for the white-collar exemptions.

This would open the door to many new arguments for employers, including challenges to the DOL Wage and Hour Division's attempts to increase the minimum salary level. As you may know, the DOL is planning to update federal overtime regulations, and we expect the department to propose a substantial increase to the salary threshold to somewhere around $900-$1,000 a week. Thus, a SCOTUS opinion in this case could potentially shape the future of such rulemaking and subsequent challenges.

What Should You Do in the Meantime?

The Supreme Court heard oral argument on this case back on October 12. That means we can expect a decision at any time now, and certainly before the end of the current term that should wrap up in late June.

Until SCOTUS releases an opinion, the 5th Circuit's ruling remains the law of that jurisdiction (this includes Texas, Louisiana, and Mississippi). Employers operating in these states need to make sure their compensation plans are compliant with the findings of that order. The safest route may be to include weekly (or less frequent, such as bi-weekly or monthly) salary guarantees in compensation packages for employees who fall under the highly compensated employee exemption.

Additionally, employers should be aware that not all states recognize a highly compensated employee exemption. If you have employees in a state that does not recognize this exemption, you need to adopt payroll policies for those employees that comply with the applicable state's laws.

Conclusion

We will continue to monitor this case and provide updates as appropriate. Make sure you are subscribed to Fisher Phillips' Insight System to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our Wage and Hour Practice Group.

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