

4 TIPS FOR EMPLOYERS AFTER APPEALS COURT SAYS HIGHLY COMPENSATED EMPLOYEE IS ENTITLED TO OT PAY

Insights

Apr 4, 2025

An appeals court just ruled that a pipe inspector who earned more than \$270,000 a year was entitled to overtime pay because he was not paid on a “salary basis.” In its April 1 decision, the 6th Circuit joined the 5th Circuit by reaffirming that the salary basis test is here to stay even if an employee is highly compensated. The decision serves as a stark warning that simply guaranteeing an employee some amount of weekly compensation above the current salary threshold (\$684 per week) may not be enough to satisfy the Fair Labor Standards Act’s (FLSA’s) salary basis requirement. Are your pay practices compliant? Here are four tips for employers in light of this ruling.

1. Understand Wage and Hour Requirements

One of the major issues spurring wage and hour litigation nationwide over the past decade centers on the “salary basis” requirement — a crucial component in determining whether an employee is exempt under the FLSA’s executive, administrative, and professional exemptions from overtime pay.

To qualify under these so-called “white collar” exemptions, employees must be paid on a salary basis at least \$684 a week and perform certain duties. Notably, the Department of Labor (DOL) applies a reduced duties test for highly compensated employees who earn at least \$107,432 in total annual compensation – but these employees still must be paid on a salary basis.

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Lindsay Reimer

Partner

713.292.5617

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Employees who do not qualify for an exemption generally must be paid an overtime premium of 1.5 times their regular rate of pay for all hours worked beyond 40 in a workweek. You should also be aware of state law requirements, which may be more stringent than federal law.

Compliance is key: If an employee is misclassified as exempt, the employer could be on the hook for thousands – or even hundreds of thousands – of dollars in unpaid overtime premiums, as well as an equal amount in liquidated damages and attorneys’ fees and costs.

2. Review the Most Recent Ruling

In *Pickens v. Hamilton-Ryker IT Solutions, LLC*, a pipe inspector filed an overtime claim under the FLSA arguing his employer misclassified him as an exempt, salaried employee when he was really a non-exempt, hourly worker entitled to overtime pay.

In any week the pipe inspector worked, his employer paid him a guaranteed weekly amount of \$800 (a figure equivalent to eight hours of pay) plus \$100 an hour for all hours he worked over eight hours each week. On average, the pipe inspector worked 52 hours each week and earned \$274,000 in a year.

The district court agreed with the employer, finding the pipe inspector was an exempt salaried worker and was not entitled to overtime pay.

Leaning on the Supreme Court’s 2023 decision in [*Helix Energy Solutions Group, Inc. v. Hewitt*](#), however, the 6th Circuit reversed and found in favor of the employee. The appeals court said the employer failed to pay the pipe inspector a “salary” because the eight-hour weekly guarantee he received (\$800) did not cover a week’s worth of work and was not “roughly equivalent” to his usual weekly earnings for his regular 52-hour workweek. In other words, the court determined it is not enough for an employee to be guaranteed just any fixed amount above the salary threshold if it makes up only a small portion of their weekly pay.

3. Assess Your Pay Practices

Do your pay practices align with the ruling? The 6th Circuit emphasized that payment on a “salary basis” requires an

employee receive a predetermined amount (a salary) each pay period that does not fluctuate based on the quantity of work performed (hours worked). This is meant to provide employees with stability and security.

The court interpreted this to mean the weekly salary guarantee must be the cornerstone for a week's worth of work — no matter how many hours the employee worked or how much they were ultimately paid. Because the pipe inspector's weekly compensation varied significantly based on the hours he worked each week, the court found his weekly guarantee did not function as a true salary.

The 6th Circuit's decision puts a spotlight on the type of weekly guarantee that will be sufficient to satisfy the "salary basis" test. Therefore, employers would be wise to:

- carefully review your pay practices;
- work with experienced legal counsel to ensure that any weekly salary guarantee satisfies the requirements of the "salary basis" test; and
- evaluate whether additional payments exceeding the weekly guarantee endanger a worker's exempt status — no matter how much they make.

Given the Supreme Court's ruling on the salary basis issue, in addition to the 5th and 6th Circuit decisions, employers nationwide will want to review their practices and assess their risks.

4. Track Legal Battles Over Bigger-Picture FLSA Issues

The 6th Circuit also addressed the validity of the salary basis regulations altogether, which came into question during the Supreme Court's oral argument in *Helix* (though the issue was not formally before the court).

The employer argued that the FLSA's salary regulations exceeded the DOL's authority to "define and delimit" the scope of exemptions. The 6th Circuit refused to depart from "every court of appeals to consider the question" and upheld the validity of the DOL's authority.

But the Supreme Court has not formally weighed in on the issue, so the validity of the salary basis regulations could come up again on appeal — an issue several Supreme Court

Justices appeared eager to discuss during the *Helix* oral arguments.

For example, Justice Kavanaugh said it is questionable whether the regulations “would survive if and when they are challenged as inconsistent with the statute.” He all but invited employers to challenge the rules in the lower courts and “ultimately” at the Supreme Court.

In a footnote, the SCOTUS majority sidestepped some of the issues Kavanaugh noted, stating that the employer failed to raise the arguments in the courts below — but we’ll likely see these question litigated in the near future.

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 author of this Insight, or any attorney in our Wage and Hour Practice Group.