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U.S. Supreme Court Rules Employee Making Over $200,000 Is Entitled to Overtime Pay

Tanner J. Bean & Joan M. Andrews

On February 22, 2023, the U.S. Supreme Court decided an important case regarding whether an employee is entitled to overtime pay under the Fair Labor Standards Act ("FLSA"). The case, *Helix Energy Solutions Group, Inc. et al. v. Hewitt*, reminds employers to strictly comply with the FLSA and not assume a highly compensated employee is exempt from the FLSA's overtime requirements.

As background, the FLSA requires employers to pay 1.5x an employee's regular rate of pay for any hours worked in excess of 40 hours a week. But there are various categories of employees who are exempt from this rule, leading employers to classify their employees as either "exempt" or "non-exempt." Common exemptions from the overtime requirement exclude executives, professionals, administrators, computer professionals, and highly compensated employees making more than $107,432. For these employees to qualify for an exemption, they must satisfy the FLSA's "salary basis test." In other words, they must be paid a minimum "salary" of at least $684 a week.

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The Helix Energy Solutions Group case posed the question: what does "salary" mean? The Supreme Court explained that under the FLSA "salary" can mean: (1) a fixed, predetermined, and regular payment of compensation largely unaffected by the amount of time an employee works or (2) an hourly, daily, or shift system of payment that guarantees pay (A) of at least $684 a week and (B) the weekly pay is roughly equivalent to what the employee would earn under an hourly, daily, or shift system in a normal workweek. In both cases, "salary" represents a steady stream of predictable pay.

The employee in the Helix Energy Solutions Group case typically worked 12-hour days on an oil rig, seven days a week, for 28-days straight, and then had 28 days off before returning to work. His employer paid him a daily rate and did not pay overtime. As a result, his weekly earnings fluctuated greatly according to the number of days he worked each week. Even so, he earned over $200,000 a year. In response to his FLSA lawsuit for unpaid overtime wages, his employer claimed he was a bona fide executive exempt from overtime payments due to his high income.

The Supreme Court determined that the employer did not use a fixed, predetermined, and regular system of payment, nor did its daily system of compensation guarantee weekly payment roughly equivalent to what the employee earned in a normal workweek with his typical shifts. In short, the employee was not paid a "salary."

Thus, he was not eligible for the executive exemption from the FLSA and should have been paid overtime for his work over 40 hours in a week.

The employer now faces steep fines under the FLSA: double the amount of the overtime pay owed to the employee (hundreds of thousands of dollars), as well as the employee's attorney fees and court costs.

Classifying employees under the FLSA must be done on a case-by-case basis. Fabian VanCott's attorneys are ready to guide you through fact-specific circumstances as you structure your workforce for compliance with the FLSA.

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ADDITIONAL UPDATES

FTC Proposes Rule to Ban Non-Competes Nationwide

by Jacqueline M. Rosen

In January 2023, the Federal Trade Commission proposed a rule to define unfair competition to include the use of non-compete clauses in almost all instances. If the proposed rule is finalized, it would ban nearly all non-competes. The comment period is currently open for this rule through April 19, 2023. Fabian VanCott's attorneys are ready to advise you about the development of this rule, how to draft an effective comment, anticipated challenges to the rule, and if finalized, the impact the rule will have upon your business.

NLRB Decision Prompts Employers to Pull Non-disparagement and Confidentiality Provisions

by Jacqueline M. Rosen

In late February 2023, the National Labor Relations Board ("NLRB") ruled in the case of *McLaren Macomb* that non-disparagement and confidentiality provisions in severance agreements may violate the National Labor Relations Act ("NLRA") in some circumstances. The NLRB concluded that the provisions unlawfully interfered with broad NLRA rights, overruling prior decisions in 2020. Although challenges to this decision are expected, because the decision is now in effect, it may be advisable for employers to review their agreements to ensure they comply with the new decision. Fabian VanCott's attorneys are ready to assist you in preparing such updated agreements.

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