



LEHR MIDDLEBROOKS
VREELAND & THOMPSON, P.C.

LABOR • EMPLOYMENT • IMMIGRATION

March 6, 2023

Big Bucks Supervisor Scores Overtime Win

Many employers labor under the misconception that a highly paid employee is necessarily exempt from the overtime requirements of the Fair Labor Standards Act (FLSA). After all, the FLSA was enacted in 1938 to protect low wage workers by requiring employers to pay a minimum wage (currently \$7.25 per hour) and time and a half for overtime (hours over 40 per week). Certainly, Congress did not intend for it to provide a windfall for employees banking \$200,000 a year, right? Think again.

Last month, the Supreme Court took on this issue. Michael Hewitt was a supervisor on an oil rig, bringing in over \$200,000 a year. He worked on rotating 28-day “hitches” (28 days on/28 days off) and was paid \$936 per day. And therein lies the rub.

The “white collar” exemptions to the overtime requirements under the FLSA (executive, administrative and professional) are determined by a three-prong test: (1) the employee must be paid on a salaried basis; (2) the salary must be at least \$684 per week; and (3) the employee must perform certain duties – which vary depending on the type of exemption. Everyone agreed Hewitt earned well above the salary threshold (pulling in a minimum of \$936 in any week in which he worked just one day) and that his job satisfied the duties test (supervising 12-24 employees).

As you’ve no doubt deduced, the problem is that Hewitt was paid based on a daily rate. His employer argued that because the daily rate was so high (\$936) he was, in effect, guaranteed a salary over the minimum threshold (\$684) for any week in which he worked at all. The Supreme Court wasn’t buying it. In addition to being paid above the threshold, the employee has to be paid on a salaried basis for a week or longer. Because Hewitt was paid on a daily basis, he could not qualify for the exemption no matter how much he ultimately earned. As you can imagine, the overtime tab for a high wage employee working 84 hours a week will be hefty.

In addition to regular audits to confirm that exempt employees meet the duties tests, confirm that exempt employees are paid a fixed salary for any week in which they work at all.

If you have any questions regarding overtime requirements of the FLSA, please contact Al Vreeland at 205-323-9266 or avreeland@lehrmiddlebrooks.com.