



Supreme Court Decision Opens Door for Overtime Wage Lawsuits from Highly Compensated Day Rate Workers – Protective Measures Energy Companies Should Consider

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The US Supreme Court [issued a decision](#) yesterday that will likely impact companies within the oil and gas industry. Now is the time for you to consider some protective measures for your business.

In *Helix Energy Solutions Group, Inc., et al. v. Hewitt* (No. 21-984), SCOTUS held that highly compensated supervisors who typically would be exempt from the overtime compensation provisions of the Fair Labor Standards Act (“FLSA”) are entitled to time-and-a-half pay for hours worked over 40 hours in a workweek because they receive a daily rate rather than a fixed annual salary. While there is still an opening to show a different exemption, that will be more fact intensive. Make no mistake: the next wave of wage and hour litigation is coming, and it will be costly.

Numerous companies in the oil and gas industry pay their employees and subcontractors based on daily rates. Even if your company doesn't, you may have master service contracts with those who do, which brings a heightened risk of being dragged into your vendor's wage and hour dispute.

What can you do to prepare?

- **Take stock of your potential direct liability:** If you pay some of your own employees based on a day rate, then you need to re-examine your exempt / non-exempt categories immediately.
- **Consider insurance for potential defense costs:** Most employment practice liability coverage excludes wage and hour liability. You can purchase an endorsement for wage and hour coverage, although such coverage usually only covers defense costs (not liability) and has a lower sublimit. Some risk transfer may be better than no risk transfer?
- **Consider lowering your potential litigation exposure, particularly to class actions:** You can require your employees to sign a mutual agreement to arbitrate certain employment-related disputes (not all) and which can include a class action waiver. You can also require your contractors to agree to arbitration and class action waivers. This will greatly reduce your potential litigation exposure.
- **Shore up your indirect litigation risks coming from third-party contractors:**
 - You can revise your master service agreements (if needed) to include indemnification for wage and hour claims by the vendor's employees and subcontractors;
 - You can require your vendors (if needed) to enter into mutual arbitration agreements with their employees and subcontractors that would inure to the benefit of their

customers (i.e. you) – to do this, you need to make sure the arbitration agreements of your vendors and contractors broadly define covered claims to include customers;

- Consider high-grading your existing vendor contracts by spend and vendor type to identify higher risk exposures, then approach them about re-negotiating to include the above provisions.

GableGotwals' [energy, oil & gas](#) and [employment and labor](#) practice groups have extensive experience assisting clients before, during and after litigation arising from wage and hour claims and other complex issues.



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