United States Court of Appeals for the Fifth Circuit

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Fifth Circuit
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Lyle W. Cayce
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No. 25-50594

TREVER GUILBEAU, *individually and on behalf of all others similarly situated*; CHRISTOPHER O'MARA, *individually and on behalf of all others similarly situated*; HENRY HERBERT, JR.,

Plaintiffs—Appellees,

versus

SCHLUMBERGER TECHNOLOGY CORPORATION,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:21-CV-142

Before HIGGINBOTHAM, SMITH, and OLDHAM, *Circuit Judges*.

PATRICK E. HIGGINBOTHAM, *Circuit Judge*:

This is a collective action case[1] about eligibility for overtime pay under the Fair Labor Standards Act ("FLSA"). The FLSA requires overtime for

[1] A "collective action" is similar, but not identical, to a typical class action. "Traditional class actions under Federal Rule of Civil Procedure 23 . . . proceed under well-established procedural safeguards to ensure that the named plaintiffs are appropriate class representatives. But so-called 'collective actions' under the Fair Labor Standards Act proceed . . . differently." *Swales v. KLLM Transp. Servs.*, 985 F.3d 430, 433 (5th Cir. 2021). FLSA collective actions employ an "*opt-in* mechanism," while standard Rule 23 class

covered employees paid by the day, but not for salaried employees.[2] Some pay arrangements, however, have elements of both. Schlumberger gave these plaintiffs "hybrid" pay that was part salary and part day rate. This appeal turns on whether that hybrid scheme is "salary-basis" and exempt from overtime pay under the FLSA and related regulations.

We hold that Guilbeau was paid on a salary basis and hence ineligible for overtime compensation. We REVERSE and order summary judgment for Schlumberger rejecting Guilbeau's claims, and REMAND for further proceedings consistent with this opinion.

I.

A.

The named plaintiffs were Schlumberger employees. Trever Guilbeau was a Directional Driller ("DD") who "provided oilfield drilling services to Schlumberger and was generally responsible for executing non-vertical well-drilling projects." Christopher O'Mara was a Measuring While Drilling employee ("MWD"), "an engineering position involving collecting, monitoring, and reporting data collected from various tools and sensors on directional drilling rigs regarding drilling operations."

Schlumberger paid both DDs and MWDs with a "hybrid" system whose mechanics are undisputed.[3] First, there was fixed pay. Every two weeks, Schlumberger paid Guilbeau $1,826 and O'Mara $2,538.46, amounts which did not vary with hours or days worked. Then there was variable pay.

"members are bound by the judgment or settlement unless they affirmatively *opt out*." *Id.* at 435 (emphases added).

[2] 29 U.S.C. § 207(a); 29 C.F.R. §§ 541.602(a), 541.604.

[3] The district court itself observed that "the parties identify no material factual dispute."

Guilbeau earned a "rig day rate" of $525 for each day he actually worked on a rig and a "standby day rate" of $262.50 for each day he waited on-site, and O'Mara earned $160 for each day he worked on a rig. Guilbeau also received other bonuses "for exemplary or extra work," like when he was "the most experienced member of a crew" or working "on a short-staffed crew." Variable pay comprised a substantial part—often a majority—of DDs' and MWDs' total compensation. For example, "Guilbeau would work for seven days straight," "would earn his 'rig day rate' for each of those days of work," and would consequently "earn $913.00 [salary] plus $3,675.00 (7 days * $525.00 rig day rate), totaling $4,588.00" in one week.

B.

The plaintiffs "routinely worked in excess of 40 hours per workweek" without overtime pay. Guilbeau and O'Mara sued Schlumberger under the FLSA seeking overtime pay for themselves and other DDs and MWDs "paid partially on a 'salary' basis . . . and partially on a day rate basis." The plaintiffs soon moved to issue notice to potential DD and MWD collective members, and Schlumberger moved for partial summary judgment on Guilbeau's claims, arguing he was ineligible for overtime compensation as a matter of law because he was a salaried employee.

The district court denied Schlumberger's motion for partial summary judgment. It authorized notice to the proposed DD collective but denied notice to the MWDs. Later, the district court granted Schlumberger's motion for interlocutory appeal under 28 U.S.C. § 1292(b), citing the "continuing shifting legal landscape" in this area. This appeal followed.

II.

On interlocutory appeal from the denial of summary judgment, we review de novo.[4] We also "review the district court's interpretation of the applicable Labor Department regulations de novo."[5]

III.

A.

"Congress has authorized the Secretary [of Labor] to promulgate regulations exempting 'bona fide executive, administrative, [and] professional' employees from overtime."[6] "Under that authority, the Secretary has exempted 'highly compensated' as well as more modestly paid 'executive,' 'administrative,' and 'professional' employees."[7]

These exemptions have three prerequisites. "First, the employee must meet certain criteria concerning the performance of executive, administrative, and professional duties."[8] "Second, the employee must meet certain minimum income thresholds."[9] "Finally, the employee must be paid on a 'salary basis.'"[10] "Whether an employee is within an exemption is a question of law, but how an employee spends his working time is a question

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[4] *Smith v. Ochsner Health Sys.*, 956 F.3d 681, 683 (5th Cir. 2020).

[5] *Hewitt v. Helix Energy Sols. Grp., Inc.*, 15 F.4th 289, 293 (5th Cir. 2021) (en banc), *aff'd*, 598 U.S. 39 (2023).

[6] *Helix*, 15 F.4th at 290 (quoting 29 U.S.C. § 213(a)(1)).

[7] *Id.* (citations omitted).

[8] *Id.*

[9] *Id.*

[10] *Id.*

of fact."[11] "The employer has the burden of proof on a claimed exemption."[12]

The parties dispute only the "highly compensated employee" ("HCE") exemption—specifically, whether Schlumberger paid Guilbeau on a salary basis.[13] The relevant regulations provide two ways to show exempt salary-basis compensation.[14] We must decide which, if any, covers Guilbeau's pay scheme.

The first path, under 29 C.F.R. § 541.602(a) ("Section 602(a)"), applies to employees whose guaranteed compensation is "paid by the week (or longer)."[15] The "'predetermined sum' [must be] *calculated*, not merely provided, by the week."[16] 29 C.F.R. § 541.604(a) ("Section 604(a)") adds nuance. It explains that "[a]n employer may provide an exempt employee with additional compensation without losing the exemption or violating the

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[11] *Smith*, 956 F.3d at 684 (citing *Icicle Seafoods, Inc. v. Worthington*, 475 U.S. 709, 714 (1986)).

[12] *Id.* (citing *Owsley v. San Antonio Indep. Sch. Dist.*, 187 F.3d 521, 523 (5th Cir. 1999)).

[13] HCEs "(1) [are] annually compensated at least $100,000; (2) 'customarily and regularly perform[] . . . the exempt duties or responsibilities of an executive, administrative or professional employee'; and (3) ha[ve] within [their] primary duties the performing of office or non-manual work." *Id.* (cleaned up).

[14] *See* 29 C.F.R. §§ 541.602(a), 541.604.

[15] *Helix*, 598 U.S. at 50; *see* 29 C.F.R. § 541.602(a) ("An employee will be considered to be paid on a 'salary basis' within the meaning of this part if the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed.").

[16] *Gentry v. Hamilton-Ryker IT Sols., L.L.C.*, 102 F.4th 712, 720 (5th Cir. 2024) (emphasis in original); *see also Helix*, 598 U.S. at 53 ("[A] 'basis' of payment typically refers to the unit or method for calculating pay, not the frequency of its distribution.").

salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly-required amount paid on a salary basis."[17]

The second path, under 29 U.S.C. § 541.604(b) ("Section 604(b)"), "focuses on workers whose compensation is 'computed on an hourly, a daily or a shift basis,' rather than a weekly or less frequent one."[18] These employees, despite being paid per unit of time worked, are still compensated on a salary basis if "the employment arrangement also includes a guarantee of at least the minimum weekly required amount paid on a salary basis regardless of the number of hours, days or shifts worked, and a reasonable relationship exists between the guaranteed amount and the amount actually earned."[19] The idea is to capture "[w]hen daily and hourly rates are consistent with the salary basis concept."[20] To that end, as long as total pay does not exceed 1.5 times the amount of guaranteed pay, we have found a "reasonable relationship" between the two that is "consistent with the salary basis concept."[21]

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[17] Section 604(a) further explains that under Section 602(a), an otherwise "exempt employee . . . may also receive additional compensation of a one percent commission on sales . . . a percentage of the sales or profits of the employer . . . [or other] additional compensation based on hours worked for work beyond the normal workweek." 29 C.F.R. § 541.604(a).

[18] *Helix*, 598 U.S. at 46 (quoting 29 C.F.R. § 541.604(b)).

[19] 29 C.F.R. § 541.604(b).

[20] *Helix*, 598 U.S. at 56.

[21] *Id.*; *see Gentry*, 102 F.4th at 723-24 ("The reasonable relationship test is satisfied so long as the 'weekly guarantee is roughly equivalent to the employee's usual earnings at the assigned hourly, daily or shift rate for the employee's normal scheduled workweek.' Department of Labor opinion letters advise that a 1.5 to 1 ratio of actual earnings to a guaranteed weekly salary satisfies this test." (citations omitted)).

Which pathway applies is key here. If Guilbeau's "compensation [was] 'computed on an hourly, a daily or a shift basis,' rather than a weekly or less frequent one,"[22] then Section 604(b)—and its reasonable-relationship test—would govern. Under that section, Guilbeau's pay would not be salary-basis, as his ratio of total pay to guaranteed pay was 5.9-to-1 (far beyond the "reasonable relationship" cutoff). But if Guilbeau's "'predetermined sum' [was] calculated . . . by the week" (or some longer basis),[23] then Section 602(a) would apply. That section lacks the "reasonable relationship" requirement, so Guilbeau's pay scheme would qualify as salary-basis, and Schlumberger would not owe overtime pay.

B.

Guilbeau's hybrid compensation scheme fits the requirements of Section 602(a), exempting him from overtime pay and entitling Schlumberger to partial summary judgment. We ground our analysis in the plain text of the regulation, supplemented by recent caselaw.

1.

We start with the text of Section 602(a). The regulation requires only that Guilbeau "regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of [his] compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed." There is no dispute that Guilbeau's salary fits these requirements.

Schlumberger provided Guilbeau "a biweekly lump payment [of] $1,826.00." This amount was above the then-applicable salary minimum in

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[22] *Helix*, 598 U.S. at 46 (quoting 29 C.F.R. § 541.604(b)).

[23] *Gentry*, 102 F.4th at 720 (emphasis removed).

29 C.F.R. § 541.600(a) and constituted "part of [Guilbeau's] compensation."[24] And the amount was predetermined and "guaranteed," not dependent on work quantity or quality. That means Guilbeau was paid on a salary basis under Section 602(a). The parties agree Guilbeau meets the other exemption requirements. Accordingly, Guilbeau is exempt from overtime pay as a qualifying HCE, so Schlumberger is entitled to summary judgment on his claim.

It is immaterial "whether the day-rate portion of Plaintiffs' compensation was part of the base compensation." Under the plain text of Section 602(a), we consider only the "predetermined amount" of pay a worker receives (in other words, his salary). Section 604(a) corroborates this, reiterating that our lodestar is the nature of the salary, not the nature of the variable pay. That provision explains that "[a]n employer may provide an exempt employee with additional compensation"—such as Guilbeau's day rates—"without losing the exemption or violating the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly-required amount paid on a salary basis."[25]

2.

We and our sister circuits[26] have taken this same approach.

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[24] 29 C.F.R. § 541.602(a).

[25] 29 C.F.R. § 541.604(a).

[26] Considering this very same pay system in *Wilson v. Schlumberger Tech. Corp.*, 80 F.4th 1170, 1176 (10th Cir. 2023), a collective action by Schlumberger MWDs, the Tenth Circuit held Schlumberger's hybrid compensation was an overtime-exempt, salary-basis scheme controlled by Section 602(a)—not Section 604(b). The Eleventh Circuit, in a case with "a guaranteed weekly salary" plus "additional incentive compensation . . . paid at a straight-time . . . rate[,]" rejected plaintiffs' argument "that they were not paid on a salary basis because the amount of their bonuses fluctuated based on the cumulative number of hours worked." *Bell v. Callaway Partners, LLC*, 394 F. App'x 632, 633-34 (11th Cir. 2010)

Venable v. Smith International is illustrative.[27] As here, *Venable* presented a nigh identical "bifurcated" pay structure for oil rig workers with both "an annual salary and daily-rate" pay.[28] The salary "was paid bi-weekly and was not subject to reduction based on the quality or quantity of work performed,"[29] while the plaintiffs also received day rates "if they provided services to . . . customers on their drilling rigs." The *Venable* plaintiffs argued Section 604(b) should apply because they were daily workers.[30] We rejected that position, concluding that an employee is on a salary basis under Section 602(a) as long as his salary (1) does not depend on time worked, (2) "satisfies the requisite guaranteed minimum weekly salary requirement," and (3) is calculated on a weekly or longer "basis."[31]

Venable dictates the outcome here. Guilbeau concedes Schlumberger "guaranteed" him a salary, which exceeded the weekly minimum and was paid "on a 'salary' basis" as "a biweekly lump payment." As Guilbeau meets all the other exemption requirements, Section 602(a) applies in this case too.

(unpublished). That court explained that "as long as there is a non-deductible minimum, [then] additional compensation on top of the non-deductible salary is permissible" without violating the salary basis requirements. *Id.* (quoting *Hogan v. Allstate Ins. Co.*, 361 F.3d 621, 625 (11th Cir. 2004)). And the Third Circuit has held that establishing salary-basis classification "requires only that the employee receive a predetermined amount of money each pay period that is 'part of the employee's compensation[.]'" *Higgins v. Bayada Home Health Care, Inc.*, 62 F.4th 755, 761 (3d Cir. 2023) (quoting 29 C.F.R. § 541.602(a) (emphasis added by court)). "So long as the employer does not dock that pre-determined part of the employee's compensation," said the Third Circuit, then "the employer has satisfied the salary basis test." *Id.*

[27] 117 F.4th 295 (5th Cir. 2024).

[28] *Id.* at 298.

[29] *Id.*

[30] *Id.* at 299.

[31] *Id.* at 299-300.

"[T]he additional compensation at the daily rate does not defeat [his] . . . exemption" from overtime rates.[32] We reject Guilbeau's argument that his "actual pay was based on time worked" because his day rates "represent[ed] compensation for ordinary work." *Venable* reaffirmed that the nature of the guaranteed salary pay determines salary basis classification, not the nature of the day rate or how often it is paid.[33]

Gentry v. Hamilton-Ryker IT Sols., L.L.C. is the other side of the same coin.[34] Like *Venable*, *Gentry* stands for the proposition that "the 'basis' of an employee's purported *salary* determines which regulatory test governs a particular compensation scheme."[35] But given different facts, that principle led *Gentry* to a different result. The plaintiffs were paid hourly, but they received eight hours of guaranteed wages per week at their standard hourly rate. Our court held it would be "illusory" to call the eight-hour backstop a "salary" because it "failed to provide a *weekly* rate" as the regulations required.[36] As the plaintiffs' "guaranteed weekly salaries were valued at their individual hourly rate times eight hours,"[37] meaning the "'salary' was paid

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[32] *Id.* at 300.

[33] We have embraced this logic in other recent cases, too, like *Hebert v. FMC Techs., Inc.*, No. 22-20562, 2023 WL 4105427, at *2 (5th Cir. June 21, 2023) (unpublished). The plaintiff there was an oil rig worker paid with a similar hybrid scheme. As the plaintiff "admit[ted] that he received a bi-weekly salary without regard to the number of hours or days he worked," and he met all the other exemption requirements, we held "[t]hat salary plainly satisfies the definition of 'salary basis'" in Section 602(a).

[34] 102 F.4th 712 (5th Cir. 2024).

[35] *Id.* at 720 (emphasis added).

[36] *Id.* at 721 (emphasis added).

[37] *Id.* at 720-21 (cleaned up); *see also id.* at 716 ("During the relevant time period, both [plaintiffs] were paid on a two-tiered system. First, a 'Guaranteed Weekly Salary equal to 8 hours of pay.' The 'weekly salary' only compensated [the plaintiffs] for, at most, one

on an hourly basis and not by the week as § 602(a) requires,"[38] *Gentry* proceeded through Section 602(b) instead. Guilbeau's case is the opposite; Section 602(a) governs because his "predetermined sum" was "calculated . . . by the week[.]"[39]

* * *

Schlumberger is entitled to summary judgment on Guilbeau's claims. The district court erred in ruling otherwise.

IV.

But Guilbeau is not the only plaintiff. The district court also authorized notice to other potential members of the DD collective, and thirty-one people opted in before the close of the notice period. Schlumberger argues that it is "entitled to summary judgment . . . as to the entire DD collective as they all share the same common traits." We disagree.

We draw from the wisdom of the district court in *Boudreaux v. Schlumberger Tech. Corp.*[40] There, on all but identical facts, the court faced certified collectives of Schlumberger DDs and MWDs that lost their named plaintiffs upon summary judgment. Noting "factual disparities" among remaining collective members that "would make it difficult, if not impossible, to coherently manage the class in a manner that will not prejudice

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eight-hour workday. Then, for any hour they worked beyond their eighth hour, Plaintiffs were paid at their hourly rates, including any hours worked over 40." (cleaned up)).

[38] *Id.* at 721.

[39] *Id.* at 720 (emphasis removed).

[40] No. 6:14-cv-2267, 2022 WL 17422103 (W.D. La. Nov. 14, 2022), *report and recommendation adopted*, 2022 WL 17417265 (W.D. La. Dec. 5, 2022).

any party, a situation that is all the more evident given that there is no representative plaintiff[,]" the district court decertified the collectives.[41]

Here, Schlumberger moved for partial summary judgment on Guilbeau's claims before the collective was certified. Even if Schlumberger paid the rest of the DDs with the same salary-basis hybrid structure, the record does not show whether those individuals also meet the *other* exemption criteria. As in *Boudreaux*, we do not know the other DDs' location-specific job duties,[42] what each DD's total compensation was,[43] or whether their biweekly salaries met the exempt threshold,[44] all of which bear on individual employees' exempt status.

For that reason, we pass no judgment on the other collective members in this case. Now that Guilbeau's claims will be dismissed, the continued viability of the collective—and whether Schlumberger should receive summary judgment on their claims—is a fact-bound question we return to the district court.

V.

Finally, we decline to reach Schlumberger's contentions addressing estoppel and the collective notice process. Although we have jurisdiction

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[41] *Boudreaux*, 2022 WL 17422103, at *9.

[42] *See id.* at *7 ("The different assignments, equipment used, and locations of the DDs would require the Court to engage in highly fact-specific analyses to determine whether [or] which exemption applies to each individual plaintiff. The job duties of the plaintiffs are not homogenous and do not lend themselves to a collective action.").

[43] *See id.* ("In the instant matter [*Boudreaux*], [Schlumberger] has set forth significant evidence that the three exemptions at issue in this case – the administrative exemption, the executive exemption, and the HCE exemption – differ by plaintiff, and can actually change over time with respect to an individual plaintiff as that plaintiff's compensation level and duties change over time.").

[44] *See id.*

over issues fairly raised by the orders on appeal,[45] the parties and the district court all presented exemption as the issue apt for immediate review. We limit ourselves to that question alone.

VI.

We REVERSE and order partial summary judgment for Schlumberger on Guilbeau's claims. We REMAND for further proceedings consistent with this opinion.

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[45] *Castellanos-Contreras v. Decatur Hotels, LLC*, 622 F.3d 393, 398-99 (5th Cir. 2010) (en banc).