



Does Federal Wage Decision Bring A Sea Change To Offshore Operations?

5TH CIRCUIT CASE CLARIFIES FLSA EXEMPTION STANDARD FOR OFFSHORE WORKERS

Insights

5.03.17

A recent federal court decision may bring about a new wave of overtime claims by offshore workers, particularly those working within the territorial waters of Louisiana, Mississippi, and Texas (*Halle v. Galliano Marine Service, LLC*.) But does it mean a sea change in the way employers pay their workers?

The Facts

Galliano Marine Services (GMS) is an offshore services company that uses remotely operated vehicles (ROVs) to perform maintenance and repairs on underwater drilling rigs. The unmanned ROVs are tethered to a nearby support vessel, where technicians use a video feed and joysticks to operate them.

Kyle Halle worked for GMS as an ROV Technician. He filed a collective action under the Fair Labor Standards Act (FLSA) asserting that he and other ROV Technicians worked upwards of 80 hours per week and should have received overtime pay. GMS argued that the FLSA's seamen exemption applied to Halle and the other workers, contending they were not entitled to overtime.

The Seaman Exemption

Notably, the determination of who qualifies as a "seaman" under the FLSA is different from the test to determine who qualifies under the Jones Act. To be considered a seaman under the FLSA, the employee must (1) be subject to the authority, direction, and control of the vessel's master; and (2) offer service primarily to aid the vessel as a means of transportation, provided that the employee does not perform a substantial amount of different work.

U.S. Department of Labor regulations provide that non-seaman work becomes "substantial" if it accounts for more than 20% of the employee's work time in any given workweek. The rule applies equally to vessels navigating inland waters and ocean-going and coastal vessels.

Past court decisions have generally interpreted the seamen exemption broadly and applied it to members of the crew who had a relatively indirect relationship to the vessel's navigation but still perform traditional maritime duties. For example, cooks have been considered exempt seamen, as have tankermen who load and unload barges.

The Decision

Initially, the lower court sided with GMS and dismissed the case. But, on appeal, the 5th Circuit (hearing federal appeals from Texas, Louisiana, and Mississippi) reversed the lower court's decision and ordered the case to proceed to trial. As the court pointed out, the crucial inquiry is the character of the employee's work, not where it was performed.

First, evaluating the facts in light of the seaman exemption, the 5th Circuit found evidence that Halle actually reported to land-based management, not to the ROV support vessel's captain. Thus, it was questionable whether he was subject to the authority, direction, and control of the vessel's master.

With respect to the exemption's second prong requiring service in aid of a vessel, the court examined Halle's duties with respect to the ROV support vessel. It found that Halle's duties were limited to the ROV itself, rather than the vessel. The appeals court distinguished between maintenance or navigation of a vessel, which might qualify for the exemption, and the maintenance or navigation of machinery attached to a vessel, such as an ROV, which would not. Because Halle performed only a limited task to aid the actual vessel's navigation – communicating the GPS coordinates to its captain – the court found that he did not meet the second prong of the seaman exemption.

What Does This Mean For Employers?

This case instructs employers in Texas, Louisiana, and Mississippi to ask the following questions when deciding whether an offshore worker meets the seaman exemption:

- Does the employee actually perform work aboard a vessel in navigation?
- Does the employee report to the vessel's captain or does he have a different chain of command?
- What does the employee do to aid the vessel's navigation or its safe operations?
- Do those tasks account for at least 80% of the employee's work time in any given week?

Even if you are not operating in the jurisdiction of the 5th Circuit, you should pay particular attention to these inquiries as they will largely guide you in your wage and hour practices.

As you evaluate how they pay offshore workers, you should consider more than just the seaman exemption. The FLSA does not apply outside of the United States, so some offshore workers may not be entitled to overtime even if they do not satisfy the seaman exemption. Further, the FLSA may or may not apply to offshore workers depending on the location of the work (e.g., state waters, federal waters, or international waters), whether the vessel is attached to Outer Continental Shelf lands or floating unattached, whether the vessel is U.S. or foreign-flagged, and whether a U.S. entity controls the vessel's operations because of the nature of the charter.

There is no doubt that the plaintiff's bar will view the *Halle* decision as an invitation to bring more FLSA claims on behalf of offshore workers. In anticipation of this increased focus on offshore workers, you should carefully assess how you pay offshore workers in light of the standards announced by the 5th Circuit in *Halle*. Each of these analyses can be extremely complicated and raise questions that courts may not have clearly answered, so it is worth working with your labor and employment attorney to review your workforce's activities and determine the best course of action.

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