



Day Rates, Contractors, and Overtime Risk After the Fifth Circuit's Latest FLSA Guidance

Construction business owners know why day rates, straight-time pay, and independent contractors are common in the industry. Your crews may need to scale up or down quickly. Schedules change, and specialized trades may be needed for short windows. But those practical business reasons don't answer the legal question: if a worker later sues for overtime, will a court treat that person as a contractor or as an employee entitled to overtime by the Fair Labor Standards Act ("FLSA")?

Two Fifth Circuit cases in the last year from the oilfield-services industry, *Gilchrist v. Schlumberger Technology Corp.* (July 2025) and *Guilbeau v. Schlumberger Technology Corp.* (June 2026), are helpful because they clarify issues that show up often in construction: highly paid field workers, day rates, hybrid compensation, and overtime exemptions.

In *Gilchrist*, the court found that two highly paid field employees were exempt from overtime because their pay and their regular administrative or advisory duties satisfied the FLSA's highly compensated employee exemption. For a construction company, that may help with certain higher-level roles, such as project managers, estimators, safety managers, quality-control personnel, or field supervisors, but only if the person's real job includes meaningful judgment, compliance oversight, client advice, or project-level decision-making.

In *Guilbeau*, the court approved a pay structure that combined a fixed biweekly salary with additional day-rate pay for purposes of the highly compensated employee exemption. The important point is that the employee had a real guaranteed salary, and the day-rate piece was extra compensation. That is very different from simply paying someone a day rate and assuming overtime does not apply.

For construction companies, the biggest risk is usually not just one mistake. It is the combination of several: misclassifying someone as a contractor, paying a day rate or straight time, not tracking hours carefully, and assuming that high pay or industry custom is enough. If that worker is later found to be an employee, the company may have to show that the worker was properly treated as exempt from overtime. *Gilchrist* and *Guilbeau* may help with the question of an exemption, but they do not solve the question of who should be classified as an employee.

The contractor label will not carry the day if the jobsite relationship looks like employment. The more the company controls the worker's schedule, supervision, tools, assignments, and day-to-day work, and the more economically dependent the worker is on the company, the more risk the company has.

Straight-time pay can create another trap. The FLSA generally requires covered nonexempt employees to receive overtime at one and one-half times their regular rate for hours worked over 40 in a workweek. If a day-rate worker regularly works long weeks and is later found to be a nonexempt employee, the company may face unpaid overtime, liquidated damages, attorneys' fees, and collective-action exposure.

The practical takeaway is simple: do not rely on titles, labels, or "that's how the industry does it." Construction companies should review recurring contractor roles, confirm whether day-rate workers receive a real guaranteed salary, identify any straight-time-over-40 practices, document the actual duties of high-earning field personnel, and preserve payroll, time, compensation, and project records before a dispute arises.

For further information on these developments, please contact [Elaine Howard](#).