

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

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Lyle W. Cayce
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No. 25-30436

BROCK P. BOUDREAUX; KHALED A. BARAKE; KIEL D.
CRABTREE; MICHAEL AINSWORTH; CHRISTOPHER J. LINDLEY;
ET AL.,

Plaintiffs—Appellants,

versus

SCHLUMBERGER TECHNOLOGY CORPORATION,

Defendant—Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 6:14-CV-2267

Before SMITH, HAYNES, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:*

A group of plaintiffs employed by Schlumberger Technology Corporation asserted Fair Labor Standards Act (“FLSA”) claims, seeking unpaid overtime compensation. Plaintiffs appeal the district court’s orders

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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granting summary judgment to Schlumberger and decertifying the FLSA collective action. We AFFIRM.

I.

The FLSA “establishes a standard 40-hour workweek by requiring employers to pay ‘time and a half’ for any additional time worked.” *Hewitt v. Helix Energy Sols. Grp.*, 15 F.4th 289, 290 (5th Cir. 2021) (en banc) (quoting 29 U.S.C. § 207(a)). Consistent with the FLSA, Department of Labor regulations exempt “bona fide executive, administrative, and professional employees from overtime.” *Id.* (citation modified). The regulations address “highly compensated” employees, as well as certain “more modestly paid” employees. *Id.* Each exemption requires three conditions: (1) “the employee must meet certain criteria concerning the performance of executive, administrative, and professional duties”; (2) “the employee must meet certain minimum income thresholds”; and (3) “the employee must be paid on a ‘salary basis.’” *Id.* The salary-basis test can be satisfied either through 29 C.F.R. § 541.602(a) (“§ 602(a)”) or 29 C.F.R. § 541.604(b) (“§ 604(b)”), which provide slightly different standards.¹

The district court conditionally certified the FLSA action, and several additional plaintiffs opted in to the collective. As relevant to this appeal, plaintiffs were employed as “Directional Drillers” to advise on well-drilling projects for Schlumberger’s oil and gas customers. Directional

¹ Section 602(a) applies where the employee receives a “predetermined amount constituting all or part of the employee’s compensation” on a “weekly, or less frequent basis,” and that amount is “not subject to reduction because of variations in the quality or quantity of the work performed.” Section 604(b), by contrast, applies where the employee’s earnings are “computed on an hourly, a daily or a shift basis.” To satisfy the salary-basis test under § 604(b), the compensation plan must guarantee “the minimum weekly required amount paid on a salary basis” and “a reasonable relationship [must] exist[] between the guaranteed amount and the amount actually earned.”

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Drillers are compensated on a hybrid system. Schlumberger paid a base salary calculated on a weekly basis plus a day rate for days worked on a customer's rig. After determining that § 602(a) applied to Schlumberger's compensation scheme and the salary-basis test was satisfied, the district court addressed the remaining elements for several plaintiffs and granted summary judgment to Schlumberger on their claims. It concluded those employees were exempt from overtime compensation. The district court then decertified the collective action, adopting the magistrate judge's recommendation that the plaintiffs were not similarly situated because "different work environments and job responsibilities" for each Directional Driller would result in a highly fact-specific analysis on each claim. The district court dismissed the opt-in plaintiffs' claims without prejudice.

A.

The crux of the parties' dispute concerns whether § 602(a) or § 604(b) applies to Schlumberger's pay plan for Directional Drillers. Earlier this year, our court answered this same question, with the same defendant, under the same pay plan, for employees with the same job.² *See Guilbeau v. Schlumberger Tech. Corp.*, 178 F.4th 922 (5th Cir. 2026). We explained that if plaintiffs' "predetermined sum[s]" are "calculated by the week (or some longer basis), then [§] 602(a)" applies. *Id.* at 926 (citation modified). Section 604(b), by contrast, applies when compensation is computed by hour, day, or shift. *Id.* Because Schlumberger's pay structure for Directional Drillers included a predetermined sum calculated on a weekly basis and not subject to diminution based on quantity or quality, § 602(a) applied to satisfy the salary-basis test. *Id.* at 926–27; *Venable v. Smith Int'l, Inc.*, 117 F.4th 295, 299–300 (5th Cir. 2024) (concluding hybrid compensation structure where

² *Guilbeau* issued after the parties briefed this appeal.

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plaintiffs were paid salary plus day-rate job bonus was governed by § 602(a), not § 604(b)).

Guilbeau forecloses plaintiffs' efforts to apply § 604(b), instead of § 602(a), to Schlumberger's pay plan. Plaintiffs try to sidestep *Guilbeau* by arguing that "the evidence in this case" would allow a jury to "find Schlumberger's alleged 'salary' was not 'compliant' with § 602(a)." They emphasize our earlier *Gentry v. Hamilton-Ryker IT Solutions, L.L.C.*, 102 F.4th 712 (5th Cir. 2024), precedent to support this notion. *Gentry*'s analysis addressed whether the salary "truly compensates employees for a week's worth of work or, instead, provides an artificial distinction between a salary and additional compensation." 102 F.4th at 725. Plaintiffs suggest that the salary portion of Directional Drillers' pay did not "truly compensate" them for a week of work.

Plaintiffs' arguments fail. They never explain why the facts here differ from the facts in *Guilbeau* or identify a disputed fact about the pay plan. And *Guilbeau* reiterates that whether "an employee is within an exemption is a question of law." 178 F.4th at 925 (internal quotation marks and citation omitted). Absent an underlying factual dispute about Schlumberger's pay plan, plaintiffs' arguments merely attempt to relitigate the legal issues in *Guilbeau*—an exercise improper on panel review. *Tech. Automation Servs. Corp. v. Liberty Surplus Ins. Corp.*, 673 F.3d 399, 405 (5th Cir. 2012) ("Because a previous panel has resolved this question, we cannot overturn its decision absent an intervening change in the law." (citation modified)). To be sure, *Guilbeau* distinguished *Gentry*. In *Gentry*, it was "illusory" to call the predetermined sum a weekly salary under § 602(a) because it was calculated as the employee's hourly rate multiplied by just eight hours. *Guilbeau*, 178 F.4th at 928. The pay plan here "is the opposite." *Id.*

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Here, as in *Guilbeau*, § 602(a) applies because plaintiffs’ “predetermined sum[s] were] calculated by the week.” *Id.* (citation modified). And because plaintiffs do not challenge any other conclusions in the district court’s summary judgment decisions, we AFFIRM the district court’s grants of summary judgment to Schlumberger.

B.

Because *Guilbeau* controls the § 602(a)-or-§ 604(b) issue, it likewise eliminates plaintiffs’ decertification arguments. Plaintiffs argue the district court erroneously decertified the collective action because it determined the salary-basis test was satisfied under § 602(a). They did not object in the district court to the magistrate judge’s recommendation to decertify and identified no other error in the district court’s decertification order. *See James v. Smith*, 152 F.4th 594, 603 (5th Cir. 2025) (applying plain error standard of review when litigant failed to object to issue in magistrate judge’s report and recommendation). We AFFIRM the district court’s decertification of the FLSA collective.

II.

With its decertification order, the district court dismissed without prejudice the opt-in plaintiffs’ FLSA claims. According to plaintiffs, the district court should have equitably tolled the FLSA statute of limitations for the opt-in plaintiffs to provide an opportunity to file individual lawsuits.³ Without equitable tolling, plaintiffs say, the entry of final judgment converts what should be dismissal without prejudice into a dismissal with prejudice for the opt-in plaintiffs. Schlumberger argues only that plaintiffs have forfeited

³ Plaintiffs have forfeited any equitable tolling argument related to non-FLSA claims. *See Rollins v. Home Depot USA*, 8 F.4th 393, 397 (5th Cir. 2021) (recognizing forfeiture of arguments not briefed on appeal).

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this argument by failing to “properly raise[]” it before the district court. We review the district court’s equitable tolling decision for abuse of discretion.⁴ *Fierro v. Cockrell*, 294 F.3d 674, 679 (5th Cir. 2002).

Even assuming this issue is not forfeited, plaintiffs’ argument fails. Our circuit has made clear that “equitable tolling . . . is a narrow exception” that “should be applied sparingly.” *Phillips v. Leggett & Platt, Inc.*, 658 F.3d 452, 457 (5th Cir. 2011) (citation modified). It is a “discretionary doctrine that turns on the facts and circumstances of a particular case.” *Fierro*, 294 F.3d at 682 (internal quotation marks and citation omitted). Plaintiffs are entitled to equitable tolling only by showing: (1) that they have diligently pursued their rights; and (2) some extraordinary circumstance stood in their way and prevented timely filing. *Menominee Indian Tribe of Wis. v. United States*, 577 U.S. 250, 255 (2016). The second prong requires circumstances that are both “extraordinary *and* beyond [the litigants’] control.” *Id.* at 257. Self-inflicted delay does not suffice. *See Sandoz v. Cingular Wireless, L.L.C.*, 700 F. App’x 317, 320 (5th Cir. 2017) (per curiam). The opt-in plaintiffs bear the burden to establish their entitlement to equitable tolling. *See Teemac v. Henderson*, 298 F.3d 452, 457 (5th Cir. 2002).

Plaintiffs seek a blanket rule that opt-in plaintiffs dismissed from a decertified FLSA collective action are entitled to equitable tolling of the statute of limitations. Because equitable tolling is discretionary and “turns on the facts and circumstances of a particular case,” it “does not lend itself to bright-line rules.” *Fisher*, 174 F.3d at 713; *see also Palacios v. Stephens*, 723

⁴ Where the district court denies equitable tolling as a matter of law, opposed to discretion, we review the decision de novo. *See Molo v. Johnson*, 207 F.3d 773, 775 n.1 (5th Cir. 2000) (citing *Fisher v. Johnson*, 174 F.3d 710, 713 (5th Cir. 1999)). Although the district court did not explain why it denied equitable tolling, neither party suggests it was based on a legal bar, as opposed to a discretionary refusal. To be sure, the opt-in plaintiffs do not even suggest a standard of review for the district court’s equitable tolling decision.

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F.3d 600, 605 (5th Cir. 2013) (explaining that “courts are instructed to avoid mechanical rules” when assessing diligence required for equitable tolling (internal quotation marks and citation omitted)). To be sure, some courts have applied equitable tolling under similar circumstances. *See Lusardi v. Lechner*, 855 F.2d 1062, 1066 n.5, 1080 (3d Cir. 1988) (applying procedural FLSA elements as required in Age Discrimination in Employment Act suit and directing district court to equitably toll statute of limitations on opt-in plaintiffs’ individual claims for 30 days upon decertification of the collective); *Mickles v. Country Club Inc.*, 887 F.3d 1270, 1281 (11th Cir. 2018) (recognizing that opt-in plaintiffs dismissed without prejudice from FLSA collective when conditional certification is denied are entitled to tolling); *see also Johnson v. Big Lots Stores, Inc.*, No. 04-3201, 2008 WL 11313313, at *1 (E.D. La. July 24, 2008) (tolling for 45 days); *Reyes v. Tex. Ezpawn, L.P.*, No. V-03-128, 2007 WL 101808, at *7 (S.D. Tex. Jan. 8, 2007) (tolling for 30 days to “avoid prejudice to individual opt-in Plaintiffs who may choose to file their own cases”). Others have suggested that equitable tolling should be addressed “on a case-by-case basis” in the court where an opt-in plaintiff later files his individual action. *See Green v. Harbor Freight Tools USA, Inc.*, 888 F. Supp. 2d 1088, 1106 (D. Kan. 2012) (declining to equitably toll FLSA claims of dismissed opt-in plaintiffs and leaving question “to the court in which the dismissed opt-in plaintiffs refile their claims”).

But the opt-in plaintiffs in this case make no effort to explain how their unique “facts and circumstances” satisfy the two equitable tolling requirements. *See Fisher*, 174 F.3d at 713. They do not even cite our equitable tolling standard. Absent efforts to carry their burden, we cannot conclude the district court abused its discretion by refusing to toll the FLSA statute of limitations for the dismissed opt-in plaintiffs. We make no judgment about whether similar circumstances could satisfy our equitable tolling standard if sufficiently addressed by the parties. We likewise make no judgment about

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whether equitable tolling would be appropriate in any individual case filed by any opt-in plaintiff.

AFFIRMED.