

## Fifth Circuit Affirms Trial Court Decision: Directional Driller is “Contractor,” Barring Overtime Action.

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**Affirmed.** The Fifth Circuit just issued its **opinion** upholding the summary judgment decision of Judge Morales in the Corpus Christi Division of the Southern District of Texas. The *Hargrave* decision largely relies on *Parrish v. Premier Directional Drilling, L.P.*, 917 F.3d 369 (5th Cir. 2019). See the previous [blog](#).

As an extension of *Parrish*, the *Hargrave* case, with the Fifth Circuit’s imprimatur, provides an obvious line of demarcation about contract workers like Hargrave, who offer directional drilling services in the oil patch, through companies like AIM. Thus, as a follow-up decision to *Parrish*, so to speak, *Hargrave* makes clear that *Parrish* was not a “fluke” or a “one-off”; instead, *Parrish* and now *Hargrave* mean something—directional drillers like Hargrave are “contractors” when hired by energy service companies like AIM, for project-by-project work. **Ultimately, this finding means that Hargrave and others like him are not subject to the overtime requirements of the Fair Labor Standards Act.** The result is that *Hargrave* further illuminates an area that is often fraught with questions—the classification (or misclassification, as the case may be) of employees versus contractors, and that bright line helps both companies operating in the energy field and the lawyers advising them.

The value of *Hargrave* should not be dismissed. While it follows *Parrish*, the *Hargrave* decision, in its “stick-to-it-ness,” helps American industry generally, and particularly the energy industry, further define who a contractor is. It provides easy-to-follow guidance that employers often feel is missing when they try to understand the factors that may make a worker a contractor rather than an employee. That kind of clarity is not often achieved, but, when it appears, it is appreciated, and that’s what *Hargrave* does.

In AIM’s case, it sought Hargrave’s contractor help through a third-party, “RigUp,” through which Hargrave, in essence, pitched his skills and services to a variety of companies, such as AIM. The Fifth Circuit agreed with the district court, that Hargrave was “highly skilled,” and, consequently, the appellate court also agreed that the Company did not control Hargrave’s work and its results – *he did*. The fact that Hargrave had to follow the standard safety protocols that the oil patch dictates to everyone or that the Company assigned him to the projects that it had on its roster (if they came up) did not change the result.

Moreover, the Fifth Circuit, just as it did in the *Parrish*, discounted the fact that AIM (as all similar companies do) might also provide certain expensive equipment and perhaps living quarters to aid Hargrave (or others) (for his part, Hargrave, like other directional drillers, brought along his key equipment, too, like calculation and measurement tools and his computer, all necessary to get his job done). As Hargrave had been operating as a contractor for years, believed he was a contractor all that time, presented himself as a contractor through RigUp, and admitted that he had deducted, for years, his operating expenses on his taxes, it appeared that he knew what the system was, how it worked, and how he had to rely on himself to generate profitable work. His overtime lawsuit claiming that he was suddenly an AIM “employee” (rather than the contractor he had said he was) started only when AIM stopped using Hargrave’s services because of a run-in he

had with the law. Before that moment, he had long operated as a contractor and seemed to enjoy the benefits of that arrangement, when he did so.

The Fifth Circuit emphasized that Hargrave's work, like that in *Parrish*, was project by project. Thus, the fact that Hargrave chose to "fish" and generally "enjoy life" in the gaps of his assignments showed the freedom that he had, rather than demonstrating, as Hargrave had argued, that somehow he was precluded from pursuing other work.

In short, when all the factors were considered, the appellate court found that it agreed with Judge Morales, affirming his summary decision—that Hargrave was, in fact, the contractor that he appeared to be, and, as such, he was not subject to the requirements of overtime pay.

## **Related Attorneys**

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