



**MIND THE GAP:  
ON THE OUTER  
CONTINENTAL  
SHELF STATE LAW  
APPLIES ONLY  
WHERE THERE  
IS A GAP IN  
FEDERAL LAW**

*In Parker Drilling Management Services v. Newton, 587 U.S. \_\_\_, 139 S.Ct. 1881 (2019), the U.S. Supreme Court confirmed the Fifth Circuit's long held position that, under the Outer Continental Shelf Lands Act (OCSLA), state law is borrowed as the applicable federal law only when there is a gap in the coverage of federal law.*

Brian Newton worked 14-day hitches on Parker's drilling platform off the California coast. He worked 12-hour shifts, followed by 12 hours of rest, though he was on call at all times on the platform. While the federal Fair Labor Standards Act (FLSA) requires employers to pay workers for actual hours worked, California law entitles workers to compensation for stand-by hours. California law also mandates a higher minimum wage than what federal law requires.

Newton filed a proposed class action arguing that he and other workers were due compensation under California law for all hours spent on the platform. Parker defended by arguing that it properly paid workers under the FLSA, the applicable law pursuant to the OCSLA. The U.S. Court of Appeals for the Ninth Circuit held that California law applied because, while the FLSA does regulate worker pay, it "explicitly permits more protective state wage and hour laws."

The OCSLA extends federal law to the subsoil and seabed of the outer continental shelf (OCS) and to all structures permanently or temporarily attached to the seabed for the purpose of developing, producing, or exploring for oil. 43 U.S.C. § 1331 et seq. (Notably, OCSLA does not apply to vessels.) It commands that state laws be adopted as federal law on the OCS "**to the extent that they are applicable and not inconsistent**" with other federal law. § 1333(a)(2)(A) (emphasis added).

The Supreme Court unanimously reversed the Ninth Circuit's determination that California's wage and hour laws applied to offshore oil and gas drilling on the OCS. It wrote:

[T]he question is whether federal law has already addressed the relevant issue; if so, state law addressing the same issue would necessarily be inconsistent with existing federal law and cannot be adopted as surrogate federal law. Put another way, **to the extent federal law applies to a particular issue, state law is inapplicable.**

Moving forward, operators on the OCS can be certain that state wage and hour laws will not apply to those operations. This should make payroll simpler for platform operators with employees off the coasts of multiple states. It should also allow them to avoid conflicting state law in areas other than wage and hours where federal law already provides guidance.

For further information, please contact the authors of this briefing:



**JAMES BROWN**  
Partner and Master Mariner  
Houston  
T +1 (713) 706 1947  
E jim.brown@hfw.com



**JEANIE GOODWIN**  
Partner  
Houston  
T +1 (713) 706 1945  
E jeanie.goodwin@hfw.com

**HFW has over 600 lawyers working in offices across the Americas, Europe, the Middle East and Asia Pacific. For further information about our shipping capabilities, please visit [www.hfw.com/shipping](http://www.hfw.com/shipping)**

**[hfw.com](http://hfw.com)**

© 2019 Holman Fenwick Willan LLP. All rights reserved. Ref: 001481

Whilst every care has been taken to ensure the accuracy of this information at the time of publication, the information is intended as guidance only. It should not be considered as legal advice. Holman Fenwick Willan LLP is the Data Controller for any data that it holds about you. To correct your personal details or change your mailing preferences please email [hfwenquiries@hfw.com](mailto:hfwenquiries@hfw.com)

Americas | Europe | Middle East | Asia Pacific