

Recent Department of Labor Enforcement Actions against Oilfield Services Contractors

AUTHOR: Phil Antis
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Oilfield services contractors and employers should be aware of the most recent successful wage enforcement actions by the U.S. Department of Labor. The DOL recently announced that it recovered \$4.5 million in back wages from two major contractors engaged in natural gas extraction operations in the Marcellus Shale region of Pennsylvania and West Virginia.

The DOL identified several violations of the Fair Labor Standards Act (FLSA), the majority of which arose from improper overtime payments. For example, DOL investigators found that employees' bonuses were not included in the regular rate of pay used to determine overtime pay. They also found that some salaried employees were misclassified as exempt from the FLSA overtime requirements and were not paid overtime regardless of the number of hours worked.

In another recent enforcement action, the DOL collected more than \$1.6 million from a Louisiana oilfield services labor and recruiting agency. DOL investigators found that the agency mischaracterized wages as per diem payments and impermissibly excluded those wages when calculating overtime premiums.

The DOL believes these violations are endemic to employers in the oil and gas industry, and identifies the structure of the industry as a cause of these violations. "The oil and gas industry is one of the most fissured industries. Job sites that used to be run by a single company can now have dozens of smaller contractors performing work, which can create downward economic pressure on lower level subcontractors," said Dr. David Weil, administrator of the DOL's Wage and Hour Division. "Given the fissured landscape, this is an industry ripe for noncompliance." The DOL has made clear that it will continue to prosecute similar enforcement actions and that its investigators will continue to examine potential wage and hour violations associated with oil and gas extraction operations in other parts of the country.

Employers in the industry should review their overtime pay practices for compliance with the FLSA. For starters, the FLSA requires that covered employees be paid at least federal minimum wage and overtime at the rate of time and one-half their regular rates for every hour of work beyond 40 hours per week. All pay received by employees during the workweek must be considered when determining the overtime premium to be paid. Certain payments, such as bona fide reimbursements for work-related expenses, may be excluded when computing overtime. Among other requirements, employers must also maintain accurate records of employees' wages, hours, and other conditions of employment. Employers that violate the FLSA may be liable to employees for back wages and liquidated damages. Contact Gordon Arata if you have any questions regarding these recent enforcement actions or the FLSA.