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Labor and Employment Alert: FLSA Case Highlights the Importance of Wage-Hour Laws

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A newly filed collective action in Ohio federal court against an oil and gas company highlights the importance of wage-hour law compliance and the potential ramifications for failing to do so. The case, *Casarez v. Producers Service Corp.*, pending in the U.S. District Court for the Southern District of Ohio, involves the proper calculation of overtime compensation for employees paid under a “Belo” plan.

The Fair Labor Standards Act (FLSA) provides an exception from the overtime pay requirements for certain employees with duties necessitating irregular hours of work. This exception applies if there is an agreement to provide a weekly guaranteed salary for no more than 60 hours at a regular rate of pay that is not less than the applicable minimum wage and compensation at not less than 1.5 times the regular rate of pay for all hours worked over 40 in a workweek. This is the only provision of the FLSA that allows otherwise nonexempt employees to receive the same amount of total compensation each week, regardless of the number of overtime hours worked (up to the maximum number of hours guaranteed in the agreement, which may not exceed 60). This is known as a “Belo” plan.

The defendant in the case, Producers Service Corporation (PSC), provides high pressure pumping, fracturing and acidizing, and water pumping services in the oil and gas industry. PSC operates in oil and gas fields throughout Ohio, Oklahoma, West Virginia, New Mexico, Pennsylvania and Texas. The plaintiff was an oilfield equipment operator who worked in the Oklahoma operations for five months. He brought a collective action under the FLSA alleging that he was not properly paid overtime. After a brief discovery period, he moved for conditional certification, which would allow him to send notice of the lawsuit to all similarly situated current and former employees.

The Court granted the plaintiff’s motion for conditional certification (PSC can later move to decertify the class). In doing so, the Court gave three reasons for rejecting PSC’s arguments.

First, there was no dispute that the plaintiff and the putative class are paid pursuant to a common policy and are similarly situated, which is the relevant inquiry. In the conditional-certification phase, which occurs at the beginning of the discovery process, “named plaintiffs need only make a modest factual showing that they are similarly situated to proposed class members.” This is a very low burden, and the Court does not delve into the merits. PSC’s “contention that it pays its non-management oilfield employees under a valid Belo plan exception to the overtime provisions of the FLSA is simply of no moment to the current inquiry.” So “even a compelling defense does not pave the way for a merits inquiry at this stage of the proceedings.”

Second, the fact that the parties had a 30-day discovery period does not heighten the plaintiff’s burden at the conditional certification stage. “Rather, the modest plus factual showing standard is considered only in cases where the parties conduct discovery regarding the class certification question prior to the plaintiff moving for conditional certification.”

Third, the Court found that the plaintiff’s declaration submitted in support of his motion was sufficient to show that he had actual knowledge about other employees’ job duties, pay structures, hours worked, and overtime pay. “First-hand observations or conversations with co-workers may be sufficient to support an inference that a plaintiff has actual knowledge of company-wide employment practices.” Therefore, the Court concluded, “while Plaintiff only worked at the oilfield locations throughout Oklahoma, it is appropriate to infer that **all** oilfield workers are paid under an exception to the overtime provisions of the FLSA referred to as a Belo plan” (emphasis added).

The Court then ordered that notice of and opportunity to opt-in to the lawsuit be sent to all current and former employees of PSC who were employed as non-management oilfield operations employees at any time since December 14, 2014.

This case illustrates how one employee’s complaint can ripple through an organization. Even though he only worked in Oklahoma, the plaintiff’s allegations are sufficient to send notice to all of PSC’s non-management oilfield employees in six states, who then have the opportunity to join the lawsuit. *Casarez* is in the early stages of litigation, and it is unclear whether the plaintiff will ultimately prevail. Regardless, PSC will incur costs (as well as distraction from its business) while defending itself. Contact your Vorys lawyer if you have questions about your company’s operations and wage-hour laws.