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Client Alert: U.S. Department of Labor Targets the Oil and Gas Industry for Wage-Hour Compliance

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The U.S. Department of Labor (DOL) recently announced the results of a 2014 enforcement initiative that focused on the oil and gas industry in New Mexico and west Texas. According to the DOL, it recovered more than $1.3 million owed to some 1,300 employees as a result of this investigation. This is not the first DOL foray into wage-and-hour practices within the oil and gas industry. In December 2014, the DOL announced that employers engaged in natural gas extraction in the Marcellus Shale region of Pennsylvania and West Virginia agreed to pay $4,498,547 in back wages to 5,310 employees.

In both cases, the DOL attributed the majority of the violation to the improper payment of overtime, including the failure to include production bonuses in the regular rate of pay (which affects the calculation for the overtime rate of pay). The Fair Labor Standards Act (FLSA) requires that all pay received by employees during the workweek must be factored in when determining any overtime premiums. The DOL also found that salaried employees had been misclassified as exempt, hourly employees had not been paid for off-the-clock work, and, in some cases, employees had been paid a flat rate without regard to the number of hours worked – all of which are prohibited by federal law (and, in some cases, state law).

Another lurking issue for oil and gas employers is the use of independent contractors. Agencies such as the DOL, Internal Revenue Service, the Equal Employment Opportunity Commission, and, most recently, the National Labor Relations Board, will investigate and often challenge a company's classification that a worker is an independent contractor instead of an employee. This increasing scrutiny from regulators goes hand-in-hand with the increasing number of class and collective actions filed by plaintiffs' lawyers in these cases.

The DOL attributed the wage-hour problems it found to the "fissured" nature of the oil and gas industry. As the administrator of the Wage and Hour Division explained, "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. Given the fissured landscape, this is an industry ripe for noncompliance." The DOL has stated that it will "continue reaching out to industry employers, stakeholders and employees" to educate them about their rights.

Along with this downward economic pressure, the drop in oil prices may incite more wage-hour suits against oil and gas employers given the industry's recent mass layoffs. It is difficult for employers to ensure consistent compliance with all wage-hour requirements – especially when rapidly hiring many workers. At the same time, it is relatively easy for workers to get an FLSA collective action conditionally certified. So where there was once an oilfield employment boom, oil and gas employers may soon be facing a boom in lawsuits by thousands of former workers claiming they were misclassified or paid improperly.

The fissured landscape, economic pressure, drop in oil prices, and the DOL's recent investigations highlight the need for oil and gas employers to be vigilant in ensuring they comply with local, state, and federal laws. Contact your Vorys attorney for assistance in reviewing your wage-and-hour practices.