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Wage and Hour Focus in the Energy Sector Alive and Well

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The U.S. Department of Labor's (DOL) focus on wage and hour violations, which caught the oil and gas industry by surprise a little more than six years ago, continues to cause problems for the energy sector. Most recently, the Wage and Hour Division announced Thursday, March 24, that oil field service companies Nova Mud Inc., Nova Hardbandings LLC and Nova Sand LLC violated overtime and record-keeping provisions of the Fair Labor Standards Act (FLSA).

The companies collectively paid \$1.5 million, equally split between back wages and liquidated damages, to 241 oil well service workers after conclusion of the investigation by the DOL's Wage and Hour Division. Investigators determined the three commonly owned and operated businesses violated overtime and record-keeping provisions of the FLSA.

When the DOL originally honed in on the industry, one of the big areas of concern was if companies were correctly classifying employees as hourly wage workers. The government examined payroll records, job descriptions and performed interviews to determine if companies needed to reclassify their highly skilled and highly paid technical employees as hourly wage workers instead of supervisors exempt from overtime pay requirements. A record-setting \$18.3 million in back pay resulted from this exact practice when the DOL found Halliburton misclassified employees in 28 occupations as salaried professionals, exempt from overtime and minimum wages. The landmark payout resulted when the investigation showed that employees who should have received overtime pay for any time worked over 40 hours per week had actually worked 42 to 87 hours per week without receiving overtime pay.

In Nova's case, the companies paid their employees fixed semi-monthly salaries. This pay structure led to a predictable result in an industry not known for 40-hour workweeks. When the companies failed to account for the actual number of hours the employees had worked, it resulted in overtime violations and the large payout. The companies also signed an agreement requiring them to take proactive measures to ensure workers are paid appropriately in the future, including setting up an anonymous complaint system for employees, posting information about recordkeeping requirements and providing training to frontline managers and human resources staff.

Since 2012, the agency has recovered more than \$37 million in back wages for thousands of workers through more than 200 investigations in the oil and gas industry. While the Nova companies' situation is not uncommon, it is just the latest example to reinforce the continued importance of companies in the oil and gas industry making sure their employee classifications and payment practices are in line with the FLSA.