

## Individual Liability in the Oil Patch Under the FLSA

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As a follow up to [my earlier post](#), not only was the company (Stuart Petroleum) sued in the overtime lawsuit, but so was the company's president.

You may wonder how a company president might be liable given the fact that we are talking about an entity that was the official "employer," and corporate law, generally, provides a shield for individuals who work at the company, whether as employees, managers, or officers. Further, generally speaking, in other employment contexts (such as Title VII), the term "employer" is limited to the company that issues the payroll checks. Why is there a difference when we are talking about overtime?

The answer is simple: That's how the Fair Labor Standards Act ("FLSA") has been interpreted. The FLSA's definition of "employer" is "any person acting directly or indirectly in the interest of an employer in relation to an employee." It has been stated that the definition is expansively interpreted; so, in a nutshell, there may be more than one "employer" for FLSA purposes.

Thus, the notion of possible individual liability is always something corporate management has to take into account for FLSA claims. Not all plaintiffs' counsel add corporate individuals automatically to a pleading along with a company, but some do, for what is presumed to be leverage purposes, and some do, I suspect, as added financial "insurance."

The critical point today is this: In these days of energy industry uncertainty, this issue may be a further factor for companies (and their management) to consider as they plot their financial future, either on a going forward basis or, for some, through corporate reorganization or, perhaps, liquidation. In short, if a Chapter 11 or 7 is on the possible corporate horizon, that step, by itself, will not stay or prevent an action against individuals within the company, if they meet the factors noted below.

The test is called the "economic realities" test, which generally focuses on the control the person has over the employees in question (particularly as to their compensation and other employment terms and conditions) and over the operation of the business. Courts may look at:

- The individual's job description—who he/she is and what is his/her significance to the operations as a whole?
- What is his/her financial interest in the business?
- How is she/he involved in decisions affecting the employee's employment terms, conditions, and compensation? and,
- What is her/his relative operational control in the workplace?

So, while high-ranking officers, such as corporate presidents, may be liable, depending on the facts, others in the organization potentially may be as well, with or without ownership of the entity.

It all, as they say, comes down to the facts.

**Related Attorneys**

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