

## In The News

# Employer wins fight with feds on worker classification

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Bert Steindorf wasn't in the office the day his company got a surprise visit from a federal wage inspector looking for payroll data.

But a couple of months later, he received a \$6 million back wage bill from the U.S. Department of Labor for allegedly misclassifying the guards who monitor oil field gates as independent contractors instead of employees.

Steindorf recalls thinking: "This is absurd."

In a David-Goliath match-up, Steindorf spent hundreds of thousands of dollars over the next five years defending the employment practices of his business, Gate Guard Services, which operates in oil and gas fields of Texas, Louisiana, Mississippi, New Mexico and Oklahoma. The Corpus Christi-based company hires attendants who live in their recreational vehicles while logging traffic at drilling sites.

The Labor Department claimed the guards who monitor the gates around the clock for Gate Guard Services are employees and should be paid on a 24/7 basis. Steindorf argued they are free to run other businesses and can even subcontract their gate-tending duties.

Last week the five-year odyssey came to an end when Steindorf received a \$1.5 million check from the U.S. Treasury. Most of the money went to pay his legal fees but it also included a payment of about \$250,000 to compensate Steindorf for the aggravation of wrangling with the government.

"It was overwhelming," said Steindorf.

The U.S. Department of Labor has been racking up a string of impressive back wage wins -the most recent against Halliburton, which agreed to pay \$18.3 million to more than 1,000 workers it misclassified as salaried employees. But the federal agency received a stinging rebuke from the 5th U.S. Circuit Court of Appeals on the way it handled Steindorf and Gate Guard Services.

The 5th Circuit took the department to task for destroying evidence, calculating back pay after only a cursory investigation and launching the inquiry in the first place at the behest of the investigator's drinking buddy, who had previously worked at Gate Guard as a service technician. The investigator also met with a former gate attendant, which led him to believe the company was misclassifying its independent contractors.

It also criticized government lawyers for their "belligerent litigation tactics."

The award was unusually high because the appeals court found the Labor Department acted in bad faith. In those instances, there is no cap on legal fees.

The statute has been around for five decades but bad faith rulings are "extraordinarily rare," said Daniel D. Pipitone, a lawyer with Munsch Hardt Kopf & Harr who represents Gate Guard. Until this case thrust him into prominence in employment circles, Pipitone was mostly known for his maritime legal work.

Mark Oberti, an employment lawyer with Oberti Sullivan, said parties claiming bad faith must meet "a super-high standard" of proof.

They must prove the government pursued a frivolous case even when it knew it was frivolous, said Oberti, who was not involved in the Gate Guard case.

The Labor Department declined to comment.

The 5th Circuit detailed a series of errors on the part of the Labor Department including a realization during an early internal review that the investigator's back wage calculation was improperly inflated by \$4 million because it included sleeping and eating time.

The Labor Department also violated its internal policies when it calculated back wages before it determined whether Gate Guard had violated federal wage and hour laws in the first place, the appeals court held. But instead of acknowledging the errors, the government pressed on with litigation.

Senior U.S. District Judge John D. Rainey of Victoria dismissed the government's case before it ever went to trial, and determined the Labor Department was responsible for paying Steindorf's legal fees.

The Labor Department did not appeal Rainey's dismissal of the underlying lawsuit but it did appeal the awarding of attorney fees.

Steindorf remembers the call from his lawyer when he heard the government's case had been dismissed.

"You can't help but get emotional," he said.

"I would like to think that what happened to Gate Guard is extraordinarily rare," said Pipitone.

Steindorf started his company 21 years ago as a way to earn extra money to put his daughter through nursing school.

Steindorf was selling oil tools and some of his clients mentioned they needed guards for their gates. The business quickly grew and within two years, Steindorf was able to quit his sales job and devote full time to Gate Guard.

At its peak, the Corpus Christi-based operation had 800 gate guards. Today, with oil companies reducing their expenses because of low crude prices, it has about 200 guards. The cloud of litigation hanging over Steindorf hasn't helped either.

"We were always having to defend ourselves in public," said Steindorf, who said he is certain he lost business as a result of the five-year investigation and lawsuit that generated significant press coverage.

Companies don't want to do business with you when you're embroiled in litigation with the government, he said. At the same time, though, he got plenty of congratulations from many of those same companies for standing up for small business.

"I just tell them to keep the faith and the judicial system will work its way through," he said. And he wouldn't hesitate to do it again.

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