

# FLSA

## Overview

According to the Federal Judicial Center, in 2015 there were a record 8,957 cases filed asserting claims under the Fair Labor Standards Act (FLSA), the federal law that establishes minimum wage, overtime and record keeping requirements for employees employed in the United States. Five hundred and fifteen (515) of those lawsuits were filed in the Southern District of Texas, an 85% increase from employment cases filed in 2010. The attorneys at Munsch Hardt have noticed these filings are keeping an unrelenting pace in 2017.

When a client must defend claims of wage and hour violations under FLSA, it is essential to have experienced counsel prepared to provide the powerful defense these cases demand. At Munsch Hardt, we recognize defending wage and hour litigation can cause extreme hardship to a client's business. Without proper representation, employers face potential liability that includes treble damages and liability for plaintiff's attorneys' fees.

Our FLSA experts have defended clients facing allegations for failure to pay wages owed, minimum wage and, more commonly, failure to properly pay overtime wages, bonuses and per diems. These actions often stem from allegations involving:

- Meal and rest breaks not granted
- Employee mis-classifications (non-exempt employees classified as exempt)
- Compensatory time not granted for hours worked before or after shift
- Failure to pay overtime or spread-of-hours pay
- Other wage and hour claims

Our team offers both deep experience and a strong track record when it comes to defending clients against FLSA matters. We frequently manage "bet-the-company" cases, and in these instances, we are proud to successfully have won cash judgments for clients unjustly accused of infractions.

### What steps can my company take before a lawsuit or enforcement proceeding is initiated?

- Have Munsch Hardt visit to conduct an audit. This not only helps keep your policies current, but also reduces your damage exposure should you be subject to an FLSA lawsuit.
- Utilize employment agreements containing arbitration provisions in order to avoid collective action litigation.
- Review your employment and compensation policies to ensure they are in compliance with both federal and state laws.
- Determine which of your workers are employees and which are independent contractors, then properly classify each.
- Remain diligent about recordkeeping and accurately reflecting hours worked. The absence of recordkeeping will be utilized against the employer.

### What do I do when a lawsuit or enforcement proceeding is initiated?

If you are served with a lawsuit, it will typically come from a plaintiff attorney or group of plaintiff attorneys representing the affected parties, or the U.S. Department of Labor (DOL).

You want a proactive, assembling a team of experienced attorneys. If you hear from a plaintiff attorney, contact Munsch Hardt and we will conduct an immediate and thorough audit of your current pay practices. We will help you alter your compensation plans to ensure it complies with all current regulations. We will also work towards an amicable solution with the plaintiff lawyers, who are more likely to be reasonable and settle with an experienced, aggressive team on your side.

At Munsch Hardt, we understand the potential damages in these FLSA overtime and minimum wage cases can be expensive to litigate and even expensive to settle without going to trial. While we offer reasonable rates and manage our time extremely efficiently, we also believe in certain situations it important to stand-up against FLSA allegations. In our experience, once a business gives into one complaint, many are sure to follow. Fighting the first battle will inevitably end, or at the very least significantly reduce, the challenges of such allegations by other current or former employees.

## Experience

### FLSA + EAJA

Successfully represented an energy services company in an FLSA suit against the Department of Labor (DOL), in which the DOL investigated the energy services company for wrongly misclassifying its employees as independent contractors, ordering the company to pay more than \$6.2 MM in fines and back pay. The judge ruled in favor of the energy services company, dismissing the agency's enforcement action and validating the company's business model and use of independent contractors. Following the ruling, the energy services company sued the government under the Equal Access to Justice Act (EAJA), to recover attorney's fees. The Fifth Circuit court ultimately issued an opinion stating the DOJ acted in bad faith, thus ordering the DOL to pay more than \$1 MM in attorney fees.

### Employment Litigation

Represented a leading oil and gas service company in a collective action under the Fair Labor Standards Act (FLSA). The lawsuit alleged the service company misclassified its Dispatchers as exempt from the overtime requirements of the FLSA and failed to pay them overtime. The Plaintiffs sought damages for unpaid overtime, liquidated damages and attorney's fees.

### FLSA

Successfully represented an energy services company in an FLSA against claims a former employee who sued the company for failure to pay overtime wages. Following a four day trial before the U.S. District Court for the Southern District of Texas, the jury ruled unanimously in favor of the energy service company.

### FLSA Arbitration

Successfully represented a regional furniture and appliance provider in an FLSA arbitration against a collective claim by former employees who sued the company for failure to properly pay overtime wages, per diem, and bonuses. The arbitrator not only dissolved the class but found that the remaining Plaintiffs were properly paid.

### FLSA Joint Employer

Successfully represented an international professional staffing company in an FLSA law suit against claims by former employees who sued the company for failure to properly pay overtime wages, per diem, and bonuses. Plaintiffs sought inclusion of our client based on joint employer theories.

## FLSA

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## Practice Leaders



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## Related People

Bayley Estep  
Craig Harris  
Michael Harvey  
Matt Holley  
James Jordan  
Sameer Karim  
Amber Karns  
Teia Kelly  
Brenna Lermon  
Pooneh Momeni  
Daniel Pipitone  
Courtney Sauer  
Devon Sharp

Virginia Swindell

## Related Practices

Labor & Employment  
Covenants Not to Compete  
Employment Litigation  
OSHA  
Trade Secrets  
Traditional Labor Law

## Related Industries

Admiralty & Maritime  
Financial Services  
Construction  
Energy  
Health Care  
Hospitality  
Insurance  
Manufacturing  
Real Estate  
Retail  
Technology & Telecommunications  
Transportation

## Newsroom

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**Speech:** Shareholder Dan Pipitone to Discuss Labor Matters at TWC Conference

**Speech:** Employment Law Update

**Speech:** Guide to the Department of Labor's FLSA Update

**Press Release:** Munsch Hardt Wins Positive FLSA Verdict for J4 Oilfield Services

**Speech:** 5 Tips for Compliance with FLSA on Overtime

**Speech:** 2016 Employment Law Update

**In The News:** Employer wins fight with feds on worker classification

**In The News:** Government to Pay \$1.5 MM in Attorney Fees in FLSA Suit

**In The News:** DOL Settles Oil Field Service Co.'s Bad Faith Case For \$1.5 MM

**In The News:** Appeals court finds 'government overreach' in DOL's handling of Eagle Ford case

**Press Release:** Munsch Hardt Attorney Wins Appeal Against U.S. Department of Labor

**In The News:** Appeals court says Labor Department acted in bad faith in contractor case

**Article:** Fifth Circuit Overrules NLRB on Collective Action Waivers

**Press Release:** Munsch Hardt Attorney Wins Ruling Against U.S. Department of Labor

**In The News:** Munsch Hardt attorney already making a difference with labor-law ruling

**In The News:** Latest labor law case has big impact on energy sector

**In The News:** Judge chews our Labor Department over its handling of wage case

**In The News:** DOL Dinged \$600K For Oil Field Service Co.'s Atty Fees

**In The News:** Munsch Hardt Poaches Two Attorneys From Houston's Old Guard

**Press Release:** Munsch Hardt Expands Energy and Maritime Practice Through Addition of Attorney in Houston Office