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Proposed Sinopec lawsuit highlights risk of underpaying workers on overtime

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Syncrude Canada Ltd.'s oil sands processing facility stands in Fort McMurray, Alberta in 2010.

JIMMY JEONG/BLOOMBERG

A new proposed class-action lawsuit against the Alberta subsidiaries of

China's Sinopec Group highlights a risk corporations face if they don't pay their employees properly for overtime work and other benefits – one that can result in settlement payouts worth millions of dollars.

Called “overtime class-action cases,” they have become increasingly common in Canada over the past decade. While the specific claims differ, numerous employers – including several major banks – have faced claims that they habitually underpaid workers by failing to follow relevant employment laws on compensation.

“It's a live issue,” says Hena Singh, an employment law expert and partner at Singh Lamarche in Toronto, who notes that while there are many class proceedings that relate to whether large numbers of workers received the appropriate amount of overtime, vacation or other pay, such considerations are also relevant to individuals reviewing severance packages.

Employees don't often scrutinize their pay with lawyers and accountants, and employers tend not to look at how they might be underpaying staff, especially if employees do not challenge them, said Christopher Neufeld, the Calgary-based lawyer handling the case for former employees of Sinopec.

“However, with the COVID-19 pandemic exacerbating the already-depressed job prospects in the oil and gas sector, and the pandemic being a solid legal argument for increased severance pay, there's a definite push by terminated employees to seek all that they might be owed,” Mr. Neufeld said.

In the Sinopec case, two former employees have lodged a claim against the subsidiaries of the Beijing-based energy producer, claiming they were short-changed on pay and then severance. The former staff at Sinopec Daylight Energy Ltd. and Sinopec Canada Energy Ltd. argue the companies calculated their severance on the basis of base salary rather than total pay, which they claim is the labour standard.

The plaintiffs, Percy Mielnik and Orrin Forster, both of Warburg, Alta., southwest of Edmonton, say they are owed tens of thousands of dollars, and are seeking class-action status because numerous other current and former employees have suffered similar shortfalls. Mr. Mielnik had worked for the

company for 10 years and Mr. Forster 7½. They were laid off in May and filed their suit with Alberta Court of Queen's Bench in June.

China Petroleum & Chemical Corp., known as Sinopec Group, is the world's second-largest corporation by revenue, behind only Walmart Inc., according to Fortune Magazine. Its subsidiaries operate conventional oil and gas properties in Canada's energy sector and also have a stake in the Syncrude Canada Ltd. oil sands venture.

The plaintiffs allege Sinopec failed to include several components of their wages in its calculation of pay, including overtime, general holiday pay, holiday pay when working, vacation pay upon termination of employment, and termination pay in lieu of notice. This amounted to underpayment of between 10 per cent and 40 per cent, the claim alleges.

As a result, both total compensation and severance pay were below what it should have been, it said. Even so, the company asserted in its standard termination letter that the amount was based on the Employment Standards Code of Alberta.

Among all potential class members, damages could climb into the millions of dollars, the suit alleges. The allegations have not been proven in court.

Sinopec Canada would not comment on the specifics of the case. "While it is our policy not to comment on ongoing litigation, the plaintiffs' action is without merit and Sinopec Canada will take the necessary steps to defend the company in the appropriate forum," company vice-president and general counsel Kevin Long said in an e-mail.

In recent years, the Ontario Superior Court of Justice has approved large settlements in overtime class-action cases. In 2016, it authorized payments of almost \$40-million to about 1,600 class members in a case against Bank of Nova Scotia. Later that year, the court approved a \$12-million settlement with about 1,800 current and former employees of BMO Nesbitt Burns Inc.

Class-action cases must first be certified by a court before they move forward, requiring plaintiffs to prove the claims raise common issues among the class members and that a class proceeding is preferable to other procedures such as

individual lawsuits.

Once certified, most overtime class-action cases have been resolved by settlements, but after more than a decade of litigation, the Ontario Superior Court of Justice in late March ruled that Canadian Imperial Bank of Commerce was liable for breaching its obligations on overtime pay for a class of 31,000 current and former customer service workers. (A separate process will determine the amount of compensation the bank owes.)

Tom Wallis, spokesman for CIBC, said the bank believes it has “effective overtime policies and practices in place” and that it is “appealing the decisions in the matter.”

Ms. Singh, the Toronto employment law expert, said she frequently sees employers shortchanging employees on some aspect of compensation, often without realizing it.

“More often than not, if you comb through any corporate payroll practice, you will generally find an error in how things are calculated, and sometimes it’s big. What seems small might be significant when you’re looking at hundreds of employees over many years – that’s when you get into millions of dollars.”

Outside of overtime class actions, the COVID-19 pandemic could spur a range of other lawsuits related to employment, said Monique Jilesen, a partner at litigation law firm Lenczner Slaght whose practice focuses on class actions. Class-action claims could relate to unsafe working conditions, mass layoffs, or involuntary reductions in pay or working hours.

“You could anticipate that any number of issues would come up, in part because decisions have had to be made by employers everywhere very quickly,” Ms. Jilesen says. “And it’s possible in those circumstances that they weren’t strictly in compliance with the law, even if everything was done in good faith.”

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