

Employment in the oil & gas sector: Q&A

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A Q&A guide to employment issues in the oil & gas sector.

The Q&A gives a high level overview of the issues affecting employment arrangements in the sector and the key considerations for employers and employees. It covers employee and consultant contracts; intellectual property rights; compensation and benefits; regulatory and compliance issues; working time and leave; international movement of workers and the likely impact of Brexit. The Q&A also provides a summary of recent employment case law affecting the oil & gas sector.

Types of worker

1. a. Excluding generic employment issues, what are the key sector-specific issues that arise in relation to employment and other worker relationships in the oil & gas sector?

Employee issues

The oil & gas sector engages employees and workers in a wide variety of roles, from blue-collar field workers to highly-trained engineers. The profile of a workforce will depend on the specific type of business that the employer engages in. For example, an upstream business is typically engaged in exploration and production and operates oil rigs and drilling platforms, a midstream business engages in storage and transportation of products and typically operates pipelines or ships, and a downstream business is focused on refining and processing and might operate refineries. Some of the larger companies engage in all three sectors on a global basis. As a result, there is a significant variety in the types of workforce in this industry, but it is typically international with workers from a wide variety of countries moving around the globe on a regular basis. Unionisation is common in this sector.

Other worker relationships

Although many oil & gas sector businesses employ large numbers of individuals directly, the workforce engaged in any particular project is also likely to be made up of independent contractors as well as employees of joint venture partners or third party service providers. The scale and complexity of the operations in this sector means that almost all types of worker relationships are present.

Issues affecting other working relationships

The cyclical nature of the industry (which is often driven by commodity prices and geopolitical considerations) means that certain businesses seek to structure their workforces in a way that preserves flexibility. Outsourcing services to third parties rather than performing them in-house through their own employees is one way in which businesses seek to do that.

b. What are the key issues that arise in relation to self-employed relationships in the oil & gas sector?

As is the case with many industries, businesses in the oil & gas sector often engage individuals on a self-employed basis in both blue-collar and white-collar roles, and care needs to be taken to ensure that those individuals are properly classified.

Contracts of employment and consultancy agreements

2. Are there any sector-specific changes that you would make to a generic employment contract in the oil & gas sector?

Depending on the particular role, a contract may need to be adapted to include specific terms which are necessary to address issues that are common in this industry, such as:

- Regular changes in location of work (which is particularly relevant for offshore workers and those working on international projects).
- Hours of work (many projects run on a 24-hour basis with workers engaged in a variety of shift and rotational patterns).
- Restrictive covenants (to ensure that post-termination restrictions are as enforceable as possible with respect to employees working in multiple jurisdictions).

3. Are there any sector-specific changes that you would make to a generic consultancy agreement in the oil & gas sector?

A consultancy agreement would need to be tailored to the particular services being provided. Particular attention should be paid to intellectual property provisions (particularly for those consultants working in engineering or highly-technical areas). Consideration should be given to enforceability and compliance concerns where consultants are being engaged to perform services in multiple jurisdictions. Simply relying on a UK-form agreement might not be sufficient if the individual is spending a significant amount of time performing services abroad.

4. Do any sector-specific considerations apply to the assignment of intellectual property rights in the oil & gas sector?

Assignment of IPR to employees

The highly competitive nature of the oil & gas sector means that businesses carefully guard their trade secrets and IPRs. Employers must take care to ensure that the employees they hire do not improperly use the IPRs of their previous employers, and that when working on joint venture projects IPRs are assigned appropriately between the joint venture partners. Carefully drafted IPR and non-disclosure agreements are critical.

Assignment of IPR to other workers

As noted above, given the size of the workforces that usually work on oil and gas projects, there are often significant numbers of individuals engaged in a non-employment capacity. It is not unusual for such individuals to be in roles that create valuable IPRs. Therefore, care needs to be taken to ensure that the applicable contracts include robust IPR assignment clauses.

Assignment of IPR to consultants

See above, [Assignment of IPR to other workers](#).

Compensation and benefits

5. Do any sector-specific considerations apply to compensation in the oil & gas sector? What about benefits?

Workers in the oil & gas sector are generally well paid compared to other industries, including blue-collar workers. There are some remuneration and benefit structures that have been more common in the oil & gas sector because of the way in which it operates, such as premium and shift pay, overtime pay, and hardship and ex-patriate allowances and benefits.

Regulatory landscape

6. Are there any statutory or regulatory considerations that have a particular impact on employees, workers or the self-employed in the oil & gas sector?

Employees

There are a number of regulatory authorities that oversee the domestic oil & gas industry (such as the [Oil and Gas Authority](#)), but those authorities are focused principally on matters unrelated to employees, workers and consultants. However, one of the key areas affecting individuals is health and safety, where injuries to workers and employees are subject to close scrutiny and there is potential exposure to significant liabilities. As a result, employers need to have well-developed whistleblowing procedures which are implemented effectively, particularly as they relate to health and safety and environmental matters.

Workers

See above, [Employees](#).

Self-employed

See above, [Employees](#).

Policies and procedures

7. What, if any, sector-specific policies, procedures and considerations apply to staff handbooks in the oil & gas sector?

For the reasons noted elsewhere in this overview, policies relating to hours of work and shift/rotational work are often included and tailored to a particular business' needs. Additionally, with the prevalence of international and expatriate workers, many employers develop separate handbooks or policies governing assignments and secondments. Health and safety, environmental and whistleblowing policies are also given significant attention.

8. Are there sector-specific anti-bribery, modern slavery and other compliance and enforcement issues in the oil & gas sector?

Anti-bribery and corruption

The nature of the oil & gas industry means that businesses are frequently operating in jurisdictions that are prone to bribery and corruption. Because of this, many employers are acutely aware of the need to implement and enforce detailed anti-bribery and corruption policies, including through training of their employees. Ensuring that these policies are up-to-date is a critical part of the compliance process.

Modern slavery

Global supply chains and operations in countries that have significant exposure to modern slavery mean that oil and gas companies need to ensure that they understand their reporting obligations under the [Modern Slavery Act](#). Complex multi-national corporate structures can require a careful analysis of whether and how certain obligations under the legislation apply but, given the reputational issues involved in this area, some companies in the oil & gas sector choose to voluntarily disclose more than they are strictly required to do under the law, in order to demonstrate their corporate values and their efforts in eradicating modern slavery and human trafficking.

Other compliance issues

See above, [Anti-bribery and corruption](#) and [Modern slavery](#).

Other enforcement issues

See above, [Anti-bribery and corruption](#) and [Modern slavery](#).

9. Are there any sector-specific obligations or considerations in relation to the handling of employee data or the monitoring of employees in the workplace?

Handling employee data

The international nature of the workforce and the operations of many oil and gas companies means that they are often handling employee data which is subject to the [General Data Protection Regulation \(\(EU\) 2016/679\)](#) (GDPR). The expanded jurisdictional scope of data protection obligations under the GDPR means that many of these companies have needed to revisit their processes and policies to ensure compliance with the new laws. Furthermore, those companies with corporate functions centralised in countries outside the EU, including HR functions, will need to pay particular attention to the restrictions and requirements involving transfers of personal data abroad.

Monitoring

Where health and safety issues are critical to the functioning of certain operations, the use of employee monitoring is more prevalent.

10. Are there any sector-specific challenges in relation to working time, leave entitlements or holiday pay in the oil & gas sector?

Working time

Many oil and gas operations and projects work on a 24/7 basis and therefore present particular challenges to employers in structuring appropriate rotas and shifts for employees, while bearing in mind applicable limits on working time and rest breaks.

Leave entitlements

Shift-based working (particularly for those employees that work offshore with substantial amounts of onshore time) requires careful analysis over whether annual leave entitlement needs to be provided in addition to onshore time, or if an employer can insist on any entitlements under the [Working Time Regulations](#) being taken during onshore periods. Much will depend on what, if any, restrictions and obligations are imposed on time spent onshore.

Holiday pay

As with most other industries, the oil & gas sector has needed to grapple with recent developments in the law on holiday pay to determine what remuneration (particularly overtime pay) needs to be included in holiday pay calculations.

Other

No other issues.

11. Are there any sector-specific considerations or procedures relating to whistleblowing that commonly occur in the oil & gas sector?

The environmental and health and safety consequences of failures to abide by applicable regulations mean that there is considerable scrutiny of these issues. A company's failure to put in place (and properly implement) appropriate whistleblowing policies can lead to substantial financial liabilities and reputational harm. However, pressure can exist on workers not to blow the whistle where any complaint results in the cessation of production, which can be costly. Ensuring that robust whistleblowing policies exist, and that those policies are supported by management, helps to mitigate such risks.

Brexit and immigration

12. What are the specific employment and immigration issues (if any) that have arisen as a result of Brexit in the oil & gas sector?

The impact of Brexit is not currently being felt in a significant way by the oil & gas sector, but the ability to manage a globally mobile workforce is critical to the industry, which will need to grapple with the immigration consequences of Brexit like many other multi-national businesses.

13. What are the main anti-discrimination issues and diversity initiatives in the oil & gas sector?

Sex discrimination and gender pay issues have affected the oil & gas sector in much the same way as other industries. There are certain parts of the workforces within the sector that have been particularly prone to gender imbalance, such as the make-up of rig and refinery workforces. Companies have needed to pay close attention to why that is the case and to make sure that there are no directly or indirectly discriminatory hiring practices that are affecting the proportions of male and female employees.

Offshore and cross-border

14. Is there much international movement of employees and workers in the oil & gas sector?

The international nature of the oil & gas sector means that there is a lot of international movement of employees and workers. Secondments and international assignments are common at all levels of the workforce. Many companies have well-developed international assignment policies that consider all aspects of the arrangements, including identifying:

- "Home" and "host" employer entities.
- Tax issues affecting remuneration and benefits (including tax equalisation and other benefits).

- Relocation, ex patriate and repatriation benefits.
- Immigration and work permit arrangements.

However, it is often the case that one size does not fit all because of the differences in applicable laws of the jurisdictions involved. The types of arrangements used are typically driven primarily by immigration and tax requirements, but an employer will also need to understand the local employment law implications of the way in which they choose to engage or assign employees. In addition to international assignments, there are also large numbers of offshore workers, where the jurisdictional reach of applicable laws and tax obligations need to be considered.

15. Is there much engagement of contractors and consultants in overseas jurisdictions in the oil & gas sector?

Engagement of contractors and consultants is common, but as is the case in the UK, businesses must take care to ensure that they have classified individuals correctly as non-employees and that they have complied with applicable tax and employment law requirements. In many jurisdictions, the legal test of whether an individual is an employee or an independent contractor depends heavily on the applicable facts and circumstances of the day-to-day relationship of the parties.

Tax

Companies will need to ensure that the individuals they engage are properly classified as independent contractors under applicable tax laws. Otherwise, the company could be liable for a failure to withhold income tax and other employment tax obligations.

Anti-bribery

Anti-bribery laws have a broad reach and companies therefore need to understand the extent to which the actions of individuals they engage as contractors or consultants could trigger liability for the company itself. Appropriate policies and training are critical to managing that risk.

Data protection

The jurisdictional reach of applicable data protection laws will need to be carefully considered for consultants and contractors that work in multiple jurisdictions. The personal data of those employees will also need to be transferred cross-border and, where applicable, appropriate safeguards for that data will need to be put in place.

Visa and work permit requirements.

Immigration requirements will often be one of the first issues that need to be considered when engaging a contractor or consultant on an international assignment. If a visa or other work permit is required, a business may need to sponsor that visa application. In some cases, visas are only available to employees and the individual will therefore

need to be engaged as an employee for such purposes. Additionally, local content rules (particularly in some countries in Africa) may limit the number of foreigners that can be engaged by a particular entity.

Other

No other issues.

16. Are there any international employment law issues that arise in relation to the oil & gas sector?

Tax

One of the principle concerns with sending employees abroad is the risk of unintentionally creating a taxable presence or permanent establishment in the foreign jurisdiction. This risk can be managed by understanding the applicable local tax rules. For example, it might be advisable to create a local entity, to whom the employee's employment is transferred before any work is performed in the foreign country. The other key tax consideration is to make sure that appropriate income and payroll taxes are applied in the country. This may depend on the number of days worked in the country and other factors, but if a local tax liability arises then some or all of that liability might be offset under applicable tax treaties. Ex-patriate and foreign assignment arrangements often include tax equalisation policies in order to ensure that individual employees are not worse off as a result of their foreign assignment.

Anti-bribery

Anti-bribery laws have a broad reach and companies therefore need to understand the extent to which the actions of employees could trigger liability for the company itself. Appropriate policies and training are critical to managing that risk.

Visa and work permit requirements

Because of strict requirements and an often lengthy application and approval process, visa and work permit requirements need to be considered at an early stage. In addition, many countries in which oil and gas companies have operations also have local content rules, which limit the number of foreign nationals that can work for a particular employer in the country. This can be a significant issue for large oil and gas projects where the local workforce might not have skilled workers in sufficient numbers.

Due diligence on employment implications of business transactions and closures

Transactions involving oil and gas companies can involve a large number of different jurisdictions. Therefore, identifying and managing local counsel efficiently is critical to managing costs and the deal timetable. Many transactions are structured as asset deals in which employment issues may need to be considered in a different manner than the UK's *Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246)* (TUPE) regime. Some transactions may involve assets with few or no employees attached (such as the purchase and sale of offshore oil and gas licenses), while others can involve thousands of employees across multiple jurisdictions.

Global codes of conduct and work policies

There is a growing trend of laws with extra-territorial effect in the areas of corruption, bribery and human rights. These are issues of particular concern in many of the jurisdictions in which oil and gas companies operate. Having up-to-date policies, training staff, and carrying out appropriate due diligence and monitoring of local operations and supply chains is critical to managing these risks, which can have significant financial and reputational repercussions.

Data protection

The jurisdictional reach of applicable data protection laws will need to be carefully considered for employees that work in multiple jurisdictions. The personal data of those employees will also need to be transferred cross border and, where applicable, appropriate safeguards for that data will need to be put in place.

Other

No other issues.

Recent EAT cases in the sector

17. Please identify key recent rulings relating to employment cases in the EAT, High Court and above affecting the oil & gas sector in the table below.

Case	Area	Impact
<i>International Petroleum Ltd and others v Osipov and others</i> (UKEAT/0058/17/DA)	Whistleblowing	Individual liability under whistleblower detriment claims.
<i>Talbot v Costain Oil, gas & Process Ltd and others</i> (UKEAT/283/16)	Sex discrimination	Consideration of surrounding circumstances when considering claims of sex discrimination, such as where there is only one female engineer who alleges she was treated differently to male colleagues.
<i>Kellogg Brown & Root (UK) Ltd v Fitton; Kellogg Brown & Root (UK) Ltd v Ewer</i> (UKEAT/0205/16/BA)	Unfair dismissal / contractual mobility clause	Considering the application of mobility clauses in a redundancy situation, and whether it is reasonable to require employees to relocate.
<i>ESS Support Services LLP v Pabani and another</i> (UKEAT/0161/15/DA)	Jurisdictional scope of unfair dismissal claims	Considering whether a British citizen recruited in the UK but working for an oil and gas services

*Wittenberg v Sunset
Personnel Services Ltd & Ors
(UKEATS/0019/13/JW)*

Employer identity; territorial reach
of employment rights

company in Kazakhstan had a sufficiently strong connection with the UK for the Employment Tribunal to have jurisdiction to hear a case for unfair dismissal.

Considering the correct identity of an employer of an offshore mariner where various entities were named respondents, and whether there was territorial reach of employment rights.

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