In wage and hour litigation, current and/or former employees allege unpaid work, including unpaid overtime, failure to provide meals and/or rest breaks, and off-the-clock work. Cases may be brought under state law or under the Federal Fair Labor Standards Act (FLSA). These cases may result in civil settlements or verdicts, as well as in back wages and penalties levied by the Department of Labor (DOL).

In this 2015 Update, we add 27 months of data to our database of civil wage and hour settlements, creating a dataset that spans January 2007 to March 2015. Looking at patterns in this data over time, we found that companies continued to pay substantial amounts to settle lawsuits involving allegations of wage and hour violations. We identified total wage and hour settlement payments of $445 million in 2013, $400 million in 2014, and $39 million through the first three months of 2015, bringing the aggregate amount paid for cases settled since January 2007 to over $3.6 billion. In total, our database contains 613 settlements from January 2007 through March 2015, for an average rate of approximately 75 settlements per year.

Average settlement values were lower in 2014 than in prior years. On average, companies paid $5.3 million to resolve a case in 2014, lower than the observed average of $6.3 million in 2013 and the overall average of $6.9 million for the 2007 to 2015 period. This pattern has continued into the first quarter of 2015; during this period, average settlement values were down to $2.8 million. Median settlement values have similarly declined. The median settlement value was $3.0 million in 2013, the median was $2.4 million in 2014, and the median was just $1.9 million through the first 3 months of 2015. This is below the overall 2007-2015 median of $2.2 million.
After controlling for the number of plaintiffs in a case and the number of years in the class period, we found a decreasing trend in the average settlement value per plaintiff per class year—from a peak of $1,475 in 2011 to $686 in 2014 and just $253 through the first three months of 2015.

Historically, the most common allegation in the settlement data related to overtime violations, and this remained true over the past 15 months. In addition, we identified an increase in the proportion of settlements that included allegations of minimum wage violations in 2014 and 2015 relative to prior years.

The number and amount of settlements also vary by industry. In 2014 and 2015, we found an increase in the proportion of settlement dollars spent in the food & food services industry relative to prior years.

We compared our sample of civil wage and hour settlements to concluded actions taken by the DOL’s Wage and Hour Compliance division over the past nine years. Over that time period, the DOL reported thousands of investigations, of which 75% resulted in a determination of a violation. Comparing our wage and hour settlement data to the DOL data, we found that nearly 60% of the companies with a wage and hour settlement between 2007 and 2015 had also been investigated by the DOL’s Wage and Hour Compliance division. Approximately 25% of the companies in our wage and hour settlement database were found by the DOL to have an FLSA violation, and back wages associated with these violations totaling $19.3 million were paid.¹

Figure 1. Over 600 Wage and Hour Cases Have Settled Since 2007
Settled Wage and Hour Cases by Year
Data as of March 31, 2015
Figure 2. **Average Settlement Values Have Declined in 2014-15, Reversing the 2013 Increase**
Mean Wage and Hour Settlement Amount by Year
Data as of March 31, 2015

2007 – 2015 Overall Average: $6.9 Million
2011 – 2015 Overall Average: $5.1 Million

Figure 3. **Median Settlement Values Have Declined in 2014-15 Relative to 2013**
Median Wage and Hour Settlement Amount by Year
Data as of March 31, 2015

Overall Median: $2.2 Million
Data and Methodology

Our updated data includes 613 settlements for wage and hour cases, obtained from articles published in *Law360* between 1 January 2007 and 31 March 2015, and a review of the Seyfarth Shaw annual litigation report for 2007 through 2014. When the information available from these sources was incomplete, additional case-specific details were obtained from Factiva. In addition to settlement value, the data extracted includes case-specific information such as industry, allegations, number of plaintiffs, length of class period, and jurisdiction. While this data collection methodology yielded a substantial number of wage and hour settlements, particularly those with large settlement amounts and/or large classes, it is not necessarily comprehensive.

The DOL’s Wage and Hour Compliance Data was obtained from the website http://ogesdw.dol.gov/data_summary.php.²

![Figure 4. More Than Half of Cases Settle for Under $2.5 Million](image-url)
Average Wage and Hour Settlements – Trends per Plaintiff and per Class Period Year

- For approximately 75% of the cases in our database, we were able to determine the number of plaintiffs participating in the settlement; for about 66%, we could determine both the number of plaintiffs and the reported settlement amount.

  - The number of cases with over 10,000 plaintiffs had been decreasing between 2007 and 2013, but increased in 2014, as 16% of settlements were associated with such large classes. The percentage of large settlements remained above 2013 levels in the first three months of 2015.

- On average, the settlement per plaintiff for this subset of cases for which we have plaintiff counts was $5,742. A small proportion of cases—approximately 5%—had settlements averaging over $25,000 per plaintiff, which skews the average upward. The median settlement per plaintiff was lower, at $2,576.

- Cases with more plaintiffs tend to have higher total settlements but lower settlements per person.

- For about 40% of the settlements in our database, we identified the number of plaintiffs in the case, the number of years covered by the settlement, and the settlement amount.

  - The median and average duration of a class period in our data were five years. Like cases with more plaintiffs, cases with longer class periods tend to have larger total settlements. However, these cases do not necessarily have higher settlements per class year.

  - The vast majority of average settlements were less than $5,000 per plaintiff per class year. The few cases with average settlement amounts per plaintiff per class year above $5,000 were in either the telecommunications/utilities or the financial services/insurance industries and included allegations of misclassification and overtime.

  - More recently, the average per plaintiff per class year has dropped substantially, relative to the overall average.
Figure 5. **More Than Half the Cases Have Fewer Than 1,000 Plaintiffs**
Settled Wage and Hour Cases by Number of Plaintiffs
January 2007 – March 2015

Figure 6. **The Proportion of Cases Involving Large Classes Grew in 2014**
Annual Distribution of Settled Wage and Hour Cases by Number of Plaintiffs
Data as of March 31, 2015
Figure 7. **The Average Settlement Value Per Plaintiff Decreased Significantly in 2014, but Increased in the First 3 Months of 2015**

Average Settlement Value Per Plaintiff for Wage and Hour Cases by Settlement Year

Data as of March 31, 2015

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**Overall Average:** $5,742

**Overall Median:** $2,576

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Figure 8. **A Large Proportion of Cases Have an Average Settlement Value Per Plaintiff Between $1,000 and $4,999**

Settled Wage and Hour Cases by the Average Settlement Value Per Plaintiff

January 2007 – March 2015

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**Overall Median:** $2,576

**Overall Average:** $5,742
Figure 9. **Less Than 15% of Settled Cases Have a Class Period Greater Than 7 Years**
Settled Wage and Hour Cases by Number of Years in Class Period
January 2007 – March 2015

<table>
<thead>
<tr>
<th>Number of Years in Class Period</th>
<th>Number of Cases</th>
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<tbody>
<tr>
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<td>140</td>
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<tr>
<td>15</td>
<td>150</td>
</tr>
</tbody>
</table>

Figure 10. **The Average Settlement Value Per Plaintiff Per Class Year Has Declined Considerably Since the Peak in 2011**
Average Settlement Value Per Plaintiff Per Class Year for Wage and Hour Cases by Settlement Year
Data as of March 31, 2015

- **Overall Average:** $1,097
- **Overall Median:** $519
Figure 11. Few Cases Settle for More Than $5,000 Per Plaintiff Per Class Year
Settled Wage and Hour Cases by the Average Settlement Value Per Plaintiff Per Class Year
January 2007 – March 2015

Case Characteristics

- We identified all the allegations made in the cases in our settlement database and classified these allegations in the following categories:
  - Overtime
  - Off-the-clock
  - Minimum wage violation
  - Donning and doffing
  - Missed meals and breaks
  - Misclassification
  - Tip Pooling

- Many of the cases in our database had multiple allegations—for example, workers frequently claim that alleged off-the-clock work caused them to have minimum wage violations. About 60% of the cases had at least two allegations. Approximately 16% of the cases in our data had an allegation of overtime only, while another 55% included an allegation of overtime in addition to one or more other allegations.

- This pattern of allegations has been relatively steady; as in prior years, overtime allegations dominated in 2014 and 2015. The share of misclassification and off-the-clock allegations were slightly down in 2014 and 2015 compared to earlier years, but the share of minimum wage violation allegations increased.
• We also identified the industries of the settling defendants and found that the most common industries in all years were financial services/insurance, retail, and food & food services. In 2014 and 2015, the most common industry of settling defendants was retail, followed closely by the financial services/insurance and food & food services industries.

• Three industries accounted for more than half of total spending overall in 2014 and 2015. Over the past 15 months, 21% of settlement dollars were paid to workers in the financial services/insurance sector, 19% of settlement dollars were paid to workers in the retail industry, and 17% were paid to workers in the food & food services industry—in total, 57% of spending. Over all years, these three industries comprised 54% of total spending.

• The majority of the cases in the financial services/insurance, retail, and food & food services industries included allegations of overtime.

• The second most frequent allegation in the financial services/insurance industry was misclassification.

• In the retail industry, we saw allegations of overtime violations, off-the-clock work, and missed meals and breaks, as well as misclassification.

• There were relatively few allegations of misclassification in the food & food services industry, but that industry had several other types of alleged violations, including donning and doffing, missed meals and breaks, and off-the-clock work.

• From 2007 – 2015, settlements with defendants in the technology industry were the highest, followed closely by settlements in the financial services/insurance and food & food services industries.

• In 2014 and 2015, as in prior years, the majority of settlement dollars have been paid out in New York and California.
Figure 12a. **Over 40 Percent of Allegations Relate to Overtime Violations**
Allegations in Settled Wage and Hour Cases
January 2007 – March 2015

- **Overtime**: 41%
- **Off-the-Clock**: 15%
- **Misclassification**: 17%
- **Missed Meals and Breaks**: 17%
- **Donning and Doffing**: 4%
- **Minimum Wage**: 6%
- **Tip Pooling**: 2%

Figure 12b. **In 2014 and 2015, Overtime Remained the Most Common Type of Allegation**
Allegations in Settled Wage and Hour Cases
January 2014 – March 2015

- **Overtime**: 42%
- **Off-the-Clock**: 11%
- **Misclassification**: 11%
- **Missed Meals and Breaks**: 18%
- **Donning and Doffing**: 2%
- **Minimum Wage**: 15%
- **Tip Pooling**: 3%
Figure 13. The Financial Services/Insurance, Retail, and Food & Food Services Industries are the Most Common Industries for Settlements
Settled Wage and Hour Cases by Industry of Employer
January 2007 – March 2015

Figure 14a. Nearly Half of All Total Settlement Dollars Were Paid to Employees in the Retail and Financial Services/Insurance Industries
Wage and Hour Settlement Dollars by Industry: January 2007 – March 2015
Figure 14b. **Over Half of All Total Settlement Dollars were Paid to Employees in the Retail, Financial Services/Insurance, and Food & Food Services Industries in 2014 & 2015**

Wage and Hour Settlement Dollars by Industry: January 2014 – March 2015

- Retail, 19%
- Financial Services/Insurance, 21%
- Food & Food Services, 17%
- Healthcare/Healthcare Services, 6%
- Technology, 5%
- Telecommunications/Utilities, 6%
- Transportation/Shipping, 9%
- Other, 15%
- Manufacturing, 1%

Figure 15. **The Average Settlement Value by Industry Ranged from $2.9 Million to $7.4 Million in 2014 & 2015**

Mean Settlement Values for Wage and Hour Cases by Industry of Employer January 2014 – March 2015
Notable Recent Settlements

Although no recent settlements were outside of the historical range observed in our database, a few notable cases had settlement values over $20 million in the last 15 months:

- Brinker Restaurant Corp. – $56.5 million. The case included 108,000 workers who alleged wage and hour violations. Because of the large class, the average settlement value per plaintiff was just $523.

- City of Los Angeles – $26 million. The case included 1,074 trash truck drivers who alleged meal and rest break violations. The average settlement value per plaintiff was $24,209.

- Walgreen Co. – $23 million. The case included 40,000 workers who alleged that they were denied overtime and meal and rest breaks. Because of the large class, the average settlement value per plaintiff was $575. Further, the class period lasted seven years, so the average settlement value per plaintiff per class year was just $82.

- Schneider Logistics Transloading and Distribution Inc. – $21 million. Plaintiffs asserted that they were denied overtime and minimum wage.
DOL Public Wage and Hour Data

The data NERA compiled are public civil wage and hour cases. Another source of data on wage and hour activity comes from the U.S. Department of Labor, which reports statistics on their investigations, violations, and back wage payments related to wage and hour issues. The data spans all concluded actions since 2007 and includes variables such as indicators for whether violations were found, whether the violations were FLSA, and the amount of back wages, if any, agreed to be paid by the employer.

According to the DOL’s public data, the DOL has completed over 150,000 investigations since 2007. Of these:

- Over 115,000 resulted in findings of violations.
- 56% of the investigations found violations that included back wage payments, while 8% found violations that included some kind of penalty.
- Over 60% of the investigations were found to have an FLSA violation, and nearly half of the investigations resulted in an FLSA violation that included back wage payments.
- 90% of back wage payments included an overtime violation.
- The states with the most DOL cases were Texas, California, Florida, and New York. These four states accounted for 35% of all investigations and violations since 2007.
- In the aggregate, back wages paid for cases with DOL wage and hour enforcement violations was $1.55 billion over the six years, with an additional $75 million assessed as civil money penalties.
Figure 17. Approximately Half of All Investigations Resulted in FLSA Violations with Back Wages or Civil Money Penalties
Distribution of All Concluded DOL Wage and Hour Compliance Investigations 2007 – 2015

Figure 18. Nearly 90% of Cases Resulting in Back Wages Paid for FLSA Violations Included an Overtime Violation
Distribution of Back Wages Agreed to Pay for FLSA Violations for Concluded DOL Wage and Hour Compliance Investigations
Figure 19. **California, Florida, New York, and Texas Accounted for Over One Third of the FLSA Violations Found**
Distribution of FLSA Violations Following DOL Wage and Hour Compliance Investigations Across Regions
2007 – 2015

Figure 20. **Average Back Wages Agreed to Under FLSA in California, New York, and Texas were Above the National Average**
Average Back Wages Agreed to Pay Under FLSA Following DOL Wage and Hour Compliance Investigations by Region
2007 – 2015

Overall Mean: $11,878
Comparing DOL and NERA Wage and Hour Data

Many of the allegations related to FLSA violations are the same as those brought in state court wage and hour civil litigation. To see if there was overlap in the defendants settling civil cases with those found to have FLSA violations by the DOL, we matched our wage and hour settlement database to the DOL’s violation list.

Given the available data, it is not possible to do a one-to-one map of each investigation to each settlement. However, we can identify and match the defendant companies in both databases. In other words, starting with our wage and hour settlement data companies, we looked to see if any of these companies were listed in the DOL data during the January 2007 – March 2015 period.4

We found that 59% of the defendants in our database with a settled wage and hour civil case during this time period also had a DOL investigation. Of those, 21% were found to have a non-FLSA related violation and 44% were found to have at least one FLSA violation. In total, 60% of the companies with wage and hour settlements either had no investigation or were found to have no violation.

For the defendants with an FLSA violation, 86% paid at least some back wages to employees. 53% of these were for overtime, 26% were for overtime and minimum wage, and 7% were for minimum wage only.

Figure 21. Two-Thirds of the Companies with a Wage and Hour Settlement Between 2007 and 2015 Had a DOL Investigation; Over 25 Percent Had an FLSA Violation
Distribution of Concluded DOL Wage and Hour Compliance Investigations for Companies with Wage and Hour Settlement
Endnotes

1 We thank Mary Elizabeth Stern for her peer review and Tanner Baker, Christopher Dederick, Matthew Fisher, Wendy Magaronga, Yingtian Yang, and Richelle Zheng for additional research assistance.

2 Also, due to incomplete information, reported statistics exclude the Wal-Mart Multi-District Litigation settlement in 2008, which resolved 63 wage and hour class action cases for over $600 million.

3 There are a handful of cases with “Other” allegations that were not captured by these categories.

4 This restriction exists because a company may show up multiple times in either database, so there is no definitive way to tie an investigation to a specific settlement. Furthermore, no open or close dates exist in the DOL data, so there is no way to effectively approximate which DOL investigation is related to which settlement.
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