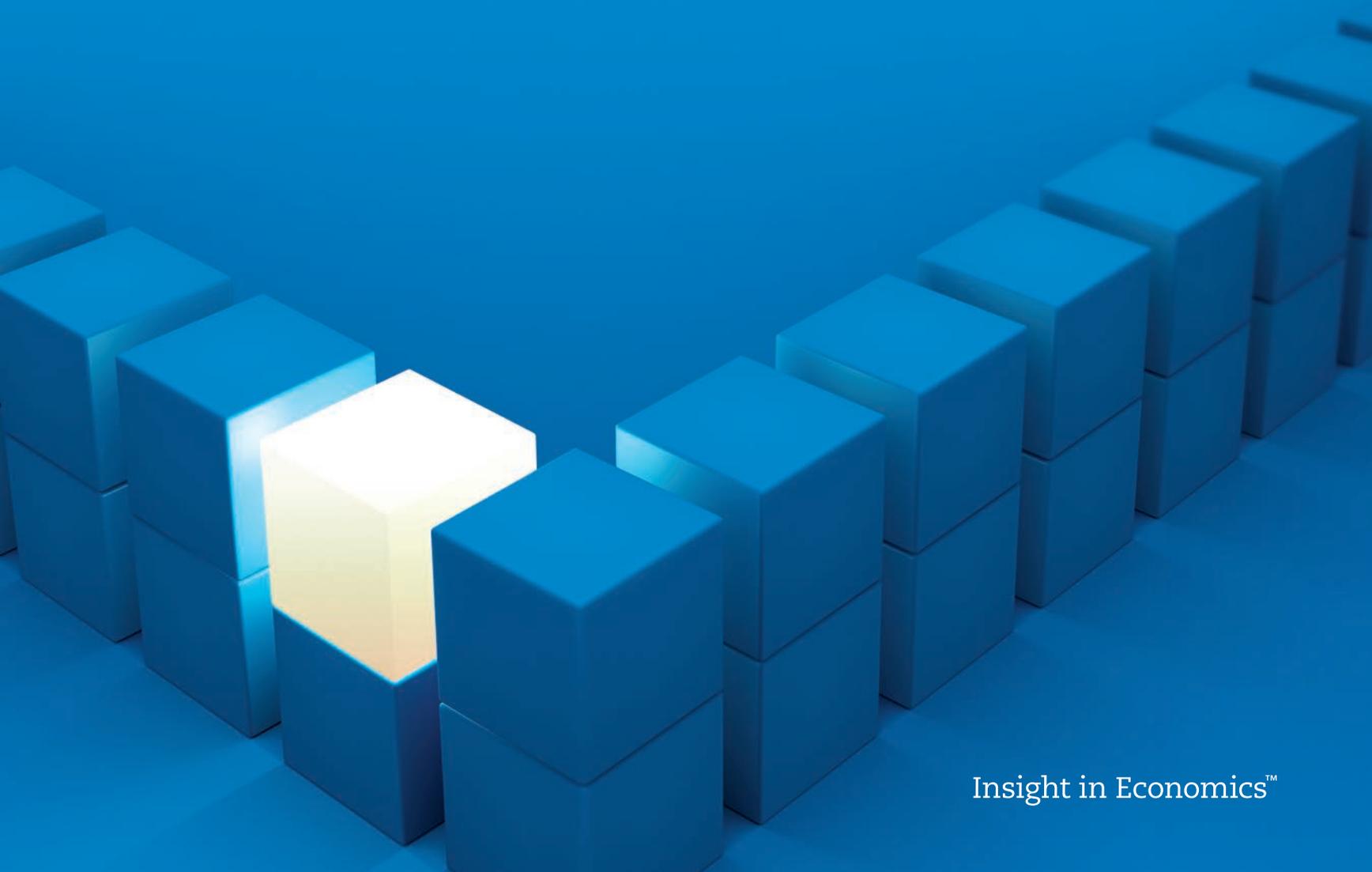


Services and Capabilities

Labor and Employment

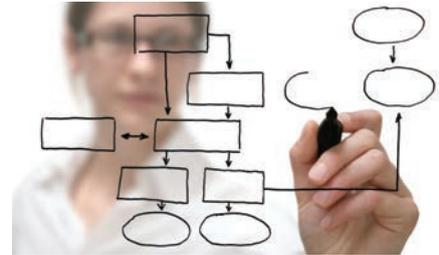
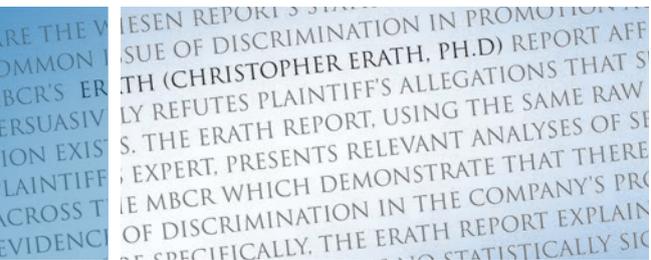




Our team of experts offers an unmatched combination of economic credentials, industry expertise, and testifying experience.

For half a century, NERA experts have been central to client success in some of the world's highest-profile cases related to litigation, regulation, and business challenges. Experts in our Labor and Employment Practice apply rigorous economic analysis to investigate allegations of discrimination or wage and hour violations; to conduct workforce reviews/evaluate RIFs; to estimate economic loss and damages; to assess contracting affirmative action; to undertake availability disparity studies; and to design and implement sampling and surveys. We specialize in economic analysis based on the details of the individual employees, companies, and labor markets we study. Clients return to us to provide the expert testimony necessary to evaluate statistical claims of liability and damages, as well as to ensure equity in all types of employment outcomes in the day-to-day management of their workforces.

NERA's Labor and Employment Practice



NERA has developed one of the largest in-house teams of economists in the economic consulting world. Our Labor and Employment Practice has long been recognized as a leader and innovator in the labor and employment field. Our experts apply rigorous quantitative methods to evaluate issues arising at the certification, liability, and damages phases of the wide array of employment cases. Our statistical expertise allows us to develop targeted econometric studies that address the critical questions in a case, and we take pride in being able to explain our results using clear, compelling language and graphics. Our results are often used in combination with anecdotal information from internal documents, as well as testimony from company personnel. In addition to our in-house survey and sampling expertise, we offer extensive data processing capabilities that help clients manage and process large, complex personnel, timekeeping, and payroll databases with maximum efficiency.

NERA has developed one of the largest in-house teams of economists in the economic consulting world.

Areas of Focus



NERA experts' hands-on experience and deep understanding of labor markets and employment processes span the range of industries and capabilities that are critical to our clients' success. We are grounded in a set of core principles that have always guided our pioneering efforts: focus, independence, defensibility, and clarity. In the field of labor and employment economics, our areas of focus include:

Class Certification

NERA advises clients on the full range of economic issues that can arise in class actions alleging discrimination or wage and hour violations, including the determination of common impact on a classwide basis, proof of injury, analysis of intra-class conflict, and the feasibility of formulaic approaches to damages. NERA's ability to go beyond the broad-brush analyses frequently presented in labor litigation allows our economists to understand whether an alleged disparity or violation pervades the proposed class, limits the class to some subgroup, or does not exist at all. Our work may include assessing whether the available data would allow such a determination, as well as understanding the drivers of observed variability in patterns of alleged violations. Our experts have testified extensively on statistical issues related to Rule 23 and on whether any statistical claims are artifacts of the model an opposing expert has chosen.



Contracting Affirmative Action/Disparity and Availability Studies

NERA economists were among the first to recognize the importance of periodic evaluation of affirmative action programs in public contracting and procurement, and we have specialized in conducting disparity and availability studies since the seminal *City of Richmond v. J.A. Croson Co.* decision in 1989. Our disparity studies evaluate goals established by federal, state, and local governments and help these agencies to develop effective and lawful affirmative action programs for procuring goods and services from businesses owned by minorities and women. We have delivered disparity studies to scores of public sector clients across the US, and have been retained to testify in numerous constitutional challenges to DBE/MBE/WBE programs.

The results of our unique approach to conducting disparity research have been dramatic. In every case, public programs based upon our studies have withstood legal challenge—at summary judgment, at trial, and on appeal. NERA disparity studies helped the City of Chicago to establish the continuing compelling need for its MBE/WBE program and formed the basis for Court of Appeals decisions to uphold Denver's MBE/WBE program (10th Circuit), the State of Minnesota's DBE program (8th Circuit), and the State of Illinois' DBE program (7th Circuit). We have been called upon by Congress on several occasions to testify on these issues and were entrusted by the National Academy of Sciences to produce national guidelines for conducting disparity and availability studies.

Discrimination

NERA's experts regularly provide statistical analysis of employment discrimination claims in all phases of complex litigation. Our experience extends to all types of employment practices—compensation, performance rating, promotion, hiring, and termination—across the full range of protected groups. We have consulted and provided expert testimony for cases involving individual plaintiffs as well as large class actions. Such work includes alleged discrimination associated with reductions in force. In all cases, we draw extensively on the company's HR fact base, using rigorous statistical tools and proprietary techniques to analyze and compare across company operations, age categories, job positions, salary ranges, and other dimensions with litigation risk. In discrimination work of all kinds, NERA's experts have built our reputation using sophisticated statistical analyses that accurately model the challenged decision process.

We frequently provide expert testimony related to discrimination and wrongful termination. Given our reputation for independence and defensibility, our clients turn to us for calculations of economic loss and damages where those are needed. In such cases, NERA experts provide realistic and rigorous estimates based on the facts relevant to the particular plaintiff and defendant.

Economic Loss/Damages

NERA economists have calculated economic damages for one or more plaintiffs in cases alleging discrimination, wrongful termination, personal injury, or wrongful death where liability has been established. Our experts recognize that accurate calculations require knowledge of each plaintiff's individual situation, as well as that of the defendant. Too often, loss estimates based on generalities and economy-wide trends are substituted for information specific to the parties involved.

NERA's approach to calculating each plaintiff's alleged economic damages is based on accumulating all information necessary to accurately model earnings but-for the alleged wrongful conduct and the expected earnings given such conduct. Use of such information allows us to develop realistic assumptions about expected earnings growth patterns and the tenure of workforce participation. We understand that actual earnings following events such as an alleged wrongful termination may not reflect expected earnings for a similar-situation employee. To generate a reliable estimate, our economists pioneered a method of assessing the reasonableness of plaintiffs' efforts to mitigate their losses. We have submitted expert reports and testified about economic damages at trial, providing clear descriptions of the complex statistical analyses that may be required in these cases.





Wage and Hour Litigation

NERA's Labor and Employment experts have substantial experience investigating the key issues of wage and hour litigation at the class certification, liability, and damages phases of cases, including those with allegations related to:

- Meals and breaks
- Off-the-clock work
- Overtime pay
- Processing errors
- Minimum wage
- Misclassification/exempt status
- Termination pay
- Donning and doffing

Our projects often require us to merge and analyze business records for as many as several hundred thousand employees. Our experts' analytical and statistical expertise can handle computational requirements under the most demanding circumstances. We have extensive experience in a variety of types of wage and hour litigation, enabling us to apply analytical rigor in distinguishing between specious or valid claims, and to place an accurate value on valid claims. Often, our work may include assessing whether the available data would allow such a determination, as well as understanding the drivers of observed variability in patterns of alleged violations. Such variability may indicate that apparent violations are, in fact, innocuous and result from the mechanical application of a damages formula to data that may be available from business records but cannot reliably answer the questions raised in litigation.

Workforce Reviews/Evaluation of RIFs

NERA's workforce reviews help to minimize employment law risk in several ways. With our detailed statistical analysis of workforce composition, NERA experts can:

- Assess the impact of proposed reductions in force (RIFs).
- Determine whether statistical disparities exist in salaries, incentive compensation, or other elements of compensation such as stock options.
- Review promotional patterns to assure no glass ceilings exist.
- Review hiring data to see if screening tests or other mechanisms show an adverse impact.
- Evaluate existing affirmative action programs.
- Diagnose where changes can be considered to reduce future risk from a lawsuit or government audit.

When developing a statistical workforce review, NERA draws extensively on the company's HR fact base. We use rigorous statistical tools and proprietary techniques to analyze and compare across company operations, age categories, job positions, salary ranges, and other dimensions with litigation risk.

Union-Related Analyses

NERA's economists have conducted studies on labor union issues including the desirability of using union labor, aspects of a union decertification election before the National Labor Relations Board, and the reasonable compensation of various union crafts in the railroad industry. Our experts have also testified on wage comparability and cost of living issues for major municipal unions. In wage and hour cases, we have assessed claims that union members were not paid overtime or provided with other benefits to which they were allegedly entitled. Such cases have required our experts to work with large datasets including employee time records and detailed information on benefits received.

Sampling and Surveys

NERA survey experts combine a deep knowledge of sampling techniques, survey administration, and analyzing complex sets of data with a firm grounding in econometric principles and practice. Our experts regularly testify on statistical issues and are current with the latest research on survey procedures and statistical sampling.

In situations in which data necessary to answer the questions raised in litigation do not exist or may be too numerous for individual analysis, NERA's experts have either designed surveys to develop the needed data or have sampled existing datasets. Our use of survey and sampling techniques spans a wide range of projects, including: addressing issues of discriminatory promotion and hiring practices in EEOC-related cases; examining the evidence in litigation on race, gender, and age-based hiring and promotion practices; presenting evidence related to wage and hour litigation; and conducting surveys to understand corporate and employee practices related to these issues.



We frequently provide expert testimony related to discrimination and wrongful termination.

Our experts' analytical and statistical expertise can handle computational requirements under the most demanding circumstances.



Case and Project Profiles

NERA's experts bring to bear a passion for finding the right answer. The following case profiles illustrate the breadth of our experience in the area of labor and employment.

Validation of a DBE Program

The Illinois Department of Transportation's (IDOT) Disadvantaged Business Enterprise Program was upheld based on NERA's expert testimony. Illinois highway contractor Northern Contracting Inc. filed suit against the IDOT over its DBE program, which promotes the participation of socially and economically disadvantaged businesses in federally-assisted transportation contracts. IDOT commissioned NERA to conduct a study to meet the constitutional and regulatory requirements of the DBE Program and to testify at trial. NERA created a "custom census" of DBE availability in the relevant market and analyzed data from almost 135,000 distinct pay items totaling almost \$2.5 billion. The federal district court ruled in favor of IDOT. Plaintiff appealed to the Seventh Circuit. The Court of Appeals re-affirmed the earlier decision that IDOT's DBE program—based largely on the NERA report—"was narrowly tailored to the compelling interest identified by the federal government—remedying the effects of racial and gender discrimination in the highway construction market."

Critique of Alleged Termination Damages for Large Retailer

In a wage and hour case alleging that a large retailer failed to pay vacation and personal time owed as of termination, NERA was retained to assess class certification and damages issues. NERA experts developed an in-depth understanding of the complex interactions between the payroll, cash office and timekeeping databases. We combined this knowledge with individualized review of a sample of personnel records, as well as corroborating aggregate statistics, to demonstrate that the electronic business records could not be used to assess liability. Our analysis, which also revealed that plaintiffs' expert had incorrectly analyzed these records, was used in support of a Daubert motion.





Investigation of Alleged Misclassification in the Pharmaceutical Industry

Pharmaceutical companies were swamped recently with claims that they misclassified sales representatives as exempt from overtime pay requirements. NERA experts assisted in several state and federal matters with wide-ranging analyses—construction of class lists for state-wide claims by identifying employees with relevant job titles and territory assignments within the state; identification of highly compensated individuals; presentation of variability in sales reps’ call and sampling behavior; comparisons of named Plaintiffs to remaining putative class members; and estimation of the relationship between sales rep activities and sales achievement. Some of these analyses resulted in expert witness testimony in opposition to class certification and defense of the exercise of discretion.

Evaluation of Wrongful Termination Claim for Bank Executive

NERA was retained to assist in the critique of an expert report estimating damages for a displaced bank executive claiming defamation as a result of wrongful discharge “for cause”. Referencing abundant academic literature, our experts determined that the earnings losses allegedly linked to the cause termination likely would have occurred regardless the reason for the discharge. The damages associated with defamation were minimal relative to those claimed by Plaintiff’s expert.

Recommendations Prior to an OFCCP Audit

A major high-tech company regularly consulted NERA labor economists regarding proposed promotions, merit and equity pay increases, bonus compensation, and stock option grants for their employees. This proactive collaboration made our client aware of any gender, race, or age disparities that would emerge as a result of proposed changes as well as what action would remove such disparities. In part due to the groundwork that had been laid by this type of proactive periodic workforce review, our client passed a subsequent OFCCP audit with flying colors and received recognition from OFCCP for best practices in this area.

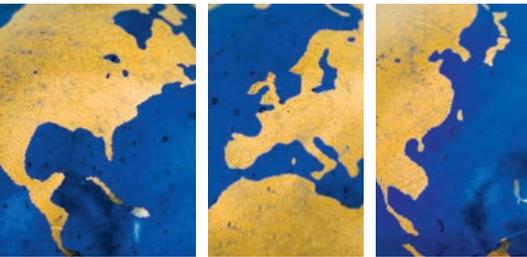
Analysis of Alleged Discriminatory Promotion Practices

Four minority current and former employees sued the Massachusetts Bay Commuter Rail Company (MBCR) (*Elaine DeRosa, et al v. Massachusetts Bay Commuter Rail Company*), alleging employment discrimination due to the process by which the MBCR determined promotions. MBCR retained NERA to provide expert research, to analyze whether there was statistical evidence to support plaintiffs' claims of employment discrimination, and to assess whether class certification was appropriate. Using available statistics of MBCR's workplace demographic, our expert analysis report submitted to the court showed that there was no statistical difference among the promotion rates of blacks, hispanics, and whites at MBCR. Furthermore, NERA experts found that among the senior positions available, no position statistically favored whites in a significant manner and that 67% of those positions actually favored blacks and hispanics. The court denied plaintiffs Motion for Class Certification and found that there was no statistical evidence of discrimination in MBCR's promotional practices, noting that NERA's expert report "affirmatively and persuasively refutes plaintiffs' allegations that such discrimination exists."



NERA's experts bring to bear a passion for finding the right answer.

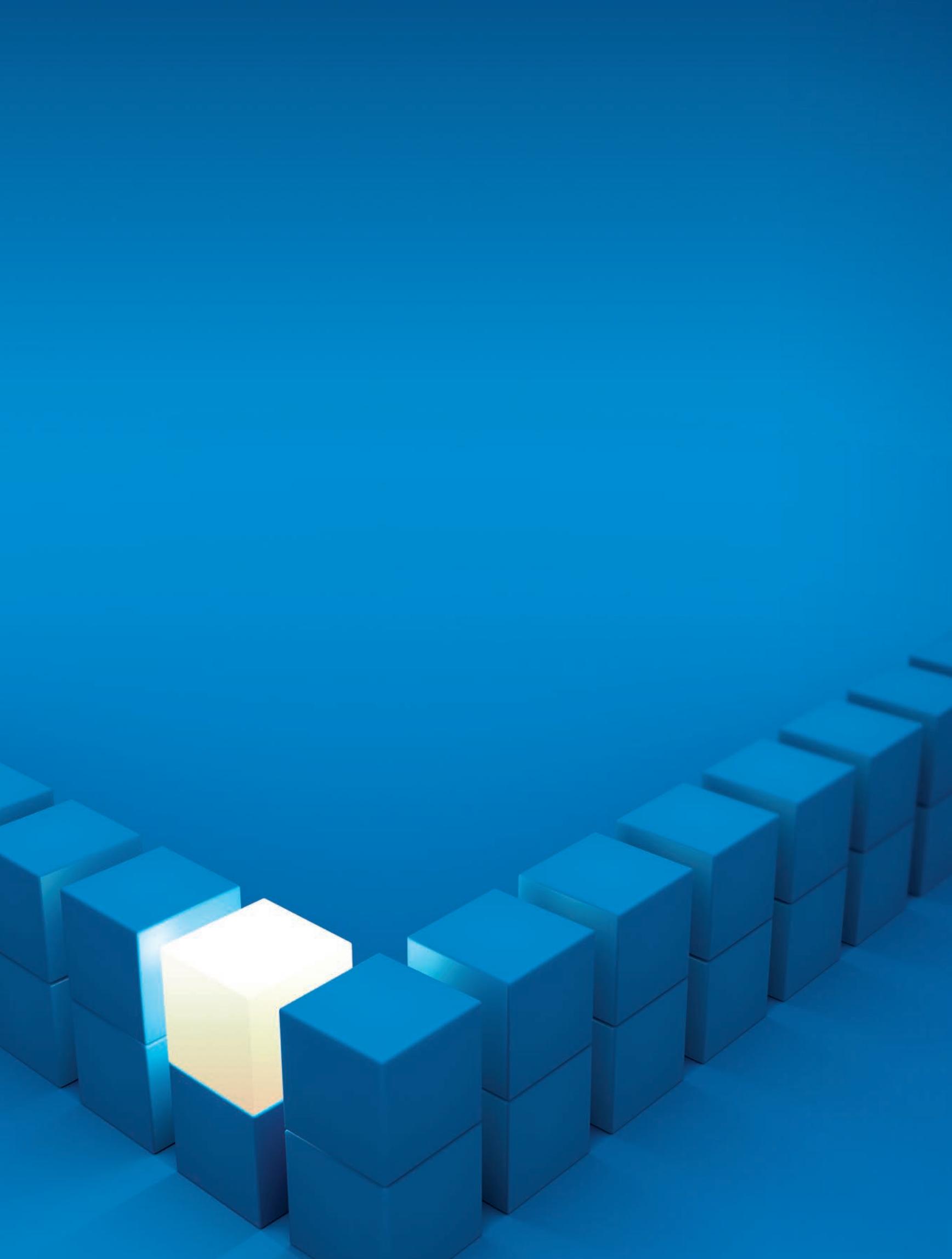
About NERA



NERA Economic Consulting (www.nera.com) is a global firm of experts dedicated to applying economic, finance, and quantitative principles to complex business and legal challenges. For over half a century, NERA's economists have been creating strategies, studies, reports, expert testimony, and policy recommendations for government authorities and the world's leading law firms and corporations. We bring academic rigor, objectivity, and real world industry experience to bear on issues arising from competition, regulation, public policy, strategy, finance, and litigation.

NERA's clients value our ability to apply and communicate state-of-the-art approaches clearly and convincingly, our commitment to deliver unbiased findings, and our reputation for quality and independence. Our clients rely on the integrity and skills of our unparalleled team of economists and other experts backed by the resources and reliability of one of the world's largest economic consultancies. With its main office in New York City, NERA serves clients from more than 25 offices across North America, Europe, and Asia Pacific.

For more information about our capabilities and services in Labor and Employment, please visit www.nera.com/labor.





Visit www.nera.com to learn more about our practice areas and global offices.

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