

Overview

Our Employment and Labor experts regularly provide statistical analysis of employment discrimination claims at the class certification stage and in subsequent phases of the litigation. Our experience extends to all types of employment practices—compensation, performance rating, promotion, hiring, and termination—as well as to evaluations of protected groups. We have built our reputation using sophisticated statistical analyses that accurately model the challenged decision process. Our clients also appreciate our ability to explain our results in clear and convincing terms.

NERA economists and statisticians have analyzed large class claims of discrimination, as well as pattern and practice claims for smaller groups of plaintiffs. We frequently provide expert testimony related to discrimination and wrongful termination. Given our reputation for independence and defensibility, our clients return 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.

Key Areas of Expertise

- NERA economists provide statistical and economic testimony responding to motions at the class certification stage in employment discrimination cases. We focus on statistical determinations of whether there are fact patterns common to the class and whether any results are artifacts of the statistical model an opposing expert has chosen.
- Our work centers on how to model the decision process used by the employer most accurately. This means understanding a company's business and accurately disaggregating, where appropriate, the management hierarchy to analyze each decision making unit separately.
- NERA economists also have considerable experience in assessing claims of economic loss in individual discrimination lawsuits. We base our damage estimates on the company's particular compensation system, as well as our understanding of labor economics and analysis of relevant, plaintiff-tailored data.
- We understand the intersection of statistics and the law. In our approach to our clients' litigation needs, we consider what the courts deem relevant probative evidence regarding discrimination by an employer.
- Our work extends to internal audits, where we use statistics to evaluate potential liability in the interests of equity or to protect against future litigation.
- Our experts have PhDs in economics and are fluent in econometric techniques, managing large databases, and important concepts—both traditional and cutting-edge—from labor economics.
- While our conclusions are based on the application of sophisticated statistical and economic analysis, we are able to explain our analyses and results clearly and understandably to our clients, judges, and juries.

At A Glance *Employment Discrimination*

Examples of Client Experience

- In a recent class-action race discrimination case, plaintiffs claimed that across the defendant's entire workforce, whites were paid more than African-Americans or Hispanics and presented multiple regression analyses allegedly demonstrating their claim. NERA modeled the compensation process and found that the defendant's workforce included fixed-pay jobs and others where compensation was a function of seniority only and after controlling for seniority, the plaintiffs' results were undone. NERA also found that minorities were paid more than whites in many positions within the defendant company, and thus that the plaintiffs' claims of a class-wide pay disparity were erroneous.
- A major city agency was sued for race discrimination in pay and promotion. NERA showed that under a proper statistical analysis, large sections of the proposed class were unaffected by the challenged practices and class members in large part fared as well or better than whites.
- In a collective action against a technology company, plaintiffs alleged that older workers were more apt to be discharged through reductions in force. NERA's analysis showed that plaintiffs' expert had inappropriately grouped force reductions together and failed to take into account the specifics of the decision process. Correctly modeled, no adverse impact existed.
- In a class action alleging discrimination on a promotional exam, NERA demonstrated that actual damages were a small fraction of plaintiffs' eight-figure claims by analyzing what promotions would have been expected absent the challenged process.

Selected Publications and Working Papers

"Implications of the Fair Pay Act for Statistical Analysis in Wage Discrimination Suits," Christopher Erath, Denise Martin, and Elizabeth Newlon, Working Paper

"The Use of Economic Analysis in Predatory Lending Cases: Application to Subprime Loans," Denise Martin, Faten Sabry, and Stephanie Plancich, Working Paper

"A Regression Primer for Labor Practitioners," Kristin Terris and former NERA Vice President John H. Johnson, *Labor and Employment Law*

"Investigating Dual Labor Market Theory for Women," Christine Siegwath Meyer and Swati Mukerjee, *Eastern Economic Journal*

"Friend or Foe? Recent Changes from the OFCCP and Supreme Court," Christopher Erath, *Employment Law Strategist*

"Report of the Equal Pay Act Subcommittee of the ABA Section of Labor and Employment Law Federal Labor Standards Legislation Committee," Jon S. Wainwright with the Equal Pay Act Subcommittee of the ABA Section of Labor and Employment Law Federal Labor Standards Legislation Committee

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 nearly 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. With its main office in New York City, NERA serves clients from over 20 offices across North America, Europe, and Asia Pacific.

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