At A Glance
# Labor and Employment

## Our Practice

Our Labor and Employment experts advise clients on a wide range of issues both inside and outside the courtroom. We have provided extensive expert testimony on statistical issues both at the class certification phase (on issues of commonality and typicality) and at the liability phase (for class and pattern-and-practice cases). Given our reputation for independence and defensibility, our clients often return to us for calculations of economic loss and damages. In such cases, NERA experts provide a realistic estimate based on the facts relevant to plaintiff and defendant. We have also conducted a series of highly respected studies on affirmative action programs for minority and woman-owned businesses. Outside the courtroom, we frequently analyze employer statistics for potential disparities in hiring, layoffs, promotions, pay, and performance assessments.

## Key Areas of Expertise

Our work in each of the following areas focuses on a different aspect of labor and employment economics:

### Liability/Class Certification
Our work in these areas involves performing statistical analyses of employment discrimination claims both in a pattern and practice and in a class certification context. In pattern and practice cases our work centers on how to most accurately model the actual decision process used by the firm so that any effects of a protected characteristic such as race or gender can be separated from effects of other potentially explanatory factors. In a class context, we have participated extensively at the certification phase, performing statistical analyses to determine whether the commonality and typicality prongs of Rule 23 are met and going beyond the broad-brush types of analyses frequently presented to learn whether any alleged disparity pervades the proposed class, is limited to some subgroup, or does not exist at all.

### Hiring/Promotion/Termination/Compensation
Our experience in this area includes internal reviews designed to reduce the probability of future litigation as well as formal reviews such as OFCCP audits. We also perform statistical analyses of workforce composition using employer data and Census data. Our work has been used to evaluate proposed reductions in force, create affirmative action programs, evaluate existing programs, and recommend goals for the future.

### Labor Economic Loss/Damages
Our experts recognize that accurately calculating economic damages for one or more plaintiffs requires 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. Our approach to finding the correct amount of a plaintiff's economic damages is based on accumulating all information necessary to accurately model earnings but-for the allegedly illegal conduct and expected earnings given such conduct. NERA economists have also pioneered a method of assessing the reasonableness of plaintiffs' efforts to mitigate their losses.

## Insight in Economics™

### Union-Related Analyses

Our experts 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.

### Workforce/Contracting Affirmative Action

NERA is a leading provider of studies related to historically disadvantaged business enterprise. These studies evaluate goals established by state and local governments and help public agencies to develop effective and lawful affirmative action programs for procuring goods and services from businesses owned by minorities and women.

## Client Experience

- When the EEOC filed suit against a large shipping company, alleging a nation-wide pattern and practice of underpromoting and undercompensating African-Americans, we were asked to examine employment data from the company. Our conclusion was that, when analyzed correctly, African-Americans had received a proportionate share of promotions and that there was no statistical evidence to support an allegation of differential pay. At the summary judgment phase, the judge dismissed the case, citing the NERA analysis and concluding that the statistics proffered by the EEOC were insufficient to sustain the case.

- A major computer firm retained NERA to analyze various elements of its compensation system, including base pay and stock options. Using regression analyses and other techniques, we were able to identify potential problem areas and indicate employees whose pay was out of line with competitors'.

- A large class action against a major US public utility had been settled and the question arose as to how to allocate the settlement amount. We were retained by defendants and discovered numerous errors in the allocation model introduced by plaintiffs and in the related computer programming. Correction of these errors significantly changed the allocation of the settlement amounts.

- The nation's large railroads were involved in a wage dispute with several unions when the two sides could not agree on wages for the next collective bargaining increase. Retained by the railroads, we presented testimony comparing wages for railroad workers to those of workers in comparable jobs outside the railroad industry and also discussed how wages for railroad workers had progressed over time in comparison to other industries.

- NERA compared the statistical participation of minority-owned and woman-owned businesses in state procurement activity with the availability of such businesses in the relevant markets. NERA also examined data from the Census Bureau's Current Population Survey and the Federal Reserve Board's National Survey of Small Business Finances for statistical evidence consistent with a claim of business discrimination. This study became, in part, the basis for legislation revising and updating this state's existing affirmative action policies.

## Selected Publications and Working Papers

"Tea Leaves and Damages Experts: Which is More Exact?"

"Racial Discrimination and Minority Business Enterprise: Evidence from the 1990 Census"

"Class Dismissed: Using Economic and Statistical Evidence to Defeat Class Certification"

"Correcting Flaws in Statistical Tests for Mortgage Lending Discrimination"

## 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. With its main office in New York City, NERA serves clients from more than 25 offices across North America, Europe, and Asia Pacific.

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