

At A Glance

Wage and Hour Litigation

Overview

Experts in NERA's Labor and Employment Practice frequently provide economic and statistical analysis for wage and hour litigations. We have substantial experience investigating the key issues at the class certification, liability, and damages phases of cases, involving allegations related to:

- Meals and breaks
- Off-the-clock work
- Overtime pay
- Minimum wage
- Exempt workers
- Termination pay

Our projects often require us to merge and analyze business records for as many as several hundred thousand employees. We have successfully presented the results of such statistical assessments in testimony to both judges and juries. We also provide consulting services to help firms understand their exposure and reliable defenses, as well as to assess current wage and hour practices to avoid litigation. Our clients value NERA's reputation for independent, rigorous economic and statistical analysis, as well as our ability to tailor and present our complex work product in a clear and understandable way.

Key Areas of Expertise

- In providing statistical analysis for large wage and hour cases, NERA economists identify databases maintained for alternative business purposes that may be converted to use in litigation, as well as merge relevant databases together. Our experts can also help clients understand when these data may not be suitable for assessing allegations or estimating any damages, demonstrating how the incorporation of personnel records or other individualized review may be required to reach reliable conclusions.
- In class certification analyses, our work often begins with detailed analysis of the characteristics of the alleged class, developing rigorous statistical models to understand the sources of variability across class members. We also analyze lead plaintiffs' characteristics to assess whether they are representative.
- With substantial experience building models of alleged damages, our experts develop algorithms to identify potential violations under alternative assumptions of liability. In other cases, we demonstrate how it is necessary to develop individualized damage estimates for each class member, incorporating worker-specific characteristics and circumstances.
- With extensive training and experience with statistical sampling and surveys, our experts can determine when the use of these techniques may be appropriate in the context of wage and hour litigation. In addition,

we can assess the quality of a proposed sample or survey design, explaining to a judge or jury when such techniques would be inappropriate or would generate unreliable results.

Examples of Client Experience

- In a recent class action, retail employees relied on timekeeping data to allege that they did not receive all of their scheduled meals and breaks. Analyzing the same data, NERA found substantial variability in the pattern of alleged violations, which was inconsistent with any corporate-level intent and provided statistical evidence that missed timekeeping swipes could not be equated with involuntarily missed meals or breaks.
- Plaintiffs alleged that a retail company had failed to pay vacation and personal time due at termination. By analyzing all of the relevant data, including both electronic and paper records, NERA economists identified methodological flaws and calculation errors in the plaintiffs' expert's analysis and demonstrated why individualized review was required.
- In a collective action brought against a defendant in the insurance industry concerning the alleged misclassification of employees as exempt workers, our economists developed models to analyze the typical work patterns of the employees, which were used to support the client's arguments related to liability.
- In a class action alleging off-the-clock work, NERA showed that plaintiffs' expert's approach—which merged together the timekeeping system with electronic records of cash register activity—was critically flawed. The clocks underlying the two systems were not synchronized; edits to the timekeeping system not affecting pay introduced inconsistencies; and subsequent compensation was not considered.
- In a suit in which workers in the package shipping business alleged they did not receive full and timely meal periods, NERA experts demonstrated to the court that the plaintiffs' survey proposal would produce

unreliable results. Its sampling plan was flawed and would not represent all workers in the population and the key survey questions would require putative class members to recall precise and complex details over the entire class period.

- In a lawsuit concerning worker compensation premiums owed, NERA experts drew a representative sample from the paper records of 80,000 temporary employees to evaluate data coding errors. NERA demonstrated that the number of errors was large and that the insurance had been underpaid.
- For a case related to potential misclassification of workers as independent contractors instead of employees, NERA developed individualized models of economic loss to determine the potential magnitude of the liability under alternative assumptions.

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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