



WAGE & HOUR

HOW CAN WE HELP YOU?

How can we help you? It seems like a simple question, but in the early stages of an engagement, it may not be clear exactly what information and analyses will best assist you. Even in the standard types of wage & hour matters, it is often difficult to understand the nature and scope of the problem without organized data.

Welch Consulting excels at transforming unorganized and disjointed data into an accessible form that can be used to generate a straightforward estimate of exposure for mediation or for a more in-depth and complex examination of class issues. From there, we can offer potential new areas of exploration and, working with you, help create a clear picture of what your data will support and how best to present it.

ABOUT WELCH CONSULTING

Welch Consulting possesses the knowledge, experience, and computing resources to thoroughly analyze data and testify credibly on any wage & hour issue. We have an impressive track record addressing the major areas of wage & hour claims: meal and rest break violations, off-the-clock work, misclassification, time shaving / record keeping violations, alternative work arrangements, and benefit payment disputes.

We assist clients with matters of all sizes and complexity. Whether a matter encompasses multiple claims and the extensive data challenges often associated with a class setting or is limited to a single plaintiff alleging personal mistreatment, we have the skills and experience to help. Our economists are retained regularly on matters brought under the Fair Labor Standards Act as well as state-specific statutes and Department of Labor investigations.

ADVICE AND ANALYTICS

We frequently provide empirical support on topics including:

- Identification of potential liability areas and behavioral patterns from the data
- Assessment of class certification issues
- Damage and exposure analyses
- Replication and critique of opposing expert opinions
- Support for settlement/mediation proceedings
- Trial preparation
- Expert reports and testimony
- Settlement administration

In some matters, we are involved throughout and perform many of the tasks listed above; in others, our role is limited to exposure estimates. For each case, we work with clients to tailor the amount and type of analyses to meet their specific needs.



We rigorously explore secondary data sources to expand our understanding of employment practices beyond what can be learned from payroll and HR/employee centralized files. Our extensive experience managing large databases allows us to quickly and accurately analyze data of any size and scope. Where data is not available, we can help design survey questionnaires and develop sampling strategies to produce accurate and reliable information for analysis.

Welch economists believe effective analysis requires going beyond surface observations to reveal the underlying behavior and workplace dynamics that are reflected in source data when examined over time and across groups. With the insight that stems from this more comprehensive approach, we are able to identify key issues in the data and produce quality work product that effectively conveys our findings.

Selected Industry Experience:

Retail
Warehouse Stores
Healthcare
Hotel and Hospitality
Food Services
Food Processing
Telecommunications
Call Centers
Manufacturing
Delivery Services
Energy
Tax Preparation
Insurance
Banking



MEAL AND REST BREAK VIOLATIONS

In many cases we are able to use non-exempt employees' recorded clock-in and clock-out times to measure the timing and length of meals, and determine if any are missed, short, or interrupted. When time clock system data are not available we can identify likely meals using alternative data sources, including POS terminals, scanners, or computer log on/off information. In addition to quantifying and valuing these instances, we can examine the data for trends to address class certification.



DEVELOPING PRACTICAL SOLUTIONS...

The Claim:

Cashiers at a retail chain alleged that their meal periods were short and interrupted because they were regularly called back to work before the end of their break. The time clocks were set up so that once an employee clocked out for a meal, she could not clock back in for at least 30 minutes, making it impossible for the time clock data to reflect these violations.

Our Findings:

To test the validity of these claims, we linked the cash register data that tracks sales transactions to the time clock data to see if cashiers were actually working during the time in which they were clocked out. Instances of such behavior were infrequent and restricted to a small number of employees. This analysis helped defeat class certification.

OFF-THE-CLOCK WORK

These claims can be verified or refuted statistically if other work records are maintained. Ancillary records of timed activities (such as computer, phone, and building access records) can be matched to time clock data to assess the accuracy of claimed off-the-clock work. We can also calculate total exposure associated with such claims under the relevant state and federal overtime laws, penalties, and interest.



The Claim:

Tax professionals claimed that their supervisors prohibited them from entering their actual work time on time sheets to avoid payment of overtime. Given the nature of the allegations, the time records were of no use in analyzing the claims.

Our Findings:

Because their work required them to be logged-on to the phone system, we collected phone log data and compared the duration between the first and last activity of the day to the work hours on the time sheets. This analysis revealed a very small instance of potential work time exceeding paid time and directly contradicted plaintiffs' claims.

MISCLASSIFICATION

Claims of misclassification of exempt employees are often based on the testimony or survey responses from employees. These claims may be verified or refuted with alternative surveys and/or time-in-motion studies tracking the activities of current employees. In cases where misclassification is agreed upon, we use various data sources to estimate and value damages due to unpaid overtime and meal and rest break violations.

The Claim:

A food service company was charged with misclassifying its managers as exempt employees. Plaintiffs claimed that their job function was similar to non-exempt employees.

Our Findings:

We created an Index of Managerial Activity based on the number of hires, terminations, promotions, salary changes, and other activities at the store consistent with managerial and not non-exempt activity. This analysis revealed sufficient variation in managerial activities across the purported class to reject the claim of a common lack of managerial duties and called into question the purported lack of decision-making authority among class members.





TIME SHAVING AND RECORD KEEPING VIOLATIONS

Allegations regarding unauthorized edits to time records by managers may impact total paid time, overtime payments, and meal penalties. Analysis of such claims can be completed by comparing raw time records to edited records to reconstruct the edit process. Comparison of edits by location and/or supervisor can be used to address class certification.

The Claim:

Employees at a national fast food chain claimed that managers removed overtime from time records to cut costs.

Our Findings:

We showed that, among edits by managers, time was added to pay records by a factor of ten compared with the time removed by edits. We also isolated a small number of instances where potentially malicious edits appeared with relative frequency among a few supervisors; we identified those for investigation and follow-up by the attorneys.



BENEFIT PAYMENT DISPUTES

Allegations regarding incorrect payment of benefits include claims such as illegal forfeiture of paid time off and incorrect payment of benefits upon termination.

The Claim:

Employees at a leading manufacturer of printers and related supplies alleged that the firm's use-it-or-lose-it vacation policy was not valid, and the Courts upheld the challenge.

Our Findings:

We were retained to estimate the value of the illegally-forfeited vacation time. Data tracking vacation accrual was maintained, but there was no information regarding the days forfeited by employees. We used the company's data to estimate the number of days forfeited, the applicable regular rate, total damages, and state-specific penalties. Our findings were presented in expert testimony at trial.



ALTERNATIVE WORK ARRANGEMENTS

Alternative work schedules can take many forms and have become more common in the workplace, but differences in state requirements and overtime laws complicate their application. Some payroll systems may not accurately track alternative work arrangements, resulting in mis-payment of overtime. In other cases, it may be determined that alternative work arrangements are not valid, requiring the calculation and payment of overtime due.



The Claim:

The validity of alternative work arrangements at a national telecommunications company was challenged. Employees in California had alternative schedules of 10 hours a day for 4 days a week (4/10) and 12 hours a day for 3 days a week (3/12). They alleged they were not being properly compensated for overtime.

Our Findings:

We reviewed time and pay records in claimed non-overtime owed 4/10 and 3/12 work arrangements. We then estimated potential damages if these alternate schedules were found to violate overtime laws. Additionally, we identified overtime payments made under the alternative work arrangement that were not required and could be applied as offsets to the outstanding liability.

EXPERIENCE BECOMES EXPERTISE



WELCHCONSULTING

LOS ANGELES

12100 Wilshire Boulevard
Suite 1650
Los Angeles, California 90025
310.393.5530

TEXAS

1716 Briarcrest Drive
Suite 700
Bryan, Texas 77802
979.846.0303

WASHINGTON, DC

1090 Vermont Avenue NW
Suite 900
Washington, DC 20005
202.435.0200

For more information about our firm,
visit us at www.welchcon.com