



CAPABILITIES IN WAGE AND HOUR MATTERS

Welch Consulting has more than 30 years experience assisting clients of every size in matters involving employment issues and complex business litigation across a broad spectrum of industries and public sector entities. Our track record in producing rigorous analyses meeting the highest standards of accuracy, clarity and punctuality makes Welch Consulting a consistent choice for industry leading companies and the nation's preeminent law firms.

Expert Insight. Actionable Advice.

Welch Consulting Capability in Wage and Hour Matters

Federal and state wage and hour claims require the analysis of large volumes of electronic personnel records to assess potential liability and exposure. We have extensive experience with the wide variety of these claims: misclassification, missed meals and breaks, off-the-clock work, expense reporting, and outside sales exemptions. Welch Consulting maintains computing and electronic storage capacity that can accommodate time-clock, payroll and human resource data for companies of any size. If data are not available, we work with survey experts to design questionnaires, administer surveys, and assess statistical findings drawn from responses.

Welch Consulting is experienced in assisting businesses in audits of compliance with wage and hour laws apart from litigation. Our consulting experts work with businesses to identify areas of concern and internal data available for analysis. We analyze the data and assess the existence of violations and the extent of exposure for penalties and/or damages. Our experts are adept in isolating patterns or outliers in the data which may indicate the source of violations - whether particular locations or individual supervisors.

We also assist counsel in discovery, mediation, arbitration and trial to identify potential witnesses and to prepare summaries of work patterns for questioning witnesses and managers.

Missed Meals and Breaks

For non-exempt employees, time records will generally show clock-in and clock-out times for each employee, allowing measurement of late and short lunches. Analysis of these records can show patterns of missed meals that indicate a failure of the employee to punch in or out rather than a true missed meal. In addition, identifying persistent violations by isolated individuals can be helpful in assessing the idiosyncratic nature of the violations and determining whether or not a statistical pattern exists.

- For a retail chain facing claims of off-the-clock work we combined time-clock data with cash register data to show that cashiers who clocked-out on lunch breaks in fact were not working, contrary to the claims of the plaintiffs.
- For sales workers we combined electronic data from employees' computer workstations with employee time records to show that workers started and stopped working on their computers when their time records indicated.
- For delivery drivers, we analyzed product drop-off times to locate gaps in work activity consistent with lunch breaks, although the drivers claimed their schedules were so burdensome they could not take lunch breaks and make all deliveries.

Off-the-Clock Work

These claims can be verified or refuted statistically if other work records are maintained. Computer log-in and log-out times, building access records, telephone call records, security camera video, and other ancillary records of timed activities can be matched to clock data to assess the accuracy of claimed off-the-clock work. Such comparisons can be made on a random sample of class members when electronic or paper records are difficult to obtain. When productivity measures are available (files worked or customer volume) it may be possible to assess the plausibility of off-the-clock work by showing that individual productivity (work output per day) is, or is not, closely associated with hours worked. Alternatively, hours worked by employees not claiming off-the-clock work can indicate when overall work measures are inconsistent with requiring off-the-clock work in order to meet management demands.

Expert Services In Economics And Statistics

Classification

Claims of misclassification of exempt employees are often based on the testimony, or survey responses, of current and former employees. These claims may be verified or refuted with alternative surveys, or directly, by time-in-motion studies tracking the activities of current employees. We work with survey experts and industrial psychologists to assist counsel in properly designing sampling schemes and in statistically analyzing survey responses. We also provide evaluations of the statistical quality and accuracy of survey responses.

- For a large courier company, we analyzed survey responses from class members on claimed overtime hours worked, submitted by plaintiffs' attorneys. We showed these were inconsistent with prior interview responses. We also showed that the responses were so varied, and the number of responses so few, that an average number of overtime hours computed from the survey was statistically unreliable
- For a food service company, we showed that assistant managers claiming non-exempt status were providing extensive managerial decision-making, including measured hiring, termination, promotion, salary change and other activities consistent with managers and not non-exempt employees. Differences in manager activities within Class members—and between those opting out of the Class and those in the Class—were helpful in identifying potential witnesses.

Exposure Analysis

For negotiation or mediation it is often critical that an early estimate of potential exposure be made. Welch Consulting has performed over one hundred such evaluations for clients ranging from several hundred employees to hundreds of thousands of employees. Our experience with very large computerized employee data bases allow us to quickly and efficiently calculate baseline statistics for evaluating potential violations and penalties.

We have extensive experience calculating the penalties and wages that may be owed for these claims including the recalculation of regular rates, penalties for lunch and meal break violations, waiting time penalties, bookkeeping penalties and interest owed on these amounts.


Experience

- For a health service provider, we showed the concentration of lunch violations among a few employees. 70% of violations were attributable to 10% of employees. The data were not consistent with a pattern and practice.
- For a retail chain we analyzed surveillance videos to develop estimates of the amount of time employees were delayed in exiting stores after lunch and upon exit. We developed a sampling scheme and data collection instruments to capture information from video recordings. We performed statistical analyses of survey results to develop likely ranges of time delayed.
- Route sales workers, arriving on the premises of the employer, keyed into an access panel to open the security gate. Only later did they clock-in to work. We analyzed the gap in time from entry to start-time, and end-time to exit, to show that the time gap was idiosyncratic and not amenable to class treatment.
- For a delivery firm we analyzed surveys conducted by both plaintiffs and defendant and discussed shortcomings of non-scientific surveys, and problems of unreliably small sample sizes.
- Claims adjusters had recently been converted to a non-exempt position but plaintiffs were claiming that large amounts of overtime were owed before the conversion. We used productivity measures (claims cleared) to show that the adjusters were equally productive before and after their overtime was actually clocked. Measured overtime was low after their conversion to non-exempt status and productivity measures showed that it was likely low prior to conversion.
- For another claims adjuster case we analyzed the deposition testimony of all claimants. We showed that the statistical pattern of these claims was so varied that only a small minority of claimants could be represented by a statistical average of claimed overtime hours. In addition, the statistical average itself was measured very imprecisely.
- In a classification case, plaintiffs claimed that assistant managers did not have the personnel resources to complete the required non-exempt work. This forced them to perform the work themselves. Using actual hours worked by the non-exempt employees under their supervision, we found that, in the vast majority of pay periods, managers could not have materially impacted total non-exempt work hours because of their small numbers and few available hours.



WELCH CONSULTING PRINCIPALS

are recognized authorities who provide expert advice in consultative arrangements and credible testimony in litigation environments. Our lengthy experience with equal employment opportunity issues includes analyses of discrimination claims under Title VII, the Equal Pay Act, the Americans with Disabilities Act, and the Age Discrimination in Employment Act as well as related labor litigation. Our abilities encompass all facets of analysis in the scope of the Fair Labor Standards Act as well as Wage and Hour statutes and regulations particular to California and other states. Welch economists routinely provide analyses of damages and exposure in class action, multi-district litigation and individual employment cases.



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