

Labor and Employment Litigation Services

Forensic & Litigation Consulting

FTI Consulting is highly regarded for its expertise in labor and employment litigation matters. We have experts in all relevant areas, including labor economics, financial analysis, statistics, survey design and execution, information systems and e-discovery. We specialize in preparing economic and statistical analyses for clients facing wage-and-hour, employee misclassification, class action including class certification, lost earnings and discrimination issues, as well as assisting with regulatory investigations into hiring practices and working conditions and any resulting regulatory enforcement. We can assist clients in all phases of the dispute lifecycle from discovery, data gathering, preservation, analysis and privileged consulting and/or expert witness testimony.

Our Expertise

Class Identification and Early Case Assessment

Our team can provide clients and counsel with an understanding of the true scope of the problem early in the matter, including identifying purported class members, determining the extent of the alleged violations and calculating potential damages. By rapidly targeting and analyzing a company's HR and financial data, we create a holistic view rather than providing estimates based on sampling.

Data Identification and Production

We help clients navigate the technical labyrinth of HR, Payroll and Timekeeping systems that were not designed to respond to these types of matters. For example, our team has extensive experience working with a multitude of HR, payroll, billing and timekeeping systems, including Kronos/UKG, PeopleSoft, ADP, QuickBooks, Paycom and Dayforce, among others. We have also been called upon to extract and produce information from legacy systems and archived reports that are no longer supported by anyone in the company.

Complex Analysis

Our approach centers on extensive data and statistical analyses of information from a variety of sources, including company, industry, government and survey data. When appropriate, our experts apply economic analysis and econometric techniques, which can be decisive tools both in assessing the merit of employment-related claims and in evaluating potential economic damages.

Manage Large and Complex Data Sets

We can quickly and effectively handle large amounts of data in both hardcopy and electronic form, including data such as daily timekeeping and payroll records for thousands of employees spanning several years. Our professionals will collect and organize the data, perform relevant analyses and summarize the results to best meet the litigation or regulatory demands of our clients.

Class Damages and Settlement Assistance

Our professionals commonly assist counsel in determining the overall class size and financial exposure, which includes modeling “what if” scenarios to measure the impact of various legal arguments. We also provide expert consulting throughout the matter with respect to:

- Developing alternative damage scenarios
- Rebutting expert reports and / or opinions
- Quantifying prejudgment interest

We can also provide analytical support during settlement talks, including:

- Quantifying the various settlement alternatives
- Assessing the value of non-cash settlement options
- Estimating expected claim rates

Our Services

Wage and Hour Analysis

- Economic evaluation of payroll, timekeeping and personnel records
- Assessment of time allocations across various job duties
- Identification and quantification of unpaid overtime hours
- Evaluation and quantification of missed meal and rest breaks
- Statistical assessment of exempt / non-exempt designation
- Large-scale data analysis for FLSA and wage and hour compliance

Our experience includes:



Unpaid Overtime



Off-the-Clock Claims



Mileage Reimbursement



Donning and Doffing Claims



Regular and Straight Rate Calculations



Meal and Rest Breaks



Round Time



Misclassification



Reimbursement Issues



Miscellaneous Compensation Issues

Including State and Federal Penalties / Interest



Class Certification

Analyze named plaintiff and putative class characteristics from both an economic and data-science perspective to determine if factual attributes comport with concepts of commonality and typicality.

Discrimination Analysis

Evaluate claims of discrimination on the basis of age, race, gender, religion, national origin and criminal background checks in response to litigation, regulatory investigations, or enforcement matters from both an economic and statistical perspective.

Potential Damage Estimates

Calculate potential damage estimates associated with wage and hour claims for settlement and mediation. A preliminary estimate is often useful in mediation and settlement discussions, in addition to helping shape future case strategy.

Workforce Strategy / People Analytics

Assist companies in creating more efficient, productive, non-discriminatory and ultimately compliant workforce processes such as hiring, compensation, evaluation, team building, or termination processes.

Pay Equity Audits

Provide comprehensive statistical analysis of an employer's compensation structure to identify potential equity issues among protected classes and provide actionable recommendations for remediation.

— SAMPLE ANALYSES

- Employee conduct and whistle blower investigations (including alleged officer misconduct)
- State and FLSA wage and hour claims
- Discrimination claims
- Responses to EEOC investigations and enforcement actions
- Pay equity analysis
- OFCCP audits
- Hiring and promotions assessment
- Termination and vacation pay calculation
- Critique of OFCCP reporting requirements and pay equity analysis
- Valuation of front and back pay
- Assessing potential damage periods
- Measuring mitigation opportunities
- Calculation of lost earnings



CASE STUDY

FINDING NEEDLES IN THE HAYSTACK

FTI Consulting was engaged by the independent Board of Directors of a global company to conduct a thorough, firm-wide forensic investigation into alleged acts of misconduct perpetrated by certain officers and related parties. The investigation included the consideration of more than 6 million documents, 11.4 million accounting, expense and payroll records and hundreds of hours of interviews.

Our work began shortly after the Board very publicly suspended its founding CEO, alleging a long list of failures, from financial mismanagement to gross sexual misconduct. Shortly after making these allegations, the Board announced a formal investigation into the CEO's behavior over a 10-year period. Having previously built a trusting relationship with the company, we pitched our investigative capabilities that included the ability to quickly assemble the technical resources to conduct a pervasive investigation within a concentrated period of time. We won the bid and successfully delivered on this complex project by bringing to bear the breadth of our unique combination of skill sets, subject matter expertise and local resources.

The case involved extensive media coverage of the alleged improprieties by the CEO (including the Wall Street Journal, Bloomberg, Businessweek and others). Understanding the complexity and high-profile nature of the engagement, we assembled a team of more than 60 forensic accounting, technology and corporate finance experts who worked together for more than 10,000 hours in an intense three-month period. Our investigative work ultimately supported the Board's decision to terminate the CEO for cause and concluded with testimony to the Board and various government agencies. The combined team delivered exemplary client service on this high-profile case under some of the most difficult circumstances imaginable including intense public scrutiny.

DAVID ALFARO

Senior Managing Director
+1 415.283.4220
david.alfaro@fticonsulting.com

MICHELLE HERMAN

Senior Managing Director
+1 213.452.6053
michelle.herman@fticonsulting.com

CHRIS KAHNKE

Managing Director
+1 415.283.4234
chris.kahnke@fticonsulting.com

CARY ELLIOTT

Managing Director
+1 202.312.9100
cary.elliott@fticonsulting.com

LAURA DERIAN

Senior Director
+1 415.283.4291
laura.derian@fticonsulting.com

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