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Labor & Employment Class and Collective Settlement Administration: Best Practices, Volume I

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If you are settling an employment class action or collective proceeding, you likely have some administration questions to answer. Those questions may involve: (1) gathering appropriate data to execute the settlement; (2) determining the claims rate you can expect; (3) providing clear, concise and effective notice and other forms of class member communication; and (4) distributing any payments in the appropriate amount to the right folks as well as dealing with any left over funds. There is a lot to do, and your negotiations now will affect how these tasks are accomplished. This article is the first in a four part series on best practices for labor and employment administrations.

The first step is to evaluate the data that will be needed to

accomplish the foregoing tasks. Whether you are working with a third-party administrator or using the data yourself, you will want to ensure that the data is collected, formatted and managed for maximum ease of use and efficiency for the settlement context.

What information should be included in the settlement data set?

Take the time during the settlement process to really think about what data will be needed to accomplish the settlement terms. Is it readily available? Is it centrally maintained? As you collect data for analysis, the goal should be to consolidate it to the greatest extent possible without compromising the content or the integrity of the data set overall. If possible, organize

and consolidate the data so that there is a single entry for each class member. This is not always feasible. In employment cases it is not uncommon for an employer to have used multiple payroll systems throughout the class period – but in general, the fewer the data documents and records, the better.

Unique identifiers save time and money

Including a unique identifier (such as an employee ID number or all or part of a Social Security Number) in each record is an excellent way to improve your efficiency in handling data, and also minimizes the risk of lost or mishandled records. Working with names alone or other non-unique identifiers typically is not a secure means of handling your clients' secure data,

particularly personally identifiable information. This is especially important when multiple spreadsheets or multiple records for one person are involved. For example, if there are multiple spreadsheets, how will they be merged together? If there are multiple records for each person within a spreadsheet, how is each person's data to be identified, especially if there are multiple people with the same name or a person's name has changed? Save yourself both time and money by working with unique identifiers and make sure that any third-party you hire to handle your data follows established practices for doing so before the work begins. While you're at it, consider whether the class will be sent different versions of the notice materials. For example, are there subclasses who will be sent different documents? Will some class members be sent notice materials translated into a foreign language? If so,

include the appropriate designations to the data so that those people can be easily identified when it's time for notice to be sent.

How much data is too much?

As a general rule of thumb, only collect the data that is required for the administration. Sometimes, SSNs and other highly confidential data are necessary – especially if awards will need to be reported to the IRS. SSNs can also help in locating lost class members whose last-known contact information is no longer current. Handling sensitive data and personally identifiable information is a big responsibility. Prevent future disputes between counsel about who is entitled to what information about the class, claimants, or other sensitive data by writing language into your settlement agreement that clearly explains the confidential handling of the data, including who

is – and who is not – entitled to access the data during the course of the project.

The success of any administration comes down to the details, but it's easy to overlook the more practical aspects of proper data management when deadlines are tight or data is being received from multiple sources and platforms. Experienced settlement administrators know too well the pitfalls and challenges that result from poor coordination and insufficient planning, and will attest that careful planning before the class data is collected will get the administration off to a good start and set the groundwork for a smooth outcome.

*For more information on all aspects of employment class actions or collective proceedings, contact **Tommy Warren** (twarren@ssiclaims.com), **Mark Patton** (mpatton@ssiclaims.com), or **Stephen Donaldson** (sdonaldson@ssiclaims.com) www.settlementservicesinc.com*