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As a legal administrator, one of the most frequent questions we are asked by counsel who are negotiating or have reached a settlement is, "Can you estimate how many claim forms will be filed?" There are many different reasons to ask this question, and depending on the structure of the settlement, the parties may have interest in competing answers. For one reason or another, however, the participation rate is almost always a point of focus. While each settlement (and each class) is different and therefore there is unfortunately often no way to precisely predict a response rate, you do have control over some of the factors that can affect the participation rate.

The class: who are they?

The characteristics of each class vary, and these characteristics will likely have a large impact on the participation rate. For example, how cohesive is the class – do they live near each other, are they likely to communicate amongst themselves, is there an organization such as a labor union that will facilitate notice and encourage participation? How transient is the class – are they likely to receive the mailed notices, or are they likely to have moved around a lot? How aware is the class about the alleged violations -- will the cause of action be news to most of the class, or are they aware of it and anxious for the issues to be resolved? Is most of the class still employed by the defendant, or does the class comprise mostly

former employees? The answers to these questions may tell you how cohesive or diffuse a class is. The more cohesive a labor and employment class, the more likely that word of mouth will drive the claims rate higher. In most instances, the more diffuse, the lower the rate.

The administration: what has an effect?

In addition to the make-up of the class itself, the design of the notice, claim form and the claims process will also play a major role in determining how many people return claims.

For many class members, whether they participate depends on whether they received and read the notice, and if they did, whether they think it is likely that it will be worth their time to file a claim. Is the notice concise, easy to read and understand? Does the notice give a clear indication of what the class member's award amount might be? Is the claim form brief and uncomplicated or is it more lengthy and involved? Is a reply envelope included, and if so, is the postage pre-paid? Is there an option to file a claim online, and if so, are emails sent with a link to the claims website?

Any additional outreach, such as publishing notice in newspapers or online, sending emails, or multiple mailings of the notice will also drive the response you receive. Inevitably, some class members will no longer live at the address provided by the defendant. Others will not see the notice even

though they have not moved, perhaps because of a "helpful" family member or roommate who doesn't pass it on, and of course there are the procrastinators! Does the settlement agreement require additional steps to reach the non-responders? For example, some settlements call for a postcard "reminder" to be sent to non-responders, either to the last-known address or to the address obtained via skip-tracing, or both. Other settlements call for phone calls to non-responders. Is there a toll-free number for potential claimants to call? Is there a website with additional information? In most instances, the easier the process and the more follow-up, the higher the claims rate.

Nonetheless, there are no hard and fast rules. In the more than 24 years we have been administering employment class actions, we have seen participation rates all over the board. Can this always be accurately predicted ahead of time? No, but talk the factors through with your administrator. Past experience doesn't necessarily translate directly to the matter at hand, but it can give you some assurances that you are crafting a program designed to achieve your desired result.

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