

Labor & Employment Class and Collective Settlement Administration: Best Practices, Volume 4

TOMMY WARREN, MARK PATTON, AND STEPHEN DONALDSON, SETTLEMENT SERVICES, INC. ("SSI")

For employment class action settlement administrations involving monetary relief, the parties often face questions about the process of distributing that money. Although there are a lot of options, the good news is that an administrator experienced with employment cases will be able to handle the distribution of payments along with related tax issues without breaking a sweat. This is the fourth in a four part series regarding best practices in labor and employment class action settlement administrations. In this article we discuss treatment of the settlement funds. Who holds the money? Who prints the checks? Who mails the checks? Who calculates the award amounts? Who calculates

the tax withholding amounts? Who sends the tax forms? There are a lot of possibilities.

Getting started

If the administrator will be responsible for holding the funds and issuing the award checks, typically they will establish a Qualified Settlement Fund ("QSF") pursuant to Internal Revenue Code §468B. From that point on, the QSF can be responsible for almost everything related to the distributions, including opening a bank account, calculating the taxes, remitting the tax payments, sending the award checks and tax forms, and more. Although the concept of a QSF may initially be foreign to defendants who are new to these kinds of settlements, both parties

typically grow to appreciate the benefits of using a QSF because it allows for the most "hands-off" and stress-free approach for the involved parties.

Distributing the funds

Tax treatment of the class member awards is a significant factor in most labor and employment cases. In most instances, this will need to be determined by the administrator before the awards can be distributed. It is most common in employment cases for the awards to comprise multiple components for tax purposes (for example, part wages and part damages). Ideally, your settlement agreement should provide clear direction as to the treatment of various tax components of the class member awards.

Before the payments to the class can occur, the QSF will need to receive the funds necessary to make the payments to the class and to pay any required taxes. While there are now multiple options for putting money into the hands of the payees such as payment via wire-transfer, third-party money transfer services, and other options, the most common method in employment cases is still physical checks sent via regular U.S. mail.

Although sometimes the settlement agreement may require that the different award components be paid to the class member in separate checks, when possible it is usually more efficient and cost-effective to send a single check for the entire net payment. Depending on the timing of the mailing, it may also be possible for the required tax forms to be enclosed with the checks, saving money on mailing and processing costs.

Some checks may be lost along the way due to address changes, mis-delivery, or misplacement. Providing class members with a clear method for contacting the administrator directly to communicate new address information and/or request the reissuance of lost checks is important.

Also, consider whether any follow-up will be done for undeliverable or otherwise uncashed checks. A follow-up letter or a phone call can go a long way in finding someone and helping them receive their award payment.

Leftover money – where does it come from and where does it go?

There is a likelihood that there will be leftover money after the class members' checks have expired. Even when every check is cashed, there may still be some funds left in the account due to accrued interest or even simple "rounding-to-the-nearest-penny" mathematics.

Having an agreed-upon treatment of these funds at the end of the administration will save headaches down the road. The most common methods for disbursing money remaining in the QSF's account at the conclusion of the awards distribution phase include donating the funds to an agreed-upon *cy pres* beneficiary, escheating any amounts resulting from uncashed checks, and/or reverting the remaining funds to the defendant.

Having a plan for your money from beginning to end will give an administrator a clear picture of how to distribute the funds. Contact them early to help create a plan that is appropriate for your case.

*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*