

FLSA CLASS ACTION & WAGE AND HOUR CONSULTING

As a recognized national damages consulting firm, Marshall & Stevens provides sophisticated damage calculations, class certification analysis, and expert testimony in Fair Labor Standards Act (FLSA) collective actions and state wage and hour class actions. Our experts have testified in federal and state courts nationwide, helping both plaintiffs and defendants navigate the complex economic issues that determine whether cases can proceed as class actions and how damages should be measured.

For the Plaintiff: Building a Defensible Damages Case

Our forensic experts work with legal counsel to build a robust and credible calculation of economic harm. We assist by:

- **Establishing Causation Assumptions:** We work with counsel to identify and document the factual assumptions linking alleged violations to quantifiable harm, ensuring our damage calculations are based on provable facts.
- **Modeling Economic Damages:** We construct detailed financial models to quantify losses for each class member or entity. These models are designed to reconcile directly to source data, including:
 - Specific pay rates and compensation structures
 - Regular and overtime hours worked
 - Paid time off, meal periods, and paid breaks
 - Commissions, bonuses, and other variable pay
 - Week-by-week overtime analysis compliant with FLSA requirements
 - Proper calculation of "regular rate" under FLSA (critical per the reports)
 - Treatment of draws against commissions, bonuses, and non-discretionary compensation
 - Accounting for paid time off, holidays, and unpaid absences

- **Analyzing Complex Data:** We process and analyze vast amounts of financial and operational data to present a clear, fact-based picture of the economic damages sustained.
- **Addressing Individual Circumstances:** We identify which damages can be proven with common evidence and which require individual analysis, helping counsel assess class certification viability and prepare for potential challenges.
- **Providing Expert Testimony:** We deliver clear, compelling expert witness testimony that explains our methodology and findings to judges, juries, and mediators.

For the Defense: Challenging Damage Claims and Class Certification

We provide defendants with rigorous financial analysis to counter damage claims and challenge the fundamental economics of a class action. Our services include:

- **Challenging Class Certification:** We analyze class member data to demonstrate, from an economic standpoint, how individual circumstances create distinct and uncommon damage calculations that cannot be reliably measured on a class-wide basis. By highlighting the variance in damages from person to person, we provide the economic evidence to support legal arguments that a class action is inappropriate.

- We identify variations in:
 - Employee decision-making (hours worked, breaks taken, efficiency)
 - Self-reported data reliability (unreasonable claims, missing documentation, inconsistent metrics)
 - Individual performance factors (productivity, communication with supervisors, adherence to policies)
 - Different representations or policies affecting various class members
 - We demonstrate when individual inquiries would overwhelm common questions
- **Analyzing Renewed Relationships:** We identify class members who renewed contracts, accepted promotions, or continued employment after experiencing the alleged violations—indicating satisfaction and undermining damage claims for those periods.
 - **Rebutting Plaintiff's Damage Models:** We critically assess the plaintiff's expert reports and damage calculations, identifying flawed assumptions, methodological errors, and unsupported conclusions.
 - **Developing Alternative Damage Calculations:** We prepare alternative damage models based on sound financial principles to present a more accurate and defensible calculation of potential exposure.

Critical Issues in FLSA Class Actions:

- **For Class Certification:**
 - Can damages be measured using common evidence, or do individual circumstances predominate?
 - Are employee records reliable and consistent across the proposed class?
 - Do class members share common policies, pay structures, and work conditions?
- **Data Reliability Challenges:**
 - Self-reported hours vs. documented time records
 - Inconsistent metrics among class members (lump sum vs. weekly vs. ranges)
 - Missing or destroyed documentation
 - Conflicts between testimony and payroll records

- **Individual Variability Issues:**

- Different pay rates, job duties, and performance levels
- Varying work schedules, breaks, and time-off patterns
- Employee personal choices affected hours worked
- Changes in company policy over time

Individual vs. Class-Wide Damage Analysis: We evaluate whether proposed damages can be calculated using common formulas or require individualized analysis. Our work includes identifying employee-specific factors (work patterns, efficiency, choices) that prevent reliable class-wide estimation and testing whether plaintiff's methodology would award the highest damages to the least efficient workers.

Class Certification Support & Opposition: We provide the economic analysis courts require to determine if common questions predominate. For plaintiffs, we demonstrate damages can be measured systematically. For defendants, we show why individual

Self-Reported Data Reliability Testing: We analyze the reasonableness and consistency of employee-reported hours by comparing claims to payroll records, PTO data, and deposition testimony. We identify unrealistic claims (e.g., working 160+ hours per week) and inconsistent metrics that prevent reliable damage estimation.

Data Analytics & Forensic Investigation: We leverage advanced data analytics tools to investigate complex financial records, identify critical patterns, and isolate the essential data needed to support our financial conclusions.

Expert Witness Testimony: Our seasoned professionals are skilled at translating complex financial concepts into understandable testimony, providing the court with a clear and credible assessment of the economic damages at issue.

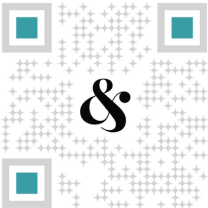
EXPERTISE IN ACTION

Founded in 1932, Marshall & Stevens provides valuation consulting, transaction advisory, and litigation support services. The firm's specialists are relied upon by businesses, investors, and advisors for analyses utilized in complex transaction and legal matters.

From the boardroom to the courtroom, Marshall & Stevens delivers clarity, independence, and results.

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