

AS SEEN IN...

Labor & Employment Class and Collective Settlement Administration: Best Practices, Volume 3

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

Sending notice to the class might be the most important process that you will encounter in your employment-related settlement or ongoing litigation. Decisions about the contents of the notice, the methods employed to provide notice, and the options available to the class to communicate with class counsel and the administrator in response to the notice will all have a major impact on the success of the notice plan as well as on the cost of the administration. In this third of four articles on best practices in labor and employment settlement administrations, we focus on notice. What questions should you address when planning a notice program?

What to say/what not to say?

The content of the notice is typically straightforward—there

will be details and aspects of the case as well as legal precedent that dictate most of that content. However, there are few “extras” that you may want to consider. If a substantial portion of the class speaks a language other than English, should a translation of the notice materials be included in the mailing or otherwise made available to the class? If you decide it would be helpful for class members to communicate directly with the administrator, is the administrator’s contact information prominently displayed in the notice materials?

It is not uncommon for counsel to draft and edit the notice, claim form and draft settlement agreement simultaneously during the negotiation phase. As a result, terms such as deadline

dates, whether the deadlines are postmark- or receipt-date deadlines, and other details end up being treated inconsistently in the documents provided to the administrator. A last careful review comparing the deadlines and various specific requirements mentioned in those documents against actual language in the settlement documents by you and/or your administrator before submission is a good idea.

Also, be cautious of language in the notice materials relating to monetary awards because there are some pitfalls in that regard that can lead to confusion and/or frustration amongst the class. If a class member’s estimated award amount will be printed in his notice materials, the notice should make it clear that the amount is an estimate.

Furthermore, if the amount is the estimated gross award and taxes will be withheld from the gross amount, the notice should make that clear as well.

Although it might be helpful for the notice to provide a general timeline for the expected mailing of the award checks, it is a good idea to run that by your administrator first. An administrator experienced with employment cases will understand the issues that will affect the timing of the awards distribution and help you make sure your notice doesn't promise the impossible.

How to communicate?

Sending notice by email is a very cost-effective way to communicate with the class. Depending on the quality of the email data, it may serve as the primary means of notice or a backup plan following direct U.S. mail notice. Discuss with your administrator the steps that can be taken to increase the

likelihood that emails are delivered and actually read by the class members.

Having a simple informational website can be a cost-effective method to provide notice materials and general information about the settlement, and another possible way for class members to communicate directly with the administrator. From published notice to social media campaigns – there are a lot of additional options out there, and you will want to discuss these with your administrator to see if they are appropriate for your settlement.

Are you considering a mailing to those who do not respond to the initial mailing? If so, should the notice packet simply be remailed to all non-responders, or would it be better to send a less-costly reminder postcard? Should that mailing go to the same address used for the notice mailing, or should it be mailed to an address obtained through skip-tracing? An experienced

administrator will be able to help you determine the best steps.

What's the bottom line?

Typically, the administrator is responsible for virtually all communication with the class during the notice and awards phases. Distributing the notice materials, providing additional information to class members about the settlement and the claims process by phone, email, website – this is all vital to the success of the administration. Consult with your administrator prior to finalizing the notice materials and the notice plan for the most successful outcome. Consider yourself on notice!

*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*