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Trends in Wage and Hour Settlements: 2013 Update

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Introduction

In 2013, companies have continued to pay substantial settlements to resolve cases involving allegations of wage and hour violations. Plaintiffs in wage and hour cases typically allege they did not receive full compensation for all time worked. The allegations, which can be brought by current and/or former employees, may include off-the-clock work, unpaid overtime, misclassification, improper calculation of the regular rate, failure to pay minimum wage, and missed, short, or late meal and/or rest breaks.

For this update, we have expanded our analysis to include settlements reported through September 30, 2013. Over the first three quarters of 2013, we collected data on 51 cases settling for a total of approximately \$215 million, suggesting 2013 is on pace to have fewer cases settled and lower aggregate spending than 2012. If this settlement pattern continues through year end, we estimate that 68 cases will have settled for a total of \$286 million, compared to 102 cases for \$467 million in 2012. Over almost seven years between January 2007 and September 2013, including these newly reported settlements, we have identified 497 cases that settled for \$2.95 billion.

On average, companies paid approximately \$4.5 million to resolve a case in 2013, which is slightly below the average we observed in 2012 and right in line with the average in 2011. This 2013 average is still well below the overall average for the 2007 to 2012 period of \$7.5 million. In contrast, we found an increase in the median settlement value for 2013—at \$2.8 million, the 2013 median is the highest we have observed in any year since 2008. The overall median for the January 2007 to December 2012 period was \$2.0 million.

After taking into account the number of plaintiffs in the case, we found a slight increase in the average settlement value per plaintiff in 2013. The 2013 average of about \$7,000 was up from the average of \$6,400 in 2012, and well above the average of \$5,800 observed over the entire January 2007 to December 2012 period. After controlling for both the number of plaintiffs and the number of class years involved, the trend changes: we calculated an average settlement amount per plaintiff per class year of \$1,300 for 2013, a decrease from the values in 2011 and 2012. This increases the overall average for cases settled between 2007 and 2013 to \$1,200.¹

Figure 1. **Settled Wage and Hour Cases Are on Pace to Decrease in 2013**

Settled Wage and Hour Cases by Year

Data as of September 30, 2013

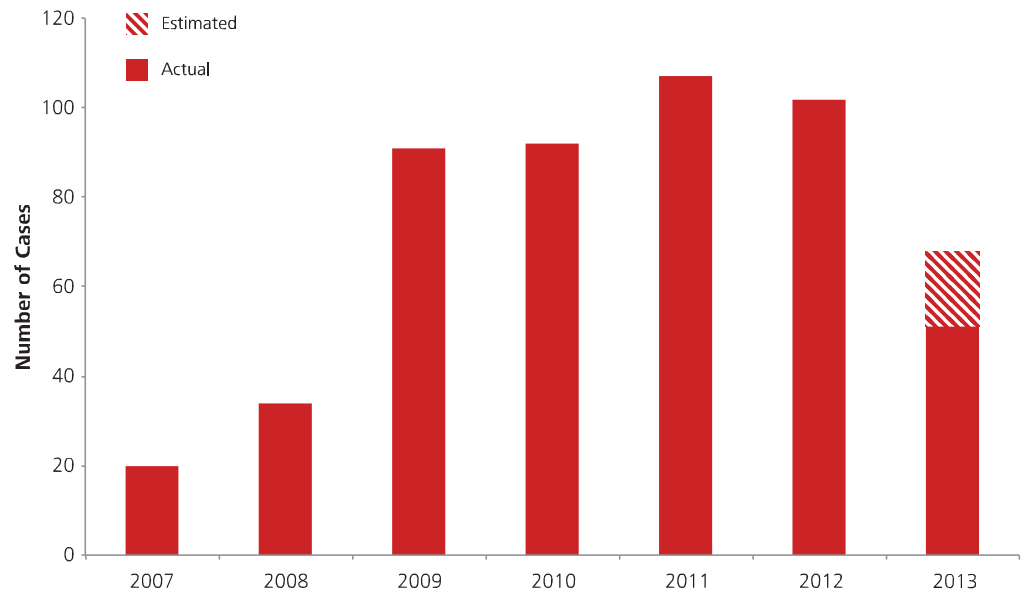


Figure 2. **Average Settlement Values Held Steady in 2013**
Mean Wage and Hour Settlement Amount by Year
Data as of September 30, 2013

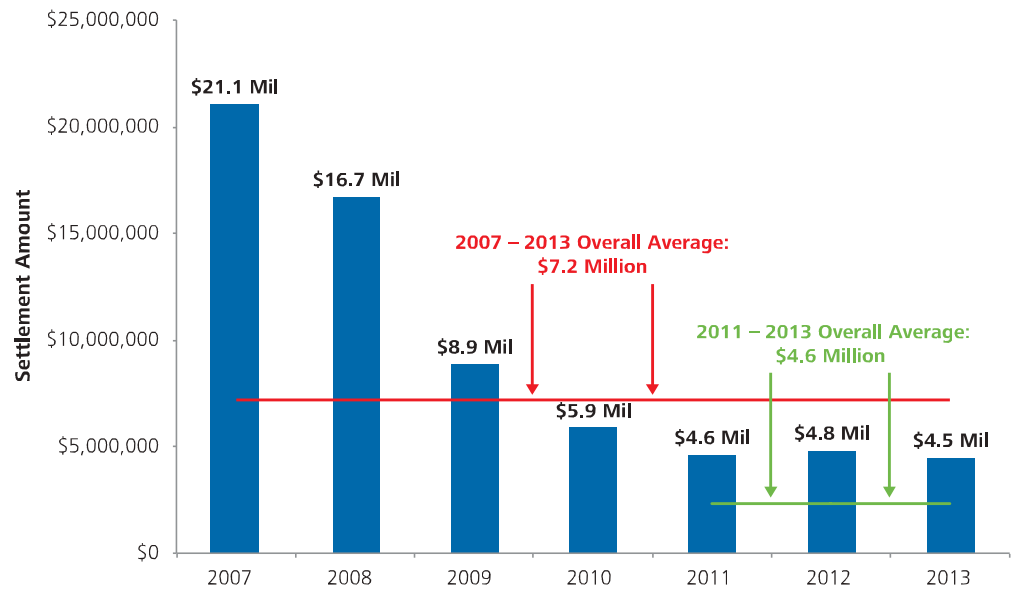
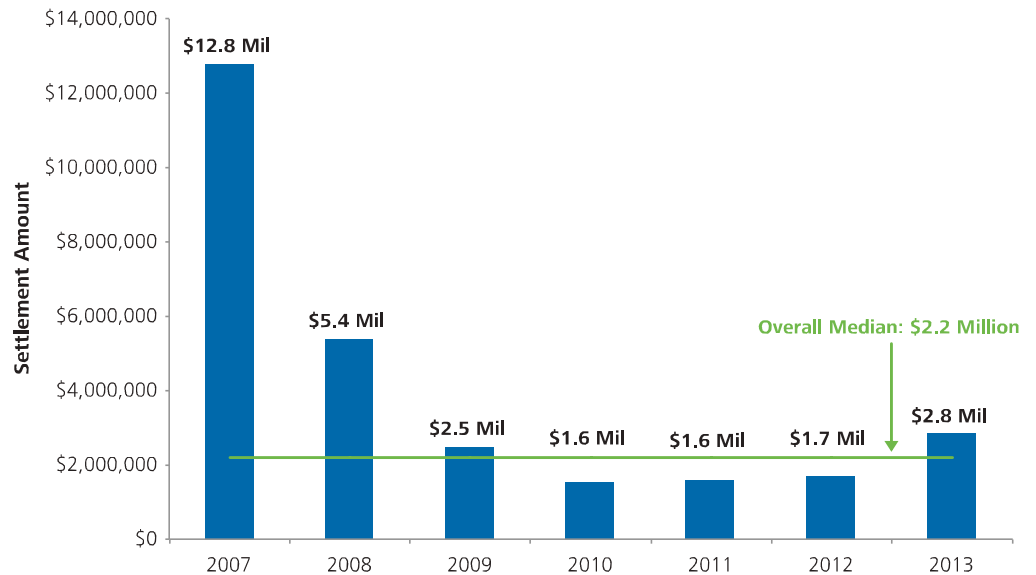


Figure 3. **Median Settlement Values Increased in the First Three Quarters of 2013**
Median Wage and Hour Settlement Amount by Year
Data as of September 30, 2013



Data and Methodology

Our expanded data include 497 wage and hour settled cases obtained from articles published in *Law360* between January 1, 2007 and September 30, 2013 and a review of the Seyfarth Shaw annual litigation reports for 2007 through 2012. When the information available from these sources was incomplete, additional case-specific details were obtained from Factiva. In addition to settlement value, the data extracted include case-specific information such as industry, allegations, number of plaintiffs, length of class period, jurisdiction, and court. While this data collection methodology yielded a substantial number of wage and hour settlements, particularly those with large settlement amounts and/or large classes, it is not necessarily comprehensive.²

Notable Settlements

As mentioned above, in 2013, we observed an average settlement value well within the values observed in prior years and a median value slightly higher than the overall median. This phenomenon was driven by the fact that a large proportion of the 2013 settlements, while within the range observed in prior years, were on the higher side of this range. More specifically, we observed a higher proportion of settlements over \$5 million in 2013 than in 2012. Below are the top five settled cases in the first three quarters of 2013.

- Puerto Rico Department of Corrections and Rehabilitation. - \$35.0 Million. This case included 4,500 workers alleging they were denied overtime. This settlement was for one class year and represented the highest settlement value observed in 2013.
- 24 Hour Fitness USA, Inc. - \$17.5 Million. This case included over 850 plaintiffs who alleged they were misclassified and denied overtime.
- Roto-Rooter Services Co. - \$14.3 Million. Plaintiffs asserted the company violated both state and FLSA laws. More specifically, they asserted they were not paid minimum wage, were denied overtime, and that the company took improper deductions.
- Old Republic Title Co. - \$12.0 Million. Approximately 1,100 current and former employees allege they were denied overtime, did not receive the proper meal and rest breaks, and were required to work off-the-clock during a six-year period.
- Tesoro Refining and Marketing company. - \$11.6 Million. Plaintiffs allege they were not permitted to take the proper meal and rest breaks. The case involved approximately 700 workers, claiming the company violated California labor laws.

Figure 4a. **More Than Half of Cases Settle for Under \$2.5 Million**
 Settled Wage and Hour Cases by Settlement Amount
 January 2007 – September 2013

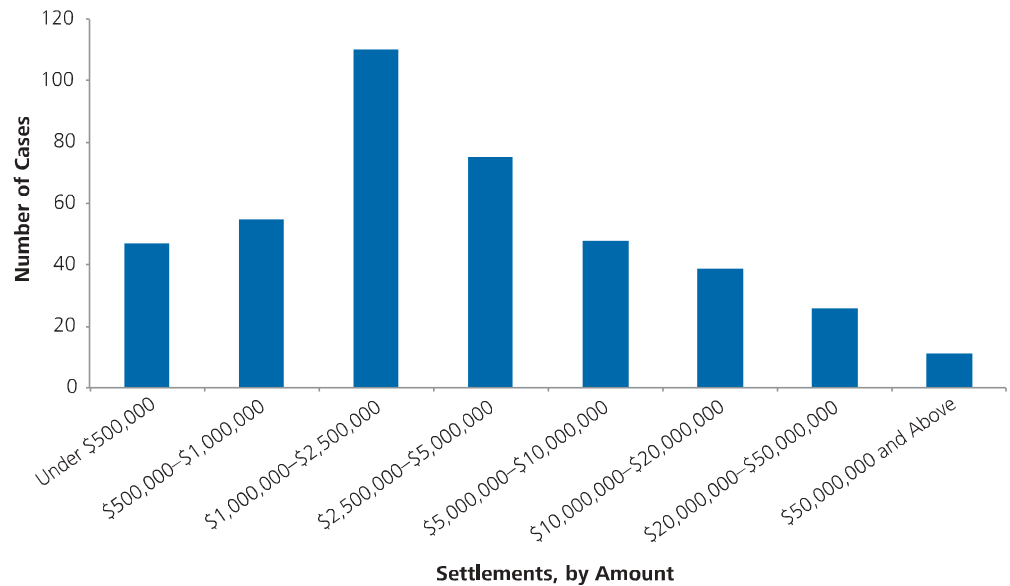


Figure 4b. **In 2013, A Larger Proportion of Cases Settled for Values Greater than \$2.5 Million Than 2012**
 Settled Wage and Hour Cases by Settlement Amount
 Data as of September 30, 2013

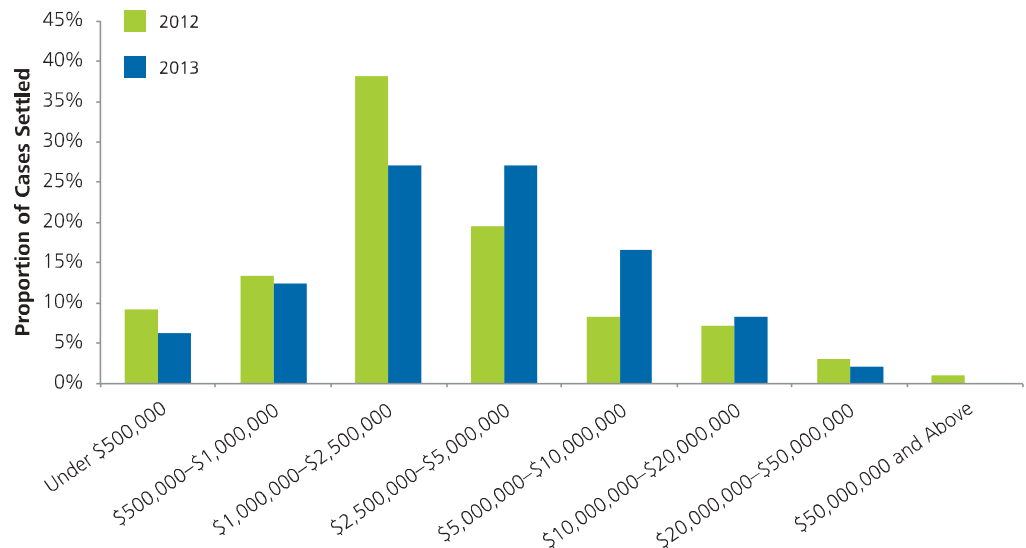


Figure 5. **The Proportion of Cases Involving Large Classes Has Declined**
 Annual Distribution of Settled Wage and Hour Cases by Number of Plaintiffs
 Data as of September 30, 2013

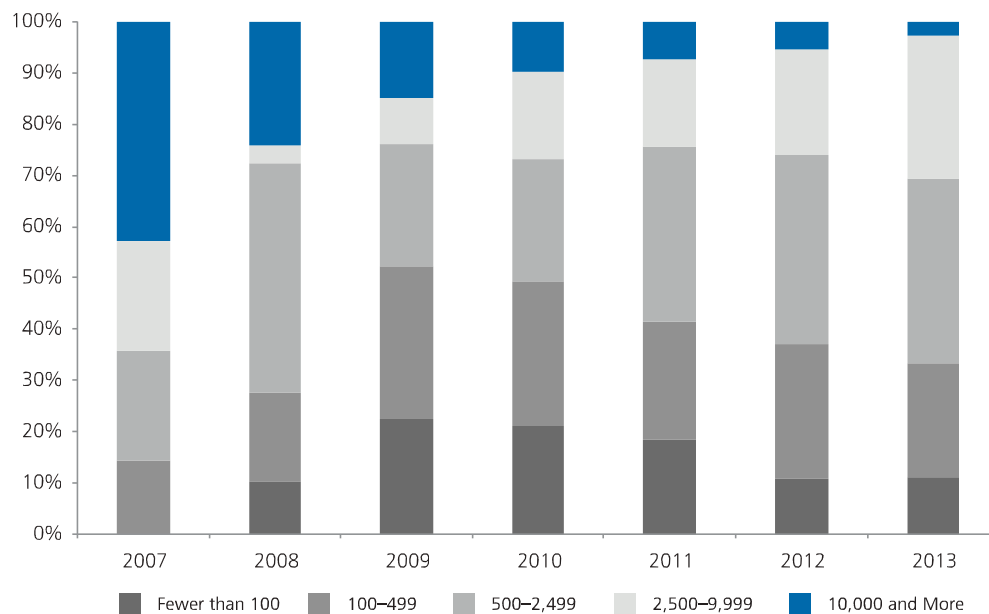


Figure 6. **More Than Half the Cases Have Fewer Than 1,000 Plaintiffs**
 Settled Wage and Hour Cases by Number of Plaintiffs
 January 2007 – September 2013

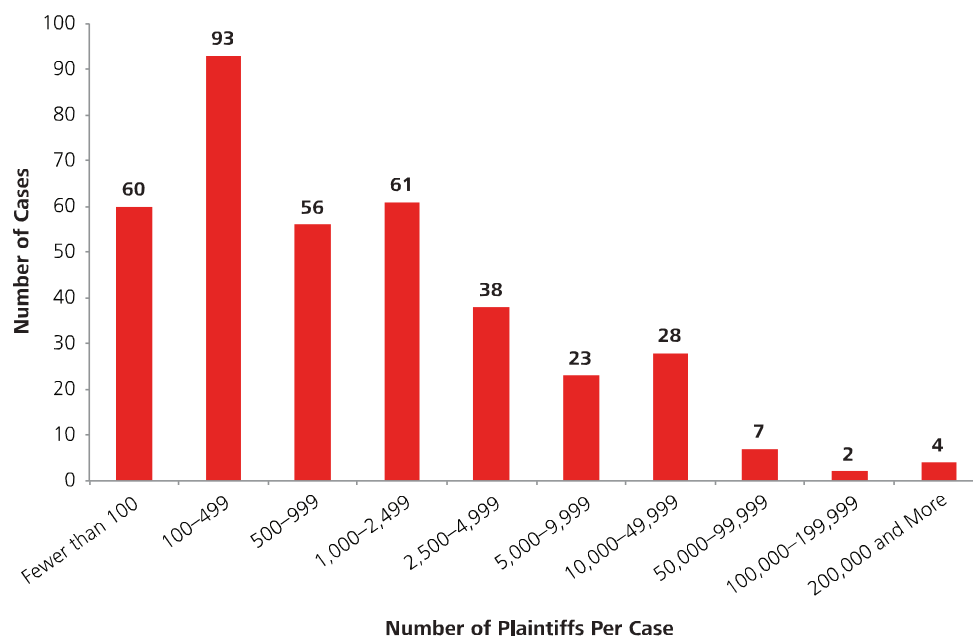


Figure 7. **The Average Settlement Value Per Plaintiff Has Increased Each Year Since 2010**
 Average Settlement Value Per Plaintiff for Wage and Hour Cases by Settlement Year
 Data as of September 30, 2013

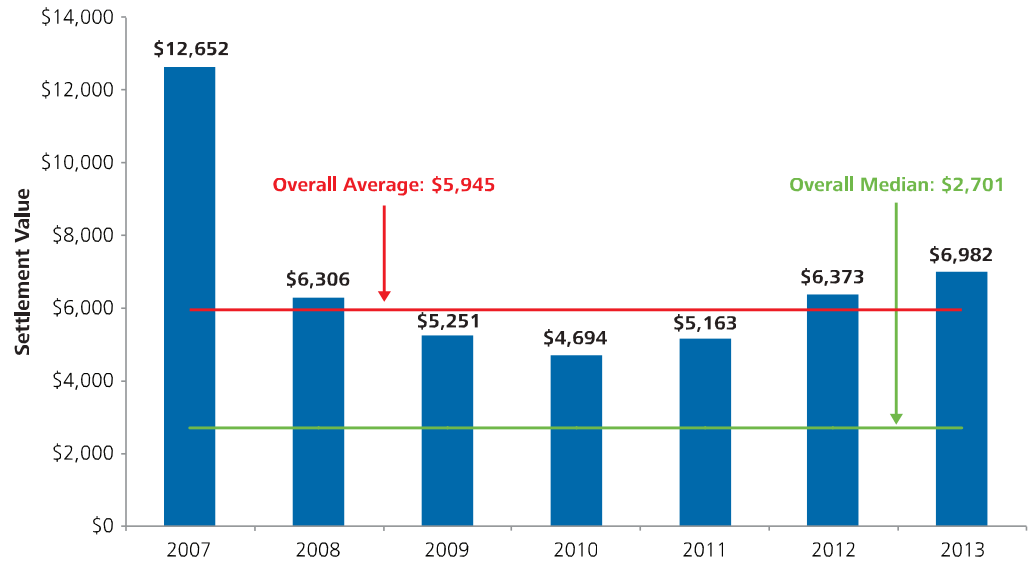
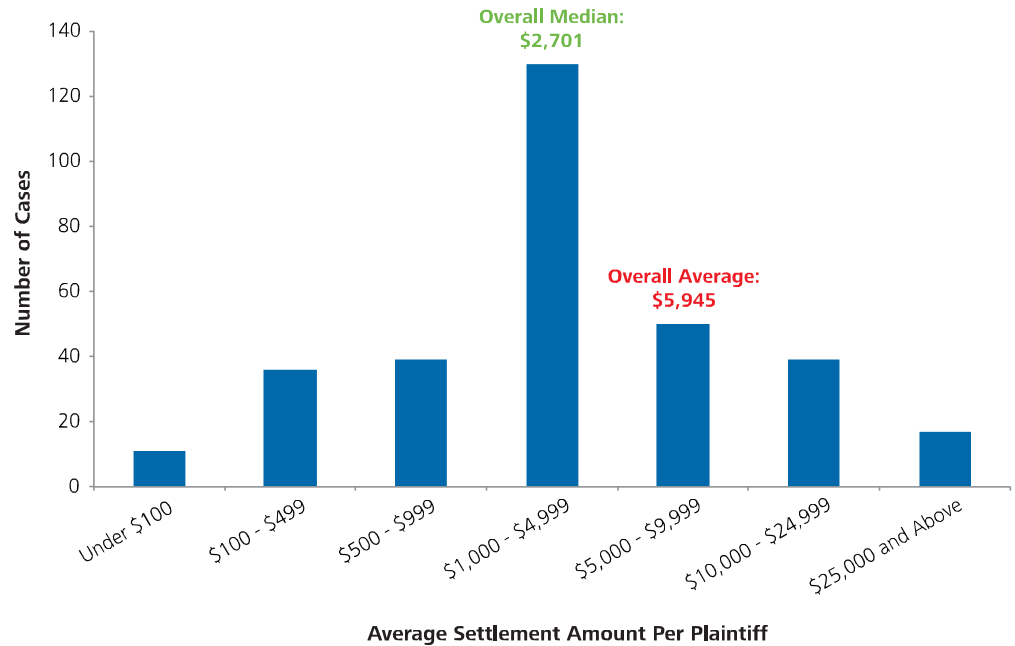


Figure 8. **A Large Proportion of Cases Have an Average Settlement Value Per Plaintiff Between \$1,000 and \$4,999**

Settled Wage and Hour Cases by the Average Settlement Value Per Plaintiff
 January 2007 – September 2013



Trends Per Plaintiff, Per Class Year, and Per Plaintiff Per Class Year

- Due to limitations with the data, we were not able to determine the number of plaintiffs participating in the settlement for each case. For this update, we were able to determine the number of plaintiffs in the case for approximately 75 percent of the cases. We found that the proportion of settlements each year involving 10,000 plaintiffs or more has continued to decline from the levels observed six years ago. In 2007, we saw around 43 percent of settled cases involved 10,000 or more plaintiffs compared to 3 percent in 2013.
- Similarly, many of the settled cases either have confidential settlement amounts or the amount was not available. Taken together, approximately 65 percent of the cases in our data had both the number of plaintiffs and the settlement amount. Using these cases, we were able to evaluate trends in the average settlement value per plaintiff. We found that the average settlement amount per plaintiff has increased steadily from 2010, reaching \$6,982 in 2013. This 2013 value is higher than the overall 2007 to 2012 average of \$5,823 and the 2007 to 2012 median of \$2,633. Because settlement values, on average, have remained fairly stable in recent years while the number of plaintiffs in each case has been declining, there has been a higher average amount paid per plaintiff.
- Another important characteristic that can often affect or influence settlement values is the length of the alleged class period. Like the data related to the number of plaintiffs, this information is not provided/reported for every settlement. For our current update, we were able to determine the length of the class period for approximately 55 percent of the settled cases. We found the mode—the most frequently occurring observation of the distribution—to be five years.
- For approximately 35 percent of the cases in our data, we have data on settlement amount, number of plaintiffs, and length of class period. Using these three statistics, we can calculate an average settlement amount per plaintiff per class year. The average value per plaintiff per class year is lower in 2013 than in the prior two years, but above the pre-2011 averages. For 2013, we observed an average of \$1,252—which is above the 2007 to 2012 overall average of \$1,174 and the 2007 to 2012 overall median of \$518. In addition, we find that more than 95 percent of cases have an average settlement value per plaintiff per class year of less than \$5,000, with approximately 70 percent less than \$1,000.

- For our current update, we have included a flag indicating the court of the case at the time of settlement and identified trends within the data for cases settled in federal court. We find that the overall average settlement value per plaintiff is slightly higher for cases in federal court than for all cases at \$6,135, and the federal-case median is also higher at \$2,937 per plaintiff, for cases settled from 2007 to 2013. We also find the same pattern to be true for the average and median settlement values per plaintiff per class year. After controlling for number of plaintiffs and class length, the average is \$1,239 for federal cases and the median is \$551 for federal cases—both higher than the average across all state and federal cases combined.

Figure 9. **The Majority of Settled Cases Have a Class Period of 7 Years or Less**

Settled Wage and Hour Cases by Number of Years in Class Period
January 2007 – September 2013

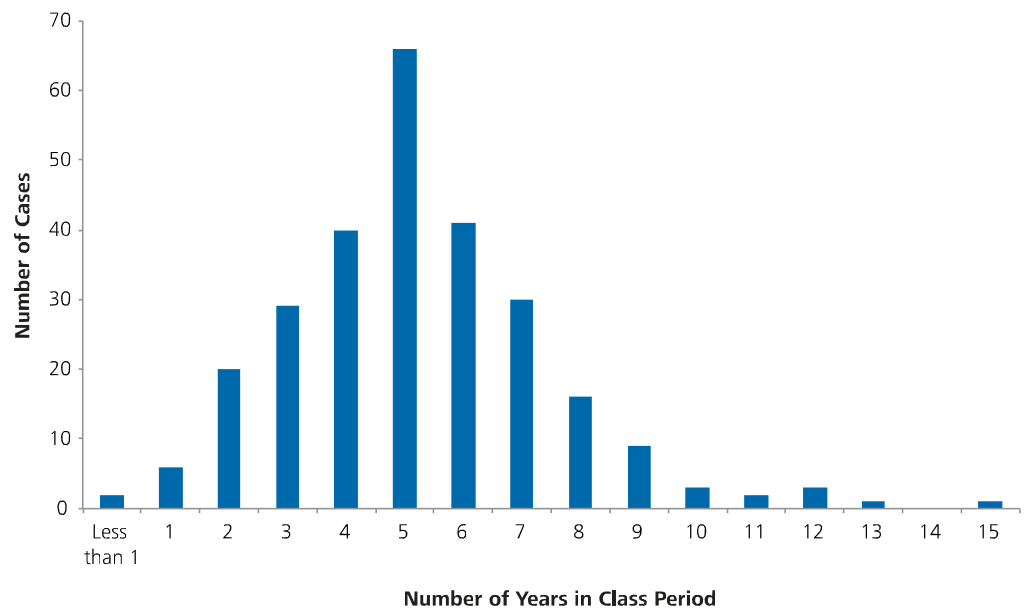


Figure 10. **Few Cases Settle for More Than \$5,000 Per Plaintiff Per Class Year**
 Settled Wage and Hour Cases by the Average Settlement Value Per Plaintiff Per Class Year
 January 2007 – September 2013

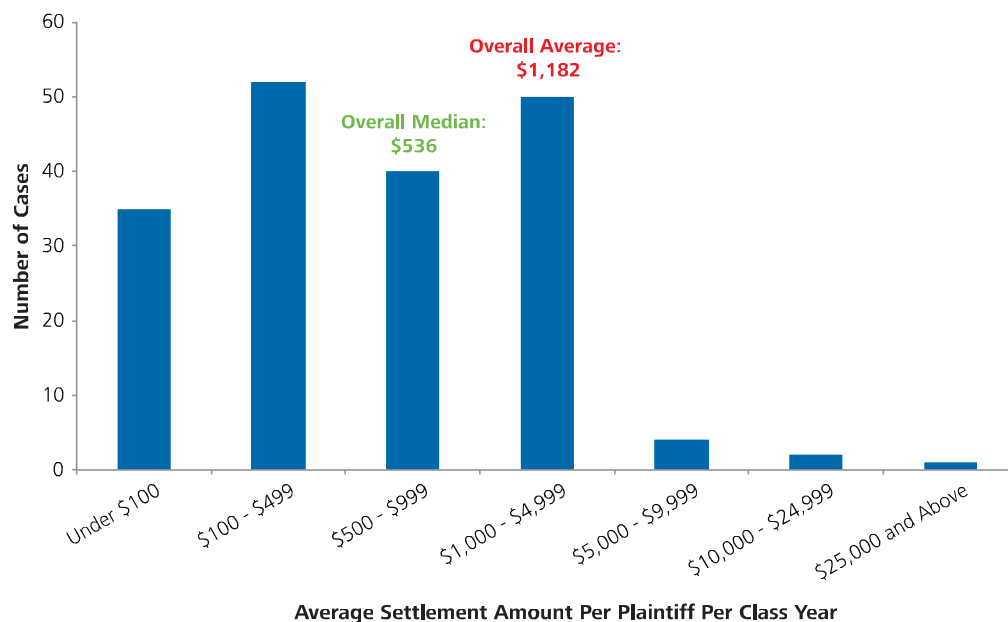
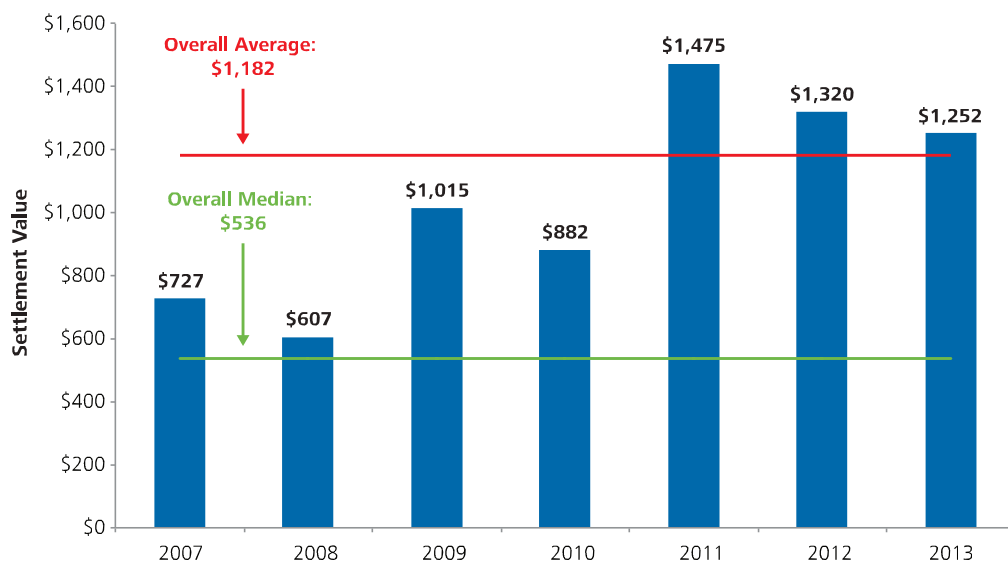


Figure 11. **The Average Settlement Value Per Plaintiff Per Class Year Has Declined Moderately Since 2011**
 Average Settlement Value Per Plaintiff Per Class Year for Wage and Hour Cases
 by Settlement Year
 Data as of September 30, 2013



CASE CHARACTERISTICS

In addition to information on settlement amount, number of plaintiffs and length of class period, we also identified state, allegations made, and industry of the defendant for each case.

Trends by State

In 2013, there was an increase in the proportion of total settlement dollars paid in California compared to 2012. The percentage of dollars paid in New York dropped by approximately 50 percent, ending the upward trend that had been observed between 2010 and 2012. The proportion of dollars paid in Illinois has continued to decline since 2011, and in 2013, these dollars represent less than 1 percent of total settlement dollars paid.

Trends by Allegation

For each case in our database, we classified the allegations of unpaid work asserted by the plaintiffs into the following categories: overtime, off-the-clock, minimum wage, donning and doffing, missed meals and rest breaks, misclassification, and tip pooling.³

As in prior years, overtime allegations continue to be the most common type of allegation in settled wage and hour cases. For cases settled over the past nine months, we found that approximately 45 percent of the allegations were related to an overtime violation. The proportion of allegations involving misclassification declined slightly from 2012, while the proportion involving an off-the-clock violation was slightly up. In 2013, donning and doffing, minimum wage, and tip pooling continue to represent a small fraction of the allegations, each representing 5 percent or less.

The distribution of allegations for cases settled during the 2007 to 2013 period shows a similar pattern. Approximately 40 percent of allegations involved an overtime violation, while between 16 and 18 percent include either an allegation of missed meals and rest breaks, misclassification, or off-the clock work.

Another interesting pattern reflected in the data is that more than half the cases involve multiple allegations. Some pairs of allegations are more commonly observed in the data than others. For example, in our expanded data, we found that of the cases with a misclassification allegation, over 85 percent also asserted an overtime allegation. In part, this is due to the fact that, in many misclassification cases, plaintiffs allege they were misclassified as exempt from overtime compensation when in fact they should have been overtime eligible. Thus, in such cases, the allegations of unpaid overtime are directly tied to those of misclassification.

Trends by Industry

We identified the industry of the settling defendant for each case and categorized the defendants into one of the following categories: Financial Services/Insurance, Food and Food Services, Healthcare/Healthcare Services, Manufacturing, Retail, Technology, Telecommunications/Utilities, Transportation/Shipping, and Other.

Overall, companies in the financial services/insurance and retail industries continue to be the most common defendants in these settled wage and hour cases. In 2013, we found a decline in the proportion of defendants in the retail industry, with only 10 percent of the cases involving a retail defendant compared to approximately 17 percent over the 2007 to 2012 period. On the other hand, we saw the proportion of cases involving healthcare/healthcare services defendants more than double—in 2013, healthcare/healthcare services defendants were involved in approximately 12 percent of the settled cases compared to 6 percent over the 2007 to 2012 period.

Retail continues to dominate the total spending category for cases settled over the 2007 to 2013 period, with approximately 30 percent of total settlement dollars being paid in that industry and about 20 percent paid by financial services/insurance companies.

While last year we observed a spike in total settlement dollars from companies in the healthcare/healthcare services industry, this year, the spending has returned to the proportions of total spending observed pre-2012. In 2013, settlements in the financial services/insurance industry represent the largest proportion of total settlement dollars paid, while less than 2 percent of total spending was paid by companies in the manufacturing industry. Spending from companies in the retail industry has continued the steady downward decline from 2009, representing only 5 percent of the spending for the first three quarters of the year compared to 46 percent in 2009.

In 2013, we also observed a spike in the total spending and average settlement value for cases in the “other industry” category. This increase was driven primarily by the fact that four out of the five largest settlements tracked in the first three quarters of 2013 involved defendants in industries that historically have had few wage and hour settlements, including corrections, refining, and other services.

Figure 12. **The Vast Majority of Settlement Dollars Has Been Paid in New York and California**
 Distribution of Settlement Dollars Paid for Wage and Hour Cases by Year and State
 Data as of September 30, 2013

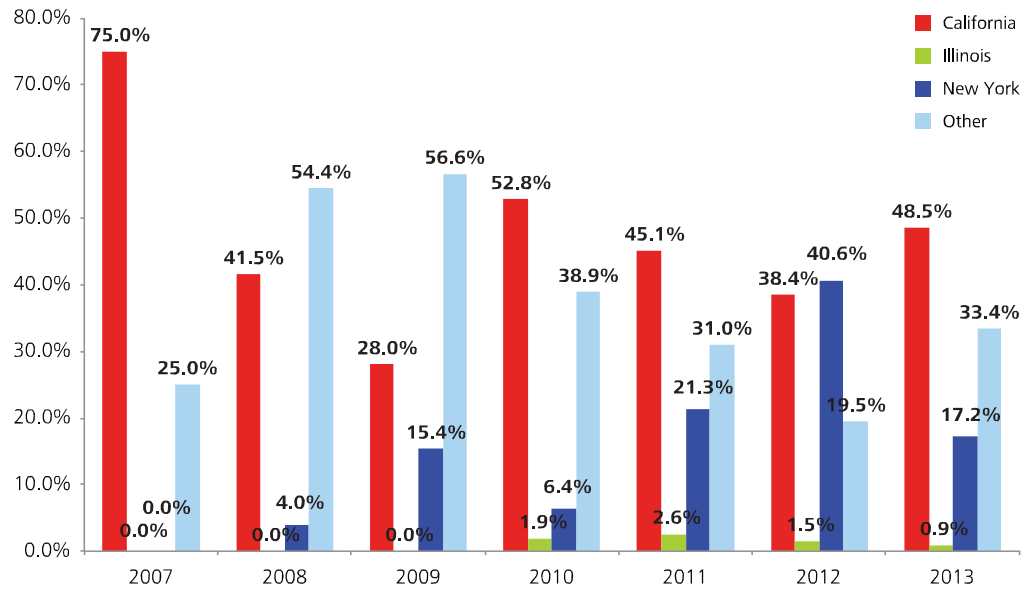


Figure 13a. **Approximately 40 Percent of Allegations Relate to Overtime Violations**
 Allegations in Settled Wage and Hour Cases
 January 2007 – September 2013

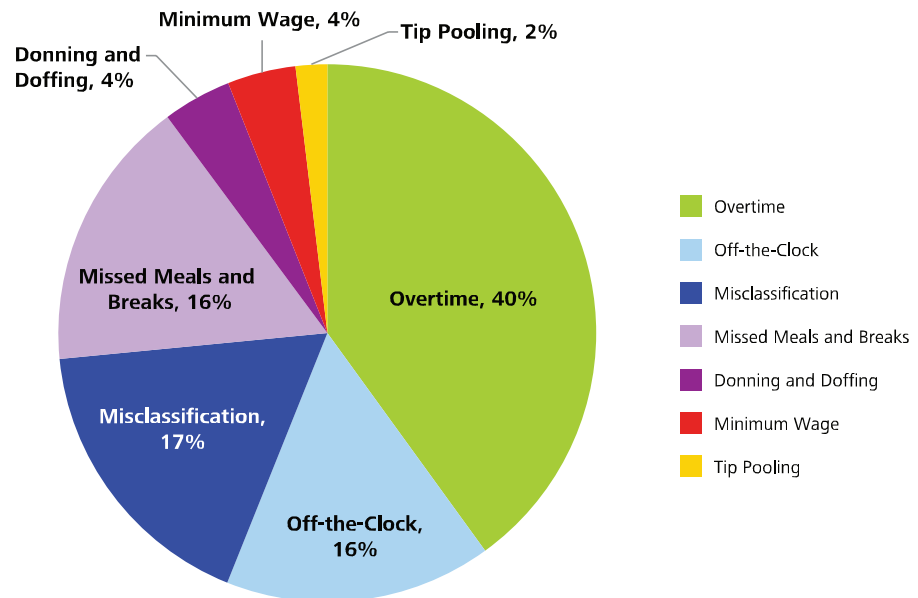


Figure 13b. **In 2013, Overtime Remained the Most Common Type of Allegation**
 Allegations in Settled Wage and Hour Cases
 January 2013 – September 2013

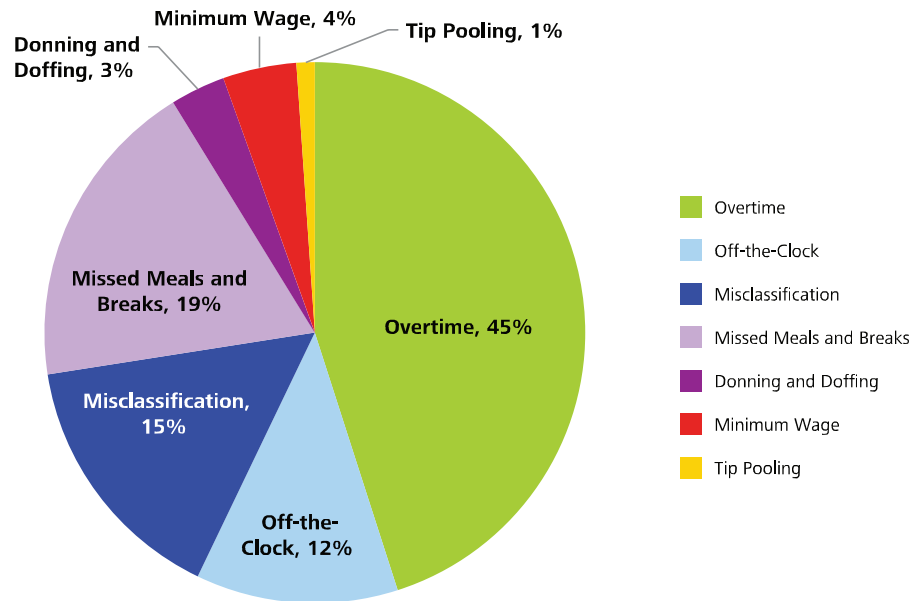


Figure 14. **The Financial Services/Insurance and Retail Industries are the Most Common Industries for Settlements**
 Settled Wage and Hour Cases by Industry of Employer
 January 2007 – September 2013

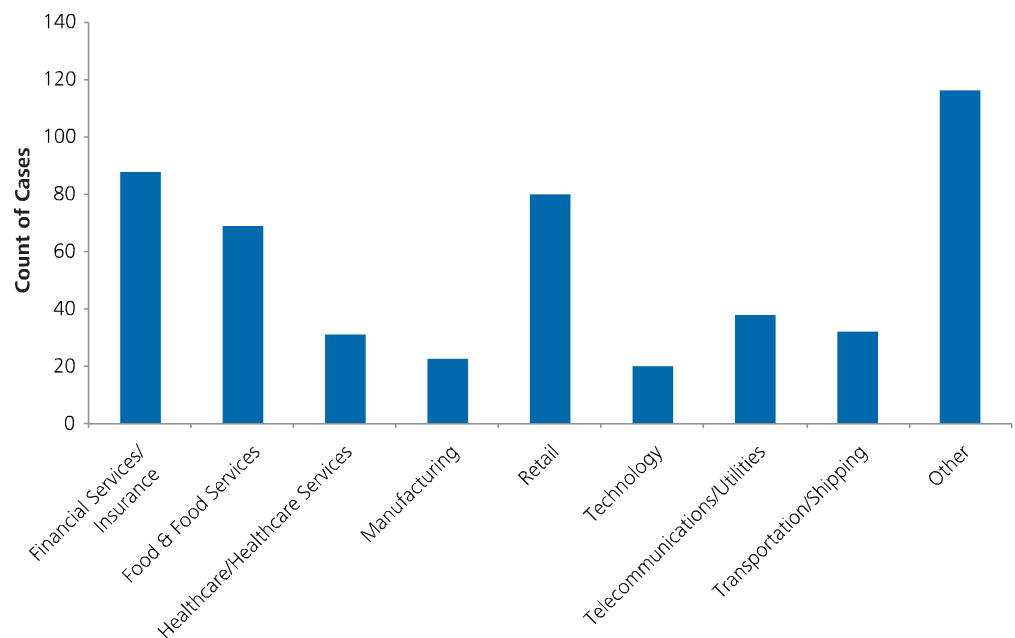


Figure 15. **Almost a Third of Total Settlement Dollars Was Paid to Employees in the Retail Industry**
Wage and Hour Settlement Dollars by Industry: January 2007 – September 2013

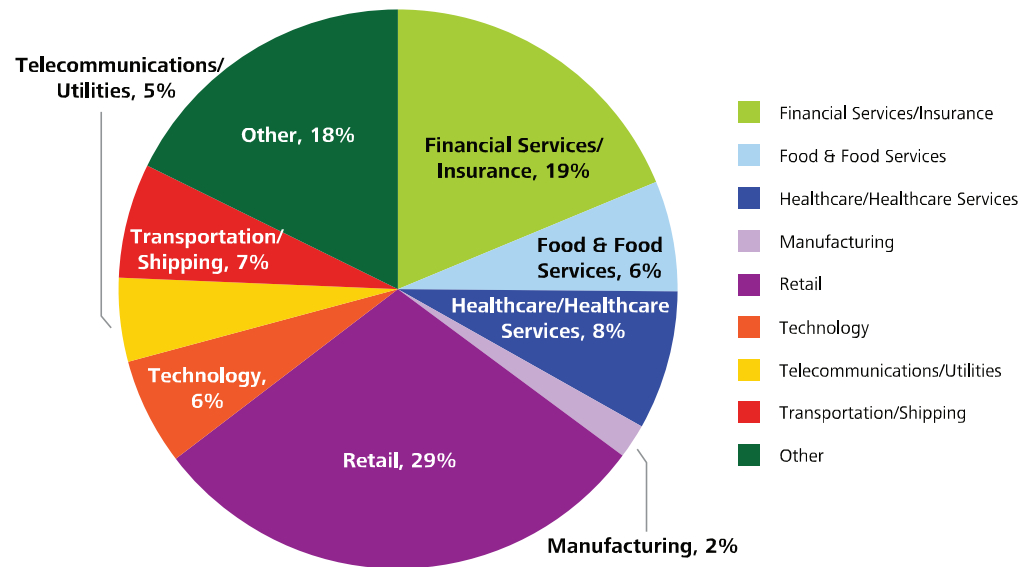
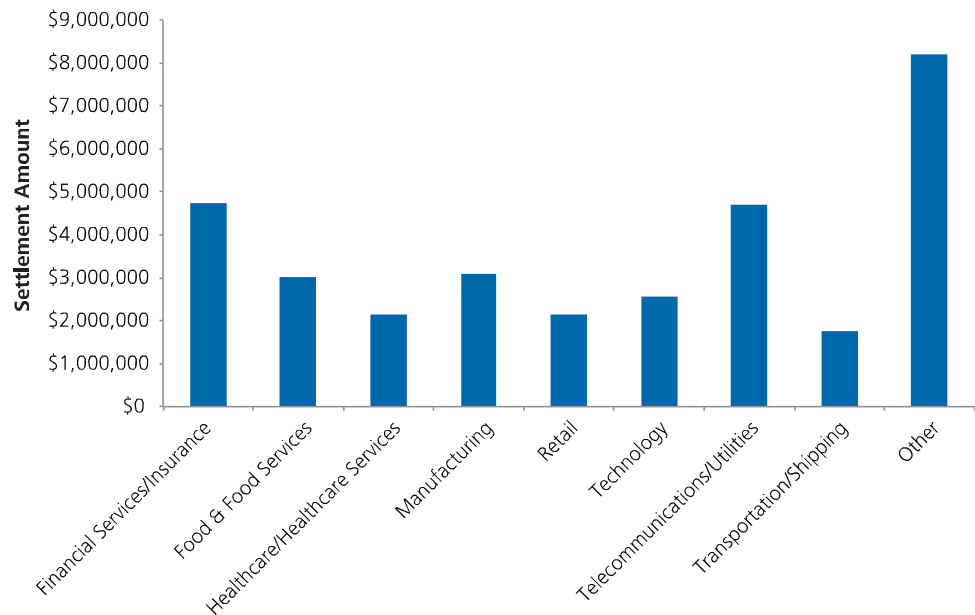


Figure 16. **The Average Settlement Value by Industry Ranged from \$1.7 Million to \$8.2 Million in 2013**
Mean Settlement Values for Wage and Hour Cases by Industry of Employer
January 2013 – September 2013



Notes

¹ We thank Neil Fanaroff, Tanner Baker, and Trisha Vohra for additional research assistance.

² Also, due to incomplete information, reported statistics exclude the Wal-Mart Multi-District Litigation settlement in 2008, which resolved 63 wage and hour class action cases for over \$600 million.

³ There are a handful of cases with “Other” allegations that were not captured by these categories.

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