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PERSPECTIVES

Using Public Records in Damages Analysis

Our perspectives feature the viewpoints of our subject matter experts on current topics and emerging trends.

INTRODUCTION

"Garbage in, garbage out" is a popular adage in the world of analysis. The general concept is that faulty inputs produce low-quality outputs. This is especially true when it comes to evaluating economic damages claims for litigation—an analysis is only as good as the information it relies on.

The quality and quantity of records provided in lost earnings claims vary widely from case to case. In some instances, full payroll, HR records, and financials are turned over during discovery, and the damages calculation can be straightforward. However, it is often difficult to obtain the records that sufficiently support (or disprove) the assertions being made in the necessary timeframe.

PUBLIC SALARY DATA

In recent years, public records information has become increasingly useful for damages experts retained in employment and injury cases. Salary database websites such as Transparent California and Feds Data Center provide specific wage information on the 2.5 million federal, state, and local government employees working in California. Further, websites like Publicpay.ca.gov can give additional background on agency composition as well as pay ranges and fringe benefits by position.

The information in these databases comes directly from government agencies. It is made possible by legislation such as the California Public Records Act (CA Govt Code § 6250), which states, "In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."

APPLICATION

The potential application of this information goes well beyond a simple search-by-name function. For example, it is possible to analyze historical salaries, overtime, and other pay for individual positions and departments across the state of California. Understanding the details and nuance of each position is crucial when projecting the lost earnings of an aggrieved party.

One of the most compelling applications of this public data is how it can be used to consider promotional potential. Consider a hypothetical case in which the plaintiff, a former postdoctoral fellow, alleges they were wrongfully denied a full-time position as a professor upon completion of their fellowship. Based upon a forensic review of available public data, it may be feasible to demonstrate the inherent speculation—or alternatively, the validity—of the claim, by determining the percentage of postdoctoral employees who go on to obtain one of these positions.

CONCLUSION

Economic damages experts strive to separate what is possible versus probable in a loss claim. Public data can be a pivotal element in establishing credible damages scenarios, and it often becomes one of the most salient talking points at mediation or trial.

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