Wage & Hour Case Study

Economic Damages Reduced by 50%

When employees allege off-the-clock damages, accurate calculations of compensable and non-compensable time can greatly reduce potential economic damages.

OVERVIEW

Wage and hour cases are a form of class-action litigation (common in employment law) wherein groups of non-salaried workers (employees who are paid by shift or by the hour) claim that they were in some way put at a disadvantage by their employer. These cases can include alleged missed meal or rest breaks, punch clock rounding errors, or mistakes in paying minimum wage and overtime.

Another common wage and hour case involves plaintiffs' claims of off-the-clock damages. Off-the-clock activities may include donning and doffing of protective gear, bag checks, entering

and exiting through a buffer zone further into a facility, or other security measures used by companies to prevent theft. In these cases, the extra measures take place before workers clock in, and after they clock out; workers are paid only for time clocked in. However, workers may allege that the time they spend on these extra measures adds up and should therefore be compensated.

The legal basis for these off-the-clock claims is hotly debated. However, an important first step is to gain an accurate measurement of the claimed uncompensated time. Only then is it possible to begin assessing the company's potential liability and damages. In most of these cases, the off-the-clock time involved for an employee on a single day is small, amounting to a few minutes or less. However, when added up across thousands of shifts, the totals can be significant.

In these cases, workers' time is measured using time-stamped information from several sources. These include time stamps recorded when an employee enters a work facility, accesses the computer, or begins and ends telephone calls. This is in addition to the actual clock time, which measures the start and end of paid work. The data measured by the various clocks can be merged to build an accurate picture of the sequence of activities performed by workers as they start or end their workday.

THE PROBLEM

Recently, a company with multiple locations asked us to assess potential damages for a wage and hour suit. Employees' claims centered on the amount of time elapsed between their entry into the facility and clocking into the payroll system. In between entering and clocking in, employees also had to gain access to a computer and boot up the system.

Employees claimed that this process took a significant amount of time, which in their view should be paid. In a class-action suit, they sued the company to gain compensation for the time starting from when they entered the building until they logged into the phone system (beginning their paid work.)

OUR APPROACH

 To begin, we worked with the client to merge employee time records and construct a timeline of each employee's actions at the start of every workday. Three stages of elapsed time could be estimated: 1) Time between entering the facility and initiating a swipe to access the employee's computer, 2) Time between gaining access to the computer and booting up the system, and 3) Time between boot-up and actual clock-in to the payroll system. Each of these

periods of elapsed time was measured for each employee, for each shift, during the liability period.

We initially concluded that the time between gaining access to the computer and booting up the system is automatic, and not within the employee's control. While there is some variation in true "boot-up time," we used a single summary measure of that time, such as the median (50th percentile) or the mean. Our measure included some workers' extremely long boot-up times, though these lengthy boot-up processes were unusual and would not be expected on a day-to-day basis.

The elapsed times between entering the workplace and beginning the computer boot-up sequence, however, were in employees' control. Employees may opt to extend the time before entering the telephone system (at which point paid time begins) either before or after boot-up, to check personal messages, spend time in the break room, or visit other employees.

To give the court a sense of the employees' control over how much time elapsed before and after the computer boot-up, we calculated the actual distribution of these times for each individual employee across their shifts. The data below focuses on the first of these alleged off-the-clock work activities—entering the workplace, and logging into the computer. (This period of elapsed time was usually longer than the amount of time between completing the computer boot-up and entering the phone system.)

OUR FINDINGS

Figures 1 through 4, below, show an example month of workplace entry-to-boot up elapse times for one location. **Figure 1** records the measured elapsed time of one individual (shown as a single dot with a height of 11.73 minutes) upon her entry to the workplace and until she began the computer log-in sequence on a single workday, June 2, 2014.
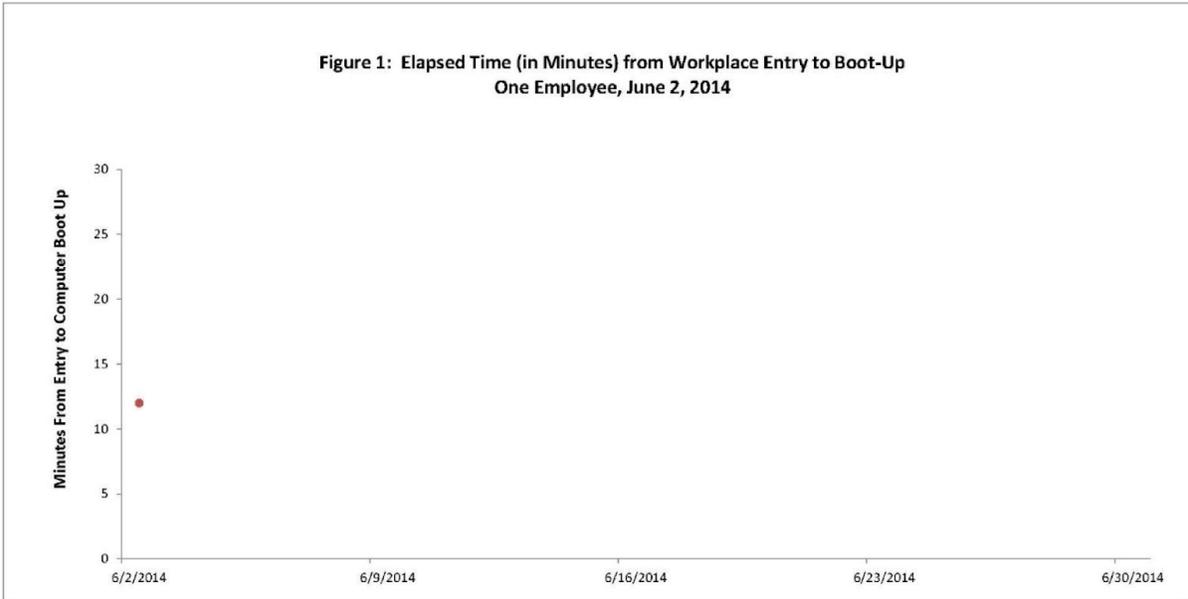
Figure 1: Elapsed time of one individual between entering and initiation of computer

Figure 2 shows the elapsed times (on the same day) for other employees at the call center, between time-stamped entry into the workplace until the time-stamped beginning of the computer-boot up. Each employee's time can be read from the height of a dot. The longest elapsed time shown in Figure 2 is 26.82 minutes, while the shortest is 10.11 minutes.
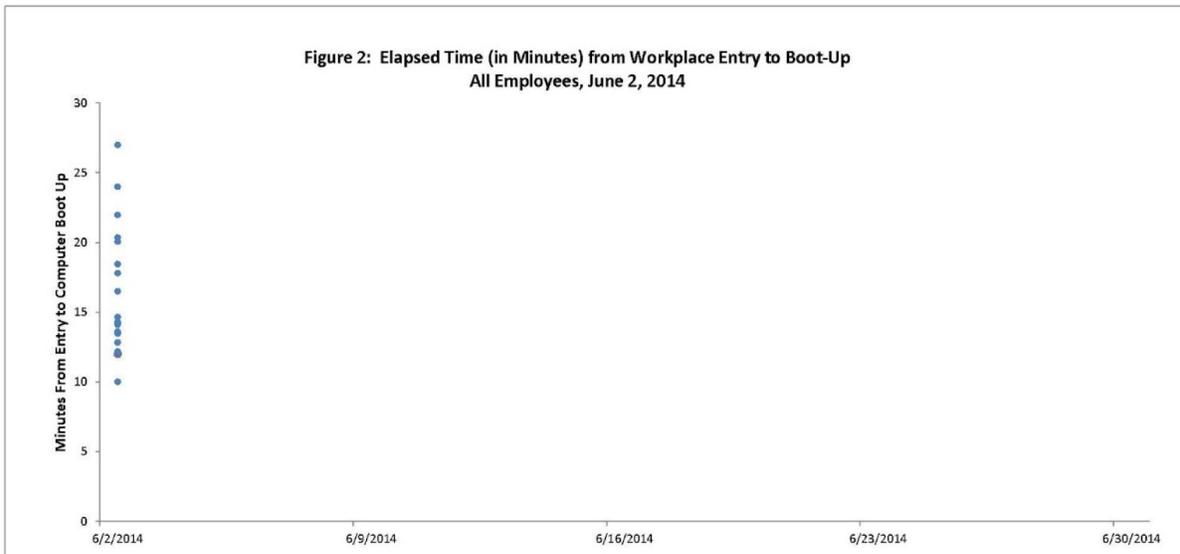

Figure 2: Elapsed time of all employees between entering and initiation of computer

Here is what we noticed: Whether an employee entered the workplace ten minutes before logging into the computer, or logged in more than 25 minutes later, each employee entry in Figure 2 was a sample measure of pre-shift activity time. But the variation from one employee to the next showed that even the minimum observed time for any employee appears to have included some non-compensable minutes.

Figure 3, below, demonstrates another variable in measuring compensable time: elapsed time entries for the same individual in Figure 1 over the course of the month. Figure 3 shows 21 entry-to-boot-up elapse times for that individual, occurring from Monday, June 2, 2014 to Monday, June 30, 2014. Over this one month, the chart shows that elapse times for this individual (in red dots) varied between a high of 17.53 minutes and a low of 5.78 minutes.
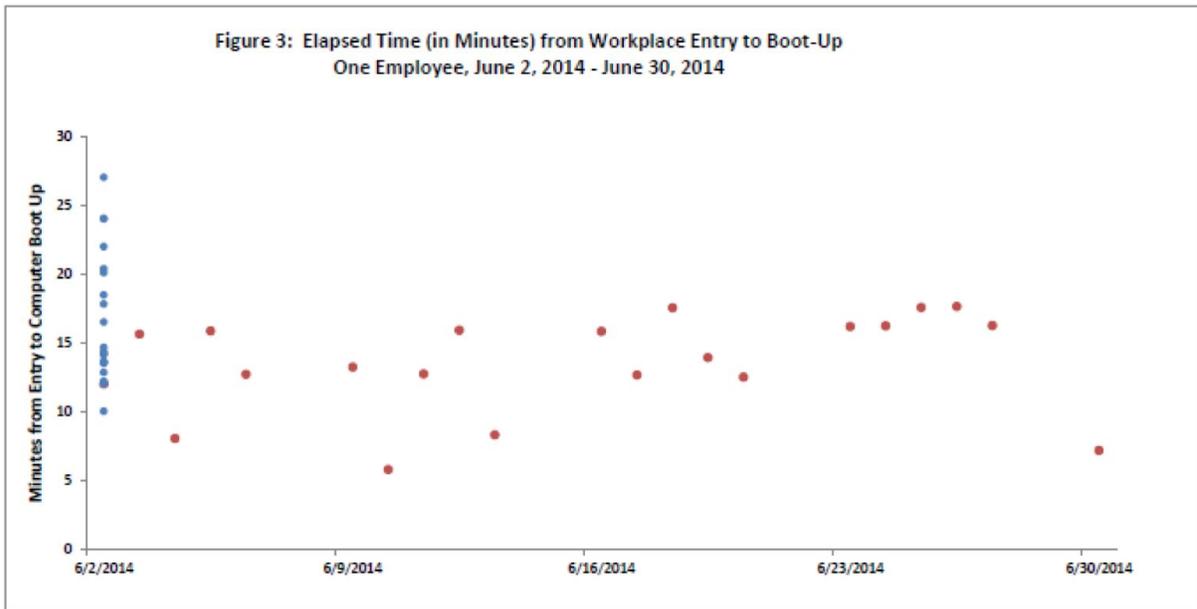

Figure 3: The elapsed time between entering the workplace and boot-up
for one individual during the month of June

In **Figure 4**, we measured elapse times for all employees, for all of 21 work days in June 2014; these elapse times are shown below. We also added three summary statistics: 1) the average (or "mean") elapsed time, for all employees over the course of the month; 2) the 50th percentile ("median"); and 3) the fifth percentile, in minutes.
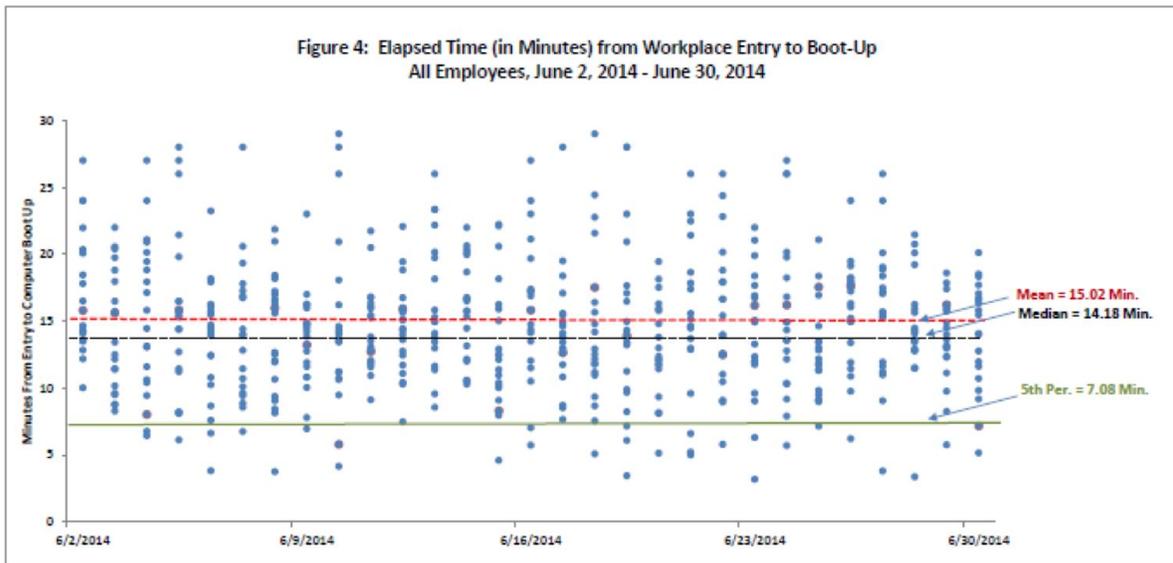
*Figure 4: The elapsed time between entry and boot-up for
all employees, for all of June, along with statistical measures*

CONCLUSIONS

Our initial goal was to measure the compensable time required for an individual to efficiently enter the workplace, perform the activities required for booting up the computer, and begin their paid work. Based on the elapse times demonstrated in Figure 4, one potential measure of compensable time might be the absolute smallest amount of time (arguably the most efficient pre-shift activities) demonstrated on June 24, 2014, of 3.18 minutes.

However, we felt that a minimum value might be too demanding: It requires walking at a faster speed than a typical employee would be capable of, and represented a day in which no activity needed to take place besides walking straight to the computer. For this reason, we selected the 5th percentile value of elapsed times—for this month, 7.08 minutes—as clearly possible, and a reasonable measure of compensable time.

An opposing expert in this matter argued that the median number of minutes (14.18) was a reasonable measure of pre-shift compensable activity time. We disagreed. We argued successfully that the median statistic was far longer than necessary.

The difference between the median number of minutes proposed by plaintiffs' experts and our suggested value, the 5th percentile of minutes, was significant: It reduced the estimated damages (to be paid by the company) by approximately 50%. We ended up combining elapse

times from all locations and all months. These calculations resulted in similar reductions in estimated compensable minutes. This meant that the company was liable for considerably less in economic damages.