

Employee Benefits & Executive Compensation Overview

The Employee Benefits & Executive Compensation Practice Area represents clients who have established and maintain broad-based retirement plans, group welfare plans, and fringe benefit arrangements for their rank-and-file employees as well as stock-based incentive plans, non-qualified deferred compensation plans, and other perquisites provided to executives. The practice generally involves the preparation of the documents that implement and communicate these programs to eligible employees in a manner intended to simultaneously achieve the purposes of the program and not expose the client to unexpected duties, liabilities, or obligations. The practice also includes litigation defense work relating to all forms of benefit claims and causes of action under ERISA. Clients represented by this practice group include publicly traded companies, private businesses, and 501(c)(3) entities.

The Employee Benefits & Executive Compensation Practice Area has wide-ranging experience in all aspects of employee benefits and executive compensation arrangements, including their design, administration, and, where necessary, defending against litigation. More specifically, our experience includes:

- The design and establishment of tax-qualified plans: traditional defined benefit, cash balance, profit sharing, new comparability, age-weighted, 401(k), safe harbor 401(k), money purchase, employee stock ownership plans (ESOP), and Davis-Bacon.
- The design and establishment of non-qualified executive retirement plans and the funding of the benefits: SERPs, excess benefit, eligible 457(b) plan, ineligible 457(f) arrangements, rabbi trusts, corporate-owned life insurance (COLI), trust-owned life insurance (TOLI).



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- Design and establishment of stock-based incentive plans: incentive stock options, non-qualified stock options, stock appreciation rights (SARs), restricted stock and restricted stock units, performance share and performance units, employee stock purchase (Section 423) plans, and phantom stock and SAR plans.
- Assistance in the drafting, design, and implementation of insured and self-funded health plans, wrap-around welfare plans, cafeteria (Section 125) plans, severance pay plans, retention bonus plans, and voluntary early retirement window plans.
- Drafting of summary plan descriptions, prospectuses, summaries of material modification, and other participant communication materials.
- Drafting of employment agreements with executives.
- Preparation of requests to the Internal Revenue Service (IRS) to issue a favorable determination for plans intended to qualify under Section 401(a).
- Preparation of Form S-8 registration statement filed with the Securities and Exchange Commission registering securities offered under employee benefit plans.
- Preparation of the documents necessary to obtain the approval of the Pension Benefit Guaranty Corporation (PBGC) and the IRS to terminate qualified plans, including defined benefit pension plans.
- Advise and prepare documents relating to the correction of failures relating to tax-qualified plans, including request under the Voluntary Correction (VCP) and Self-Correction Programs (SCP) authorized under the IRS Employee Plans Correction Resolution System (EPCRS), Delinquent Filer Voluntary Compliance Program (DFVC), and the Voluntary Fiduciary Correction Program (VFCP).
- Guidance in the areas of fiduciary responsibilities and drafting of investment policies.
- Preparation of applications for U. S. Department of Labor prohibited transaction exemptions, and assistance in structuring transactions to fall within the scope of the expedited procedure for obtaining a prohibited transaction exemption.
- Compliance reviews of qualified domestic relations orders and qualified medical child support orders.
- Assistance with COBRA and HIPAA compliance and procedures.
- Drafting of employee benefit representations and post-closing covenants in connection with corporate acquisitions and similar transactions.

- Drafting of employee benefit representations, negative covenants, affirmative covenants, notice conditions, and events of default in connection with corporate financings.
- Assistance in connection with governmental audits by the IRS, PBGC, and the U.S. Department of Labor's Employee Benefits Security Administration (EBSA).
- Notification and advice respecting changes in the laws applicable to employee benefits, executive compensation, and fringe benefit arrangements.
- Assistance and advice in the day-to-day administration of retirement, health and welfare plans.
- Advice regarding the employer's obligations to fund single employer defined benefit pension plans, collectively bargained pension plans, multiemployer pension plans, and multiple employer pension plans after the enactment of the Pension Protection Act of 2006 (PPA 2006).
- Review of contractual arrangements with employee benefit vendors, including administrative services contracts, trust agreements, master trust agreements, custodial agreements, investment manager agreements, and investment consultant agreements.
- Defense of litigation against a wide variety of claims, both single plaintiff and class-action, including allegations of wrongful denial of benefits (ERISA Section 501(a)(1)(B) action), unlawful interference in a participant's right to attain benefits (ERISA Section 510 action), breach of fiduciary duty (ERISA Section 502(a)(2) action), unlawful age discrimination in the design of a cash balance plan (ERISA Section 502(a)(3) action), breach of fiduciary duties in ESOPs, assessment of withdrawal liability by multiemployer pension plans, COBRA violations, and unlawful reduction in retiree welfare benefits.

Clients represented by the Employee Benefits & Executive Compensation Practice include employers in a myriad of industries, including large publicly traded employers and small private businesses. They also represent a significant number of 501(c)(3) entities and, to a lesser degree, governmental entities.