

# Employee Benefits and Executive Compensation

We represent and advise private and public sector employers in virtually every aspect of employee benefits, executive compensation and stock, and other equity-based compensation law.

We emphasize a risk management approach to alert our clients to potential problems and current hot issues with government regulators and auditors. We take steps early to reduce the possibility of expensive benefits, compensation, and related contract claims, disputes, and litigation.

Our depth of experience enables us to handle both highly targeted and less complex matters. We are committed to providing the highest quality legal service in a timely and cost-effective manner.

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## Areas of Concentration

- Corporate Transactions
- Employee Benefits and ERISA
- Employee Stock Ownership Plans
- Equity Incentive Plans
- Fiduciary and Prohibited Transaction Advice
- Flexible Benefit Plans
- Health Care Plans
- Non-Qualified Retirement Plans
- Other Welfare Benefits

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## Attorneys

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## Areas of Concentration

### Corporate Transactions

Members of our Employee Benefits and Executive and Stock Based Compensation Practice Group assist in plan-related due diligence, plan mergers, spin-offs, and terminations. Our employee benefit attorneys frequently advise on pre- and post-transaction planning for transition and compliance issues relating to benefit plans and compensation programs.

### Employee Benefits and ERISA

We advise on employee benefits matters including legal issues arising under the Employee Retirement Income Security Act of 1974 (ERISA), the Internal Revenue Code, federal and state securities laws, and other laws that regulate employee benefit plans and executive compensation. Our experience includes advising public and privately held companies, financial institutions, insurers, public agencies, trustees, and fiduciaries in all aspects of the law. We advise on executive compensation, stock and benefits, including compliance with Section 409A of the Internal Revenue Code. We select, design and draft qualified and nonqualified retirement plans and stock option and other equity-based plans for employers, including 401(k) plans, profit sharing plans, deferred contribution plans, deferred benefit plans, ESOPs, and cash balance plans.

We advise employer clients with respect to funding vehicles, deductibility of contributions and other tax

issues. We develop and draft prototype individual retirement accounts and individual retirement annuities, Section 403(b) annuity plans and contracts, and 457 arrangements, and obtain IRS approval of documents for prototype sponsors. We also obtain favorable IRS determination letters; prepare administration forms, notices and summary plan descriptions; review and negotiate recordkeeping, administration, and investment management agreements; assist with distribution planning and tax issues, Form 5500 filings, and IRS/DOL audits; and advise on fiduciary responsibility provisions of ERISA concerning investment of plan assets.

Our attorneys have been involved in numerous controversies and litigation matters under ERISA, including fiduciary breach claims and participant claims for benefits. Utilizing the experience gained in these litigation matters, we routinely exercise preventative counseling with our clients by informing them of new developments in the law and the courts and recommending courses of action. We also defend employers who are sued for breach of fiduciary duty and denial of benefits under ERISA.

### Employee Stock Ownership Plans

Our lawyers are experienced with ESOP transactions. They have handled a wide variety of transactions including leveraged buyouts, refinancing, and terminations of leveraged ESOPs, and conversion of existing plans into ESOPs. They have advised in-house fiduciaries, independent fiduciaries, and employers issuing stock.

### Equity Incentive Plans

Many of our clients provide various equity incentives to their employees to encourage entrepreneurial participation in company businesses. In this connection we structure a wide variety of incentive and nonqualified stock option plans, stock appreciation rights and performance share plans, and "golden parachute" arrangements. For privately held companies, these arrangements also typically involve the negotiation of various buyout, registration right, and shareholder agreement provisions. For publicly held clients, these arrangements involve registering the equity in such plans with the Securities and Exchange Commission to optimize the liquidity for employees.

#### Experience

Registering common stock in publicly held companies with the Securities and Exchange Commission and maintaining such registrations on a periodic basis.

Drafting performance share and SAR plans for privately owned companies that provide employee equity incentives but maintain voting control with founding stockholders.

Structuring incentive and nonqualified stock option plans for both privately and publicly held companies in the most tax-advantaged method appropriate for a particular company's circumstances.

Drafting plans for compliance for with Securities and Exchange Commission regulations on insider trading and reporting.

### Fiduciary and Prohibited Transaction Advice

Our attorneys advise plan sponsors, plan fiduciaries, investors, developers and professional money managers with respect to the fiduciary and prohibited transactions issues arising from the investment of pension funds, emphasizing a problem solving approach to these issues.

### Flexible Benefit Plans

Our attorneys counsel on plan design and tax and ERISA issues for flexible benefit plans. They draft plan

documents, summary plan descriptions, and related forms and notices as well as assist with Form 5500 filings, benefit claim issues and disputes, and IRS audits.

### Health Care Plans

Our attorneys counsel on plan design and federal and state mandates such as continuation coverage (COBRA), health plan portability laws (HIPAA), benefit exclusions, and subrogation; review and negotiate group insurance contracts and certificates, HMO contracts, and managed care arrangements such as point of service plans, exclusive provider organizations, preferred provider organizations, mental health care benefits, employee assistance plans and pharmacy benefits; draft self-insured plans; review third-party administration and stop-loss agreements; and draft and review summary plan descriptions and other participant communications. Our attorneys are frequently called upon to advise on tax issues, funding arrangements, DOL audits, benefit claim issues and disputes, ERISA claims review procedures and litigation, and use of VEBA trusts.

### Non-Qualified Retirement Plans

We assist in the design, selection, negotiation, and drafting of non-qualified retirement plans and related funding approaches. Additionally, we submit private letter ruling requests to the IRS, prepare administration forms and notices, and advise on tax issues.

#### Experience

- Excess benefit plans
- "Top hat" plans
- Deferred compensation arrangements
- Individual executive arrangements
- Rabbi and secular trusts
- Deferred director fee plans
- Section 457(f) plans

### Other Welfare Benefits

We design, draft, and provide counsel on tax, ERISA, funding, and vendor contracting issues.

#### Experience

- Life insurance and AD&D programs
- Short- and long-term disability plans
- Severance benefits
- Executive benefits
- Medical expense reimbursement accounts
- Dependent day care reimbursement accounts
- Tuition assistance plans
- Adoption assistance plans

Other tax-favored fringe benefits