



# EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION

## Employee Benefits

The benefits landscape has changed dramatically in recent years. Retirement plans have had to adapt to changing laws, corporate restructurings, global competition, cost reallocations, investment scandals, fiduciary scrutiny and regulatory crack-downs. Employer paternalism has shifted toward employee activism as the workforce has demanded benefit portability and a larger say in retirement programs. Increasingly, as younger generations place more emphasis on private savings over arguably shaky government programs such as Social Security, retirement plans are viewed as an ever more important part of the employer's total benefits and compensation package offered to employees.

The attorneys in our Employee Benefits and Executive Compensation Group provide a broad range of services to meet our clients' needs. Our services are practical, timely and efficient, thereby enabling clients to develop effective and flexible responses to the retirement plan challenges and opportunities they face. These services cover the full spectrum of retirement plans, including:

- Individual account plans (401(k) and Roth 401(k) plans, profit sharing plans, money purchase pension plans)
- Defined benefit pension plans
- Hybrid plans (cash balance and target benefit plans)
- Equity plans (stock bonus plans and employee stock ownership plans)
- Specialized plans, including ESOPs, 403(b) plans, 457 plans, multi-employer and multiple employer plans
- Nonqualified retirement plans (SERPs, excess benefit and top-hat plans)
- Welfare benefit plans (health, life, LTD and cafeteria plans)
- Retiree medical plans (ancillary to pension plans or freestanding)

We provide our clients with advice that prevents questions from becoming issues and issues from becoming problems. Our services cover the full life cycle of benefit plans, and include the following:

When the plan is being developed:

- Designing and drafting plan documents and operational procedures
- Implementing trusts and administrative, investment and other fiduciary functions
- Assisting in employee communications and educational programs
- Filing all necessary documents with appropriate governmental agencies

Once the plan is operational:

- Monitoring and advising clients of new opportunities and changes in the law
- Redesigning plans and related documents to meet changing client and legal requirements
- Counseling regarding domestic relations orders (QDRO5), anti-discrimination requirements, benefit payments and other administrative and compliance issues
- Conducting plan and fiduciary compliance audits
- Advising on corrective and self-corrective government programs for both plans and fiduciaries
- Representing the employer and other plan fiduciaries during Internal Revenue Service (IRS), Department of Labor (DOL) and Pension Benefit Guaranty Corporation (PBGC) plan audits
- Assisting in employer mergers and acquisitions, plan mergers and spin offs and private and public investments by plans.

Upon plan termination:

- Assisting with administrative and procedural requirements for plan terminations
- Calculating and processing benefit payments
- Implementing dissolution of plan trusts
- Assisting with the preparation and dissemination of employee communications
- Filing all necessary documents with the IRS and PBGC to terminate plans.

**Executive and Equity Compensation**

The regulatory environment for executive and equity compensation plans has increased in complexity over the past several years. Effective compensation planning requires meeting client needs while accommodating continuing changes in tax, ERISA, labor, employment, corporate and securities laws, stock exchange rules, and accounting principles.

Our attorneys provide substantial experience in dealing with these complexities, as they serve business executives, boards, and compensation committees in designing, implementing, administering, and adjusting sophisticated compensation plans. The services provided by our attorneys include the following:

#### Designing plans and agreements

- Negotiating and drafting executive employment agreements, and change in control provisions in view of Code section 280G of the Internal Revenue Code
- Drafting equity compensation plans, including stock option, stock appreciation rights, restricted stock, phantom stock, employee stock purchase plans and performance share/unit plans
- Providing counsel on deferred compensation plans (in view of Code section 409A), and on alternative funding techniques, including rabbi trusts, life insurance and secular trusts
- Advising on the design of supplemental pension plans
- Designing and drafting cash incentive, bonus and performance programs
- Assisting in the negotiating, designing and implementing of severance arrangements
- Providing counsel on non-employee director and consultant compensation
- Designing compensation plans and agreements for tax-exempt entities that comply with Code section 457

#### Providing Counsel on Compliance

- Providing counsel on the requirements for non-qualified deferred compensation plans imposed by Code section 409A
- Advising on performance-based compensation rules to minimize the impact of the \$1 million cap on deductible compensation under Code section 162(m)
- Advising on alternative approaches for minimizing the impact of limitations on golden parachutes under Code section 280G
- Assisting clients in complying with applicable securities registration requirements, or qualifying and applying for exemptions from registration
- Providing counsel on approaches for minimizing the risks under the insider trading restrictions imposed by Section 16(b) of the Securities Exchange Act of 1934
- Assisting clients in developing an approach for complying with the SEC executive compensation proxy

disclosure rules

- Advising on the use of SEC Rule 10b5-1 trading plans to minimize insider-trading liability
- Advising on the constructive receipt rules, including issues relating to the timing of deferrals and distributions

#### Assisting in Corporate Restructurings

- Implementing plan provisions triggered by a corporate transaction
- Designing and assisting in the implementation of transition plans, including retention, severance and incentive plans
- Providing counsel on proposed changes to executive compensation arrangements required by M&A and restructuring transactions

We counsel clients of all sizes and types, including large multi-national corporations, smaller publicly and privately held firms, investment banks, utilities, construction and engineering companies, insurance companies and brokers, trade associations and non-profit organizations, partnerships and limited liability companies.

We provide a “big picture” perspective on executive and employee benefit alternatives available to our clients.

We meet our clients’ needs and goals by listening, by practical thinking, and by applying the multidisciplinary talents of our firm to the benefits plan opportunities facing our clients.