Practices & Industries

Employee Benefits & Executive Compensation

Overview

Our Employee Benefits and Executive Compensation practice group provides sophisticated planning and consulting services to our clients with respect to issues affecting pension and welfare benefit plans and executive compensation arrangements under the Internal Revenue Code, ERISA, and federal and state securities laws. We bring to our clients a powerful combination of technical and practical experience in this rapidly changing area.

Qualified Plans

Our clients who sponsor qualified pension plans rely on us to assist them with all aspects of qualified plan work, including the design, submission, implementation, merger, and partial and full termination of all types of pension plans and related participant communications. Changes in accounting rules have driven plan sponsors to de-risk defined benefit pension liabilities. We partner with our clients to help them investigate and implement strategies to de-risk their plan's liabilities by changing investment policy, implementing lump-sum offers to deferred vested participants and/or retirees, and annuitizing plan liabilities. Plan sponsors of qualified plans, 403(b) plans and 457 plans turn to us to rectify operational defects in plan administration and documentation under the IRS voluntary compliance programs and to correct fiduciary breaches under the Department of Labor's voluntary correction program.

Fiduciaries of employee benefit plans rely on our counsel regarding their fiduciary duties and ERISA reporting and disclosure obligations. New reporting and disclosure obligations under ERISA and the heightened risk of fiduciary liability have required fiduciaries of defined contribution plans to scrutinize contracts with service providers, carefully draft participant communications, and ensure that the fiduciaries responsible for the investment of plan assets monitor and document their decision-making process. Additionally, we routinely negotiate investment management agreements and limited partnership agreements with respect to our fiduciary clients' investment of plan assets and advise them on unrelated business taxable-income issues.

As a result of our knowledge of our clients' businesses and familiarity with their benefit plans, we are uniquely suited to assist with employee benefit issues arising before or in connection with corporate transactions. We can evaluate due diligence materials, assist with structuring executive compensation arrangements to retain key employees, evaluate the tax ramifications of executive compensation arrangements, and design employee benefit plans and nonqualified deferred compensation arrangements to meet the goals of the new entity, as well as draft and analyze transaction documents affecting such arrangements.

Welfare Benefit Plans

On the welfare plan side, we provide advice regarding flexible benefit plan design, medical plan design issues, administrative services-only arrangements, and COBRA and HIPAA compliance. We partner with our clients and their vendors to review their group health plans and develop HIPAA compliance plans, including privacy and security procedures, plan amendments and business associate agreements. As consumer-driven health plans have grown in popularity, we have helped our clients evaluate the multiple options for cost containment using Flexible Spending Accounts (FSAs), limited-purpose FSAs, Health Savings Accounts (HSAs) and Health Reimbursement Accounts (HRAs). Since the passage of the Affordable Care Act (ACA), a significant portion of our welfare benefit practice has been devoted to helping our clients understand the impact of

the ACA on their self-funded group health plan design and the potential penalty exposure under the employer mandate. We assist our clients with the new reporting requirements for Applicable Large Employers (ALEs) that provide coverage to full-time employees under their self-funded plans. With the threat of the Cadillac excise tax looming as a risk for many employers with respect to coverage provided under their group health plans, we help evaluate ways to change benefit design and delivery to avoid imposition of the tax.

Executive Compensation

The competition for executive talent is fierce, and we are able to give our clients an edge by helping them structure and implement executive compensation plans and arrangements. We design, draft and consult with respect to restricted stock, restricted stock unit, and stock option plans and other equity compensation schemes, working closely with our Corporate practice to keep clients advised of changes in the securities laws that may affect benefit plans, such as Sarbanes-Oxley, changes in executive compensation disclosure rules, and Section 280G and Section 162(m) issues. We also help our clients choose and establish non-equity-based supplemental executive retirement plans; design and implement executive severance, employment and change-in-control agreements; and maintain their nonqualified deferred compensation plans' compliance with IRS Section 409A, and correct those plans, if necessary, under the Section 409A correction program.

Experience

No aspect of this advertisement has been approved by the highest court of any state. Prior results do not guarantee a similar outcome.

Specific work by the Employee Benefits and Executive Compensation practice group includes the following:

- In connection with limited-time, lump-sum offers from defined benefit plans, we have worked with the plan sponsor and its vendors to evaluate and implement the lump-sum window, including negotiating vendor contracts, reviewing all participant communication and SEC disclosure, drafting plan documents, consulting on nondiscrimination testing, and assisting with claims and appeals for participants who were excluded from the offer
- We have successfully negotiated numerous settlements with the Internal Revenue Service under its Employee Plans Compliance Resolution System using the Voluntary Correction Programs for operational defects and document defects under qualified plans, including failure to correctly perform Section 401(k) and 401(m) discrimination tests, failure to obtain spousal consent to distributions, improper distributions, miscalculation of benefit accrual service, exclusion of eligible employees, failure to provide suspension of benefit notices and failure to timely amend plan documents
- We are assisting several clients with the transition of their participants from a group retiree medical plan to individual retiree medical products purchased on a private exchange with HRA funds, including contract negotiation, participant communications and HRA documentation
- We are working with several ALEs to help them optimize payroll and human resources information system (HRIS) reporting to provide the information necessary to comply with new ACA reporting obligations for self-funded group health plans
- We serve as merger and acquisition counsel for numerous clients with respect to benefits issues. In connection with this type of representation, we negotiate benefits, engage in due diligence, and advise clients regarding partial terminations, distributions, ERISA 204(h) notice requirements, Pension Benefit Guaranty Corporation (PBGC) reportable event disclosure, plan mergers, multi-employer plan liability and amendment issues stemming from the transactions
- On behalf of various new entities created through spinoffs, the Employee Benefits and Executive Compensation practice group helped design and implement a full range of welfare, pension and executive compensation plans for these companies' thousands of employees. In connection with such projects, we negotiated with third-party providers and were involved in all phases of employee communications, including internal announcements, summary plan descriptions, and preparation of administrative forms and guidelines

- We serve as fund counsel to a complex of multi-employer pension plans, assisting in all aspects of compliance and administration, including withdrawal liability issues
- We regularly serve as independent counsel (to compensation committees or management) on executive compensation issues for corporate clients that are considering or anticipating a sale or merger transaction