

# Employee Benefits, Compensation & ERISA

## Overview

We make it easier for employers to attract and retain the best and brightest employees by helping them offer competitive to cutting-edge benefit packages while minimizing liabilities.

We also help service providers offer their expertise and bring innovative products to market using our knowledge of the numerous regulations that govern their industries.

### **Practical Solutions**

Our practical solutions for plan sponsors and service providers make it possible for employees to receive much-appreciated and affordable retirement and welfare benefits.

We help minimize costs and liabilities by advising on Internal Revenue Code and ERISA requirements, in general, and fiduciary issues, in particular. Our knowledge covers qualified retirement plans, nonqualified plans, and insurances, including medical and life, allowing us to provide creative solutions with limited risk.

### **Service Providers**

Our advice to service providers, including the insurance industry, securities broker-dealers, financial services companies, third-party administrators, managed care companies, and welfare plan claims adjusters, helps them offer the services and products that plan sponsors need with the desired tax and fiduciary impacts.

### **Plan Sponsors**

We assist plan sponsors with the entire benefit plan life cycle, starting with which arrangements to offer, the proper selection of service providers, and drafting or reviewing plan documentation. Our ongoing counseling includes advice on fiduciary compliance, plan interpretations, administrative advice, error correction, and claims administration. We also advise on plan terminations or conversions.

We handle arrangements including 401(k) plans, defined benefit plans, IRAs, profit-sharing plans, money purchase pension plans, 403(b) plans, 457 plans, 409A plans, life insurance, medical insurance (fully insured and self-insured), cafeteria plans, wellness programs, flexible spending accounts, parking reimbursement plans, and wrap documents.

Our clients include public entities, for-profit closely held companies, controlled groups, and nonprofits.

## **Targeted Skills**

We advise service providers as to their obligations under contract and applicable law, including ERISA, the Internal Revenue Code, the Securities Act, and FINRA Rules. Regarding welfare benefit plan sponsors and providers, we advise on numerous issues, including the Affordable Care Act, COBRA, and FMLA requirements.

We offer fiduciary advice to service providers and plan sponsors to minimize liabilities while providing proper plan services, and we defend the actions of those sponsors and service providers when questioned by a participant, beneficiary, regulatory agency, or court.

We advise on proper plan documentation and operations, including the correction of later-discovered errors. To the extent those errors are discovered by a regulatory agency, we represent our clients in audit situations.

We defend our clients in court, advise them outside of it, and frequently offer our insights at speaking engagements and in publications.

# Experience

## **Representative ERISA Matters**

- Counsel for numerous financial institutions and insurance companies in the area of ERISA litigation involving both employee welfare and retirement plans. In the health and welfare benefit plan area, we represent clients in multidistrict class action litigation against major managed care providers. We have prevailed in matters for plan sponsors in cases involving such cutting-edge issues as preemption of state law enforcement of a plan reimbursement provision, and the inapplicability of the “make whole” doctrine to a health insurer’s or health plan’s enforcement of a plan reimbursement provision.
- Whether death benefits resulting from autoerotic asphyxiation are covered under an accidental death policy provision that excludes benefits for death resulting from the intentional infliction of bodily injury.
- Use and enforcement of the “gender rule” for purposes of coordinating plan benefits.
- Whether future medical benefits become vested and irrevocable for individuals receiving long-term disability benefits at the time of disability or at the time the medical benefits are incurred.
- Whether bipolar disorder is a mental or physical illness for purposes of limiting long-term disability benefits.

## **Representative Retirement Plan Area Experience**

- Defended 401(k) plan service providers in nationwide class action involving their receipt of revenue sharing fees.
- Obtained dismissal on behalf of a life insurance client in putative class action involving IRC § 412(i) plans.
- Prevailed on motion to dismiss for a 401(k) plan trustee in ERISA breach of fiduciary duty stock-drop case.
- Represented 16 state guaranty funds in litigation in federal court in California relating to claims by holders of more than \$200 million in guaranteed investment contracts against the guaranty funds for alleged breaches of ERISA fiduciary duties in connection with insurer's rehabilitation plan.

## Insights

11.08.2023

DOL Tries Once Again To Define What Constitutes Investment Advice Under ERISA

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01.11.2022

Private Equity in 401(k) Plans: A Holiday Sequel

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01.11.2022

DOL to Plan Sponsors: "It's Mostly All About the Benjamins!"

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07.01.2020

DOL Proposes Restoring Original Investment Advice Regulation and New Prohibited Transaction Class Exemption for Investment-Advice Fiduciaries

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05.07.2020

COBRA: Avoid Getting Snakebit! (Notice Update, Deadline Update, Litigation Update)

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05.07.2020

Coronavirus Employment Tax Credits and Health Insurance

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04.27.2020

Coronavirus-Related Retirement Plan Distributions, MPPPs, and Governmental 401(a) Plans

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04.06.2020

Coronavirus-Related Retirement Plan Distributions and Loans: Helping Retirement Plan Committees Decide

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04.03.2020

Planning to Claim the COVID-19-Related Tax Credits

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04.03.2020

Executing Testamentary Documents During Pandemic Lockdowns

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03.24.2020

Retirement and Health Plan Cost Reductions During a Financial Downturn or Recession

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02.04.2020

Using Nonqualified Plans to Reduce 401(k)/403(b) Costs

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01.24.2020

Four Noteworthy Highlights on the Taxation of Fringe Benefits

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09.09.2019

Plan Amendment Deadline Approaching for Plans That Implemented Hardship Changes in 2018 and 2019

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03.07.2019

EEO-1 Pay Data Collection Stay Held "Arbitrary and Capricious"

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08.16.2018

Good News for Federal Contractors With Affordable Care Act Concerns

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06.26.2018

Retirement Plans Can Solve the Million-Dollar Problem for Entities at Risk of Excise Taxes on Compensation

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02.19.2018

Tax Incentive for Paid Family Medical Leave May Alleviate FMLA Benefit Complications

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02.01.2018

Practical Insights on DOL Guidance Affecting Retirement, Medical and Disability Plans

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12.21.2017

Parking Is Now A Taxable Expense

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12.05.2017

The DOL's Fiduciary Rule: An Update and Practical Advice

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10.24.2017

Executive Orders May Be Asking Too Much of Regulators

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10.06.2017

An Update: Retirement Plans, Leave Donation Programs, and Loans for Relief During States of Emergencies

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09.18.2017

Retirement Plan and Leave Donation Programs During States of Emergencies

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08.15.2017

The DOL's Fiduciary Rule

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## Our Team

## Key Contacts



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## Additional Members



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## Related Practices

- Banking, Commercial, and Consumer Finance
- Health Care
- Financial Services Regulatory
- FINRA Enforcement, Arbitration, and Appeals
- Labor & Employment
- Securities Transactions and Compliance
- Tax

- ERISA Employee Benefit Plan Litigation
- Sales Practices – Market Conduct Litigation
- Nonprofit Organizations
- Estates, Trusts and Probate
- Life, Annuity, and Retirement Litigation
- Discrimination
- Wage and Hour
- Education
- Cannabis Law

## Related Industries

- Banking, Commercial, and Consumer Finance
- Health Care