

Practices

# Employee Benefits and Executive Compensation

Employees and their compensation packages are at the heart of a company's success. Plans must be crafted to reflect existing and long-term strategy and goals for the business, as well as continually shifting regulatory requirements. Akerman's employee benefits and executive compensation team works with clients to design, implement, and administer qualified and non-qualified retirement, health and welfare plans, and advise on benefit and compensation issues that arise in both domestic and cross-border situations.

Our lawyers work closely with boards of directors, board committees (such as compensation, retirement, or investment), plan administrators, and plan fiduciaries on the implementation and maintenance of employee benefit programs. We counsel plan sponsors and service providers regarding compliance with ERISA, the Internal Revenue Code, the Affordable Care Act, COBRA, and the Mental Health Parity and Addiction Equity Act. We play a key role in assisting our clients with respect to benefits plan audits by the Internal Revenue Service and the Department of Labor, and represent clients before both agencies on compliance and disclosure requirements.

We regularly counsel publicly traded and privately held companies and tax-exempt organizations on executive compensation issues, with respect to employment agreements, severance arrangements,

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## Connect With Us



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## Our Team

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## Related Work

Corporate  
Corporate Tax  
Employee Benefits and  
ERISA Litigation  
Labor and Employment  
Tax

golden parachutes, and the reporting and disclosure of these compensatory arrangements.

Our broad client base allows us to help clients see what is on the horizon — to anticipate new risks and exposures with respect to employee benefit programs, and advise our clients on potential ways to address new and challenging legal hurdles. Our familiarity with an array of plans and executive pay programs provides us with valuable insight for creating tax-effective compensation and benefit solutions for large clients and practical and workable programs for our smaller clients.

## What We Do

Our team can support every aspect of plans, from designing, drafting, and implementation to maintenance counseling. Specifically, we have demonstrated skill in the following areas:

- Broad-Based Retirement Plans (defined benefit and defined contribution plans (individually designed or IRS pre-approved))
  - IRS correction programs for qualification and operational plan failures
  - Multiple employer plans
  - 401(k) and 403(b) fee litigation
  - Funding and de-risking strategies for defined benefit pension plans
  - Third-party administrator or other service provider service contract negotiation
  - Benefits issues in M&A, including plan termination, mergers, or spinoffs
  - Governmental information reporting and disclosure
- Broad-Based Health and Welfare Plans (medical, dental, vision, life, disability)

- Affordable Care Act and healthcare reform
- Self-funded medical plans
- VEBA/MEWA issues
- HIPAA privacy compliance
- Claims disputes
- Health savings accounts and health reimbursement arrangements
- Retiree medical strategies and funding
- Fringe benefits and PTO
- Cafeteria plan (health and dependent care flexible spending accounts)
- Wellness benefits and on-site clinics
- Vendor agreement negotiation
- COBRA administration
- Executive Compensation Services (private and public company)
  - Equity compensation awards
  - Nonqualified deferred compensation plan – Code Section 409A compliance
  - Executive employment agreements
  - Executive severance arrangements
  - Incentive compensation structures (short- and long-term)
  - Executive fringe benefits (e.g, life insurance, auto, spousal travel)
  - Split-dollar life insurance
  - Change in control arrangement
  - Retention agreements
  - Multinational executive mobility
  - Tax reporting and withholding
  - Governmental reporting and disclosure

- Subspecialty for tax-exempt organizations (457(f) arrangements and intermediate sanctions)
- Plan Governance and Fiduciary Obligations
  - DOL and IRS audit advisory services (and PBGC in pension termination situations)
  - Fiduciary training
  - Model committee charters, calendars, investment policy guidelines, best practices for vendor presentations at committee meetings, effective minutes and record retention advice for employee benefit plan committees
  - Advisors to both committees and boards on member independence and adherence to conflict of interest policies
  - Counseling with respect to implications and compliance with tax return compensation disclosures and reporting of executive compensation and benefits

## Representative Experience

- Broad-Based Retirement Plans
  - Submission of private letter ruling request on absence of Code Section 4980 excise tax on a multimillion dollar pension reversion pertaining to a tax-exempt organization
  - Advise a healthcare client on how to transition and structure its retirement plan platform to a multiple employer plan following its acquisition by a private equity company
- Broad-Based Health and Welfare Plans
  - Assist private equity firm that incurred challenges in certain states under the corporate practice of medicine rules to reorganize and restructure its workforce with respect to health and welfare arrangements to

ensure continued coverage by the insurance carrier as a MEWA

- Assist a family of companies on benefit plan compliance and strategy matters related to evolving early retirement and post-retirement offerings and workforce management strategies
- Counsel and assist with the implementation of technology-assisted apps and other participant-facing wellness tools in a way that ensures appropriate compliance with the EEOC and DOL regulations on wellness programs
- Advised a healthcare system and its third-party administrator on Mental Health Parity and Addiction Equity Act (MHPAEA) compliance matters in connection with a DOL audit
- Executive Compensation Services (private and public company)
  - Evaluate and prepare Code Section 280G analysis with respect to a \$1 billion transaction in the home improvement sector
  - Advise Italian parent company on creation and implementation of an equity omnibus plan in the U.S. and the respective tax requirements and securities exemptions available thereto
  - Led strategic initiatives, primarily for recruiting and retention purposes, related to a global company's executive benefits offering, including its executive-level medical and nonqualified plan, across the United States
- Plan Governance and Fiduciary Obligations
  - Primary interface with the Department of Labor on a four-year audit of a client wrap plan
  - Primary interface with the Department of Labor on a four-year audit of a client defined

benefit pension plan pertaining to investment  
in limited partnerships