

# Employee Benefits and Executive Compensation

Employers of all kinds – public and private entities, governmental employers, and tax-exempt organizations – rely on Krieg DeVault for customized employee benefit and executive compensation solutions. We also frequently represent plan trustees, third-party administrators, and benefit consultants, including those involved with all types of retirement and welfare plans. Our lawyers include Certified Employee Benefits Specialists and former benefit consultants. We understand the legal and practical issues involved in complex benefit plans, from design and implementation to ongoing administration and plan audits, both internal and initiated by the Internal Revenue Service (IRS) or Department of Labor (DOL). We also work closely with employers to help them contain benefit costs, particularly as they relate to health care. Because we work with all types of employers and plans, we can spot potential problems in employee benefits and executive compensation programs and develop solutions. We strive to assist our employers in avoiding rather than correcting problems. We do this through due diligence during merger and acquisition activities, counseling clients on their fiduciary obligations, and helping to document processes. When a problem does arise, we have lawyers experienced in handling ERISA litigation and governmental audits and penalty assessments. Our compliance team works with employers to correct plan defects and administrative errors. Our lawyers also identify innovative techniques to meet the deferred incentive and equity-based compensation needs of business owners and executives.

## Focus Areas

### Tax-Qualified Retirement Plans

- Design and implementation of plan and trust
- Plan and trust documentation, including procedures and forms
- IRS determination letter requests
- Client updates on legislative and regulatory changes that affect plans
- IRS, ERISA and state law compliance, self-audit and assistance in correcting plan document and operational failures
- Controlled group or affiliated service group analysis
- Advice on fiduciary issues including
- Advice and correction of
- Review of investment policy statements
- Review and negotiation of service provider service agreements
- Advice concerning the reasonableness of plan fees
- DOL audit advice and assistance
- DOL Voluntary Fiduciary Correction program assistance (VFC)
- DOL Delinquent Filer Voluntary Correction program filings (DFVC)

- IRS audit advice and assistance
- IRS Employee Plans Compliance Resolution System program (EPCRS) filings
- IRS Voluntary Compliance Program filings (VCP)
- IRS Self-Correction of Operational Failures (SCP) assistance and documentation
- Plan termination - assistance and government filings (IRS and PBGC)
- DOL reporting and disclosure requirements compliance assistance
- Form 5500 preparation and filing
- Determination of partial plan termination and impact on plan
- Freeze plans -
- Mergers and spin-offs of plans
- Assistance with benefits issues associated with mergers and acquisitions
- ERISA litigation
- Private letter ruling requests
- Technical advice memorandum requests
- Types of Plans
  - Defined Benefit Plans
    - Traditional
    - Cash balance
    - Hybrid
    - Retiree medical accounts (401(h))
  - Defined Contribution Plans
    - Profit sharing
    - 401(k)
    - Employee Stock Ownership Plans (ESOP)
    - Combination 401(k)/ESOP (KSOP)
    - Cross-tested plans
    - Target
    - Money purchase
  - Multiemployer plans
  - Multiple employer plans
  - Church plans
  - Government plans
  - Taft-Hartley

## Health & Welfare Plans

- Plan documentation
- ERISA and state law compliance issues

- Controlled or affiliated service group analysis
- Advice on fiduciary issues including
- HIPAA privacy and security compliance
- COBRA administration and compliance
- DOL audit advice and assistance
- Plan termination
- DOL reporting and disclosure requirements
- Form 5500 preparation and filing
- Review and negotiation of service provider service agreements
- Advice concerning the reasonableness of plan fees
- Assistance with benefits issues associated with mergers and acquisitions
- ERISA litigation
- Advice on onsite medical facilities
- Types of Plans
  - Self-funded and insured health plan arrangements
  - Section 125 cafeteria plans
  - Multiple Employer Welfare Arrangements (MEWAs)
  - Multiemployer (Taft-Hartley) plans
  - Church plans
  - Government plans
  - VEBA's and other funding arrangements
  - Life and disability plans
  - Retiree plans
  - Adoption assistance plans
  - Qualified transportation plans
  - Educational assistance plans
  - Wellness plans

## ERISA Litigation

- Federal and state trial and appellate court litigation
- Litigation, arbitration and mediation services
- Pre-suit claim resolution
- Administrative proceedings
- Representation of plaintiffs or defendants
- Claims for benefits
- Breaches of ERISA fiduciary duties

- Reporting and disclosure violations
- Collection of delinquent contributions
- MEPPA withdrawal liability claims
- Review of ERISA fiduciary liability insurance policies
- Processing of notice of claim with liability insurer
- Malpractice claims against plan service providers
- Review of service provider contracts

## **Employee Stock Ownership Plans**

### **Multi-Employer**

- Board of trustee representation
- Compliance with all applicable federal and state laws
- Attendance at trustee meetings
- Collective contributions owed to fund
- Collective MEPPA withdrawal liabilities on behalf of fund
- Claims for benefits (during administrative, appeal and litigation stages)
- Defense of breach of fiduciary duties allegations against plan fiduciaries
- Subrogation against third parties
- DOL/IRS audits or examinations
- Correction of operational or document failures
- Legal opinions
- Development and documentation of administrative policies and procedures (QDROs, IPSs, RFPs, employer audits, etc.)
- Types of Plans
  - Pension plans
  - Health & welfare plans

## **Tax Exempt and Governmental Plans**

- Design and implementation of plan
- Plan documentation
- Interpretation of statutes or other governing documents
- Controlled or affiliated service group analysis
- Advice on fiduciary issues including

- Review of investment policy statements
- Review and negotiation of service provider service agreements
- IRS determination letter requests
- IRS and state law compliance self-audit and assistance in correcting plan document and operational failures
- IRS audit advice and assistance
- IRS Employee Plans Compliance Resolution System program (EPCRS) filings
- IRS Voluntary Compliance Program filings (VCP)
- IRS Self-Correction of operational failures (SCP) assistance and documentation
- Determination of partial plan termination and impact on plan
- Freeze plans -
- Mergers and spin-offs of plans
- Assistance with benefits issues associated with mergers and acquisitions
- Plan termination - assistance and government filings (IRS and PBGC)
- Private letter ruling requests
- Technical advice memorandum requests
- Guidance on investment authority of appointed officials with respect to plans
- Guidance and legal opinions on the responsibilities of appointed and elected officials with respect to employee benefits
- Additional Services for Tax-Exempt Employers
- Types of Plans
  - Defined Benefit Plans
    - Traditional
    - Cash balance
    - Hybrid
    - Retiree medical accounts (401(h))
  - Defined Contribution Plans
    - Profit sharing plans and 401(k) plans
    - Money purchase plans
    - Target plans
  - Retiree plans
  - Leave conversion plans
  - Internal Revenue Code Section 403(b) plans
  - IRC 457(b) and 457(f) plans
  - Multi-Employer plans
  - Multiple employer plans
  - Church plans

- Governmental plans

## Executive and Incentive Compensation

- Equity-based plans
- Industry-unique services
- Not-for-profit entities
- ESOP companies
- Financial Institutions
- Designing, drafting, amending and terminating plans and agreements
- Negotiation of plans and agreements
- Consulting
  - Plan design
  - Legal considerations
  - Income tax considerations
  - Tax reporting and withholding
  - Accounting considerations
  - Securities law considerations
- Compliance
  - Code Section 162(m)
  - Code Section 280G
  - Code Section 409(p)
  - Code Section 409A
  - Code Section 457(f)
  - Code Section 457A
  - ERISA
- Governmental Interaction
  - IRS audit response
  - Private letter rulings
- Types of Plans and Agreements
  - Executive Agreements
    - Employment agreements
    - Severance agreements
    - Severance pay plans
    - Change in control agreements
    - Retention agreements
    - Golden parachute agreements
    - Perquisites and fringe benefits
  - Deferred Compensation Plans

- Executive and director plans
- SERPs
- Excess benefit plans
- Make-up benefit plans
- Rabbi trusts
- COLI/BOLI
- Incentive Compensation Plans
  - Company-wide bonus plans
  - Long and short term incentive plans
  - Phantom stock plans
  - Stock Appreciation Right plans (SARs)
  - Restricted Stock Unit plans (RSUs)
  - Performance share plans
- Equity-Based Plans
  - Employee Stock Purchase Plans (ESPPs)
  - Omnibus equity incentive plans
  - Stock option plans (ISOs and NSOs)
  - Restricted stock plans
- Industry-Unique Services
  - Publicly-Traded Companies
    - Disclosure of executive compensation
    - Compensation committee consultation
- Not-For-Profit Entities
  - Code Section 457(f) plans
  - Excess benefit transactions
  - Audit assistance
- ESOP Companies
  - Code Section 409(p) consulting
- Financial Institutions
  - TARP compliance
  - Legislative monitoring

## Mergers and Acquisitions

- Due diligence review of parties' employee benefit plans, including:
  - Identification of benefits issues to resolve pre-closing
  - Correction of operational and plan document issues
  - Advice and recommendations regarding plan design, amendment and termination
- Drafting of plan amendments
- Drafting of benefits-related provisions of letters of intent and acquisition documents

- Drafting of buyer and seller covenants
- Advice for integrating employees in surviving plans
- Plan terminations
- Review of nonqualified plan
- Identification of COBRA obligations and liabilities
- IRS and DOL reporting and disclosure requirements related to transaction

### **Corrections and Plan Failures**

- IRS, ERISA and state law compliance self-audit and assistance in correcting plan document and operational failures
- IRS audit advice and assistance, including negotiating audit CAP sanctions with IRS
- IRS Employee Plans Compliance Resolution System (EPCRS) filings
- IRS Voluntary Compliance Program filings (VCP)
- IRS Self-Correction of operational failures (SCP) assistance and documentation
- DOL audit advice and assistance
- DOL Voluntary Fiduciary Correction program assistance (VFC)
- DOL Delinquent Filer Voluntary Correction program filings (DFVC)
- Work with IRS to re-qualify a disqualified plan