



EMPLOYEE BENEFIT PLAN DESIGN AND ADMINISTRATION

All employers face complex decisions in choosing the right platform of employee benefits for the size and needs of their workforce. These choices are particularly challenging for new and growing employers. We assist employers in establishing, designing, and amending employee benefit plans of all types, including retirement, welfare, cafeteria plan, and fringe benefit plans.

The daily challenges of administration of benefit plans impacts all employers. We work with human resources personnel in resolving these issues.

In addition, we work with employers who experience the challenge of an IRS or Department of Labor audit. We also assist employers in indentifying and fixing compliance errors through voluntary programs, before an audit begins. For more detail, explore the above links.

Retirement Plans

We review options for retirement plan benefits which involve more or less complexity in administration. Because of their popularity and funding by employees from salary deferrals, many employers sponsor 401(k) plans. However, there are other “defined contribution” options in the marketplace, including SEPs, SIMPLEs, and profit sharing plans. After the choice of plan type, there are important choices of plan features. Providers of prototype documents often select plan features that don’t make sense for the employer. We can help guide that process.

Few employers are establishing new “defined benefit” plans today, because of the employer-level funding obligations and complexity of those plans. However, for those employers that sponsor defined benefit plans, we can assist with strategies to “de-risk” the employer’s liability and costs. We understand both traditional defined benefit plans and the newer “cash balance” type, including

ATTORNEYS

Allison McGrath Gardner
Steven W. McGrath
Ashley L. Selwyn
Douglas M. Selwyn
Martin R. Wing

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the process of converting a traditional plan to a cash balance plan.

Certain employers, such as tax-exempt organizations and church and nonprofit organizations have additional retirement plan options that are not available to “for profit” employers. We understand and can help establish retirement plans which are appropriate for those employers.

Welfare Plans

All employers are coping with the effort to implement and comply with the Affordable Care Act. We can discuss strategies for compliance that may reduce employer costs for all types and sizes of employers. For employers with retiree health plans, we are working on new strategies to use the expanding healthcare marketplace to assist employers in providing retirees with funds to purchase their own coverage in the emerging “private” exchange market outside of the Federal and State exchanges.

We are familiar with the new “alphabet soup” of employer-funding arrangements for healthcare, such as HRAs (health reimbursement arrangements), HSAs (health savings accounts), and FSAs (flexible spending accounts for health and dependent care expenses under so-called “cafeteria” plans). These funding mechanisms can help your employees lower their costs.

In addition to health care, we work with employers to design welfare benefits, such as short-term disability, long-term disability, life insurance, and accidental death and dismemberment insurance. We can help employers understand options for self-insured or fully-insured plans.

Many employers are interested in wellness programs to reduce costs and promote a healthy workforce. Several governmental agencies are simultaneously regulating wellness programs, which involve laws protecting privacy and prohibiting discrimination on the basis of disability and genetic information. We can help employers design compliant plans that avoid legal risk.

Cafeteria Plans

Any employer that requires employees to contribute a portion of the costs of their healthcare (the employee “premium”) should consider adopting a written “cafeteria” plan. In addition to pre-tax payment of premiums, cafeteria plans can also include employee-funded health care and dependent care flexible spending accounts to pay eligible expenses on a pre-tax basis. Cafeteria plans can also include additional features such as pre-tax payment of adoption expenses.

Fringe Benefit Programs

It can surprise employers that the law permits certain “fringe benefits” to be paid on a tax-free basis to employees. As only one example, employers may pay for the cost of one executive physical on an annual basis, without including that cost in the income of the executive. Ask us about fringe benefit programs that might be helpful to your employees.

Employee Benefit Plan Design and Administration

Challenges of Administration

HR staff often need assistance in clarifying the meaning of complex provisions of benefit plan documents. Common examples of problem areas for 401(k) plans include eligibility, entry dates, the definition of compensation, administration of hardship and loan programs, and distribution events. For health plans, challenges exist in responding to employee questions regarding eligible expenses and working with third-party administrators in processing claims. Our attorneys have experience in working with HR staff on the daily challenges of administration.

We assist employer in reviewing the complex benefits issues that arise in mergers and acquisitions, both on the “seller” and “buyer” side.

Compliance Programs

We assist employers and plan administrators in “fixing broken plans.” Both the IRS and the Department of Labor maintain voluntary compliance programs that permit employers to fix their own problems, before audit. We assist employers in correcting operational, plan document, and demographic errors in retirement plans under the Employee Plan Compliance Retirement System, and making choices among self-correction and voluntary correction. When employers are faced with audits, we can assist with the IRS Closing Agreement Program.

The Department of Labor maintains programs to permit annual returns for employee benefit plans to be voluntarily filed on a delinquent basis and to fix fiduciary errors. We often assist with the common fiduciary problem created by late transmittal of employee deferrals and loan repayments into the trusts of 401(k) Plans.

Publications & Events

Randie Thompson Quoted in Bloomberg Law About Health Plan Prescription Drug Lawsuit
Bloomberg Law, 03.24.2025

Randie Thompson Quoted in Bloomberg Law About Health Plan Prescription Drug Lawsuit
Bloomberg Law, 08.02.2024

New HIPAA Privacy Rule Requires Action by Certain Group Health Plans
05.13.2024

Proposed Class Action Filed Against Plan Fiduciaries Alleges Prescription Drug Mismanagement
02.09.2024

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Employment Law for Ministries: Whistleblowing and Ministries

10.14.2020

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30th Edition of Best Lawyers® Recognizes 67 Attorneys from Conner & Winters

08.18.2023