

Employee Benefits & Executive Compensation

In order to attract, cultivate, and retain the highest-caliber talent—and maintain a competitive advantage—employers must create mutually beneficial, leading-edge employee compensation and benefit packages. They also must continually monitor and administer those arrangements in order to comply with new and evolving complex laws and regulations.

Our Employee Benefits & Executive Compensation practice group advises both employers and C-suite and other executives on the full range of employee benefits and executive compensation, including:

- Drafting and negotiating employment compensation packages, employment agreements, separation pay packages, and restrictive covenants agreements
- Drafting and implementing equity and synthetic equity incentive arrangements, profits interests arrangements, bonus arrangements, and a wide variety of other cutting-edge incentive compensation programs
- Section 409A compliance
- Keeping clients' qualified and nonqualified plans in compliance with tax and other legal requirements and, when necessary, making needed corrections to preserve the tax-qualified status of plans
- Advising on the compensation and benefits aspects of mergers, acquisitions, and divestitures, including application of golden parachute payment tax rules (i.e., Section 280G)
- Representing clients (whether they are employers or fiduciaries) in ESOP transactions
- Drafting health and welfare plans, including cafeteria plans, wrap plans, and flexible spending plans, and assisting with ongoing compliance
- Advising private equity funds and investment advisers with respect to ERISA's plan asset rules, fiduciary obligations, and prohibited transaction rules
- Representing clients in connection with ERISA claims and litigation
- Handling the securities law aspects of executive compensation and employee benefits matters, including Compensation Discussion & Analysis and related proxy compensation disclosures
- Representing clients with respect to managing pension plan withdrawal liability and challenging withdrawal liability assessments, including arbitration of withdrawal liability disputes
- Representing companies with respect to employee benefits issues and liabilities in bankruptcy proceedings

Our clients range from publicly traded companies with thousands of employees to closely held employers with just a few employees, as well as large public and private pension funds, private equity firms, senior executives, trustees, and financial institutions. Our clients span a wide range of sectors, including private equity, venture capital, life sciences, real estate, technology, manufacturing, and retail businesses.

Our work in this arena has consistently been recognized by *Chambers USA*, which reports that clients have said, "This is a firm that I trust 100 percent" and "Between the integrity of the people and the quality of their advice and knowledge, I can really rely on them, and that makes all the difference."

Recognizing that employee benefits programs are not "one size fits all," we draw on our team's comprehensive knowledge of relevant corporate, tax, employment, labor, insurance, and securities laws to help clients create, implement, and administer custom employee benefits programs that meet their specific objectives and requirements. Throughout, we collaborate with a network of professionals, including investment advisors, actuaries, benefit consultants and administrators, financial consultants, banks, insurance companies, and other financial institutions. As a result of our experience in this area, we anticipate client needs and deliver solutions that are on point, timely, and practical to achieve the client's goals.

We provide proactive, strategic counsel to help our clients maintain compliance with the ever-growing body of regulations, court decisions, and other requirements affecting both employee benefits and executive compensation arrangements. Even the most careful employers, however, can uncover various problems that can be expensive to correct and can create delicate employee relations concerns. Our substantial experience in dealing with plan compliance issues and government authorities uniquely qualifies us to help clients tackle and resolve any problem or issue that may arise.

EXPERIENCE

- > Represented Tower International in connection with its \$900 million acquisition by Autokinon Global Group, including advising on change in control compensation matters, Section 280G issues, and corporate governance and securities matters
- > Represented Indorama Ventures in connection with its \$2.1 billion acquisition of Huntsman's chemicals units, including navigating issues related to pension plan, retiree medical, health and welfare benefits and general transition of employees
- > Minimize exposure of public and private clients to Section 280G excise taxes through proactive planning
- > Obtained no-action letters from the U.S. Department of Labor for late contributions under defined contribution plans, in some instances spanning many tax years
- > Designed, negotiated, and drafted a Section 409A-compliant deferred compensation plan for U.S. employees of a European company to mirror a global compensation plan
- > Represent multiple teams of real estate brokers in lateral moves, including comprehensive planning, negotiating broker agreements, and providing advice on restrictive covenants

- > Represent many companies, such as Altair Engineering Inc., in connection with IPOs, including designing and drafting executive compensation and employee benefits documents
- > Represented Aceto Corp. in connection with its bankruptcy filing, including supplemental executive retirement plan termination and transfer of assets, termination of health and welfare and retirement plans, and termination of employees
- > Eliminated multimillion-dollar penalty assessments by the IRS for alleged noncompliance with the Affordable Care Act
- > Represented a client in a multimillion-dollar arbitration over withdrawal liability assessments
- > Represent clients in revamping health and welfare documents and consolidating the breadth of documents through wrap plans

HONORS & AWARDS

- > **Super Lawyers (2005-2017)**
- > **The Best Lawyers in America (2008-2020)**
Recognized in the Employee Benefits (ERISA) Law section.
- > **Chambers USA: America's Leading Lawyers for Business: (2006-2019)**
Ranked in Band 1 for Employee Benefits & Executive Compensation in New Jersey