

# EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION

Starting with the passage of the Employee Retirement Income Security Act of 1974 (ERISA), pension and welfare benefits have consistently been the subject of significant annual legislative modifications, as well as extensive administrative regulations. This dramatic and continuing expansion has created a particularly complex and fluctuating area of the law that impacts employees, professionals, proprietors, and businesses of all sizes. The Employee Benefits and Executive Compensation Practice at Bond counsels its clients on all aspects of this ever-expanding field of law – not only to address the often complex legal requirements, but also to develop and implement benefits, strategies and plans that serve each client's particular objectives.

## Retirement Plans

Retirement plans are an important tool for attracting, retaining and rewarding employees. However, such plans must comply with numerous statutory and regulatory requirements in order to provide retirement benefits in a manner that is advantageous both to the employer and the employees. There are numerous types of retirement plans that a client, depending on its needs and tax status, may maintain to provide retirement benefits to its employees on a tax-favored basis. Such plans include:

- defined benefit plans
- cash balance plans
- money purchase pension plans
- profit sharing plans
- 401(k) plans
- employee stock ownership plans (ESOPs)
- tax-sheltered annuity plans (403(b) plans)
- 457 (b) plans

The Employee Benefits and Executive Compensation Practice has extensive experience working with clients in the establishment and administration of all types of retirement plans. Depending upon the client's needs, our services could encompass:

- initial planning and consultation regarding the objectives of the plan
- plan design and drafting
- employee communications
- guiding the plan through the Internal Revenue Service (IRS) qualification process
- advice on plan administration and fiduciary obligations
- assistance in retaining the services of investment managers, third-party administrators and other service providers
- representation during IRS, United States Department of Labor (DOL), and Pension Benefit Guaranty Corporation audits and litigation
- modification, conversion, merger and termination of the plan

In addition, we assist clients in the identification of administrative errors that could result in the loss of a plan's tax-favored status, and the correction of such errors through the various voluntary compliance programs maintained by the IRS and the DOL. We also have significant experience in legal matters associated with an employer's participation in multiemployer pension plans and, in particular, withdrawal liability issues and disputes.

## Executive Compensation and "Non-Qualified" Deferred Compensation Arrangements

Due to the restrictions imposed by ERISA and the Internal Revenue Code, it is often difficult to structure tax-qualified deferred compensation arrangements that are sufficient to attract, retain and reward executives and other key employees. To address these problems, many employers have turned to executive compensation and/or "non-qualified" deferred compensation arrangements, including SERPs, equity-based arrangements (e.g., stock options, restricted stock and phantom stock), and change in control/golden parachute arrangements. We assist clients in the design, implementation and administration of arrangements that meet the client's specific needs and objectives. This assistance includes structuring arrangements to comply with the broad deferred compensation requirements in Sections 409A and 457 of the Internal Revenue Code.

## About Bond, Schoeneck & King

Bond, Schoeneck & King PLLC serves individuals, companies and public-sector entities in a broad range of areas.

With 275 lawyers and 15 offices, we represent clients in manufacturing; agribusiness; commercial lending and real estate and construction; energy; health care and long term care as well as municipalities, school districts, higher education and other exempt and nonprofit organizations. We maintain ten offices across New York; and one each in Boston; Kansas City; Naples; West Palm Beach and Red Bank, New Jersey.

Bond is committed to understanding our clients' needs and providing comprehensive, practical, high-quality and responsive solutions. We strive to maintain the highest professional and ethical standards, and to provide leadership in community activities, pro-bono work and service to the Bar.

For more information, visit [bsk.com](http://bsk.com).

## Welfare Benefit Plans

In recent years, welfare benefit plans have become the subject of substantially increased regulation. Our attorneys assist clients in the design, implementation and administration of numerous welfare benefit arrangements, including:

- group health plans
- group-term life insurance plans
- cafeteria plans
- dependent care assistance plans
- disability plans
- voluntary employee benefit associations (VEBAs)
- tuition reduction plans
- educational assistance plans
- adoption assistance plans
- qualified transportation plans
- employee assistance plans
- severance and separation incentive plans
- health savings accounts
- medical savings account plans

In particular, we counsel clients regarding compliance with the Affordable Care Act, the health care continuation coverage requirements of COBRA, the requirements imposed on group health plans by legislation such as the Health Insurance Portability and Accountability Act (HIPAA), the administration of benefit claims review and appeals procedures, and the implementation of separation incentive and early retirement programs designed to comply with age discrimination laws.

## Mergers and Acquisitions

Our attorneys have substantial experience in counseling clients regarding the employee benefits issues that often arise in the context of corporate transactions. Our services often include the evaluation of the liabilities and responsibilities of the buyer and seller in connection with employee benefit arrangements; the performance of “due diligence” reviews; drafting or reviewing employee benefit-related provisions of the documents accomplishing the transaction; and assessing post-transaction controlled group implications for both parties.

## Addressing Clients' Needs

We recognize that, with respect to employee benefit matters, each client has different needs. Our practice is attuned to these differences. For some clients, we are involved in the planning, drafting and implementation of a variety of benefit plans. Other clients utilize in-house or third-party administrators and rely on Bond as a resource when problems arise or assistance is needed in implementing a change in plan structure, policies or procedures.

Given the rapid pace at which the law regulating employee benefits has developed and changed, we recognize that an important aspect of our practice is updating our clients on the current state of the law. To this end, we periodically publish Information Memos on issues of particular importance or urgency. We also present seminars that explore issues in greater detail.

## Employee Benefits Clientele

Our expertise allows us to serve a broad spectrum of clients. These include business entities that range in size from those with several employees to those with several thousand employees, professional groups (e.g., attorneys, physicians, architects, and engineers), hospitals, not-for-profit corporations and associations, colleges and universities, insurance companies, partnerships, banks, municipalities and sole proprietorships. We also counsel individuals on executive contract issues, retirement issues and retirement planning.

One of the distinct advantages to our clients is our ability to draw upon the expertise of other attorneys at Bond in areas of law that quite frequently are interrelated with employee benefits. For example, taxation issues, employee and labor relations concerns (particularly with respect to collectively-bargained plans), estate planning matters, and corporate transaction issues often arise in resolving employee benefits problems. Bond has extensive experience in each of these fields. In addition, we have interdisciplinary groups that focus on the particular legal problems of specific industries, such as health care and higher education. These groups serve to keep our employee benefits attorneys abreast of developments that impact those industries.

### Contacts:

**John C. Godsoe**  
716.416.7020  
jgodsoe@bsk.com

**Aaron M. Pierce**  
315.218.8635  
apierce@bsk.com

