

## Employee Benefits

The Employee Benefits Group includes lawyers from our Tax Practice Group who concentrate in employee benefits work. The practice covers five broad categories of legal services:

### Pension and Profit Sharing, Including 401(k) Plans

Members of the group assist in the design and implementation of tax-qualified pension and profit sharing plans and prepare the necessary legal documentation. We counsel employers about the advantages and disadvantages of various types of retirement plans, including their financial, administrative and legal aspects. This has included innovative "cross-tested" plans that address the problems created by the cap on plan compensation.

We have guided a number of defined benefit pension plans through the termination process, ranging in size up to \$60 million. Compliance problems have led our clients through the Internal Revenue Service's Voluntary Correction Program (VCP) and the Closing Agreement Program (CAP).

Investments are a common concern of both single-employer and multiemployer qualified plans. We counsel plans and money managers on the appropriate procedures for selecting and monitoring plan investment managers. Our work also includes advising on asset valuation issues and use of plan brokerage to generate "soft dollar" services.

We also counsel on prohibited transaction issues and obtain regulatory exemptions. One such exemption involved an investment by qualified plans in Boeing 747 aircraft. As the U.S. Department of Labor has stepped up its enforcement efforts, we have represented clients in investigations of plan investment practices. One investigation attacked the sale of our client's insurance products to pension plans.

We have significant experience in specialized retirement benefit arrangements for nonprofit employers. We have worked on tax-deferred annuity contracts for insurance carriers and on tax-deferred annuity

plans for employers, often in combination with conventional tax-qualified plans to maximize benefits for executives. We have also established exempt status for a number of church plans.

## Welfare Benefit Plans

As medical, life insurance, disability and other welfare-type plans have come under increasing government regulation, they have represented an increasing portion of our employee benefits practice. We have analyzed and counseled about COBRA requirements for continuation of health benefit coverage, the tax rules governing tax-exempt welfare benefit trusts, and disability and other discrimination issues. Establishment of flexible benefit plans is another growing part of our practice.

## Executive Compensation

We have increasingly been called upon to give advice about and document supplemental executive retirement plans (SERPs) in response to limitations on benefits that can be provided through qualified plans. Such plans often involve "rabbi trusts," which we have drafted and submitted to the IRS.

Design, implementation and documentation of stock option and phantom stock plans and "golden parachute" agreements also come within the scope of the group. We have devoted attention in recent years to severance arrangements, especially in connection with anticipated changes of control. Executives in some of the major corporations in the mid-Atlantic region have turned to members of our group to negotiate benefit packages upon severance from employment.

## Employee Stock Ownership Plans

Members of the group have been involved in ESOP transactions from several points of view, having represented plan sponsors, their shareholders, ESOP lenders and independent ESOP trustees. We have kept on the cutting edge of new ESOP developments, including deferral of shareholders' gain on sales of stock to ESOPs and use of ESOPs in employee leveraged buyouts.

## Litigation

Members of the Employee Benefits Group have litigated some of the most significant employee benefit cases in the country.

- *The Firestone Tire and Rubber Co. v. Bruch*: The U.S. Supreme Court ruled early that if a benefit plan gives a fiduciary discretion in determining eligibility for benefits, a court may override the

fiduciary's decision only if it constitutes an abuse of discretion.

- *Masters, Mates & Pilots Pension Plan*: We served as lead counsel for the plan trustees in massive litigation in New York over alleged fiduciary liability for investment losses.
- *EEOC v. Westinghouse*: We successfully defended corporate severance plans before the U.S. Court of Appeals for the Third Circuit, culminating an 11-year battle under the Age Discrimination in Employment Act.
- *FMC Corp. v. Holliday*: We represented several *amici curiae* in this case in which the U.S. Supreme Court invalidated a state law restricting subrogation by ERISA medical plans to automobile liability claims of participants.
- *Concrete Pipe and Products v. Construction Laborers Pension Trust Fund*: We represented two multiemployer pension funds appearing as *amici curiae* in this case in which the U.S. Supreme Court upheld various aspects of the Multiemployer Pension Plan Amendments Act against constitutional challenges.
- *Baker v. Lukens Steel Corp.*: In a case that was appealed twice to the Third Circuit Court of Appeals, we overcame a challenge to a plan amendment eliminating an early retirement benefit.
- *Teamsters Local 639 Pension Trust v. United Parcel Service*: The U.S. District Court in Washington, D.C. took the unusual step of awarding attorneys' fees to our client, the prevailing defendant.