

Our employee benefits practice group offers experience in advising clients on all aspects of employee benefits law, and brings first-chair experience to clients’ employee benefits needs at highly competitive billing rates. Our senior employment attorneys are active and recognized in both the local and national employee benefits communities, and have developed significant contacts with the IRS and the U.S. Department of Labor, locally, regionally, and nationally.

We have an extensive practice counseling employers on all aspects of employee benefits.

**Employee Benefits**

**LEADERSHIP**

[ERISA](https://www.fennemorelaw.com/services/erisa-and-employee-benefits/)

[EMPLOYMENT &](https://www.fennemorelaw.com/services/employment-and-labor-relations/) [LABOR](https://www.fennemorelaw.com/services/employment-and-labor-relations/)

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# OUR TEAM

[Ryan Curtis](https://www.fennemorelaw.com/people/attorneys/a-d/curtis-ryan-c) (practice group chair) has handled numerous Employee Retirement Income Security Act (ERISA) litigation matters regarding benefit disputes, unpaid employer contributions, and multiemployer plan withdrawal liability matters. He advises and defends plans during audits by the IRS and U.S. Department of Labor. He helps plans comply with important federal laws including ERISA, the Affordable Care Act (ACA) and Health Insurance Portability and Accountability Act (HIPAA). He assists plans with compliance failures and submitting correction applications to the IRS.

Our employment attorneys routinely advise clients on issues arising under ERISA and tax implications relating to various benefits found in the Internal Revenue Code (Code). Our practice has a range of experienced employment law attorneys and paralegals so we can properly staff benefit matters — even those that are highly complex — in a cost-effective

manner and provide excellent service. Our employee benefits practice covers all of the client needs set out below.

# CORRECTION PROGRAMS

With the recent limitations on the IRS’s long-standing favorable determination letter program, it is more important than ever to ensure an employer’s qualified plans are written and operated in compliance with ERISA and tax code requirements. Our ERISA lawyers provide periodic compliance reviews and help clients implement appropriate and timely self-correction procedures.

Further, we advise plans on failures that cannot be self-corrected and assist with the preparation and submission of applications to the IRS’s Voluntary Compliance Program (VCP) and the DOL’s Voluntary Fiduciary Compliance Program (VFCP). We have had consistent success in crafting and negotiating non-standard corrections under VCP that are carefully tailored to a specific plan sponsor and situation and that result in significant cost savings to the plan sponsor. Our

employment law attorneys also assist in plan audit-CAP scenarios.

# EMPLOYEE BENEFITS - BUSINESS TRANSACTIONS

We provide counsel regarding all aspects of employee benefits in merger and acquisition

transactions, including 280G analysis and calculations when necessary from either the buyer or seller side in both equity and asset purchase deals. Our team has a structured approach to employee benefits law due diligence, in which specific practice group members are tasked with reviewing or providing the documents and data relative to the specific employee benefit program under review. Our HR attorneys review and advise with a mind toward the best interests of the client and their side of the transaction. Due to our many years of experience, we recognize and quickly respond to the urgent time constraints these deals typically require. When problems are identified, we outline the potential corrective actions to remediate the issues, the required timing, and advise clients regarding potential exposure in delaying correction.

Our employee benefit attorneys routinely work with companies and their third-party benefits providers (insurance brokers, trustees and third-party record-keepers) on the post-merger integration of their various benefit plans, including qualified plans, welfare and fringe benefit arrangements, equity compensation, and non-qualified deferred compensation. When a qualified plan will be terminated, we prepare and file final favorable determination letter applications on their behalf and any accompanying VCP applications.

# EQUITY COMPENSATION

Our employment law services include the design, documentation, compliance, implementation and ongoing administrative overview of equity compensation arrangements, for both publicly- traded (including 162(m) considerations) and private clients. We also implement these types of programs for both corporations and entities taxed as flow-through entities. We assist clients with the design and implementation of ESPP (both qualified and non-qualified); Option Plans (ISO and NQSO); Restricted Stock; Restricted Stock Units; Stock Appreciation Rights (standalone or

tandem), and a variety of other equity-related structures. We facilitate client compliance with compensation disclosure and analysis reporting when requested.

# EXECUTIVE COMPENSATION AGREEMENTS

Our practitioners work closely with our labor and employment attorneys in designing or reviewing and advising on various aspects of executive employment agreements, change in control

agreements, various equity awards, and severance agreements.

# INFORMATION REPORTING

Our employment attorneys advise clients regarding the information reporting requirements associated with retirement plans, welfare plans, severance plans, non-qualified deferred compensation arrangements, ACA and successor employer issues, and advise on the application of the special timing as well as state and local tax withholding requirements associated with various components of compensation. We also advise clients on 83(b) issues and deductibility of compensation.

# IRS & DOL AUDIT DEFENSE

We defend and advise plans during governmental audits and are experienced in representing employers on qualified plan and employee benefit matters before both local and national offices of the [Internal Revenue Service](https://www.irs.gov/), the [U.S. Department of Labor](https://www.dol.gov/), as well as the [Pension](https://www.pbgc.gov/)

[Benefit Guaranty Corporation](https://www.pbgc.gov/). We regularly advise clients concerning fiduciary and prohibited transaction issues. We also advise employers regarding the implications and liabilities involved with participation in multiemployer union pension plans and multiple employer plans.

# NON-QUALIFIED DEFERRED COMPENSATION

Our employment law attorneys have extensive experience in designing and documenting non- qualified deferred compensation plans of all types, including 457(b) and 457(f) plans which are unique to nonprofit and governmental entities. We also work with clients in correcting plan failures under these arrangements and minimizing related financial exposure by implementing administrative policies and controls to minimize any plan errors.

# QUALIFIED PLANS

Our employee benefits law practice members have extensive experience in preparing,

analyzing, designing and amending plan documents, and providing counsel with respect to defined benefit, cash balance, section 401(k), profit sharing, money purchase pension, employee stock ownership plans (ESOP), multiemployer and multiple employer plans qualified under Code Section 401(a), as well as plans authorized under Code Section 403(b). In addition to plan documents, we review and provide advice on ancillary documents including trusts,

service agreements, required notices of all types, and administrative policies and forms provided by third parties.

# WELFARE & FRINGE BENEFITS

Our practitioners work with clients in the design, documentation, and compliance with requirements for medical, dental, cafeteria, life insurance, and flexible benefit arrangements whether they are fully-insured, self-funded or funded through a voluntary employee benefits association (VEBA). We advise clients on ACA compliance requirements including coverage and reporting and on the provisions of ACA that impact small employers’ provision of benefits and the means to stay compliant. We also advise clients on satisfying COBRA responsibilities and the proper handling and disclosure of protected health information (PHI) under HIPAA.