

Employee Benefits

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

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 benefits attorneys are active and recognized in both the local and national employee benefits communities.

LEADERSHIP



ERISA

LABOR &
EMPLOYMENT

Ryan C. Curtis

Chair

Phoenix

PH 602.916.5426

FX 602.916.5626

rcurtis@fennemorelaw.com

OUR TEAM

Ryan Curtis (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 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.

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. We also handle a variety of filings, including obtaining favorable determination letters. We handle all subsequent correspondence and negotiations with the IRS as needed, and work with our employer clients to ensure continued compliance with applicable law.

GOVERNMENT 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](#), the [U.S. Department of Labor](#), the [Pension Benefit Guaranty Corporation](#), the Office of Civil Rights, and Centers for Medicare and Medicaid. This work has become more important as we have seen an increase in government audits of plans.

CORRECTION PROGRAMS

Our ERISA lawyers assist with periodic internal compliance reviews. When an issue arises, we help clients implement appropriate and timely correction procedures. When a compliance issue cannot be self-corrected, we assist with the preparation and submission of applications to the IRS's Voluntary Compliance Program (VCP), the DOL's Voluntary Fiduciary Compliance Program (VFCP), and the Delinquent Filer Voluntary Fiduciary Compliance Program (DFVCP). We have had consistent success in crafting and negotiating non-standard corrections with the IRS and DOL 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.

EQUITY/EXECUTIVE COMPENSATION

Our benefits law services include the design, documentation, compliance, implementation, and ongoing administrative overview of equity and synthetic equity ("phantom stock") compensation arrangements, for both publicly-traded and private clients. We assist clients with the design and implementation of a variety of equity and non-equity structures. We facilitate client compliance with compensation disclosure and analysis reporting when requested. We also advise clients on 83(b) issues and deductibility of compensation. 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. Our ERISA team regularly works in the detailed regulations of Internal Revenue Code Sections 409A and 280G to assist our clients in offering attractive compensation packages for their key people while preserving the tax advantages of equity and deferred compensation.

EMPLOYEE BENEFITS - BUSINESS TRANSACTIONS

We provide counsel regarding all aspects of employee benefits in merger and acquisition transactions from either the buyer or seller side for both stock sale and asset purchase deals. Our benefits attorneys work closely with our business and finance attorneys on benefits and executive compensation-related due diligence and advise with a mind toward protecting our clients' interests while getting the deal done. We are able to recognize and respond to the urgent time constraints these deals require. When problems are identified, we help our clients

assess and mitigate exposure through adjustments to deal structure and agreement terms, and outline the potential corrective actions to both pre- and post-transaction. Our employee benefits attorneys also 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 a final favorable determination letter application and any accompanying VCP application. When a plan will be merged, we review the relevant plan documents and assist in working with recordkeepers and others to ensure the merger is timely and correctly completed.

INFORMATION REPORTING

Our benefits 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 rule as well as state and local tax withholding requirements associated with various components of compensation.

WELFARE & FRINGE BENEFITS

Our attorneys work with clients in the design, documentation, and compliance of medical, dental, cafeteria, life insurance, and flexible benefit arrangements whether they are fully-insured or self-funded. We can assist in preparing plan documents, including welfare trust agreements, plan documents, summary plan descriptions, wrap plan documents, summaries of material modification, annual summaries of benefits and coverage, and other participant communication. We advise clients on ACA compliance requirements, including coverage, plan design and administration, claims and appeals, and reporting on the provisions of ACA that impact both small and large employers' provision of benefits and the means to stay compliant.

We also work with payroll providers and HR departments on issues of enrollment, continuing coverage, family medical leave, and cafeteria plan compliance. Our ERISA attorneys have defended disability plans in benefit denial and litigation cases. We also advise clients on satisfying COBRA responsibilities and the proper handling and disclosure of protected health information (PHI) under HIPAA, and assist with necessary reporting when HIPAA breaches occur.

We work with the firm's labor and employment attorneys in preparing severance agreements and ERISA-compliant severance plans and assist employers with issues related to large and small reductions in force.

We guide our clients through new developments in the law, including but not limited to advancements in cybersecurity guidance and liability, Mental Health Parity and Addiction Equity Act (MHPEA) compliance, No Surprises Act and price transparency regulations, coverage of gender dysphoria, behavioral therapies, and new pharmaceuticals.

Finally, we are skilled in reviewing and negotiating provider agreements, PPO, HMO and network access agreements, PBM agreements, claims administration agreements, and their associated business associate agreements.

LITIGATION

Fennemore's litigation section is experienced in all aspects of dispute resolution and prevention. The firm's ERISA practice group has years of experience representing clients in a variety of ERISA litigation matters, and when necessary, teams up with full-time litigators to defend or assert claims involving a client's benefit plans. Our full-time litigation attorneys are proficient in handling

lawsuits, administrative claims, alternative dispute resolution techniques, negotiated settlements, appeals, and traditional trial representation, as well as advice on the prevention of claims and avoidance of litigation. A number of our attorneys also serve as mediators, arbitrators, and private judges.