

Employee Benefits and ERISA

Employer-sponsored benefits programs are crucial to attract, motivate, and retain employees and can serve to assist in maintaining continuity in a workforce.

In addition to changing demographics, an increasingly mobile workforce, workplace disruptions, and cost pressures, these programs can be further complicated due to consistent changes in the law and related guidance, including with regard to tax laws, the Employee Retirement Income Security Act (ERISA), and various market conditions. In order to maintain compliant programs that provide value to employees, it is important to stay abreast of many levels of changes impacting employee benefits programs.

At Epstein Becker Green (EBG), our Employee Benefits and ERISA lawyers know every facet of employee benefits law, including the design, structure, implementation, administration, and termination of all types of retirement, executive compensation, and health and welfare benefit plans. We advise our foreign and domestic clients, including taxable and tax-exempt entities, from many different industries, on compliance with the state and federal requirements governing employee benefits and compensation arrangements. In the corporate transaction setting, we guide our clients through a myriad of employee benefit and compensation issues as they transition employees and terminate or merge plans. We collaborate with human resources (HR) departments, in-house counsel, and other benefits professionals to achieve sound, cost-effective results through a responsive approach that puts our clients' business goals first. When legal disputes or government actions arise, our ERISA and employee benefit litigators can resolve the matter quickly and efficiently so that our clients can get back to business.

Recognizing that rules and regulations for plan design, funding, and compensation keep changing, we stay in constant contact with our clients, interpreting regulatory shifts and delivering

Focus Areas

Services

Class Actions

Employment, Labor & Workforce Management

ERISA – Retirement and Benefit Plan Litigation

Executive Compensation

Industries

Financial Services

Health Care Industry

Hospitality

Life Sciences Industry

Retail

Technology

Contacts



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practical, easy-to-understand solutions. Our Employee Benefits and ERISA lawyers not only provide outstanding support to clients on current issues as they arise, but also stay ahead of the curve on a variety of significant issues.

Our Services

EBG provides comprehensive legal services relating to all types of employee benefit programs, including:

Retirement Plans

Our Employee Benefits and ERISA lawyers:

- Counsel clients regarding the structure, implementation, administration, amendment, and termination of all types of retirement plans, such as 401(k), defined benefit (including cash balance, hybrid, and pension), profit sharing, money purchase, employee stock ownership plans (ESOPs), cross-tested and target benefit plans, and our work ranges from preparing plan documents, trust agreements, Internal Revenue Service (IRS) filings, and summary plan descriptions to rendering advice on related ERISA, tax, and securities law matters
- Advise clients in connection with service provider conversions and the review of service agreements, discrimination testing, and related planning opportunities
- Provide full operational support and work to ensure that our clients' retirement plans stay in compliance with ERISA statutory requirements, the Internal Revenue Code (IRC), and other federal and state requirements, including with regard to late deposits, excise taxes, and corrections
- Conduct compliance audits and handle submissions under the IRS's Employee Plans Compliance Resolution System and the Voluntary Fiduciary Correction Program of the U.S. Department of Labor (DOL)



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Health and Welfare Benefit Plans

Our Employee Benefits and ERISA lawyers:

- Advise clients with respect to the Affordable Care Act, tax and ERISA issues relating to the establishment and administration of welfare benefit plans—e.g., group health, cafeteria plans, voluntary employees’ beneficiary associations (VEBAs), severance plans, health and disability plans, on-site medical clinics, and retiree benefits plans
- Counsel clients on all aspects of Consolidated Omnibus Budget Reconciliation Act (COBRA) administration, and advise on the application of requirements under the Health Insurance Portability and Accountability Act (HIPAA), including the privacy rules, health-status discrimination, and special enrollment rules
- Draft plan documents (including “wrap plans”), provide advice with respect to the structuring of welfare benefit plans and their administration, and consult on the termination of welfare benefit plans and on the reduction of welfare benefits
- Counsel clients regarding compliance of wellness programs
- Advise clients on compliance with the Mental Health Parity and Addiction Equity Act requirements and issues with regard to substance abuse benefits
- Provide clients with legal assistance on claims reviews and DOL audits of health plans
- Guide clients through the requirements for the establishment of association health plans and direct contracting for their health programs
- Assist employers with compliance of their telemedicine service offerings

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Non-Qualified Deferred Compensation Plans

Our Employee Benefits and ERISA lawyers:

- Design, draft, and implement deferred compensation plans, including supplemental and excess plans, long-term incentive plans, and broad-based stock purchase plans, such as IRC Section 423 plans, and plans utilizing stock options (whether nonqualified or incentive stock options) and other types of equity awards for the compensation package
- Provide advice with respect to the ERISA and tax law aspects of non-qualified plans, including the issues that arise under IRC Sections 409A and 457, as well as alternative methods of "securing" the employer's commitments under the plan or agreement (e.g., using a grantor or "rabbi" trust)
- Counsel employers through the correction methods for nonqualified deferred compensation plans

Multiemployer Plans

Our Employee Benefits and ERISA lawyers:

- Give advice regarding the obligations of multiemployer plan fiduciaries on plan administration, permitted and prohibited transactions, investment selections, government registrations, agreements with service providers, plan communications, and tax-related matters, among other things
- Provide "withdrawal liability" counseling and work with actuaries on liability reduction

Also, we have extensive experience handling the following:

Benefits Communications

Client requests for assistance with the preparation or review of employee or plan participant communications can arise in many contexts. We are well-equipped to address those requests as they arise. In addition, our Employee Benefits and ERISA lawyers:

- Advise clients on how to effectively communicate benefits issues to their employees and plan participants
- Counsel clients on meeting their obligations to provide accurate summary plan descriptions, prepare required notices under ERISA and/or the IRC
- Craft responses to individual participant inquiries regarding rights under a particular plan

- Prepare required notices to participants in connection with certain submissions to government agencies (this includes the requirements for using electronic means for adequate disclosure)
- Assist in developing comprehensive communication programs that relate specifically to a client's 401(k) plans

ERISA Fiduciary Matters

Our Employee Benefits and ERISA lawyers:

- Guide employers, Benefits Committees, investment managers and advisors, trustees, and other plan service providers through ERISA's fiduciary requirements and applicable DOL regulations to help minimize the risk of liability
- Provide advice on prohibited transaction and prudence questions, advise on the allocation of fiduciary responsibilities, consult on a wide variety of pension investment questions, assist clients with the establishment of governance best practices (including Committee Charters, Investment Policy Statements, and Benefits Tech Policies), conduct training, and advise on fiduciary responsibilities
- Attend fiduciary Committee meetings, when called upon, to provide counsel to the Committee on issues, as they arise
- Draft and review agreements that allow a plan sponsor to appoint an investment manager as an ERISA 3(38) fiduciary that has discretion, authority, and control over plan assets

Mergers/Acquisitions/Downsizing/Restructuring

Employee benefits are a critical, yet often overlooked, aspect of corporate restructuring. Potential mergers, acquisitions, joint ventures, and divestitures can be jeopardized by the improper handling of employee benefits liabilities. To help clients avoid these pitfalls, our Employee Benefits and ERISA lawyers:

- Analyze and negotiate the pension, welfare, and executive compensation aspects of those transactions, correct any benefit plan-related problems or liabilities, and counsel on the consolidation and rationalization of benefit plans after a transaction is completed
- Design severance and early retirement programs when an employer needs to "down" or "right" size to ease the transition, and provide counseling on compliance with all relevant federal and state laws
- Assist plan sponsors with analyzing the impact of restructuring on their employee benefit plans and addressing approaches for the consolidation of plans or the adoption of new

plans

Pension Benefit Guaranty Corporation Matters

Our Employee Benefits and ERISA lawyers advise on Pension Benefit Guaranty Corporation (PBGC) matters, including plan terminations, liability of controlled group members for pension plan funding deficiencies, and multiemployer plan withdrawals. In addition, we help our clients avoid PBGC, IRS, and DOL actions through document reviews, self-audits, and other customized compliance programs.

Coordination with Other Practice Groups

In addition to the foregoing, our Employee Benefits and ERISA attorneys are able to bring a multidisciplinary approach to employee benefits matters by working in conjunction with EBG's employment and labor, health care, litigation, data privacy, tax, and corporate attorneys, as needs arise. For example, we:

- Work with EBG health care attorneys on HIPAA privacy/security policies
- Structure benefit plans to comply with the Service Contract Act with our employment and government contracting attorneys
- Address HR and benefits technology data privacy/security issues with our data privacy team, and conduct security risk assessments
- Advise on direct contracting and association health plans with our health care attorneys
- Draft and review employment and separation agreements and design strategic workplace programs with our employment attorneys
- Work with EBG's labor attorneys in collective bargaining situations to review benefits issues in negotiations and renewals
- Guide employers through preventative measures in conjunction with our ERISA litigators
- Provide employee benefits advice in the context of corporate transactions with our corporate and tax attorneys

Moreover, through our various industry-specific service teams, we are also able to provide insightful benefits and compensation advice on particular issues affecting those industries.

Experience

Epstein Becker Green Represents Perfusion, IONM, and Surgical Services Provider in Acquisition of Perfusion Services Company

February 1, 2017

Represented Health Insurer in Sale of Its Nonmedical Home Care and Private Duty Services Subsidiary

February 1, 2017

Assisted in Restructuring of Health Benefit Plans

June 2, 2021

Spearheaded Global Leave Policy Review and Development for More Than 20,000 Employees

December 31, 2021

Employee Benefits Advice and Counsel for Pharmaceutical Company

August 4, 2021

General Counsel Services for Medical Practice

September 15, 2021

Provided Advice and Counsel to Financial Information Provider, Resulting in Successful Merger

March 18, 2022

Assisted Company With Full Array of Benefits Plans

August 31, 2019

Assisted a Non-Profit Blood Bank with Requirements Under the Affordable Care Act

April 30, 2021

Advised Health Care Provider on DOL Rules and Regulations

September 30, 2021

Media

Pregnant Workers Fairness Act Takes Effect, EEO-1 Report Filing Start Date Pushed Back, DOL Clarifies FMLA Leave for Paid Holidays

Employee and Health Benefits One Year After *Dobbs*

What the End of the COVID-19 Public Health Emergency Means for Employers

Mental Health Awareness Month in the Workplace

ACA Preventive Coverage Mandate Blocked, Another No-Poach Loss for DOJ, and Employers Prepare for the End of the COVID-19 Emergencies

SECURE Act 2.0: What 401(k) Plan Sponsors Need to Know

Forecasting Employment Law in 2023

2022 – A Year in Review

SCOTUS Overturns *Roe v. Wade* - What Employers Should Consider

SCOTUS Rules on PAGA, Fifth Circuit Rules on COVID-19 Under WARN, Illinois Expands Bereavement Leave

Insights

Epstein Becker Green Expands Pittsburgh Footprint Following Addition of 5 Former Attorneys from Eckert Seamans

Media Coverage | *Pittsburgh Business Times* | October 31, 2023

Featured in *The Legal Intelligencer*: Epstein Becker Green Snags Employment Benefits Team to Launch Pittsburgh Office

Media Coverage | *The Legal Intelligencer* | October 31, 2023

Kathryn English, Sandra Mihok, Heather Stone Fletcher, William Carter, Samuel Nolan Featured in "5-Person Benefits Group Joins Epstein Becker Green"

Media Coverage | *Law360* | October 31, 2023

Epstein Becker Green Expands Employee Benefits Practice with Five-Attorney Group in Pittsburgh Firm Announcements | October 30, 2023

Twenty-One Attorneys Named to the 2023 *New York Super Lawyers* and *Rising Stars* Lists Firm Announcements | September 22, 2023

Epstein Becker Green Earns National Recognition and High Rankings in the 2023 Edition of *Legal 500*

Firm Announcements | June 7, 2023

David Shillcutt Quoted in "3 Items on Attys' Wish List for Mental Health Parity Guidance"

Media Coverage | *Law360* | May 26, 2023

Gretchen Harders Quoted in “*Dobbs’ Impact on Employers, Law Firms, Women Lawyers, and Future Lawyers*”

Media Coverage | *Perspectives* | April 28, 2023

Susan Gross Sholinsky, Cassandra Labbees, Delia Deschaine Named “Top Women Faculty” for *Dobbs-Related Thought Leadership*

Firm Announcements | March 23, 2023

David Shillcutt Quoted in “2023 Employee Benefits & Workplace Predictions: This Year's Must-Have Benefits”

Media Coverage | *Benefits Pro* | January 30, 2023

For Your Benefit Webinars

We are pleased to offer *For Your Benefit*, an on-demand audiocast series on diverse topics from our Employee Benefits practice and Employer Group Health Plans team. Keep up to date with the latest trends in benefits, ERISA, compensation, and employer-sponsored plans, or obtain an overview of an important topic addressing your programs.

In each 10–15-minute episode, members of our team will spotlight certain issues or topics employers should be aware of. This on-demand series should be of interest to all employers that sponsor benefits and compensation programs.

Episode 1: Understanding Machine-Readable Files

Recorded on June 7, 2022, this audiocast features Epstein Becker Green attorneys discussing key questions with our guest, health economist **Steve Parente**, to uncover what insurance companies, employer-sponsored plan administrators, and employers need to know about the July 1, 2022, deadline for publishing machine-readable files.

[Learn More](#) | [Access the Recording](#)