Employee Benefits & ERISA

Demystifying the Regulatory Landscape of Employee Benefits

Our team provides practical, easy-to-understand advice on the full spectrum of employee benefits law. Among our integrated team of lawyers, many have held non-legal roles in the corporate world, including in human resources. While we are well-versed in the legal elements of the matters we are discussing, our lawyers also bring to the table a unique perspective and add value by having walked in our client's shoes.

Employee benefits are an integral component of a company's total reward package and should not be underestimated. At Morse, we recognize that there is no one-size-fits-all when it comes to employee benefit initiatives and programs. Therefore, we engage a multi-disciplinary approach, drawing upon the collective wisdom of experienced practitioners in the areas of Employee Benefits and ERISA, Employment, and Tax. Not only do we ask the essential questions of "who, what, when, and why," we listen and engage in a dialogue with our clients to answer the "how." We have the capabilities to address all benefits matters – from concept to implementation – and address the roadblocks that happen along the way. The result are programs tailored to meet the individual needs of our clients, that are designed to effectively attract, retain, and transition employees and achieve organizational efficiencies.

Employee Benefits and ERISA

Qualified Retirement and Health and Welfare Plans

Non-Qualified Deferred Compensation Plans and Equity Arrangements

Employee Benefits in Corporate Transactions

ERISA Fiduciary Matters

Qualified Retirement and Health and Welfare Plans

Qualified retirement and health and welfare plans are the core of a company's total rewards program. We keep clients current with the applicable regulatory landscape to avoid costly mistakes.

Our qualified plans practice focuses on the design, implementation, administration, amendment, and termination of the full complement of qualified plans, including 401(k), defined benefit, profit sharing, employee stock ownership plans (ESOPs), and welfare benefit plans (including wrap plans). We educate our clients on ERISA's statutory requirements, the Internal Revenue Code (the "Code"), Affordable Care Act (ACA), and other federal and state requirements, and

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keep them current with the changes impacting this heavily regulated area of the law. And, when our clients experience compliance issues, they rely on our more than 25 years of experience negotiating with government agencies, such as the Internal Revenue Service, Department of Labor, and Pension Benefit Guaranty Corporation, in connection with voluntary corrections, closing agreements, audits, and investigations.

Non-Qualified Deferred Compensation Plans and Equity Arrangements

Our integrated team of lawyers work closely with our clients to leverage the use of non-qualified deferred compensation plans and equity arrangements to attract, retain, and incentivize top talent, while simultaneously helping executives achieve financial security in a tax advantageous manner.

The relationships that we build with our startups and emerging growth companies uniquely positions us to align the objectives of founders, investors, boards of directors, and key employees. Our clients rely on us to memorialize these relationships and objectives through the design, negotiation, and documentation of equity compensation plans, executive agreements, deferred compensation plans, severance, and change in control arrangements. The distinct advantages of these programs come with a regulatory cost; they are subject to the complex regulations under Section 409A of the Internal Revenue Code (the "Code") and may give rise to excise tax under Code Section 280G. Our team is equipped to address the regulatory issues presented by such plans.

Employee Benefits in Corporate Transactions

Whether Morse represents buyer or seller, the key to avoiding potential pitfalls is to conduct thorough diligence on seller's plans, investigating for both plan document and operational compliance issues.

Critical to any corporate restructuring is the assessment of liability associated with seller's employee benefit plans. Diligence uncovers the myriad of employee benefit and compensation issues inevitable in the operation of qualified and non-qualified benefits plans. We advise on whether there is a significant impact on deal structure, advocate for purchase price reduction or escrow as necessary, and/or recommend termination of seller's benefit and compensation plans prior to closing. Our attorneys negotiate and draft the employee benefits and executive compensation provisions of the purchase agreement and related disclosure schedules and facilitate the transition of employees which may include the implementation of a transition services agreement.

ERISA Fiduciary Matters

The fiduciary standard has been called the "highest standard under the law." We work closely with our fiduciary clients to help minimize their risk of liability. We advise our clients to document not only their decisions and actions, but also the underlying rationale and measures taken as part of the decision-making process to establish compliance with the fiduciary standard of prudence.

We regularly counsel clients and conduct training on the establishment of fiduciary best practices, including Committee Charters and Investment Policy Statements, and negotiate vendor contracts and services agreements. We closely monitor the Department of Labor's (DOL's) enforcement actions and anticipate next year's agenda items. Clients and our colleagues look to us to determine whether a proposed transaction or investment will result in a prohibited transaction and whether any exemptions apply. And when necessary, we walk our clients through the DOL's Voluntary Fiduciary Correction Program and advise on avoiding the 100% tax imposed by the IRS.