

Contact**Houston**

1200 Smith Street, Suite 1400
Houston, Texas 77002-4310
Tel: 713.658.1818
Fax: 713.658.2553

Atlanta

191 Peachtree Street, N.E.,
Forty-Sixth Floor
Atlanta, Georgia 30303
Tel: 404.659.1410
Fax: 404.659.1852

Philadelphia

300 Conshohocken State Road
Suite 570
West Conshohocken, PA 19428
Tel: 610.772.2300
Fax: 610.772.2305

San Antonio

112 East Pecan Street, Suite
1450
San Antonio, Texas 78205
Tel: 210.253.8383
Fax: 210.253.8384

Employee Benefits & Executive Compensation

Employee Benefits & Executive Compensation

The Employee Benefits & Executive Compensation attorneys at Chamberlain Hrdlicka represent public companies, large and closely-held private companies, tax-exempt organizations, and the fiduciaries who oversee those entities' employee benefit plans. We understand incentives in the workplace, and we stand ready with an integrated approach to help you deal with them.

From qualified retirement plans, to executive compensation, to fiduciary advice, to health and welfare programs, to mergers and acquisitions, to ERISA litigation, our broad experience helps companies answer questions in these areas of the law. A background in tax, securities, and fiduciary matters is our foundation. A common theme runs through our work in these areas: we specialize in representing employers in protecting their interests and maximizing tax advantages. We understand the work that goes into creating and maintaining incentives in the workplace, and we have the technical skills to help keep a company's employee benefit plans operating at peak efficiency.

At Chamberlain Hrdlicka, we stand with Boards of Directors, Compensation Committees, and the HR teams that serve those directors and committees, as they seek to provide a stable, productive environment for company executives and workers.

For the Chamberlain Employee Benefits Blog ("E-Blawg"), click on <https://www.chamberlainlaw.com/employee-benefits>.

Benefit Plans that Answer the Challenge

Listening to you is the most important step in analyzing and designing a benefit plan for your company. We carefully evaluate your employee demographics and financial situation before we begin to outline options including both tax-qualified and non-qualified plans that make sense for both your budget and your balance sheet. We develop benefit plans that maintain your competitive edge in your business sphere.

In the area of qualified retirement plans, we design and draft pension and profit sharing 401(k), and 403(b) plans and understand the discrimination issues related to retirement plan administration. We structure employee stock ownership plans (ESOPs) for employee incentive and company growth. We obtain rulings on plan tax qualification (for design and continued operation) and guide plan administrators through regulatory compliance. Further, we advise on reduction in force, early retirement, and other severance programs. Setting up and maintaining compliance for

Employee Benefits & Executive Compensation, *Continued*

both tax-qualified and non-qualified plans requires highly specialized training.

Compensation Programs that Attract and Retain Executives

In the area of non-qualified plans, we remain mindful of the IRS's 409A tax on improperly structured deferred compensation plans that could create current taxation. Companies retain us to review, draft, and negotiate employment, bonus, and severance agreements. We structure long-term incentive, bonus, stock option, and other equity-based programs. We ensure coordination between and among our colleagues from other legal disciplines to provide comprehensive guidance regarding tax (federal and state), securities, and labor issues related to the employment relationship between the company and executive.

Coordinating Fiduciary Roles of Directors, Management and HR

We guide plan sponsors, Boards of Directors, Compensation Committees, and HR teams regarding the consequences of their actions and oversight with respect to their plans. Routinely, we help identify who the plan fiduciaries are and what their roles are. We help determine available prohibited transaction exemptions and obtain exemptions, whenever appropriate. We also structure pension plan investment and the necessary venture capital operating companies and real estate operating companies that might be needed to facilitate pension investment.

Health and Welfare Benefits

In addition, we regularly assist our clients in designing and handling the compliance requirements of medical, dental, life insurance, cafeteria and flexible spending, split dollar, and other employee fringe benefit plans.

Part of Your Team in Mergers and Acquisitions

In the context of acquisition, sale, merger, or spin-off, we quarterback and help our corporate colleagues and your HR Team in the due diligence, and determine the impact on the bottom line, of existing employee benefit programs, compensation arrangements, and health and welfare benefits. We help Boards of Directors decide whether to start anew, terminate, assume, or merge plans, and help them understand the costs in doing so pre- or post-transaction. We oversee the transfer of plan assets and supervise compliance with regulatory deadlines.

ERISA and Benefits Litigation

We provide subject matter expertise for the firm's Labor and Employment group, with respect to ERISA litigation and issues related to benefits claims, fiduciary breach, subrogation, and plan document and operational compliance.

Representative Matters

- Reduced a possible \$13 million tax exposure down to a \$500,000 plan correction for a management company that had inadvertently omitted 70 percent of its workers from its 401(k) plan.

Employee Benefits & Executive Compensation, *Continued*

- Designed a creative solution (subsequently approved by the IRS) involving assessment of a sanction amount 50% lower than demanded by the tax rules for a company whose fiduciaries and HR personnel had poorly run its 401(k) plan and for whom outside retirement plan service providers had created regulatory tax problems.
- Negotiated with the IRS and DOL to lower sanctions for an equity fund that purchased a target company and eventually merged the target into the fund's other two companies, through identifying four years worth of fiduciary breaches and tax disqualification issues as tied to the three merged retirement plans.
- As part of a corporate deal in which an international client sold its stock and assets to a large, national buyer, structured the executive compensation of the leadership that the buyer wished to retain, post-acquisition.
- Negotiated a compensation package for a highly-recruited, but non-founder, executive that included a \$300,000 base salary and a nine percent share of the technology company on a fully-diluted basis, in exchange for one day of work per week.

Areas of Expertise

- Employee Stock Ownership Plans
- Pension and profit-sharing plans
- 401(k), 403(b), and 457 plans
- Retirement plan self-audits
- Fiduciary audits
- Welfare plans
- Executive compensation arrangements
- 409A deferred compensation
- ERISA issues, in the context of M&A
- Administrative proceedings, audits and litigation initiated by the Department of Labor and the IRS
- Arbitration and mediations
- ERISA and benefits litigation
- Structuring of VCOC and REOCs to allow pension plan investment
- Fiduciary training
- HR training regarding plan administration and regulatory compliance

Employee Benefits Blog - E-Blawg

The Chamberlain Employee Benefits practice launched an Employee Benefits Blog ("E-Blawg"). To read the blogs in the Employee Benefits Blog, click on <https://www.chamberlainlaw.com/employee-benefits>.