

Employee Benefits/ERISA



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Complying with the myriad of complex employee benefits rules can be mystifying. The attorneys in Ulmer & Berne LLP's employee benefits practice have extensive experience in all aspects of employee benefits and ERISA matters. We pride ourselves on being able to communicate complex employee benefits issues to our clients in an understandable and usable fashion.

For the past five years, the Employee Benefits Group has been nationally recognized by *Chambers USA: America's Leading Lawyers for Business* as one of the best in Ohio. *Chambers USA* ranks top attorneys by state and area of practice. The most recent edition of the publication reports that the group has "extensive experience designing and implementing employee benefit, executive compensation and pension plans."



Areas of expertise include the following:

- Employee benefit plan design and compliance, including pension and welfare plans;
- Executive compensation and nonqualified plans;
- Employee benefits issues in business transactions; and
- Employee benefits litigation.

Ulmer & Berne is ranked among the top firms in the categories of Employee Benefits (ERISA) Law and Litigation-ERISA.

Employee Benefit Plan Design and Compliance

Pension Plans. We have significant experience designing, drafting and working with all types of employee pension benefit plans, including profit sharing, 401(k), money purchase, defined benefit pension (including cash balance) and ESOPs. We regularly advise clients with respect to operational and administrative issues relating to such matters as non-discrimination testing, plan mergers, spin-offs and terminations, plan distributions, participant loans, contribution allocations and limitations, deduction issues, forfeiture allocations, amendment procedures, investment direction, investment policies, qualified domestic relations orders, plan investments in employer securities and employer real property, prohibited transactions, fiduciary responsibility issues, and investment considerations concerning unrelated business taxable income and unrelated debt-financed income.

In addition, members of our employee benefits practice are frequently involved in the analysis of controlled group and affiliated service group status. We represent clients in audit controversies with the Internal Revenue Service and



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Department of Labor, and assist clients in seeking private letter rulings, advisory opinions and prohibited transaction exemptions.

Welfare Plans. We have significant experience in designing, drafting and consulting with respect to all types of welfare benefit programs, including medical benefit plans, retiree medical plans, medical reimbursement plans, disability plans, group term life insurance, dependent care, cafeteria plans, voluntary employee beneficiary associations (VEBAs) and educational assistance programs. We assist employers and insurers with claims issues and compliance with the complex ERISA claims procedures, privacy rules under HIPAA, and continuation health coverage under COBRA.

Executive Compensation and Nonqualified Plans

We have extensive experience representing businesses (both publicly traded and closely held) and key executives in connection with the formulation, negotiation, drafting and interpretation of employment agreements, severance agreements and a wide variety of executive compensation benefit plans, including stock option plans, phantom stock plans, stock appreciation rights plans, split-dollar life insurance agreements, excess benefit plans, top hat deferred compensation agreements, and rabbi trusts - including compliance with the Internal Revenue Code Section 409A. In addition, we have extensive experience with regard to the special executive compensation and benefit needs of tax exempt entities and their executives.

In addition, our attorneys are skilled in all aspects of SEC compliance and tax issues with respect to the compensation plans and arrangements that are adopted by public companies. We are experienced at registering the securities underlying the plans, researching and preparing SEC filings for Section 16 compliance, instructing executives and directors regarding insider trading regulations, and negotiating with institutional and other shareholders to secure approval of new plans at Annual Meetings. Further, we are well versed in the SEC's executive compensation disclosure requirements for Proxy Statements and Forms 8-K.

Employee Benefits Issues in Business Transactions

We assist clients with benefits issues arising in connection with purchases and sales of businesses and initial public offerings. Such assistance includes drafting, reviewing and negotiating appropriate benefits representations and warranties and indemnifications in purchase and sales agreements. In connection with business acquisitions, we analyze the seller's employee benefit plans, prepare tables comparing the seller's programs with the buyer's



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programs and outlining problem areas, and assist the client with integration of employee benefit programs. We also analyze issues involved in buying and selling businesses from or to employee benefit plans. In connection with initial public offerings, we analyze the offering company's compensation and benefit plans and aid in the transition to plans and arrangements more appropriate in the public company context.

Employee Benefits Litigation

We handle numerous employee benefit litigation matters. We staff using the team approach, with an employee benefits and business litigation practitioner on each case. We represent businesses of all sizes, fiduciaries, insurers and financial providers in connection with ERISA disputes on a regular basis. We have handled routine claims for benefits, breach of fiduciary duty claims, wrongful termination of employment for purposes of denying employee benefits (510 claims), defense of employers against multiemployer benefit plan claims, representation of plan administrators in connection with qualified domestic relations order disputes and representation of clients in connection with litigation brought by governmental entities. We also have extensive experience and expertise in representing employers in connection with withdrawal liability issues under multiemployer pension plans.



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