

Executive Compensation, ERISA, Employee Benefits

Helping clients achieve compensation & benefits goals



Whether you are seeking to

- establish new benefit programs for your employees
- maintain compliance with tax and benefits laws and regulations
- deal with administrative issues as they arise
- conduct pre-acquisition diligence or internal audits
- protect boards, committees, and other fiduciaries from liability
- evaluate and negotiate executive compensation arrangements, bonus plans, and equity incentive programs

our team can provide cost-effective and practical solutions to help you maximize the recruitment and retention of your workforce.

We help clients manage

- Executive compensation arrangements
- Equity and phantom equity plans
- Change in control and 280G issues
- Employment and severance agreements
- 409A deferred compensation
- 403(b)/457(b) plans
- Qualified retirement plans
- Health, welfare and wellness plans
- Affordable Care Act compliance
- Fiduciary risk
- Public school and local government plans
- ESOPs

Related Practice Areas

Banking & Financial Services

Broker Dealers & Investment Management Litigation

Commercial Litigation & Business Torts

Corporate & Securities

Education

Employment & Labor

General Counsel Services

Government Relations

Healthcare

Insurance

Investment Management Litigation

Mergers & Acquisitions

Non-Profit Organizations

Public Company Compliance & Counseling

Tax

Related Industries

Banking & Financial Services

Construction

Consumer Products & Retail

Education

Energy & Utilities

Interdisciplinary team and collaborative approach

- Former in-house counsel with an understanding of business practicalities
- Seasoned tax, ERISA, and employment practitioners
- Team-oriented approach
- Regularly partner with other Firm departments to provide coordinated services

Our attorneys provide responsive, business-minded, advice to help you drive your compensation and benefits strategies.

Our clients span a broad range of employers, individuals, and businesses who work with them

- Fortune 500 companies
- Mid-sized employers
- Small employers
- Multi-state and global employers
- Charitable and not-for profit entities
- MEWAs and VEBAs
- PEOs and staffing companies
- Insurance and benefits brokers
- Hedge funds, private equity funds and REITs
- Investment advisers
- Higher education and public school districts
- Individuals

Navigate the legal and regulatory landscape, focus on manageable business objectives

Nelson Mullins helps you navigate the complex rules that can impact your organization's executive compensation and employee benefits programs. We partner with you to find practical solutions to the complicated issues and laws that you face in this ever-changing environment and help you create and maintain an administratively manageable program structure.

Our executive compensation and employee benefits team works with you to

- **Stay compliant with federal and state laws governing plan qualification and administration** – including ERISA, the Internal Revenue Code, the Affordable Care Act, and HIPAA
- **Design retirement benefit and group health and welfare plans** – that accomplish your organizational goals

Health Insurance
Healthcare
Hospitality & Tourism
Insurance
Manufacturing
Pharmaceuticals & Medical Devices
Real Estate
Sports
Technology
Transportation

- **Structure and manage executive compensation programs and matters** – including equity and phantom equity incentives, annual bonus and long-term incentives, nonqualified retirement and deferred compensation arrangements, change in control agreements, Section 280G golden parachute issues, 409A compliance and more
- **Keep boards, committees and plan administrators in compliance** – and up-to-date on their fiduciary duties with respect to your organization's compensation programs, including guiding on fiduciary committee charters, resolutions and delegations, prohibited transactions and special exemptions and more
- **Negotiate executive compensation packages and incentive pay** - our experience advising both sides of the transaction allows us to provide more helpful insight to our clients
- **Solve day-to-day plan administration issues, including for defined benefit and 401(k) plans** – as they arise, including QDROs, coverage and non-discrimination testing, summary plan descriptions, employee handbooks
- **Interact with regulators** – respond to IRS, DOL, and PBGC audits, assist with corrections under governmental programs, prepare Form 5500 and other returns, and handle other inquiries
- **Manage multiple employer, multi-employer and collectively-bargained retirement and group health and welfare plan issues** – including negotiation of agreements, retiree health benefits, VEBA's and MEWA's
- **Navigate ERISA fee disclosure requirements** – that apply to plan sponsors, plan administrators and plan fiduciaries
- **Provide support for insurance and benefits broker issues** – relating to duties and disclosures imposed by law, client agreements, or insurance policies
- **Conduct benefits due diligence** – in mergers, acquisitions, sales, joint ventures, private offerings, and financings, and address pre- and post-acquisition plan mergers and terminations
- **Address public company issues** – including proxy disclosures, 162(m) exemptions, and 409A specified- employee delay
- **Solve design and testing issues** – whether proactively or in response to an identified problem
- **Promptly address HIPAA and cybersecurity breaches** – in combination with Nelson Mullins' cybersecurity practice, to provide immediate assistance and advice regarding mitigation, filing and notice requirements
- **Assess 280G compliance** – to make sure that your executives are properly protected in a change in control
- **Ensure ERISA fiduciary obligations are satisfied** – whether from an employer, plan committee, or service provider perspective
- **Negotiate agreements with key service providers** – including third party administrators, trustees, record keepers, insurers, investment advisors, benefits brokers and vendors
- **Train your staff** – with periodic client alerts, webinars and in-person training sessions to ensure that everyone understands their duties and obligations
- **Defend your plan** – as well as your business and your board members in class actions, multiple plaintiff actions, or individual actions, including ERISA litigation

involving failure to pay benefits, COBRA compliance, fiduciary breach of duty, disability claims and retirement benefit and plan fee claims

Why Nelson Mullins?

- Practical business mindset and experience
- Accessibility and responsiveness
- Cost efficiency and budget predictability
- Proactive approach to compliance

Experience

Following is a selected sampling of matters and is provided for informational purposes only. Past success does not indicate the likelihood of success in any future matter.

Executive Compensation

- Successfully restructured privately-held client's discounted stock option program to achieve 409A compliance and avoid any correction penalty
- Restructured split-dollar and other funding mechanisms for non-profit corporation's deferred compensation plan to achieve 457 and 409A compliance
- Counseled LLC client on restricted use of employee benefit plans for profits interest arrangements and designed and implemented phantom unit appreciation plan

Qualified Retirement Plans

- Merged several large defined benefit plans with a number of benefit formulas, including a cash-balance feature, into a single plan, resulting in substantial savings in funding costs, PBGC fees and audit costs
- Terminated a \$200 million defined benefit plan for a large national health insurer, resolved IRS and PBGC issues and negotiated the annuity purchase contract
- Analyzed phased retirement strategies for an aging workforce for a large manufacturing company

Fiduciary Counseling

- Performed annual fiduciary training for large public manufacturing company retirement plan and investment committees which oversee multiple qualified retirement plans and related trusts, including a defined contribution plan with an employer stock fund as an investment alternative
- Analyzed use of an insurance captive for stop-loss coverage purposes for a company's self-insured welfare plan
- Conducted ERISA 408(b)(2) service provider fee audit for large manufacturing company

Health and Welfare Plans

- Led Affordable Care Act compliance initiative for private restaurant franchisee, including the restructure of HR and payroll systems to ensure proper tracking and reporting

- Analyzed wellness programs and related discounts for the U.S. manufacturing subsidiary of a Japanese company and a large U.S. publicly-traded oil and gas corporation
- Completed state-by-state analysis of potential HIPAA violation involving third party provider to large manufacturing client group health plan, assisting client with HHS and state reporting obligations and participant communications