

# Employment & Benefits

Experience in employment discrimination, regulatory compliance, benefit plan design and administration, employment-related and benefits-related litigation, human resources management, executive compensation planning, tax, and labor and employee relations.

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***You just started your own business and would like to adopt a 401(k) plan. What is involved in establishing the plan and in keeping the plan qualified for tax purposes? What are your ERISA fiduciary obligations with respect to participants?***

Pooling our areas of strength enables us to address the full range of legal and practical issues involved in the employer-employee relationship. We offer clients rapid access to the full range of employment-related services scaled to their individual needs, from extensive reviews of personnel policies to narrowly focused questions of regulatory compliance. Whatever the scope of a client's inquiry, our primary function is not to say "yes" or "no," but to understand the client's objectives and to build cost-effective strategies for meeting them. Our goal is to enhance the employer's understanding of the legal issues that affect its business operations, and to help devise the means to achieve the employer's business objectives.

The Employment & Benefits Group is complemented by the other areas of Sullivan & Worcester LLP's practice that serve the business community. The Firm's highly regarded presence in the areas of intellectual property, new business ventures, corporate financing and reorganization, public and private finance, banking, energy, investment and securities law, taxation, antitrust law, environmental law, health care law, general corporate, and real estate law, as well as litigation, enriches the resources available to all clients of the Firm.

***Productivity in one of your branch offices has been in steep decline and you have determined that it is necessary to lay off some of the work force in order to cut costs. How do you identify which employees to include in the reduction in force? How can you manage the risk of litigation?***

## **HUMAN RESOURCES COUNSELING AND DISPUTE RESOLUTION**

Our employment lawyers advise clients on how to manage human resources most productively, with an emphasis on "preventive maintenance" and litigation

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avoidance. We assist in formulating effective and dependable procedures for matters such as hiring and recruiting, pre-employment investigation and testing, employee handbooks, employment applications, offer letters and employment contracts and non-competition and confidentiality agreements.

***A distraught female employee comes to you and complains of sexual harassment by a male co-worker. You interview the male employee and he vehemently denies the allegation. No one witnessed the alleged harassment. The female employee insists that her co-worker be discharged. What can and should you do?***

Our attorneys are also well versed in issues arising out of performance appraisals and terminations, including litigation risk assessment, trade secret protection and continuation of benefits. Our employment attorneys help to develop creative strategies for addressing particular challenges, such as management of sick or disabled employees, substance abuse in the workplace, sexual or other harassment and unionization campaigns. Together with other benefits experts, we provide fast and cost-effective answers to "quick questions" and a wider variety of issues including payroll practices, wage, hour, vacation and overtime issues, workers' compensation, unemployment compensation, benefits issues and employer vs. independent contractor classified issues.

When crisis and discord are unavoidable, we are poised to respond promptly and decisively. Our practice group includes seasoned litigators who concentrate in employment-related disputes and adversary proceedings, including issues of wrongful termination, discrimination, breach of contract, covenants not to compete, and benefit claims. We also offer experienced guidance in connection with audits and enforcement actions by the Department of Labor, the Equal Employment Opportunity Commission, the Occupational Safety and Health Administration, the Office of Federal Contract Compliance Programs, parallel state agencies, and with labor grievances and proceedings before the National Labor Relations Board. We are experienced in the use of alternative dispute resolution, including arbitration and mediation, and we help clients formulate and implement internal dispute resolution procedures. We represent clients in federal and state courts and before all relevant federal and state administrative agencies.



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***The union that represents your employees has filed a grievance contesting your discipline of a union member. The union is now requesting copies of the personnel files of other employees in order to prepare for the arbitration hearing. What obligation does the company have to reveal private or sensitive company records to the union?***

## **BENEFITS AND COMPENSATION**

In the increasingly regulated world of employee benefit programs, compliance alone demands considerable skill, but compliance is not enough. Employers need imaginative solutions to the problems of plan design and implementation, investment of plan funds, communications to participants, and handling benefit matters in business acquisitions and divestitures.

***Your employee handbook contains several statements to the effect that it is not intended to be, nor can it be, construed as a contract for employment, and that all company employees are employed "at will." Does this language protect you against claims by your employees that the handbook is a contract?***

With clients from small, high technology start-up companies to public companies and established financial institutions and service businesses with offices worldwide, Sullivan & Worcester's tax-oriented ERISA specialists bring broad-scale experience and sophistication to bear on each situation to help you achieve your goals. We assist you in fitting your compensation and benefits issues into the larger picture and maximizing the impact of the benefit dollars you spend. We also frequently advise individuals about their compensation packages and their personal planning with retirement assets.

Our practice covers retirement plans (profit sharing, money purchase pension, defined benefit, 401(k), employee stock ownership plans (ESOPs), 403(b), and 457), nonqualified deferred compensation (rabbi trust arrangements, secular trusts and annuities, golden parachutes, top hat, and excess benefit plans), equity based compensation (stock options, restricted stock, stock appreciation rights (SARs), restricted stock units (RSUs), and phantom stock), welfare plans (medical, severance pay, life insurance and disability) and tax-efficient fringe benefits (transportation programs, dependent care, flexible spending accounts (FSAs) and educational assistance).

Our areas of specialization include not only the federal and state income, gift, and estate tax aspects of benefit programs, but also issues of fiduciary liability, permitted pension plan investments, prohibited transactions, securities law, ERISA litigation, and state regulation.

***A retiring executive wonders how to choose the retirement plan distribution options that best fit her retirement situation. The executive also would like to reduce the estate tax bite on any payments to her beneficiaries when she dies. What should she consider?***

We counsel clients involved in corporate transactions as to the benefit issues implicated. We represent clients before the Internal Revenue Service, the Department of Labor, the Pension Benefit Guaranty Corporation, and similar state agencies.

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*For further information about our Employment & Benefits practice group, please visit our website at [www.sandw.com](http://www.sandw.com) or contact:*

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