

LAW OFFICE

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Outline of ERISA and Compensation Practice Areas

John D. Hartness, Jr.

A. Qualified Retirement Plans

1. Analysis of employer needs and design of plan features
 - a. Profit sharing plans
 - (1) Standard formula plans
 - (2) Integrated formula plans
 - (3) Age-weighted plans
 - (4) Cross-tested (“new comparability” plans)
 - b. 401(k) plans
 - c. Money purchase pension plans
 - (1) Standard formula plans
 - (2) Integrated formula plans
 - d. Target benefit plans
 - e. Thrift and savings plans
 - f. Governmental plans
 - g. Stock bonus plans
 - h. Prototype plans and bundled plan arrangements as options
 - i. Multiple employer arrangements
 - j. Defined benefit pension plans
 - k. Employee stock ownership plans
 - l. Simplified arrangements in lieu of qualified plans
 - (1) SEP IRAs
 - (2) SIMPLE Plans
 - m. 403(b) Plans

2. Implementation
 - a. Information gathering and document preparation
 - b. Submitting plans to IRS for favorable determination letters
 - (1) Individually designed plans
 - (2) Conversion of plans to volume submitter program
 - (3) Nonstandardized prototype plans
 - (4) Multiple employer plans
 - (5) Governmental plans
 - c. Employee communications
 - (1) Adoption announcements
 - (2) Summary plan descriptions
 - (3) Notices to interested parties
 - (4) Enrollment packages
 - (5) Miscellaneous communications
 - d. Liaison with third party administrators, accountants, investment firms and actuaries
3. Problem-solving during the life of the plan
 - a. Plan amendments
 - b. Self-correction procedures
 - c. IRS correction programs (VCR, SVP, Walk-in CAP, etc.)
 - d. Department of Labor fiduciary correction program
 - e. Other Department of Labor submissions
 - (1) Advisory opinions
 - (2) Exemption requests for prohibited transactions
 - f. Audit defense (both IRS and DOL) and closing agreements
 - g. Private letter rulings
 - h. Form 5500 filing issues
 - i. Plan contribution calculations
 - j. Nondiscrimination testing
 - k. Claim resolution (representation of employers, trustees and participants)
 - l. Litigation of selected issues
4. Termination of the plan
 - a. Planning and document preparation
 - b. Submission to IRS for favorable determination letter
 - c. Dealing with PBGC in connection with termination of defined benefit pension plans
 - d. Employee communications
 - e. Distribution planning
 - f. Reversion issues
 - g. Partial termination issues

5. Specialized issues
 - a. Employee stock ownership plans (ESOPs)
 - (1) Loan transactions
 - (2) Section 1042 transactions
 - (3) Pass-through voting issues
 - (4) Valuation matters
 - b. Planning for mergers and acquisitions of employers
 - (1) ERISA representations and warranties in contracts
 - (2) Due diligence
 - (3) Same-desk rule application
 - (4) Plan mergers, transfers and terminations
 - (5) Special ESOP matters (e.g., pass-through voting, fiduciary issues)
 - c. New defined benefit plan concepts
 - d. Minimum required distribution issues
 - e. Distribution planning for owners
 - f. ERISA fiduciary issues, including prohibited transactions
 - g. SEP IRA adoptions after termination of qualified plans
 - h. Safe harbor plans (e.g., safe harbor contribution 401(k) plans)
 - i. Multiple employer plans
 - j. Spousal rights under the Retirement Equity Act
 - k. Anti-alienation provisions for qualified plans and IRAs
 - l. Preparation and review of qualified domestic relations orders
 - m. Employee leasing
 - n. Control group issues
 - o. Affiliated service group issues
 - p. ERISA preemption of state law
 - q. Taxation of distributions of qualifying employer securities
 - r. Frozen plans

B. Nonqualified Deferred Compensation Plans

1. Design and preparation of various types of plans
 - a. Qualified and nonqualified stock option plans
 - b. Restricted stock plans
 - c. Phantom stock plans
 - d. Employee stock purchase plans
 - e. Individual deferred compensation plans
 - f. Top hat deferred compensation plans
 - g. Rabbi trust arrangements
 - h. Section 457 eligible plans for government entities and tax-exempt organizations
 - i. Section 457(f) ineligible plans
 - j. Excess benefit plans
 - k. Filing compliance with Department of Labor

2. Tax analysis and planning relating to nonqualified and qualified plans
 - a. Excess parachute payment analysis in change-of-control circumstances
 - b. Severance issues
 - c. Timing of exercise of options
 - d. Section 83 issues
 - e. Filing issues relating to Section 83(b) elections and other special reporting
 - f. Stock option modification issues
 - g. Merger effects on stock option and other equity plans (e.g., pooling issues, Section 424 issues relating to conversions and modifications)
3. Executive compensation planning
 - a. Negotiating contracts for executives and analysis of special compensation issues
 - b. Preparing individual severance agreements
 - c. Merger and acquisition issues
 - d. Tax planning for retirement
 - e. Noncompetition, nonsolicitation and related covenants

C. Welfare Benefit Plans

1. Design and preparation of plans (e.g., cafeteria plans, dependent care, individual medical and other reimbursement plans) and related documents
2. Participant communications
3. Preparation of clients for IRS and DOL audits
4. Submission of plan trusts for exemption recognition by the IRS
5. MEWA issues
6. Analysis and advice on fiduciary issues, including effect of demutualization of group insurance providers
7. Beneficiary designation issues
8. COBRA and HIPPA compliance (including Georgia "Little COBRA")
9. Delinquent filer program
10. Assist in selection of third-party administrators
11. Compliance with electronic communications regulations

D. Individual Retirement Accounts

1. Distribution planning issues (consultation with estate planning attorneys and financial planners)
2. Self-directed IRA planning issues (prohibited transaction and unrelated business taxable income issues)
3. IRA problem resolution
4. Minimum required distribution issues and calculations
5. Beneficiary designation issues (e.g., trusts)
6. Conduit IRAs and rollover issues