Employee Benefits

Barclay Damon provides comprehensive, practical, and effective advice on a full spectrum of employee benefits and ERISA matters.

Executive Compensation

Barclay Damon attorneys have experience providing counsel to employers in connection with the design and documentation of compensation and benefit arrangements aimed at attracting and retaining key employees. Our attorneys work extensively on IRC section 409A compliance and correction matters and assist clients in the design and administration of long-term incentive compensation arrangements, non-qualified deferred compensation plans, qualified and non-qualified stock options, other equity and phantom equity programs, and supplemental employee retirement programs (SERPs).

Employee Stock Ownership Plans (ESOPs)

Barclay Damon's employee benefits and ERISA attorneys have extensive experience in the design, implementation, and administration of employee stock ownership plans. We advise business owners on the use of ESOPs as a tax-favored succession management strategy; ESOP-owned companies on the administration, structure, and documentation of their plans; and trustees and plan administrators on their fiduciary responsibilities. We manage ESOP transactions and DOL claims and investigations. Our attorneys are well-positioned to help our clients achieve the substantial benefits of employee ownership. We have a national practice representing ESOPs.

Risk Management

Barclay Damon employee benefits and ERISA attorneys help plan sponsors and fiduciaries identify, prioritize, and minimize the litigation and liability risks associated with the management and administration of employee benefit programs. We accomplish this through advising on case-informed plans and employee communications strategies, plan governance ideas, and “best practice” policies and procedures. For example, the Barclay Damon team has developed distinct risk management strategies, informed by case law, for employers with self-funded medical plans. We utilize similar strategies for sponsors of qualified and non-qualified retirement plans, severance plans, and other ERISA-covered arrangements.

Employee Benefit Plan Documentation

Plan documents, summary plan descriptions, and related documents are the focal point of just about every employee benefit plan dispute. A carefully crafted plan document and summary plan description can reduce litigation and liability risks. We regularly provide plan-and SPD-drafting services in support of employers and other plan sponsors who wish to organize and restructure their complex health and welfare benefit programs into single, comprehensive ERISA plans.

Plan Governance and Reducing Risk

Our attorneys helps senior executives and board members understand their fiduciary responsibilities, and take steps to minimize those responsibilities and the attendant litigation and liability risks.

Health and Welfare Benefit Plans

Barclay Damon's employee benefits and ERISA team has substantial experience addressing the legal considerations that are unique to health and welfare benefit plans. Our attorneys advise clients on a variety of health law matters, counseling plan sponsors, insurers, and health plan service providers on a broad array of issues relating to ERISA, COBRA, the Affordable Care Act (ACA), and HIPAA privacy and security. We have substantial experience negotiating administrative service agreements, business associate agreements, and nondisclosure and data transmission agreements related to the operation and administration of self-funded medical plans. Members of our group also advise health insurance

companies and brokers on developing, documenting, and administering insurance products and services in a manner that comports with applicable law, most notably, the Affordable Care Act.

ERISA Claims and Dispute Resolution

Our attorneys routinely help claims administrators and administrative committees carry out their responsibilities in accordance with the claim and appeal rules prescribed by federal law. Careful adherence to a plan's internal claims procedure reduces litigation risk and helps ensures a plan or claims administrator's decision regarding a benefit entitlement will be upheld if the dispute finds its way to court.

ERISA Litigation Support

When a dispute ends up in court, Barclay Damon employee benefits and ERISA attorneys provide valuable subject matter support to Barclay Damon litigators in the defense of ERISA benefits and fiduciary breach claims brought against plan sponsors, service providers, employee benefit plans, and plan fiduciaries.

Governmental Investigations and Audits

We regularly engage with plan sponsors and fiduciaries in connection with USDOL investigations and enforcement matters, and have success negotiating voluntary correction steps that avoid litigation and penalty assessments. Our attorneys also have significant experience guiding employers through IRS audits of tax qualified plans.

Compliance Standards Governing Retirement Plan Recordkeeping and Investment Programs

Our attorneys provide pragmatic legal advice regarding qualified plan design, 401(k) recordkeeping and administration, and investment program management. A recent litigation trend involves lawsuits brought against employers alleging that, as sponsors of 401(k) plans, the targeted employers authorized the payment of excessive fees for the administrative and investment services provided to the plans. Barclay Damon employee benefits and ERISA attorneys have developed “best practice” policies and procedures designed to minimize litigation risk, strategies that involve negotiating and monitoring service provider and investment management fees.

Privacy and Security of Personal Health Information

Barclay Damon counsels group health plans, in particular, self-funded plans, on compliance with the privacy, security, and breach notification requirements of state and federal privacy and security laws. Our group assists clients with HIPAA risk assessments; business associate contract review and negotiation; development of HIPAA privacy and security policies and procedures; group health plan workforce training; breach assessment and notification; corrective actions; OCR and attorney general investigation response; and general advice regarding the use, disclosure, exchange, retention, and destruction of health information.

Affordable Care Act Compliance

Barclay Damon has extensive experience addressing employer and provider concerns in connection with the broad provisions of the ACA. We help employers meet the challenges of complying with new benefit mandates, coverage requirements, government and participant reporting and disclosure requirements, and taxes.

Keeping up with the continuous flow of health care guidance and case law is a major challenge for health plan sponsors. Our attorneys have experience helping clients react quickly and intelligently to new developments. The attorneys at Barclay Damon have a demonstrable commitment to the subject matter and have been helping clients comply with existing law and new developments since the March 2010 enactment of the ACA.