

# Employee Benefits & Executive Compensation

Now more than ever, companies face significant challenges in attracting and retaining employees. There is greater public scrutiny of compensation and benefits, and a push for greater transparency has vastly increased the complexity of regulations governing these matters. Federal officials routinely publish rule changes that consist of hundreds of pages.

In responding to all of this information, Cozen O'Connor attorneys train their attention on the one thing that matters most: our clients' goals. We don't waste time belaboring constraints or cataloging unlikely scenarios. We clear away distractions and focus on finding the most efficient legal path to our clients' desired results.

Cozen O'Connor's employee benefits and executive compensation lawyers advise companies, boards of directors, investment and compensation committees, management teams, and individual executives in a wide range of industries. On the employee benefits side, we provide guidance on the design and administration of retirement, health and welfare, and severance plans and counsel clients on the benefits implications of business transactions, and advise on fiduciary responsibilities, plan terminations, and withdrawals. On the executive compensation side, we negotiate sophisticated contracts that include proper protections and desirable incentives for both executives and employers.

Every organization needs compensation and benefits arrangements that comply with the law, limit liability, attract and retain top talent, and square with the company's financial position. To strike the appropriate balance among those goals, benefits counsel must develop specific strategies to suit each client's situation. But whether it's a union-sponsored multiemployer pension plan or an executive contract, any well-crafted agreement must satisfy one criterion: it must operate as intended. A plan that does not function properly or has unanticipated consequences is a missed opportunity at best and a hotbed of litigation at worst. Cozen O'Connor attorneys make sure that promises made are promises delivered.

While many large-firm compensation and benefits attorneys specialize in narrow subfields, our attorneys are well-rounded general practitioners. They are fully versed in the details of each set of laws and maintain a broad perspective on the field as a whole. We believe this versatility is essential to providing the best advice to clients. Cozen O'Connor attorneys can identify how even small changes in one area could affect a company's benefits and compensation position in other areas. Moreover, clients know that an attorney is closely overseeing their interests and understands all aspects of their benefits and compensation portfolio.

## SERVICES

### Employee Benefits

- Advise clients regarding qualified retirement plans, including defined benefit pension plans, defined contribution plans, 403(b) plans, 401(k) plans, cash balance plans, and ESOPs
- Counsel clients regarding nonqualified retirement plans, related funding arrangements, non-qualified deferred compensation, and tax considerations
- Provide advice regarding health and welfare benefit plans' statutory requirements in order to protect clients from liability
- Counsel clients in their fiduciary duties under ERISA
- Advise clients on benefits issues arising from mergers, acquisitions, and divestitures
- Assist with plan terminations and de-risking, including the implications of plan underfunding or overfunding
- Counsel clients regarding multiemployer pension plans and withdrawal liability



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### Related Practice Areas

- Capital Markets & Securities
- Capital Markets & Securities — Canada
- Health Care & Life Sciences
- Italy Practice
- Labor & Employment
- Mergers & Acquisitions – Global

### Industry Sectors

- Insurance
- Real Estate & Construction
- Sports

- Represent clients in all aspects of ERISA litigation and in matters before the Internal Revenue Service, Department of Labor, Department of Health and Human Services, and the Pension Benefit Guaranty Corporation

### **Executive Compensation**

- Counsel clients about non-qualified deferred compensation strategies, including Section 409A requirements and other deferred compensation models
- Design and provide guidance on equity and equity-based incentive compensation programs
- Prepare employment contracts, retention agreements, and change-in-control agreements
- Negotiate executive compensation arrangements, including incentive plans, equity compensation, severance and change-in-control agreements, and performance metrics
- Help clients navigate the tax law implications of executive compensation

### **CLIENTS**

- Public and private companies
- Boards of directors
- Investment committees
- Management teams
- Individual executives

### **TEAM**

Our attorneys are renowned in the field of benefits and compensation law. The team includes a fellow of the prestigious American College of Employee Benefits Counsel. Several of our attorneys have professional experience as accountants and human resources consultants, which gives them valuable insights into the needs and challenges of their clients. Attorneys in the practice frequently lecture and publish on employee benefits, compensation, tax, and employment law.

Cozen O'Connor has a reputation for being entrepreneurial, which means, in part, that we constantly strive to deepen our relationships with our clients. We provide steadfast support to our clients in the midst of challenge, transition, and upheaval because we see client relationships as long-term investments.

We see our cross-disciplinary support of colleagues within the firm as another investment. Effective collaboration is a hallmark of excellent client service. Therefore, members of the employee benefits and executive compensation group work closely with attorneys from our tax, labor and employment, mergers and acquisitions, bankruptcy, health care, and public finance groups to provide comprehensive legal counsel.

### **Experience**

Performed due diligence and provided advice on complex labor and pension liability issues on behalf of the acquiring company in the acquisition of the *New York Daily News*, the ninth-largest daily newspaper in the United States.

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Won summary judgment on behalf of an insurance company client alleged to have violated the Employee Retirement Income Security Act (ERISA) when it refused to pay the plaintiff a portion of his deceased wife's life insurance benefit, and instead made the payout to the primary beneficiaries she had designated. In granting our motion for summary judgment, and denying the plaintiff's cross-motion, the court reasoned that the plaintiff's speculation that a conspiracy existed to cover up an internal change to the plan documents removing him as a primary beneficiary did not create a genuine issue of material fact, and held that the company's practices and procedures in administering

its employee benefit plan satisfied its duties under ERISA and were properly followed.

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Assisted a major corporation in successfully arguing for the complete reversal and elimination of the Internal Revenue Service's imposition of a \$5+ million employer shared responsibility penalty under the Affordable Care Act (ACA).

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Updated an ERISA WRAP plan to incorporate newly offered FSAs.

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Researched tax reporting for both the company and employees under an executive compensation plan.

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Reviewed and drafted individual separation agreements under an ERISA Separation Plan for a reduction in force.

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Won summary judgment, affirmed by the U.S. Court of Appeals for the Third Circuit, on behalf of an employee health plan operated by a health system in an ERISA case involving the recovery of a substantial overpayment to an out-of-network health care provider by the plan on behalf of a plan beneficiary. The opinion clarifies ambiguities in recent Supreme Court cases governing recoveries by ERISA plans based on equitable liens by agreement. The circuit court found that our client's claims were equitable rather than legal, thus permitted by ERISA, and awarded the plan an equitable lien by agreement based on a provision of the plan requiring the return of overpayments made in error. The plaintiff was ordered to repay our client the substantial overpayments. Additionally, we won summary judgment on the provider's ERISA claims against our client, through which the provider sought \$1.2 million in reimbursement based on its full-billed charges.

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Secured a significant victory in an arbitration centering on multiemployer pension plan withdrawal liability. Our client withdrew from the Central Ohio UFCW pension plan and was assessed a withdrawal liability of more than \$4.6 million, to be paid quarterly over 20 years. Over a two-day hearing before the American Arbitration Association, we successfully argued that the actuarial assumptions and methods used in the determination of liability were unreasonable. The arbitrator vacated the assessment and ordered the actuary to make a new determination of liability using an interest rate that substantially reduced the client's liability.

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Handled nationwide litigation brought under Section 502(a)(3) of ERISA against a number of large insurance company clients, all of which had provided excess insurance to school districts. Lawsuits were filed in three different circuits, the Central States Teamsters Fund demanding that all insurance company clients reimburse the Fund for medical benefits. We prevailed in all three circuits at the 12(b)(6) stage, successfully arguing that Central States were impermissibly seeking money damages as opposed to equitable relief.

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Won summary judgment, which was affirmed on appeal, on a Section 502(a)(1)(B) claim centering on a disputed life insurance payout. The plaintiff, as administratrix of her father's estate, claimed that an individualized open enrollment worksheet, calculating the benefit at issue at almost \$100,000 more than the payout received, was the controlling document. We successfully argued that plan documents trump personalized estimates under ERISA, and the court's opinion includes a discussion of the policy rationale underlying this conclusion.

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Won summary judgment on claims of discrimination and retaliation brought under 42 USC § 1981, based upon race, and the Employee Retirement Income Security Act of 1974 (ERISA), based upon an employee's receipt of pension benefits, on behalf of a Fortune 100 grocery retailer.

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Represented a company in connection with structuring real estate transactions to address ERISA plan asset considerations for a significant pension investor.

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Regularly assist clients with analyzing ERISA plan asset issues for their pension plan investments.

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Prepared an ERISA WRAP plan and summary plan documents to ensure compliance with relevant law and ability to create a combined Form 5500.

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Played an instrumental role in the Federal Retirement Thrift Investment Board (“FRTIB”) awarding the Thrift Savings Plan (“TSP”) recordkeeping contract -- one of the largest federal contracts of 2020 -- to a team consisting of Accenture Federal Services LLC and our client, Alight Solutions LLC. The Cozen O'Connor team supported Alight in developing its initial offer, refining its best and final offer, and negotiating the prime contract with FRTIB and the subcontract between Accenture and Alight. We also advised Alight on the Federal Acquisition Regulations, Federal Employees' Retirement System Act of 1986 (“FERSA”) and Privacy Act of 1974. The contract spans more than 13.5 years when all options are exercised, with a base value of \$3.3 billion.

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Won summary judgment in an ERISA case brought against a large health plan in which the plaintiffs challenged the plan's claim recovery process and unsuccessfully sought to proceed as a class.

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