

## PRACTICE

# Executive Compensation & Employee Benefits

## KEY CONTACTS

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## OVERVIEW

**EXECUTIVE COMPENSATION & EMPLOYEE BENEFITS**

The Bowditch Compensation and Benefits practice works with entities and executives from manufacturing, distribution, marketing, software, accounting, higher education, private secondary and elementary schools, museums, social services and nearly every sector of the U.S. economy.

We advise on design, adoption and operation of employee benefit plans, including retirement, deferred compensation, disability and life insurance, health, dental and vision plans. We represent clients with plans under audit from the IRS or U.S. DOL. When necessary, we guide our clients in the correction of errors in the operation of their benefit plans.

Our compensation practice is expert in the negotiation and drafting of executive employment agreements, stock and other equity incentive plans, and deferred compensation arrangements for both profit-making and nonprofit entities. We seek that sweet spot between tax efficiency and incentives that drive performance — for executive employees.

*Chambers USA* recognizes our Labor & Employment practice among the most notable in Massachusetts.

**How we can help**

- *Defined Benefit, Profit-Sharing, 401(k), and 403(b) plans.* We advise clients on designing, installing, maintaining, amending, and, as is sometimes necessary, terminating their retirement plans. We have taken advantage of IRS and DOL correction programs that have saved our clients millions of dollars in assessed contributions and interest stemming from plan design or operational errors.
- *Executive compensation and benefits.* Executives get paid better, and they have better benefits. They also pay higher taxes and may have more complicated lives. Our executive benefits team assists individual executives and their employers by drafting employment contracts and installing stock option and other equity incentive plans for corporations, LLCs and partnerships. We understand the uses and complex rules of supplemental life and disability insurance plans. On the other side of life, our lawyers have intimate familiarity with severance and separation arrangements. If you like your

tax code, we can quote chapter and verse about 409A, 162(m), 280G, 457(b) and 457(f).

- *Reduction in work force planning including early retirement window plans* We have worked with our clients developing effective plans when workforce reductions are required and for early retirement incentive programs – including extended health insurance subsidies and supplemental retirement benefits. On behalf of our college and university clients, we have advised on the structure and operation of early retirement window programs.
- *Mergers and acquisitions:* We assist our clients in the due diligence process. As the transaction moves forward, we advise on benefit restructuring in order to assure that employees at the resulting entity are happy with their benefits. If some employees are made redundant, we assist in creating programs that help bridge the gap to new employment. We map out and take actions as necessary to minimize the impact of excess parachute payments and accelerated distributions of deferred compensation.
- *Benefit plan audits:* We assist in preparations for benefit plan audits, whether by an independent or government auditor. Our goal is to identify and correct any issues prior to the audit. If the auditor identifies a problem, we advise on the appropriate correction. We have deep experience working with IRS and DOL correction programs. Our relationships with these agencies allow us to get helpful guidance on particularly difficult issues.
- *ERISA litigation and regulatory proceedings* We vigorously advise and defend our clients if they become embroiled in ERISA investigations or litigation, including claims for disability benefits, retaliation or breach of fiduciary duty. We counsel clients on current legal developments to help prepare them for what is coming. Our goal is to resolve issues by taking advantage of opportunities to resolve problems through administrative procedures and negotiation.

## EXPERIENCE

### Advised an out-of-state engineering firm on multi-jurisdiction tax issues

A client headquartered and incorporated outside of Massachusetts recently established an office and registered to do business here as a foreign corporation. Several of the shareholder/employees who would be working here were residents of other New England states. The Bowditch team drafted an advisory for the employer describing payroll tax obligations as well as potential tax reporting and liability issues with respect to each shareholder/employee in each jurisdiction.

### Correcting a failed supplemental retirement plan

The long-time, much-loved head of an independent school in the Mid-South and the school's board realized that he had been underpaid for much of his career and would be left without the savings to enjoy a dignified retirement.

When we were called in to advise them, we saw that an earlier attempt to provide supplemental retirement benefits was not compliant with the applicable law and, as a consequence of inadequate legal work, the head of school had failed to pay income taxes on the intended benefit beginning several years prior to our engagement and his intended date of retirement.

We worked with both the board and the headmaster to design a compliant retirement benefit that met his needs while mitigating the potential disastrous effects of the inherited plan.

### Correcting a number of errors in drafting and operating a 403(b) plan that saved millions for the client

A senior official at a large university in the Northeast called our team when she saw that her

predecessor was not following the rules set out in the plan document, errors that had eluded the plan's outside independent auditors.

Our investigation found a host of problems, beginning with a plan drafted by a consultant that was more generous to participants than his instructions from the board and than had been operated. In addition, the individual previously in charge of the plan did not follow its rules for eligibility or vesting, did not honor individual elections for salary deferrals, and misreported contributions to TIAA. If the university had been required to make all of the contributions required by the plan, it would have cost several million dollars in contributions and earnings.

We were able to show the IRS how these mistakes had occurred and were able to convince the agents to permit the university to retroactively amend the plan to reflect the original intentions of the board. Where individual employees had been injured by the inexplicable actions of the former administrator, the university made the appropriate adjustments to mitigate the harm.