

Employment and Benefits

The relationship between employers and employees has always been vital to a company's success. From competitive benefits programs to attract the best talent to the myriad of legal and commercial issues once that talent has joined the company, employers require a legal advisor with a wealth of experience and successful track record in leading the way.

Bringing together professionalism and innovation of the highest standards, our Labor and Employment Law practice is a preferred destination for an extensive list of domestic and international employers, both public and private, as well as nonprofits and public entities, individual business people, senior employees and groups of employees.

Domestic and multinational employers also tap into the full spectrum of our services, which are focused on all areas of individual and collective labor and employment, including day-to-day employment and labor law issues and creating and negotiating individual and collective employment agreements. We are also regularly involved in providing seminars, lectures, workshops, and training on labor and employment issues to clients to ensure they remain abreast of all the relevant issues affecting them.

Furthermore, clients profit from the experience of our employment & benefits lawyers in structuring, designing and implementing all forms of retirement, welfare, fringe benefit, deferred compensation, and equity compensation plans, assisting with all relevant filings, ensuring compliance and always striving to fit compensation and benefits packages into the employer's bigger picture.

These plans and benefits, for example, include:

- Welfare and fringe benefit plans (medical, severance pay, life insurance, disability, dependent care and

education assistance)

- Non-qualified deferred compensation arrangements (including the use of secular trusts, golden parachutes, top hat and excess benefit plans)
- Employee stock ownership plans (ESOPs)
- Retirement plans for tax-exempt organizations (including 403(b) and 457 arrangements)
- Qualified retirement plans (profit sharing, money purchase pension, defined benefit and 401(k) plans)

We are also focused on the swift and effective resolution of labor law disputes before they arise, with our lawyers equally prepared for and skilled in litigation, arbitration and mediation proceedings, should the need arise.

Balancing the importance of defending the rights of employers and employees alike, we strive to reach the most beneficial and amicable resolution of any dispute – vital to maintaining a healthy and successful working environment.

Benefits Regulatory Compliance Checklist - USA

The following is a brief sample of just a few of the areas we explore when conducting a Benefits regulatory compliance review. For more information on the complete audit checklist, or to discuss questions or concerns specific to your organization, please contact David A. Guadagnoli.

Plan Documentation

- Have plans been timely adopted, especially 401(k) and cafeteria (Internal Revenue Code Section 125) plans, prior to any pre-tax withholding?

- Have retirement and welfare benefit plans been timely amended to reflect changes in the law or operational changes?
- Are you timely filing for an updated determination letter for any retirement plans?
- Do nonqualified deferred compensation plans reflect Section 409A?
- Have employment agreements, separation agreements and change in control agreements been reviewed for Section 409A compliance?
- If you are a multinational business, have nonqualified deferred compensation arrangements been reviewed for Section 457A compliance?

Summary Plan Descriptions (when applicable)

- Has an SPD been provided to new participants and beneficiaries?
- Is your SPD current, either by updating with Summaries of Material Modification (SMMs) or through an update of the SPD itself?
- Have the periodic redistribution requirements for SPDs under ERISA been satisfied?
- Have applicable foreign language requirements been met?

Plan Notices

- Have various required notices for retirement plans been distributed (such as the safe harbor notice in the case of certain 401(k) plans or the QJSA explanation for plans offering annuities)?
- Are you properly distributing welfare benefit notices (such as the HIPAA Notice of Privacy Practices, the annual Women's Health and Cancer Rights Act notice and federal health care reform notices, as applicable)?

Plan Testing

- Are various nondiscrimination tests properly performed for retirement plans, welfare plans and fringe benefit plans annually?
- Are tax law or plan limits being properly applied and monitored (such as the dollar cap on 401(k) contributions or any health care flexible spending account maximum election)?

Annual Reporting

- Are you filing Form 5500, where applicable, and distributing the Summary Annual Report?
- Have you filed the one-time "top hat" notice for nonqualified deferred compensation plans to avoid annual filings?
- Are you obtaining actuarial reports and/or audited financial statements as appropriate to the plan?
- Are you updating the Social Security Administration via Form 8955-SSA to reflect participants previously reported who have recently received a distribution?

COBRA, HIPAA and HIRD

- Are you timely distributing an initial COBRA notice?
- Are you timely distributing COBRA election paperwork upon triggering events (such as a reduction in hours that results in a loss of coverage)?
- Are you properly administering COBRA (amount, due dates, etc.)?
- Are notices of special enrollment rights under HIPAA being timely distributed?
- Do your plan documents and business associate contracts properly reflect HIPAA's current privacy and security requirements?

- Are you satisfying the privacy and security requirements under HIPAA with respect to protected health information (PHI)?

Executive Benefits

- Are plans properly designed to maximize the employer deduction under Section 162(m) for amounts to the top paid employees of public companies?
- Have change in control agreements been designed to address golden parachute issues?
- Are registration statements on file (and prospectuses and other required information distributed) for public companies with equity plans, nonqualified deferred compensation plans and retirement plans holding company stock?
- Are fringe benefits (such as spousal travel and personal use of aircraft) being properly reported for tax and securities law purposes?

Administrative Issues

- Have you confirmed that any “independent contractors” to the company are properly characterized as independent contractors for various federal and state law purposes?
- Have you reviewed the eligibility rules in your benefit plans and confirmed the ineligible status of otherwise excluded employees?
- Are you maintaining adequate fiduciary bond coverage?
- Have you solicited beneficiary designation forms for all benefits to which they may be relevant?
- Are you timely depositing any withheld 401(k) contributions and loan repayments into any 401(k) plan’s related trust?

- Are you monitoring compliance with the required minimum distribution rules (age 70½) in the case of a retirement plan?

- If applicable, have you designed your group health plan, and are you monitoring employee eligibility, to avoid “pay or play” mandate penalties under federal health care reform?

Representative Client Work Israel

- Represent **The Technological Colleges Network Ltd.** in all aspects of legal and administrative aspects of labor law, including litigation in the Labor Court (regional and national), kibbutz disputes, professional opinions for the management of the chain.
- Represent **Hamashbir Lazarchan Department Stores Ltd.** in all matters relating to legal and administrative aspects of the labor laws, legal claims in the Labor Court and the Magistrate Court and the provision of professional opinions.
- Represent **Xerox Israel Ltd.** in the process of acceptance to work, management of work and retirement, as well as representation in legal claims in the Labor Court.
- Represented **Petach Tikvah Community Centers**, as well as representation in a collective dispute that lasted for three years against the New Histadrut, in the framework of which a new collective agreement was signed regarding the employees of the community centers in Petah Tikva.
- Represent The **New Pharm** chain in all aspects of the legal aspects of labor law, including representation in legal claims in the Labor Court.
- Represent The **Stier Group** International exhibitions and conferences, including providing legal opinions, drafting employment and retirement agreements, and guiding management on issues that arise in matters of employee rights.

- Represent **Access Israel** in all aspects of the legal aspects of labor law, including representation in legal claims in the Labor Court.
- Represent **On Track Innovations Ltd.**, in all aspects of the legal aspects of labor law, including litigation in the Labor Court.
- Represented **Alcobra Pharma Ltd.** providing professional legal opinions, preparing work agreements, training of the human resources department, consulting with the management of the company, drafting of transfer agreements and more.

For further information about our Employment And Benefits practice, please visit our website at www.zag-sw.com or contact:

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