

## Employee Benefits, ERISA & Executive Compensation

Our attorneys provide a wide range of representation in connection with the design, preparation, and administration of pension, profit sharing, stock option, employee stock ownership plans (ESOPs), and other deferred compensation and employee benefit plans, both qualified and non-qualified. We also represent taxpayers before the Internal Revenue Service (IRS) in connection with the qualification of pension and profit sharing plans. We render advice on health plans, other employee welfare benefit plans, and employee benefit issues in general in connection with business acquisitions and sales. Clients who use the firm's services in this area include individuals, nonprofit organizations, banks, and corporations.

Our clients include employers—public, private, and nonprofit—as well as their executives, boards of directors, and compensation committees. We advise clients on executive compensation programs, including stock option and other equity-based compensation arrangements; cash incentive plans; change-of-control agreements; and non-qualified deferred compensation programs. Our services include not only drafting executive compensation arrangements, but also advising on accounting aspects, tax consequences, securities disclosures, regulatory compliance, and the shareholder approval process.

Jones Walker's Employee Benefits, ERISA & Executive Compensation practice provides consulting and design services for all types of qualified plans, including pension, cash balance, profit-sharing, money purchase pension, ESOP, and 401(k) plans. We prepare and review plan documents, summary plan descriptions, and plan communications; apply for IRS determination letters; assist plan sponsors in correcting plan defects; assist plan sponsors with U.S. Department of Labor (DOL) and IRS audits; and generally counsel employers on all aspects of plan administration. Our attorneys also advise employers and executives on compensation programs, including stock option and other equity-based compensation arrangements; cash incentive plans; employment and change-of-control agreements; deferred compensation programs; and the tax, securities law, and accounting implications of executive compensation arrangements.



Jones Walker's employee benefits attorneys counsel clients on welfare benefit plans, including health plans, flexible benefit (cafeteria) plans, health savings accounts (HSAs), multiemployer welfare arrangements (MEWAs), voluntary employees beneficiary associations (VEBAs), fringe benefit plans, and many related issues, including the Consolidated Omnibus Reconciliation Act (COBRA), the Health Insurance Portability and Accountability Act (HIPAA), the Uniformed Services Employment and Reemployment Rights Act (USERRA), and the Family and Medical Leave Act (FMLA). We assist companies with individual issues, such as foreign nationals' participation in United States employer plans, estate planning for retirement distributions, and IRA, Roth IRA, and SEP-IRA issues.

Our employee benefits attorneys work closely with our trial attorneys in complex ERISA and employee benefits litigation, including the defense of benefit claims and fiduciary litigation. We also consult on employee benefit issues arising in financial institution lending, labor and employment law, and mergers and acquisitions.

### *ESOP Experience*

Our attorneys have helped numerous clients evaluate whether an ESOP is appropriate for their companies, and have designed and drafted ESOPs and related documents for a significant number of public and private companies. Our ESOP clients range from small employers to public companies and include Subchapter S corporations and employee-owned companies.

We assist with the implementation, administration, and termination of ESOPs. We have advised clients on the use of leveraged ESOPs and have documented ESOP loans and sales to ESOPs. Our advice includes the use of Code Section 1042 to defer gain on the sale of shares to an ESOP. We work closely with administrators, CPAs, valuation experts, and other client-selected advisers to create an integrated client service team.

Our attorneys assist ESOP committees and fiduciaries in day-to-day ESOP operation and prepare employee communications, summary plan descriptions, distribution policies, qualified domestic relations order procedures, committee minutes, and other administration documents. When mistakes arise, we assist ESOP clients with voluntary correction applications to the IRS and help clients prepare for IRS audits and DOL reviews, and bring them to a

satisfactory conclusion. Our corporate and securities attorneys ensure that ESOP companies comply with securities law aspects of ESOPs and advise clients on ESOP corporate governance issues. We advise ESOP fiduciaries of their responsibilities and successfully defended a public company and its ESOP fiduciaries against fiduciary breach allegations following a merger with another public company.