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## Employee Benefits and Executive Compensation Law

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Flaster Greenberg provides a full range of services relating to the compensation of employees and employee benefits including basic bonus plans, cafeteria plans, employee stock ownership plans, and complex 401(k)s and phantom stock plans along with a specialization in Employee Retirement Income Security Act, IRS audits, and benefit plan compliance.

We recognize that there is no “one size fits all” employee benefit program and each plan must be crafted to serve the needs of a particular business, whether that means attracting or retaining key employees, structuring employee incentives to achieve the goals of the business owners or creating an executive compensation plan such as a retirement program or exit strategy for the business owners. Our attorneys can help with a variety of your business needs related to employee benefits and executive compensation.

Our employee benefits attorneys also work closely with attorneys in other practice areas including commercial transactions and labor and employment law. In the area of commercial transactions, employee benefit plan issues can often be of profound importance in the context of the acquisition or sale of a business, financing transactions, and even the choice of a business entity. Attorneys in our labor and employment practice group work closely with the employee benefits practice group in a diverse range of matters involving the rights or claims of employees and employers in connection with employee benefit programs.

### Cafeteria Plans and Welfare Benefit Programs

Our attorneys also assist employers in the design and implementation of welfare benefit programs and other fringe-benefit programs. These include the design of a cafeteria plan to permit employees to choose from a range of specified benefit options and often use a combination of employer and employee funds on a pre-tax basis.

A well-designed cafeteria plan can often help an employer deal with the rising costs of maintaining fringe-benefit programs by having employees pay all, or a portion of, the premiums for selected insured health benefits on a pre-tax basis. In fact, our employee benefits attorneys recently developed a welfare plan design to help an employer avoid substantial layoffs by combining a furlough program with deferred benefits to incentivize and retain its staff despite financial difficulties caused by the recession.

### Attorneys

Allen P. Fineberg  
Stephen M. Greenberg  
Steven S. Poulathas  
Steven D. Usdin

## Design and Implementation of Qualified Retirement Plans

Flaster Greenberg attorneys help with the design and implementation of qualified retirement plans. The qualified retirement plan provides a tremendous vehicle for the employees and owners who work with the business to invest pre-tax dollars for long-term savings goals.

We have substantial experience in the design, implementation, and administration of the full range of qualified retirement plans, including traditional pension and profit-sharing plans; defined benefit plans; defined contribution plans, including plans using a “cross-tested” design; and a variety of 401(k) plans. Our pension professionals can develop alternative “what if” scenarios allowing for the design of an appropriate plan for any business.

## Employee Retirement Income Security Act (ERISA)

Our litigation lawyers have substantial expertise and experience litigating disputes that involve employee benefits issues, including claims under the Employee Retirement Income Security Act (ERISA).

Our ERISA litigation lawyers have represented companies and individuals in all types of employee benefits disputes, from individual claims for long-term disability, severance, medical and death benefits, to the most complex, high-exposure claims involving ERISA plans. Our lawyers are able to achieve excellent results in complex suits by combining substantive knowledge of employee benefits law (and the overlapping fields of labor, employment, securities, healthcare and insurance law) with the talents of skilled trial lawyers.

The combination of our experience and depth, in addition to our broad knowledge base, has established our reputation as formidable adversaries when litigating a wide range of benefits disputes.

In a recent successful resolution of an ERISA-related matter, we helped a Fortune 100 client achieve a favorable, out-of-court resolution with another large corporation relating to a plan dispute involving tens of millions of dollars in funding obligations.

## Employee Stock Ownership Plans

An employee stock ownership plan, or ESOP, may be the perfect choice for an employer who wants to give employees an equity stake in the business, or design a tax-favored strategy to transfer control of the business from one generation of management to the next. These plans are designed to invest primarily in stock of the employer and can be eligible for special exemptions from certain qualification rules which allow them to engage in otherwise prohibited transactions to acquire employer stock or permit deductible contributions that exceed the limits applicable to other defined contribution plans.

## Executive Compensation

We are experienced in working with all types of employers—from emerging growth companies to large established corporations—that need to develop creative compensation arrangements to recruit and retain key talent. We regularly represent executives in negotiating their compensation packages and severance agreements. We look for ways to use such strategies as stock grants, restricted stock, stock options, phantom

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stock, stock appreciation rights, incentive-pay plans, deferred compensation plans and golden parachutes to achieve the client's business goals.

### **Owner-Friendly 401 K Plans**

A cash or deferred arrangement, sometimes known as a 401(k) plan (after the section of the Internal Revenue Code under which these plans are established), is often viewed as an ideal vehicle to encourage employee retirement savings, and in fact can accomplish this goal quite effectively. This is particularly true when the employer provides a savings incentive, for example by offering a matching contribution to promote greater participation.

However, 401(k) plans are subject to numerous non-discrimination rules that can limit the participation by owners and other highly paid employees, particularly when the plan is maintained by a company with relatively few employees. A carefully designed 401(k) plan can actually take advantage of different 401(k) compliance requirements to provide greater benefits to the highly compensated owners, at a lower cost, than would be available in a traditional profit-sharing plan, which is funded solely by employer contributions.

We typically consider a wide range of different combination or hybrid plan designs (with and without 401(k) features) in order to achieve the best result for the business and its owners.

### **Plan Qualification, IRS Audits, and Other Compliance Issues**

Our attorneys help employers with compliance issues under both the tax and labor laws governing employee benefit plans. The most basic service consists of submission of plan documents for a determination by the Internal Revenue Service of their tax qualification and of the tax-exempt status of the plan's trust fund.

In addition, we can assist employers in addressing operational compliance issues including correction options under the IRS's various voluntary compliance programs, and identification and correction of prohibited transactions and other problems, including obtaining administrative relief from the Department of Labor.

### **Stock Options, Phantom Stock, and Other Deferred Compensation Plans**

A non-qualified deferred compensation plan can be used effectively in conjunction with a qualified retirement plan to provide additional benefits or incentives to a select group of management or highly compensated employees. Because these programs are not subject to rigorous tax qualification requirements, it is often possible to design a program with great creativity to address the employer's needs in a particularly effective way.

One of the more popular approaches to offer incentives to management employees is to provide the opportunity to acquire stock of the employer so they can share in future increases in the value of the company. Another alternative, which is often very attractive in a closely held business, is to provide a phantom stock interest, in which the employee receives the economic benefits of stock ownership but does not acquire voting or other minority shareholder rights that accompany actual stock ownership.