

WHY YOUR BUSINESS NEEDS A BENEFITS LAWYER

Whether motivated by a desire to increase profits or by moral obligation to be a good corporate citizen, most businesses aim to provide their employees with an attractive benefits package. Generous benefits, like retirement plans and medical coverage, are key to rewarding and retaining employees. Employers have at their disposal experienced accountants, actuaries, recordkeepers, and other service providers to help them design and administer benefit plans. Often, because of the pressures to provide benefits at the lowest cost, employers neglect to include a benefits attorney in the mix of advisors.

Make no mistake – third party administrators (“TPAs”), accountants and others know most aspects of the benefits world very well, and you still need their assistance. But here are some situations where a benefits attorney can bring a valuable additional perspective to the table:

- **Drafting resolutions and other legal documents.** Most likely you will receive “sample” documents from your other service providers, often marked with the suggestion that you review the documents with your attorney before signing. An attorney, unlike other service providers, is best suited to determine whether the documents are in compliance with the company’s governing documents (like bylaws), and whether the documents create any conflict with other benefit arrangements the service provider might not be aware of (like an employment agreement promising a different benefit).
- **Handling adversarial employment situations.** As with other elements of the employment relationship, a benefit plan can lead to litigation. Whenever there is a dispute with an employee (especially if the employee is being terminated) over benefits, an attorney can make sure you are in the best position in the event the employee decides to sue.
- **Deliberating changes in benefits.** Whether the debate is over increasing benefits or decreasing them, the discussion among management is often one that employers would prefer not to make public. If an attorney is present to advise you on your legal rights and obligations, your internal discussions may be protected by the attorney client privilege.
- **Educating ERISA fiduciaries.** ERISA (the federal law that, in addition to the Internal Revenue Code, governs most benefits) is a complex and ever-changing statute. One of the fundamental features of ERISA is that it creates categories of persons who are fiduciaries with respect to benefit plans, and sets out standards for how they must behave. Certain transactions (like an investment in employer securities, or a loan from a plan to an interested person) carry a higher degree of risk than others. A benefits attorney has the training and experience to provide initial and ongoing education to your benefit plan fiduciaries, to make sure no missteps are made.
- **Reviewing reports and recommendations from other service providers.** All retirement plans and funded medical plans with more than 100 participants are required to have an annual audit. Often, the audit report will have helpful information in less-than-obvious places of the audit report (like footnotes) that would be useful to the future operation of the plan. A benefits attorney can, with a quick review of the audit report, make sure that the important information is gleaned from the audit and put to its best use. Similarly, by briefly reviewing the annual allocation and testing report for a retirement plan a benefits attorney can determine whether plan amendments might be beneficial or whether there are

areas where the risk of operational errors is significant.

- **Reviewing service contracts.** When the employer (or the plan) engages a service provider, there is typically a contract to cement the relationship between them. Often times these form contracts are actually flexible. A benefits attorney can help you negotiate provisions that best fit your business and your plans.
- **Fixing plan errors.** Unfortunately, the world of benefit plans is so complex that mistakes are almost a certainty. A benefits attorney has experience with navigating all of the Department of Labor's and IRS's correction programs to set the plan back on the right path. Often, a benefits attorney can negotiate a customized correction with government officials, saving the employer significant financial and administrative cost.
- **Putting all the pieces together.** Benefits attorneys are trained in all aspects of benefits, from executive compensation arrangements and qualified retirement plans to cutting-edge defined contribution health plans. A benefits attorney can pick up where your other advisors leave off, and help you plot a course through the alphabet soup of benefits (ERISA, COBRA, HIPAA, 409A, 401(k), SERP, HSA, DFVC, EPCRS – to name a few!).

As the above examples illustrate, a benefits attorney can be a contributing player on the team of professionals that help you with your company's benefits package. Feel free to contact any member of the Benefits Law Group for assistance with a benefits issue.



Jane Francis
jfrancis@hollandhart.com
(303) 295-8599
Denver



Rebecca Hudson
rhudson@hollandhart.com
(303) 295-8005
Denver



Elizabeth Nedrow
enedrow@hollandhart.com
(406) 252-2166
Billings



Leslie Thomson
lthomson@hollandhart.com
(406) 252-2166
Billings



Brenda Berg
brberg@hollandhart.com
(303) 295-8029
Denver



Michelle Sullivan
mmsullivan@hollandhart.com
(406) 252-2166
Billings