



## Employee Benefits and Executive Compensation

Our goals in representing employers are to help clients design, implement and administer their employee benefit programs cost-effectively and to help them minimize the legal risk of participant lawsuits under ERISA, Department of Labor, or Internal Revenue Service investigations, while always keeping in perspective the employer's corporate and human relations objectives.

The employee benefits and executive compensation practice provides a full range of business legal services with respect to employee benefits and executive compensation matters.

Our practice is broad based, covering the design and implementation of qualified retirement plans; compliance with regulatory requirements under ERISA, the Internal Revenue Code, and federal securities laws; ERISA litigation; complex pension fund investments; employee stock ownership plan transactions; welfare benefit plan issues; and the design, implementation, and administration of nonqualified deferred compensation and stock option plans.

The scope of our practice provides our lawyers with deep insights into all aspects of an employer's benefit programs. Similarly, the firm's experience in representing health care organizations provides additional insights in representing employers with respect to their group health plans.

### EXPERIENCE

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#### Clients

Our clients include publicly traded, large privately held, small business, governmental, and tax-exempt entities, as well as internal and external plan fiduciary, financial institutions, trade associations, insurance companies, government retirement plans, health care organizations, and employee benefit and executive compensation consulting and administration firms.

#### General benefits advice

On a regular basis, we:

- Advise and assist clients in designing, implementing, and operating pension, cash balance, profitsharing, 401(k), employee stock ownership requirements, and successfully manage 403(b) tax-sheltered annuity, and 457 deferred compensation plans
- Design processes that are intended to assist plan sponsors and their fiduciaries in complying with applicable fiduciary and prohibited transaction issues that arise from, and impact, upon the operation and administration of employee benefit plans
- Counsel and assist clients with regard to flexible benefit or 'cafeteria' plans, voluntary employee beneficiary associations (VEBAs), and other employee welfare plans, such as medical and dental plans, disability plans, life insurance plans, and retiree health plans, so that clients comply with applicable legal requirements such as tax considerations, ERISA requirements,

and other requirements relating to federal and state law

- Advise clients on compliance with HIPAA and other legislative changes to ERISA affecting group medical plans
- Work with state, local, and federal governmental entities to design and operate retirement and welfare benefit plans, including tax-qualified retirement plans, 403(b) plans, 457 plans, 'pick-up' plans, and cafeteria plans
- Represent major benefits programs in connection with outsourcing of administrative services and benefits administration to third-party administrators, including service agreements and audit controls
- Advise clients on self-insured medical plan liabilities and COBRA obligations in the context of acquisitions and divestitures
- Draft and review plan documents and amendments, summary plan descriptions, and other plan materials
- Obtain IRS approval of new tax-qualified plans and amendments to existing tax-qualified plans
- Help clients resolve plan compliance issues through the IRS Employee Plans Compliance Resolution System, including the Voluntary Compliance Resolution (VCR) Program and the Closing Agreement Program (CAP)
- Represent clients in connection with government investigations and audits of benefit plans
- When necessary, litigate tax, fiduciary, and other issues involving plan operations

## Executive compensation and incentive plans

Our lawyers regularly advise clients in designing and operating:

- Supplemental executive retirement plans (SERPs) and excess benefit plans
- Incentive plans and non-tax-qualified deferred compensation plans
- Golden parachutes and discretionary severance agreements that contain the language needed to ensure a favorable judicial review standard under the Supreme Court's decision in *Bruch v Firestone* and its progeny
- Employment agreements for key executives
- Stock option plans, restricted stock plans, stock purchase, stock appreciation, and other equity-based and capital appreciation-based compensation plans, both domestically and internationally. We have prepared registration statements for employee equity programs and regularly advise clients on the securities laws affecting employee benefits

## Third party fiduciary responsibility and plan investment counseling

On a regular basis, our lawyers:

- Work with investment fund managers in structuring investment products suitable for qualified retirement plans, and work with plan committees and individual trustees, helping them understand their responsibilities as ERISA fiduciaries
- Represent banks and insurance companies in developing mutual funds and other investment packages for sale to retirement plans
- Design processes that are intended to assist clients in complying with applicable fiduciary issues relating to these transactions
- Analyze plan investments to determine whether unrelated business taxable income may be generated for plan investors
- Advise clients on other tax issues, such as the unrelated business income tax

## Mergers, acquisitions and other transactional work

We are experienced in structuring ESOP transactions for tax and ERISA compliance, financing and ESOP's purchase of employer securities, and advising on corporate and securities issues relating to ESOP transactions.

Our lawyers have extensive experience in advising clients on many types of ERISA and other employee benefits litigation. We have handled cases involving multi-employer plan withdrawal liability, benefit claims, contribution collections, and ERISA fiduciary matters.

## INSIGHTS

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## Publications

### **Coronavirus: New York State enacts emergency paid sick leave law, effective immediately (United States)**

20 March 2020

To be eligible for the benefits available under the Act, an employee must be subject to a mandatory or precautionary order of quarantine or isolation.

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### **Coronavirus: executive summary - key highlights from Washington (March 19, 2020) (United States)**

19 March 2020

Key highlights for March 19, 2020.

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### **US employee benefits and the coronavirus**

17 March 2020

Some of the many benefit plan issues that employers are facing.

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### **Coronavirus: federal and state tax relief (United States)**

16 March 2020

Congress and state legislatures and administrative agencies are working hard to provide necessary tax relief for those affected by the coronavirus disease (COVID-19) pandemic.

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### **Coronavirus: Congress expected to pass expanded paid leave (United States)**

16 March 2020

The paid leave requirements in the current version of the Families First Coronavirus Response Act.

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### **Coronavirus: key employment legal issues for US employers (United States)**

10 February 2020

Considerations and action steps for prudent employers.

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### **IRS issues proposed Section 162(m) regulations**

3 February 2020

Publicly held companies that already exceed or that may soon exceed the Section 162(m) deduction limit will need to carefully consider the impact of amended Section 162(m).

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## **SECURE Act brings significant changes to employer retirement and benefit plans**

21 January 2020

Provisions of the SECURE Act most relevant to employer-sponsored retirement and benefit plans, plus key deadlines.

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## **Employers: 2020 deadlines approach to furnish incentive stock option and employee stock purchase plan information statements and returns**

14 January 2020

The statements must be furnished by the corporation on Forms 3921 and 3922 no later than January 31, 2020.

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## **Global Employment Law Quiz 2020**

19 December 2019

Our annual quiz.

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## **2020 dollar limit increases on benefits and contributions in qualified retirement plans announced by the IRS**

8 November 2019

The Internal Revenue Service (IRS) issued Notice 2019-59, which announced cost-of-living adjustments that affect the calendar year dollar limits for benefits and contributions in retirement plans

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## **Department of Labor proposes regulations offering safe harbor electronic annual disclosures for retirement plans**

31 October 2019

A significant development in retirement plan regulations, marking the DOL's first expansion into disclosures through electronic media since 2011.

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## **New California law requires year-end account balance notices for Flexible Spending Account plans – action items**

25 October 2019

Starting in 2020, FSA participants in California should be given account notices twice prior to the FSA plan year's end and in different forms.

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## **IRS issues final 401(k) hardship distribution regulations: top points**

1 October 2019

Plan sponsors should consider reviewing their plans to ensure compliance and maintain the plans' tax-qualified status.

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## **New HRA final rule is a game changer for employers**

8 July 2019

The final regulations provide for two new types of HRAs.

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### **Plan sponsors of hybrid defined benefit plans and certain merged retirement plans can apply for an IRS determination letter, starting September 1, 2019**

20 June 2019

IRS Rev. Proc. 2019-20 provides for an expansion of the determination letter program for some individually designed retirement plans.

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### **The art of self-correction: IRS guidance on retirement plan loan and document failures under EPCRS**

22 MAY 2019

With this guidance, many common mistakes in documenting and administering a retirement plan can be corrected without going to the IRS for approval.

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### **Employers: 2019 deadlines approach to furnish incentive stock option and employee stock purchase plan information statements and returns**

15 JAN 2019

Timely filing and furnishing of Forms 3921/3922 is important.

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### **Global Employment Law Quiz 2019**

11 JAN 2019

The annual quiz about global developments and trends in employment law.

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### **The 116th Congress: prospects for tax policy as House shifts to Democrats**

8 NOV 2018

Key issues arising from the overall shift of the House from Republican to Democratic control.

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### **Prospects for tax policy in a divided post-election Congress**

23 OCT 2018

Potential tax policy developments in the upcoming lame duck session and the 116th Congress.

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### **New York state issues final guidance regarding anti-sexual harassment legislation**

8 OCT 2018

With the finalized guidance in hand, New York employers should consider a number of actions.

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## **California mandates female board directors for publicly held companies**

1 OCT 2018

California becomes the first state in the US to mandate gender diversity in the corporate boardroom, but the law may face legal challenges.

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## **New York City and State publish materials aimed at combatting workplace sexual harassment**

12 SEP 2018

New York State and New York City each publish materials to assist New York-based employers in complying with legislation aimed at sexual harassment prevention and remedies.

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## **Announcing COMPASS – our newly automated compliance assessment tool**

4 SEP 2018

COMPASS, DLA Piper's newly automated compliance assessment tool, helps to ensure that your company's compliance program meets or exceeds all legal and regulatory requirements as well as industry best practices.

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## **IRS issues new, mostly unfavorable Section 162(m) guidance**

28 AUG 2018

As a result of the IRS Notice, more executive compensation arrangements will be subject to the Section 162(m) deduction limit.

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## **Changes coming to Rule 701 disclosure thresholds**

21 JUN 2018

The SEC is directed to increase the sale threshold triggering enhanced disclosure under Rule 701 from \$5 million to \$10 million and to index the enhanced disclosure threshold for inflation every 5 years.

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## **New Jersey requires paid sick leave for all employees, the latest development in the ever-expanding and increasingly complicated world of paid leave**

7 MAY 2018

Governor Phil Murphy has signed into law new statewide legislation requiring paid sick leave rights for employees. The new law is set to go into effect in October 2018.

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## **SEC proposes rules and interpretations to protect retail investors**

2 MAY 2018

A close look at each component of the SEC's retail investor protection proposal.

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## **SEC proposes "regulation best interest" rule package, including new disclosure form and investment adviser conduct interpretation**

24 APR 2018

The rule package is designed to "enhance the quality and transparency of investors' relationships with investment advisers and broker-dealers."

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## **Fifth Circuit opinion invalidating fiduciary rule creates circuit split; SEC moves forward on fiduciary rule proposals**

17 APR 2018

Conflicting opinions among the circuits have created a quandary for firms that provide investment-related information to plans. Meanwhile, the SEC is preparing its fiduciary regulation proposal.

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## **Credit Karma fined by SEC for stock option failures**

10 APR 2018

The SEC stated that the failure to provide enhanced disclosure triggered the violation.

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## **Global Equity Desk Reference**

28 Nov 2011

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## [Events](#)

## [Previous](#)

## **Hot Topics in 2019: Health and Welfare Plans**

11 APR 2019

Webinar

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## [NEWS](#)

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## **DLA Piper lawyers named Acritas Stars**

10 March 2020

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Acritas has named over 200 DLA Piper lawyers as 2020 Acritas Stars. Now in its fourth year, Acritas Stars highlights the stand-out lawyers in private practice as nominated by clients around the world. More than 3,000 senior in-house counsel feed into the nomination process to give a comprehensive view of highly recommended lawyers across the globe.

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### **DLA Piper's Holly R. Lake named Labor and Employment Lawyer of the Year by Century City Bar Association**

3 March 2020

The Century City Bar Association has named DLA Piper partner Holly R. Lake its Labor and Employment Lawyer of the Year.

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### **DLA Piper's Holly R. Lake and Miles Cooley named Top Minority Attorneys by the Los Angeles Business Journal**

28 January 2020

The Los Angeles Business Journal has named two DLA Piper partners with strong community ties to its 2020 Top Minority Attorneys list.

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### **Kim Askew joins DLA Piper's Employment practice in Dallas**

21 January 2020

DLA Piper announced today that Kim Askew has joined the firm's Employment practice as a partner in the Dallas office.

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### **DLA Piper achieves trial victory for Applied Underwriters**

22 November 2019

DLA Piper recently represented Applied Underwriters, Inc. in a bench trial victory in California state court.

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### **New report finds retail sector leadership diversity deficit will affect future competitiveness**

5 JUN 2019

DLA Piper and executive recruitment and diversity consultancy Green Park today launch *The Retail Leadership 700* report, which reveals for the first time the extent of the lack of diversity within the leadership teams of the top US, UK and European retailers.

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### **DLA Piper announces partnership promotions for 2019**

1 APR 2019

DLA Piper is proud to announce that 77 lawyers have been promoted to its partnership. The promotions are effective as of April 1, 2019 in the United States and May 1, 2019 for EMEA and Asia Pacific. The promotions were made across many of the firm's practice areas in 43 different offices throughout 20 countries.

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### **Ciara McLoughlin joins DLA Piper's Employment practice in Dublin**

20 MAR 2019

DLA Piper announced today that Ciara McLoughlin has joined its Global Employment practice as a partner in the firm's newly opened Dublin office.

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### **Two DLA Piper lawyers listed in *D Magazine's* 2019 Best Lawyers Under 40 list**

8 JAN 2019

Crystal Woods and James C. Bookhout were recently named to *D Magazine's* 2019 Best Lawyers Under 40 list, which recognizes outstanding young lawyers in Dallas.

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### **Dean Fealk named honorary senator of German economy**

6 DEC 2018

DLA Piper is pleased to announce that Dean Fealk has been named an honorary senator of the German economy (Senat Der Wirtschaft) in recognition of his efforts to strengthen transatlantic relations by leading trade, investment and innovation initiatives between Germany and California.

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### **DLA Piper advises Columbia Capital, LLC in its US\$21 million equity investment in Resilience360**

13 NOV 2018

DLA Piper represented Columbia Capital, LLC in its US\$21 million equity investment in Resilience360 GMBH.

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### **Janine Guzman joins DLA Piper's Employment practice in San Juan**

17 OCT 2018

DLA Piper announced today that Janine Guzman has joined the firm's Employment practice as a partner in San Juan, Puerto Rico.

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### **Holly Lake has joined DLA Piper's Employment practice in Los Angeles**

17 SEP 2018

DLA Piper announced today that Holly Lake has joined the firm's Employment practice as a partner in Los Angeles.

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### **DLA Piper advises Nemetschek on acquisition of MCS Solutions**

31 AUG 2018

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DLA Piper has advised the software supplier Nemetschek SE on the acquisition of the real estate and facilities technology firm MCS Solutions in Belgium, Sweden, India and the USA. The acquisition sees Nemetschek SE gain access to the rapidly growing market in building management.

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### **Brooke Kim and Evan Parness named *Law360* Rising Stars**

16 AUG 2018

DLA Piper is pleased to announce that *Law360* has named Brooke Kim and Evan Parness to its 2018 list of Rising Star attorneys.

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### **DLA Piper wins significant victory for New York University**

31 JUL 2018

DLA Piper won a significant victory for its client, New York University (NYU), in an Employee Retirement Income Security Act (ERISA)- related class action.

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### **Mary Dollarhide and Ute Krudewagen named *Daily Journal* Top California Labor and Employment Lawyers**

23 JUL 2018

DLA Piper is pleased to announce that the *Daily Journal* has named Mary Dollarhide and Ute Krudewagen to its 2018 list of Top California Labor and Employment Lawyers.

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### **Ryan Vann joins DLA Piper's Employment practice in Chicago**

10 JUL 2018

DLA Piper announced today that Ryan Vann has joined the firm's Employment practice as a partner in Chicago.

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### **Cecilia Guzmán-Barrón joins DLA Piper's Labor and Migratory practice in Peru**

3 JUL 2018

DLA Piper announced today that Cecilia Guzmán-Barrón has joined DLA Piper Pizarro Botto Escobar in Peru as a partner and leader of the Labor and Migratory practice.

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### **DLA Piper named International Law Firm of the Year in Ukraine for fifth year running at The Legal Awards 2018**

24 MAY 2018

DLA Piper has been named International Law Firm of the Year in Ukraine at the 2018 Legal Awards, held by Yuridicheskaya Practika Publishing House. This is the fifth time the office has won the award.

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### **Dean Fealk elected chair of the Northern California District Export Council**

17 MAY 2018

DLA Piper is pleased to announce that Dean Fealk, a partner in the San Francisco office, has been elected chair of the Northern California District Export Council (DEC).

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### **DLA Piper announces new US Employment practice leadership**

11 MAY 2018

DLA Piper is pleased to announce that New York-based partner Brian Kaplan has been named US chair and global co-chair of the firm's Employment practice.

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