

EMPLOYEE BENEFITS

Attorneys in the Hodgson Russ Employee Benefits Practice provide a comprehensive array of counseling and advocacy services to assist clients in designing, establishing, maintaining, and operating a wide range of retirement, welfare, executive compensation and fringe benefit plans. Our representations include a diverse group of clients, from public to private sector, and include for-profit, not-for-profit, closely held and public entities.

PARTNERING WITH OUR EMPLOYEE BENEFITS ATTORNEYS

Our attorneys have substantial experience with tax-qualified retirement plans, supplemental retirement benefits and other non-qualified deferred compensation arrangements, stock-based compensation programs, and specialized compensation programs for executives. We routinely advise clients regarding all aspects of welfare benefit plan design and compliance, including addressing complex issues related to the Consolidated Omnibus Budget Reconciliation Act (COBRA), the Health Insurance Portability and Accountability Act (HIPAA) and the Affordable Care Act (ACA). Hodgson Russ employee benefits attorneys have exceptional experience and depth in all aspects of ERISA. Hodgson Russ has been awarded a prestigious "Best Law Firms" Metropolitan Tier 1 ranking by *Best Lawyers/U.S. News & World Report* in the Employee Benefits (ERISA) Law category.

Retirement Plans

A particular strength of Hodgson Russ's Employee Benefits Practice is our knowledge of the laws of taxation related to qualified retirement plans and deferred compensation arrangements, such as 403(b) plans and Section 457 deferred compensation plans. Members of our practice authored the publication *Taxation of Distributions from Qualified Plans*, a 700-page guide and the seminal work in its field which may be accessed here.

Our attorneys assist with 401(k), profit sharing, defined benefit, cash balance, employee stock option plans (ESOP) and stock bonus plans, including:

- Drafting and reviewing plan and trust documents, as well as plan description
- Providing sponsors with advice on compliance with relevant laws and regulations
- Developing appropriate plan procedures, employee communications and administrative forms

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Professionals

Attorneys

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- Reviewing and negotiating service agreements with plan professionals, including recordkeepers, trustees, investment advisors, investment managers and other retirement plan consultants

Our firm's employee benefits attorneys devote significant attention to the correction of qualification errors through guided self-correction or the submission of Voluntary Correction Program applications under the Internal Revenue Service's Employee Compliance Resolution System (EPCRS). We have successfully resolved defects in the design and operation of retirement plans through carefully crafted submissions and negotiations, resulting in the efficient and economical mitigation of substantial legal risks arising from such retirement plan failures. In addition, we have substantial experience correcting late remittances of participant contributions and other prohibited transactions through the Department of Labor's Voluntary Fiduciary Correction Program, and avoiding penalties for untimely annual report Form 5500 filings through the Delinquent Filer Voluntary Compliance Program.

The attorneys in our employee benefits practice have abundant experience in multiemployer plan and multiple-employer retirement plan administration and compliance issues, including advocacy in withdrawal liability disputes.

Welfare and Fringe Benefit Plans

We help clients establish and maintain a wide variety of welfare and fringe benefit plans, including:

- Group health plans for active employees and retirees, including plan designs using high-deductible health plans, HSAs, self-insured arrangements and an array of account-based health reimbursement arrangements
- Group insurance plans (life, disability, etc.)
- Cafeteria or flexible benefits plans
- Voluntary employees beneficiary association (VEBA) trusts and other post-retirement benefit funding mechanisms

Hodgson Russ attorneys provide comprehensive legal counsel to our clients to maintain compliant welfare plan documents, plan descriptions, and negotiate the terms of complex service agreements with claims administrators and other welfare plan professionals. We have particular experience successfully defending clients from assessments under the employer mandate of the ACA, including mandatory tax filings and adopting plan design strategies to avoid exposure to penalty assessments.

[CLICK HERE TO LEARN MORE ABOUT HOW OUR TEAM CAN ADDRESS YOUR ORGANIZATION'S POTENTIAL EXPOSURE TO ACA EMPLOYER SHARED RESPONSIBILITY PAYMENTS.](#)

Non-Qualified Plans & Executive Compensation Programs

The attorneys in our employee benefits practice assist clients in designing, drafting, and implementing supplemental retirement benefits and other non-qualified, deferred compensation arrangements for highly-compensated employees and senior executives. We design and implement a variety of stock-based compensation programs for both publicly traded and privately held businesses, including the use of stock options, stock appreciation rights, restricted stock and phantom equity.

Hodgson Russ attorneys develop other specialized compensation programs for executives and senior staff. In addition to deferred and stock-based compensation programs, our attorneys are experienced with the tax and other legal issues involved in employment, severance and change-in-control agreements (such as 409A and 280G golden parachute taxation),

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performance-based or incentive compensation arrangements and compliance with the 162(m) deduction limit and the 4960 compensation limits for executives of tax-exempt organizations.

Specific Employee Benefits Disciplines

ERISA and Fiduciary Compliance

The fiduciary landscape is changing fast. It is more important than ever for businesses and organizations sponsoring retirement plans and funded welfare plans to understand the various fiduciary roles, responsibilities and requirements that apply to ERISA plans. Liability for fiduciary breaches resides at the highest level of the organization, with directors and officers having potential personal exposure for resulting losses to employee benefit plans. The current regulatory environment, and lawsuits targeting benefit plan, makes conducting fiduciary compliance review an essential part of any organization's risk management and corporate compliance strategy. Our attorneys counsel ERISA plan fiduciaries regarding plan governance, fiduciary processes, and have developed a proactive approach to addressing fiduciary compliance issues. **CLICK HERE TO LEARN MORE ABOUT MITIGATING YOUR ORGANIZATION'S FIDUCIARY EXPOSURE THROUGH OUR FIDUCIARY COMPLIANCE REVIEW.**

Our ERISA practice is comprehensive, encompassing all aspects of compliance, including:

- Assisting with drafting and administering ERISA compliant claims procedures
- Preparing and advising regarding ERISA reporting and disclosure requirements
- Addressing prohibited transactions through corrective action and advocacy before the Internal Revenue Service (IRS) and Department of Labor (DOL)

Employee Benefits Disputes

Contact any of our employee benefits attorneys to address IRS or DOL examinations or audits related to your organization's employee benefit plans. Our attorneys also handle benefits claims and claims for breach of fiduciary duty, and provide litigation exposure and avoidance counsel to plan sponsors. Although our employee benefits attorneys' attention to plan operations renders litigation situations less frequent, clients may rely on our respected team of litigators if and when a conflict arises.

Contact Us

Our attorneys have the experience and knowledge that you need to receive the best guidance and legal services for your employee benefits program.

Hodgson Russ proudly works with numerous companies and individuals to deliver top-quality employee benefits services and representation. Contact us today to schedule your consultation.

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Experience

Hodgson Russ closed a merger transaction on behalf of a long-time, NASDAQ-listed defense and aerospace products manufacturing client. As a result of the merger, the client became a wholly owned subsidiary in a deal valued at approximately \$275 million. The closing completed a four-month project in which attorneys from many of our practices contributed in significant ways under intense time pressures and opposite some of the largest firms in the country. Our work included advising our client's board in connection with its fiduciary duties; negotiating the merger agreement; preparing a proxy statement for the special meeting of shareholders and dealings with the SEC and FINRA; defending the company and the board in two shareholder lawsuits alleging, among other things, breach of fiduciary duty by the board; appearing in federal and state court and ultimately settling the lawsuits; advising management on directors and officers insurance matters; advising the board and management on certain options and other benefit matters; handling HSR filings; and assisting on financing related to the transaction.

The complex rules of Internal Revenue Code Section 409A (409A) commonly result in operational or documentary errors in employers' nonqualified deferred compensation plans, so it was no surprise when a large corporation suspected it had made several operational errors in connection with its supplemental executive retirement plan (SERP). We assisted our client in identifying and correcting the operational errors, correcting them in accordance with IRS Notice 2010-113 to minimize penalties and ensure continued compliance. Our work included analyzing the errors to determine the best correction method for each error, assisting with calculating the amounts payable for each year in which errors were made, drafting the required IRS statements and participant notices, drafting explanatory letters to participants, and assisting with responses to a threatened legal action for reimbursement in connection with the errors. We have also assisted other clients in correcting 409A documentary errors under IRS Notices 2010-6 and 2010-80.

Hodgson Russ assisted a large, multinational corporation with respect to liability for posting of security with the Pension Benefit Guaranty Corporation (PBGC) under Employee Retirement Income Security Act of 1974 (ERISA) Section 4062 (e). Under ERISA Section 4062(e), if there is a cessation of business operations that results in more than 20 percent of active participants separating from employment, the employer is required to deposit a calculated amount into an escrow account with the PBGC or obtain a bond in favor of the PBGC. In connection with this representation, the client was ultimately able to demonstrate to the PBGC that there was no additional risk to the PBGC as a result of the cessation of operations. As a result, the employer was able to avoid the need to post security with the PBGC. This was a very favorable result because the PBGC has become extremely active in pursuing security or other means of promoting plan solvency in these situations.

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When a privately held, multinational company underwent a corporate restructuring, the transaction had unintended consequences for the stock appreciation rights (SARs) of the company's U.S. employees. Hodgson Russ attorneys analyzed the tax compliance issues arising under 409A as a result of the transaction, prepared corrective amendments for the plan and award agreements, advised our client on the various correction options and reporting obligations, and prepared the required IRS statements and participant notices. Once the corrections were made, we assisted the client in designing new incentive plans suitable for the company's corporate structure and unique circumstances.

When a large, multinational corporation and sponsor of multiple qualified retirement plans discovered that an employee had been illegally "appropriating" plan assets, it turned to Hodgson Russ for help. The firm provided assistance and support in unraveling the techniques by which monies were illegally appropriated from the plan accounts of participants, assessing the many operational errors triggered by this appropriation, developing a strategy for restoring funds to the accounts of the affected participants, and correcting the operational errors so as to preserve the qualified status of the affected plans. We helped our client successfully implement the necessary corrections, develop procedures to prevent similar problems in the future, and communicate the corrections to the affected participants in a manner that helped preserve participant confidence in the security of their retirement plans. Our work also included analyzing fiduciary liability and prohibited transaction issues, assisting with reporting obligations, and advising on the potential liability of a third-party administrator.

A Hodgson Russ team helped a large public company organize and restructure its numerous and complex benefit programs into a single, comprehensive ERISA welfare benefits plan. In this process, our attorneys assisted the client by drafting a consolidated ERISA plan document and summary plan description; providing counsel with respect to the implementation and administration of wellness and smoker cessation initiatives that included advice regarding compliance with HIPAA nondiscrimination rules; and providing counsel with respect to the implementation and administration of a disease management and electronic health record initiative that included advice regarding compliance with federal (i.e., HIPAA) and state law privacy and security laws. We also provided counsel with respect to the implementation and administration of policies and procedures designed to ensure compliance with FMLA, COBRA, the Children's Health Insurance Program Reauthorization Act, the Genetic Information Nondiscrimination Act, the Wellstone-Domenici Mental Health Parity Act, the proposed cafeteria plan regulations, and the Affordable Care Act. Additionally, our attorneys provided a comprehensive review of numerous administrative service agreements related to the client's complex health care program involving disease management and wellness initiatives and electronic health records, and counsel with respect to numerous retiree plan benefit structures.

Hodgson Russ handles the day-to-day and complex labor and employment related matters for various large food and beverage manufacturers, including union negotiations, advice on executive compensation, defense of employment-related disputes and advice on employee benefit matters.

Several of our clients in the food, automotive, and chemical industries contribute to multiemployer defined benefit plans. The plan trustees imposed on these clients millions of dollars in additional contributions and withdrawal liability to remedy the underfunded status of the plans. In many cases, we were able to negotiate changes in the wage and benefit packages in the applicable collective bargain agreements to offset the cost of these additional contributions. In other cases, we negotiated substantial reductions in withdrawal liability.

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Hodgson Russ assisted a large, multinational corporation and sponsor of multiple qualified retirement plans in connection with its response to the illegal appropriation of plan assets by an employee of the plan sponsor. Our work included providing assistance and support in unraveling the techniques by which monies were illegally appropriated from the plan accounts of participants, assessing the many operational errors triggered by the illegal appropriation of plan funds, developing a strategy for restoring funds to the accounts of the affected participants, and correcting the operational errors so as to preserve the qualified status of the affected plans. We helped our client successfully implement the necessary corrections, develop procedures to prevent similar problems in the future, and communicate the corrections to the affected participants in a manner that helped preserve participant confidence in the security of their retirement plans. Our work also included analyzing fiduciary liability and prohibited transaction issues, reporting obligations, and the potential liability of a third-party administrator.

In the News

Coronavirus Resource Center

Thought Leaders - Employee Benefits Demand Change During Pandemic

Buffalo Business First, April 23, 2021

How the New Tax Rules Affect Taxpayers

October 26, 2020

Employers Stay on Path as ACA Upheld

Buffalo Law Journal, July 6, 2015

Not All Is Well With Wellness Programs

Buffalo Law Journal, January 12, 2015

More of the Same in '15 for Employee Benefits

Buffalo Law Journal, December 19, 2014

In Question: Health Benefits for the Retired

Buffalo Law Journal, December 15, 2014

WNY Businesses Face Post-DOMA Uncertainty

Buffalo Law Journal, August 19, 2013

Six Hodgson Russ Attorneys Named *Best Lawyers* 2012 Buffalo 'Lawyers of the Year

October 17, 2011

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Press Releases

71 Hodgson Russ Attorneys Ranked in 2023 Edition of *Best Lawyers in America*
Hodgson Russ Press Release, August 19, 2022

Hodgson Russ Receives Top Tier National and Metropolitan Rankings in 2022 Best Law Firms Listings
Hodgson Russ Press Release, November 15, 2021

Hodgson Russ Earns Five National-Level Rankings in *U.S. News & World Report/Best Lawyers 'Best Law Firms'* Report
Press Release, November 18, 2015

Publications

Final HIPAA Privacy Rule Provides New Protections for Reproductive Health Care Information
Hodgson Russ Employee Benefits Alert, May 22, 2024

Welfare Plan Fiduciaries Sued Due to Excessive Pharmacy Costs
Hodgson Russ Employee Benefits Alert, March 19, 2024

A Look at the IRS's Proposed Long-Term Part-Time Employee Regulations
Hodgson Russ Employee Benefits Alert, March 8, 2024

SECURE 2.0 Update: IRS Announces Two-Year Delay for New Roth Catch-Up Contribution Rule Implementation
Hodgson Russ Employee Benefits Alert, September 6, 2023

IRS Provides New Required Minimum Distribution Relief and Guidance
Hodgson Russ Employee Benefits Alert, August 16, 2023

IRS Issues EPCRS Guidance to Implement SECURE 2.0's Expansion of Self-Correction Opportunities
Hodgson Russ Employee Benefits Alert, June 22, 2023

Employee Benefit Plans Face Administrative Transition at the End of the COVID-19 National/Public Health Emergencies
Hodgson Russ Employee Benefits Alert, March 29, 2023

Group Health Plan Sponsors Required to Submit First Attestation of Compliance with Gag Clause Prohibition
Hodgson Russ Employee Benefits Alert, March 16, 2023

New York State Secure Choice Savings Program
TaxStringer, March 1, 2023

SECURE 2.0 Makes Numerous Changes to Retirement Plan Rules
Hodgson Russ Employee Benefits Alert, January 12, 2023

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Presentations & Events

NYSSCPA Southern Tier Chapter Taxation Conference
Doubletree by Hilton Hotel Binghamton, October 26, 2022

Public Company Update 2022
January 28, 2022

School Client Conference Webinar Series 2021
January 15, 22, and 29

Public Company Update 2021
Hodgson Russ LLP, January 28, 2021

The Hodgson Russ CARES Act Webinar Series – A Primer for Businesses
April 6 & 13, 2020

Public Company Update 2020
Hodgson Russ LLP, January 30, 2020

Labor & Employment Seminar
Offices of Hodgson Russ LLP, New York, NY, December 12, 2019

Labor & Employment Seminar
The Century House, Latham, NY, December 5, 2019

25th Annual Labor & Employment Conference
Buffalo Niagara Marriott, Amherst, NY, November 14, 2019

Important Employee Benefit Issues for Payroll Professionals
October 10, 2019