

American Conference Institute's

# Compensation & Benefits BOOT CAMP

## For Labor & Employment Practitioners

*An In-Depth Guide for Attorneys and HR Professionals on the Ins and Outs of ERISA, Deferred Compensation and the Common Comp & Benefit Pitfalls in Employment Contracts, Severance Agreements, Collective Bargaining, and more*

Finally, a comprehensive program on DRAFTING STRATEGIES for troubleshooting comp & benefits issues in common employment documents, with emphasis on:

#### EMPLOYMENT CONTRACTS & OFFER LETTERS

- 409A issues relating to incentive, bonus, and profit sharing arrangements
- Restricted stock, phantom stock and stock appreciation rights
- Performance based awards
- Top hat plans and avoiding benefits discrimination

#### MERGERS & ACQUISITIONS

- The trigger words that signal comp & benefit liabilities in transactional situations
- Finding hidden compliance failures in the target company's plan
- Avoiding pension withdrawal liability
- "Change in control" payments and "double triggers"

#### SEVERANCE PLANS & LARGE SCALE RIFs

- Continuing benefit coverage issues, including continued participation in 401(k) plans and providing extended medical coverage
- Dealing with pension & benefit issues in termination of older employees in RIFs
- Liability for termination/partial plan termination in connection with RIFs

#### EMPLOYEE HANDBOOKS

- Drafting handbooks to be consistent with plan documents
- Defining key terms

*Our unparalleled faculty will increase your compensation & benefits knowledge on key issues through expert insights on:*

- The expanded definition of deferred compensation under 409A
- The basics on spotting an ERISA plan and the litigation advantages of an ERISA plan
- The requirements of 409A regarding time and form of distribution and why the old arrangements don't work anymore
- ERISA's interaction with the Bermuda Triangle – FMLA, Workers Comp & the ADA
- Understanding pension plans (multi-employer, defined contribution, defined benefit) and where the liabilities lie
- Understanding how the PPACA and the Dodd-Frank Acts affect your clients' benefit plans
- The tax penalties for Golden Parachute payments
- Special tax and benefit issues in the collective bargaining setting
- ERISA as it relates to wage and hour claims under the FLSA
- Understanding how to value benefits as an element of damages
- What labor & employment attorneys need to know about employer health care obligations, negotiating medical plans, COBRA notices, and protecting employee information under HIPAA

#### Conference Co-Chairs:



Rosina B. Barker  
Ivins, Phillips & Barker, Chartered



Marianne W. Culver  
Ungaretti & Harris LLP

#### And don't miss the interactive workshops:

- A) Pre-Conference Primer – Understanding & Preparing for New Legislation: How the PPACA and Dodd-Frank Affect Your Clients & Their Plans  
January 24, 2011 – 8:00 a.m. – 10:00 a.m.
- B) Post-Conference International Drafting Master Class: Special Comp & Benefit Issues for Labor & Employment Attorneys Advising Multi-National Corporations & Drafting Cross-Border Arrangements  
January 25, 2011 – 3:00 p.m. – 5:00 p.m.

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## Increase your compensation & benefits knowledge to become a better labor and employment attorney or HR professional

*Do you know what is defined as “deferred compensation” under 409A? Can you identify when you are dealing with an ERISA plan? Or name the strategic advantages of having such a plan if litigation arises? Can you spot compliance failures in a target company’s benefits plan? Do you know what to look for in plan documents before you draft an offer letter, severance plan or settlement agreement?*

If you answered “no” to any of these questions, you could be missing critical issues for your clients and setting them up for large amounts of liability, tax penalties or litigation. Recent regulation, including the **Dodd-Frank Act** and the **PPACA**, have made it clear that it is essential for those who do not have compensation and benefits practices – but who venture into these highly legislated and litigated fields – to understand the rules and regulations that impact the compensation and benefits arena.

Because employee-related litigation often hinges on what happened in the *drafting or negotiation stages of designing an employee handbook, initiating an offer or reviewing transactional documents in an acquisition, it is imperative that labor and employment practitioners become well-versed in the essentials of ERISA, the Internal Revenue Code, and other common issues that pop up in the comp & benefits arena.*

**ACI’s Compensation & Benefits Boot Camp** has been designed to give labor and employment attorneys and HR professionals, along with any other attorneys confronting issues in these arenas, a strong, working knowledge of core issues needed to be competent in the comp & benefits arena.

A distinguished faculty of top compensation and benefits attorneys, tax specialists and ERISA litigators from across the country will share their knowledge and give you critical insights on:

- The new standards for defining deferred compensation and why the old drafting standards for offer letters, severance packages and settlement agreements no longer work
- The basics of ERISA, including:
  - Spotting an ERISA plan
  - The strategic advantages of litigating with a tax-qualified ERISA plan
  - Knowing how to keep your plan ERISA-compliant
- Best practices in **drafting employment contracts, offer letters, settlement agreements, severance packages, and employee handbooks**
- Understanding the exceptions and special compensation and benefits problems arising from a **bargained workforce**
- The interaction between comp & benefits law and the Bermuda Triangle: the **ADA, FMLA and Workers’ Comp**
- The special issues to look for when advising **multi-national corporations**

You will not want to miss the opportunity to learn to navigate the compensation and benefits issues that play such a crucial role in your practice area. Register now by calling 1-888-224-2480 or by faxing your form to 1-877-927-1563. You can also register online at [www.AmericanConference.com/CompBenefits](http://www.AmericanConference.com/CompBenefits)

**PLUS**, add value to your attendance by registering for our workshops:

**A) Pre-Conference Primer - Understanding & Preparing for New Legislation: How the PPACA and Financial Reform Affect Your Clients & Their Plans**  
January 24, 2011 – 8:00 a.m. – 10:00 a.m.

**B) Post-Conference International Drafting Master Class: Special Comp & Benefit Issues for Labor & Employment Attorneys Advising Multi-National Corporations & Drafting Cross-Border Arrangements**  
January 25, 2011 – 3:00 p.m. – 5:00 p.m.

## Who You Will Meet:

- In-house Labor & Employment Counsel
- Outside Counsel Practicing in Labor & Employment
- Human Resources Professionals
- In-house Benefits Attorneys
- Top Comp & Benefit Outside Counsel

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**Wendy Tyler**

Head of Sales, American Conference Institute

Tel: 212-352-3220 x242 | Fax: 212-220-4281  
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## Day One – Monday, January 24, 2011

9:30 **Main Conference Registration and Continental Breakfast**

10:00 **Co-Chairs' Welcoming Remarks**



*Rosina B. Barker*  
Ivins, Phillips & Barker, Chartered (Washington, D.C.)



*Marianne W. Culver*  
Ungaretti & Harris LLP (Chicago, IL)

## Everything Labor & Employment Practitioners Need to Know About...

10:05 **...ERISA: The Basics of Compliance & Litigation Strategy for Labor & Employment Practitioners**



*Gregory C. Braden*  
Morgan, Lewis & Bockius LLP (Washington, D.C.)



*Russell L. Hirschhorn*  
Proskauer Rose LLP (New York, NY)



*Andrew Holly*  
Dorsey & Whitney LLP (Minneapolis, MN)



*Andrew L. Oringer*  
Ropes & Gray LLP (New York, NY)

### Understanding ERISA Basics

- ERISA terms, concepts & an overview of the leading case law
- The current landscape of ERISA litigation (fiduciary liability, the new disclosure requirements, ESOPs & stock drop cases, 401(k) fee cases)
- Spotting an ERISA plan – understanding when you are dealing with or setting up an ERISA plan, even if you don't intend to
- Understanding Section 510 (ERISA) claims: termination/discrimination for a right arising under an ERISA plan
- ERISA's reporting & disclosure requirements
- The basics of ERISA's administrative process

### ERISA Litigation Strategy in Wage & Hour, Termination & Discrimination Suits

- Spotting an ERISA claim in a complaint: when do benefit losses trigger ERISA?
- ERISA Litigation Strategy:
  - Understanding ERISA preemption and which claims may survive preemption
  - The limits on discovery when working with an ERISA plan
  - Conflicts of interest and how they affect ERISA's standard of review
  - The limited remedies available under ERISA
  - ERISA's exhaustion requirements
  - The limits on jury trials and punitive damages
- Standing to sue under ERISA: When is a claim for exclusion from an incentive plan (*i.e.* – discrimination, wage & hour, worker misclassification) an ERISA claim?

11:30 **Morning Coffee Break**

11:35 **...Deferred Compensation under 409A, 162m and 480G**



*Rosina B. Barker*  
Ivins, Phillips & Barker, Chartered (Washington, D.C.)



*Derek Windham*  
Associate General Counsel  
Del Monte Foods Company (San Francisco, CA)



*Luke Bailey*  
Strasburger & Price LLP (Dallas, TX)



*Miriam (Dusty) M. Burke*  
Vinson & Elkins LLP (Austin, TX)



*Michael G. Falk*  
Winston & Strawn LLP (Chicago, IL)

### Deferred Compensation

- Understanding nonqualified v. qualified deferred compensation

### 409A

- The expanded definition of deferred compensation under 409A: what constitutes deferred compensation now?
- Exceptions to 409A
  - Short-term deferrals
  - Separation pay plans
  - Qualified Plans
- Requirements of 409A regarding time and form of distribution: why the old arrangements don't work anymore
  - Time of deferrals election
  - Time of payment and definite dates
  - Separation from service requirement
  - "Specified employees"
  - Prohibition on acceleration of payment (*e.g.* offset provisions)
  - Prohibition on delay of payment
  - Effect of release requirement on definite payment date
  - Permitted changes to payment date
  - Exceptions (*e.g.* delay due to financial inability)
- How 409A applies to independent contractors

### Other Special Problems

- Excessive compensation under 162(m)
- Tax penalties on Golden Parachute Payments, 280(G) and 4999
- Complying with TARP limitations (for domestic and overseas employees)
- Employee Plan Compliance Resolution System & plan requalification

1:00 **Networking Luncheon for Speakers and Delegates**

# A Focus on DRAFTING & TROUBLESHOOTING in Common Workplace Documents

*With highlights on 409A, ERISA and other common compensation & benefits issues*

## 2:00 TROUBLESHOOTING: Employment Issues in Mergers & Acquisitions



*L. Scott Austin*  
Hunton & Williams LLP  
(Dallas, TX)



*Michael Collins*  
Gibson Dunn & Crutcher LLP  
(Washington, D.C.)



*Regina Olshan*  
Skadden, Arps, Slate, Meagher  
& Flom LLP (New York, NY)

- The trigger words that signal comp & benefit liabilities in transactional situations
- Finding hidden compliance failures in the target company's plan
- Issues surrounding employees in an asset purchase, including:
  - Past service pension credits
  - 401(k) pay outs
  - Managing multiple employment contracts/severance agreements
- Negotiating the compensation and benefits for acquired employees: understanding your plan and what can be offered
- COBRA best practices
- The ERISA concerns/claims following an asset purchase
- What to do with employees who are out on leave
- How to handle:
  - "Change in control" payments & double triggers
  - Unvested stock options
  - Pension withdrawal liability

## 3:00 Afternoon Refreshment Break

## 3:10 DRAFTING: Severance Agreements/Plans and RIFs



*Dirk W. de Roos*  
Faegre & Benson LLP  
(Denver, CO)



*Eric E. Kinder*  
Spilman Thomas & Battle  
PLLC (Charleston, WV)



*Leigh C. Riley*  
Foley & Lardner LLP  
(Milwaukee, WI)

### Severance

- Defining "termination of employment" in plan documents
- Stock and benefit valuation mechanisms and buy back provisions: best practices in drafting employment agreements at the front end to prevent litigation at the back end
- Effect on equity awards, including stock options and restricted stock
  - Acceleration of unvested awards & the tax consequences
  - Common practices and pitfalls
- ESOPs
  - Properly handling separations when the employee holds company stock
  - Addressing ESOPs in the employment contract to avoid problems at separation
- Defining "involuntary termination" in relation to COBRA benefits
- Understanding continuing benefit coverage issues, including continued participation in 401(k) plans and providing continued medical coverage beyond COBRA
- Drafting agreements so that you have ERISA protection

### RIFs

- Best practices for dealing with multiple employment/severance agreements in large scale RIFs
- Dealing with pension & benefit issues in a large scale RIF
- Liability for termination/partial plan termination in connection with RIFs
- Special issues for pension plans – reportable events and funding rules
- WARN Act notices

4:10 **DRAFTING: The ERISA Pitfalls in Employee Handbooks & QDROs**



*Jeanne L. Bakker*  
Montgomery, McCracken, Walker & Rhoads, L.L.P.  
(Philadelphia, PA)



*Karen Grotberg*  
Mayer Brown LLP  
(Chicago, IL)

- Drafting handbooks to be consistent with plan documents
- Defining key terms
- Establishing and implementing plan-related employee policies and procedures (thereby reducing litigation)
  - Procedures for beneficiary designations
  - Designating someone other than the spouse as the beneficiary
  - Updating forms to reflect benefit and other plan amendments
  - Benefit distribution elections
- QDRO drafting and litigation prevention: understanding common pitfalls, developing model QDROs, ERISA preemption, what to look for and how to deal with incorrect orders

5:00 **Conference Adjourns**

**Day Two - Tuesday, January 25, 2011**

7:30 **Continental Breakfast**

*A Focus on DRAFTING continues with:*

8:00 **Employment Contracts, Offer Letters, Highly Compensated Executives and Top Hat Plans**



*William B. Duff*  
Katten Muchin Rosenman LLP  
(New York, NY)



*Martha N. Steinman*  
Dewey & LeBoeuf LLP  
(New York, NY)



*Brigen L. Winters*  
Groom Law Group, Chartered  
(Washington, D.C.)



*J. Mark Poerio*  
Paul, Hastings, Janofsky & Walker LLP  
(Washington, D.C.)



*Michael L. Stevens*  
Alston & Bird LLP  
(Atlanta, GA)

*Employee Compensation & Offer Letters*

- Key drafting points for 409A: reimbursement and the six-month delay
- 409A timing requirement for waiver and release provisions
- 409A issues relating to incentive, bonus, and profit sharing arrangements
- What to check for and where to check before you offer stock options, health care benefits and more...
- 280G: The basics on Golden Parachutes, excise taxes and gross-ups
- Understanding restricted stock, phantom stock and stock appreciation rights
- Performance based awards:
  - Unraveling the new definition of "performance based"
  - Understanding 162(m)
  - SEC disclosure requirements
- Renegotiating employment agreements and the substitution rules
- How to correct employment (and severance) agreements if you have a 409A violation
- Understanding the tax and ERISA consequences of promising benefits that are not provided for in the employer's plan documents
- Best ideas for contract disclaimer language

*Highly Compensated Executives & Top Hat Plans*

- Understanding top hat plans
- Reporting requirements for top hat plans
- When are deferred compensation plans subject to ERISA?
- Avoiding discrimination issues
- Special problems in dealing with highly compensated individuals
- Drafting tips for keeping your client's flexibility intact

9:35 **Morning Coffee Break**

9:45 **Special Problems in Collective Bargaining with a Focus on Pension Plans and Retiree Wellness Benefits**



*James P. McElligott, Jr.*  
McGuireWoods LLP (Richmond, VA)



*Keith McMurdy*  
Fox Rothschild LLP (New York, NY)

CBA's

- Best practices in drafting retiree medical provisions in a CBA
- The interaction of pension and benefit provisions and general provisions of the CBA – i.e. the dispute resolution clause and term clause

Pension Plans

- Understanding the liabilities in various types of pension plans
- Ideas for retaining the flexibility to alter your plan without having to renegotiate with the union
- What it means when your client gets a rehabilitation notice and what to do
- Understanding other pension plan options and how they can be used to stay out of a multi-employer plan in collective bargaining
- Identifying exceptions to withdrawal liability

Welfare Benefit Issues

- Understanding your plan before you sit down at the bargaining table
- Recognizing your options in medical plans
- Pro's and Con's of using VEBA's to fund medical benefits
- Negotiating retiree medical benefits

10:55 **Benefits in Wage & Hour, Termination/ Discrimination, Contract & Worker Misclassification Claims**



*William B. Klemick*  
Vice President, Counsel, Bayer Corporation (Pittsburgh, PA)



*Jose Martin Jara*  
Seyfarth Shaw LLP (New York, NY)



*Ronald S. Kravitz*  
Liner Grode Stein Yankelevitz Sunshine Regenstreif & Taylor (San Francisco, CA)

FLSA, ERISA and Worker Misclassification

- Aligning the definitions in plan documents and employee handbooks to avoid litigation
- ERISA as it relates to wage and hour claims under the FLSA
- Class action litigation: FLSA's opt in v. ERISA's opt out (Rule 23) classes and why to expect more wage & hour claims to have ERISA claims tied to them
- Getting the ERISA claim dismissed to get back to an opt in class
- ERISA's record keeping requirements and recordkeeping under the FLSA

Plan Language

- Are benefits based on compensation paid or wages earned?
  - Do you know what your plan says?
  - What difference can it make?

- Defining terms (full-time, part-time etc) in the employee handbook so that it coordinates with your plan and eligibility for benefits – no conflicting documents

Valuing Benefits as an Element of Damages

- How to assess the value of benefits in the damage context
  - 401(k) contributions and pension credits
  - Service time
  - Lost medical coverage
- Using future pension payments to offset damage awards

12:00 **Networking Luncheon for Speakers and Delegates**

1:05 **ERISA's Interaction with the Bermuda Triangle – FMLA, Workers' Comp & the ADA**



*Michael Newman*  
Dinsmore & Shohl LLP (Cincinnati, OH)



*Diane M. Soubly*  
Schiff Hardin LLP (Chicago, IL)

- Can retaining grandfathered status under PPACA expose an employer to ADA claims?
- Benefits and FMLA leave:
  - Who pays for benefits when an employee is on unpaid FMLA leave?
  - Do benefits accrue while an employee is on unpaid FMLA leave?
  - What if an employee substitutes paid leave (e.g. vacation) for a portion or all of the unpaid FMLA leave?
  - What if an employee's health care benefits expire before restoration to position?
- Understanding the interstices between the ADA and ERISA:
  - What are the employer's obligations when the plan documents and the law define "disabled" differently (e.g. working with an accommodation)?
  - What is ADA associational discrimination, and what are the employer's obligations to employee caretakers?
  - Can plan documents tailor benefits to particular sub-classes of disabled persons or offer wellness benefits?
  - Should the disability plan or the worker's comp carrier pay certain claims?
  - What are an employer's obligations to accommodate "favored work"?

1:55 **What Labor & Employment Attorneys Need to Know About Employer Health Care Obligations: Negotiating Medical Plan Options, COBRA Notices, and Protecting Employee Information Under HIPAA**



*Marianne W. Culver*  
Ungaretti & Harris LLP



*Eric R. Paley*  
Nixon Peabody LLP (Rochester, NY)



*Rebecca L. Sczepanski*  
Ice Miller LLP (Indianapolis, IN)

Medical Plans

- The differences between and strategic advantages of the different types of plans
- Pros and cons of insured and self-insured plans
- How to bargain for the most favorable benefit plan for the employer

### COBRA

- A general overview of COBRA & how it works
- Defining “qualified event” and “gross negligence” for COBRA purposes
- COBRA notices and excise taxes
- Who is responsible for COBRA in a merger/acquisition?

### HIPAA

- Which entities and what information is subject to HIPAA protections?
- Understanding the differing HIPAA requirements for employers and plan administrators
- Avoiding civil monetary penalties and liability suits
- Negotiating Business Associate and other HIPAA agreements

2:55 **Conference Ends – Registration for Workshop B**

## WORKSHOPS

Monday, January 24, 2011 | 8:00 a.m. – 10:00 a.m. (*registration opens at 7:30 a.m.*)

### **A** PRE-CONFERENCE PRIMER: Understanding & Preparing for New Legislation: How the PPACA and Financial Reform Affect Your Clients & Their Plans



*Marianne W. Culver*  
Ungaretti & Harris LLP



*Martha N. Steinman*  
Dewey & LeBoeuf LLP (New York, NY)

#### *The Patient Protection & Affordable Care Act*

- Understanding PPACA
  - The benefits of retaining grandfathered status
  - New reporting and notification requirements
  - When is compliance required with various provisions?
- Are there private rights of action for violations/non compliance with the health care bill?
- Special union exceptions: What to know about PPACA in collective bargaining for health care benefits

#### *Dodd-Frank Wall Street Reform and Consumer Protection Act*

- New regulations on and changes to:
  - Golden Parachute compensation
  - Say-on-Pay
  - Executive compensation & disclosure requirements
  - Clawbacks

Tuesday, January 25, 2011 | 3:00 p.m. – 5:00 p.m.

### **B** POST-CONFERENCE INTERNATIONAL DRAFTING MASTER CLASS: Special Comp & Benefit Issues for Labor & Employment Attorneys Advising Multi-National Corporations & Drafting Cross-Border Arrangements



*Michael Collins*  
Gibson Dunn & Crutcher LLP (Washington, D.C.)

*Additional speakers TBA*

- Foreign executives, expats, non-resident aliens: Resolving 409A issues that arise in cross-border employment relationships
- Deferred compensation laws abroad
- Foreign laws and bonuses: is it compensation and what are the implications if it is?
- Avoiding benefit related discrimination claims by foreign employees (in the U.S. & abroad)
- Severance pay and benefit considerations that arise when terminating employees
- Structuring deferred compensation plans for foreign employees in compliance with 409A



### About the Venue

The Union League, which occupies an entire city block in the center of Philadelphia's commercial and cultural district, is a shining jewel of history in a city defined by such treasure. Founded in 1862 as a patriotic society to support the policies of President Abraham Lincoln, The Union League has hosted U.S. presidents, heads of state, industrialists, entertainers and visiting dignitaries from around the globe. The classic French Renaissance-styled League House, with its brick and brownstone façade and dramatic twin circular staircases leading to the main entrance, is listed in the National Historic Register, and dates back to 1865, when the Broad Street building was completed. Adorning the walls and hallways is the League's distinguished art collection, artifacts imbued with the heritage and culture of its membership. The collection is a rich, historical chronicle of Philadelphia's unique imprint upon the American landscape from the nineteenth century to today.

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An In-Depth Guide for Attorneys and HR Professionals on the Ins and Outs of ERISA, Deferred Compensation and the Common Comp & Benefit Pitfalls in Employment Contracts, Severance Agreements, Collective Bargaining, and more

Finally, a comprehensive program on **DRAFTING STRATEGIES** for troubleshooting comp & benefits issues in common employment documents, with emphasis on:

- Employment Contracts & Offer Letters
- Mergers & Acquisitions
- Severance Plans & Large Scale RIFs
- Employee Handbooks
- ...and much more

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Venue: The Union League of Philadelphia  
Address: 140 South Broad Street, Philadelphia, PA 19102  
Reservations: 215-587-5570

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