Morgan Lewis

# HOT TOPICS IN EMPLOYEE BENEFITS: WHAT WE'RE SEEING

## PREPARING FOR AN ECONOMIC DOWNTURN

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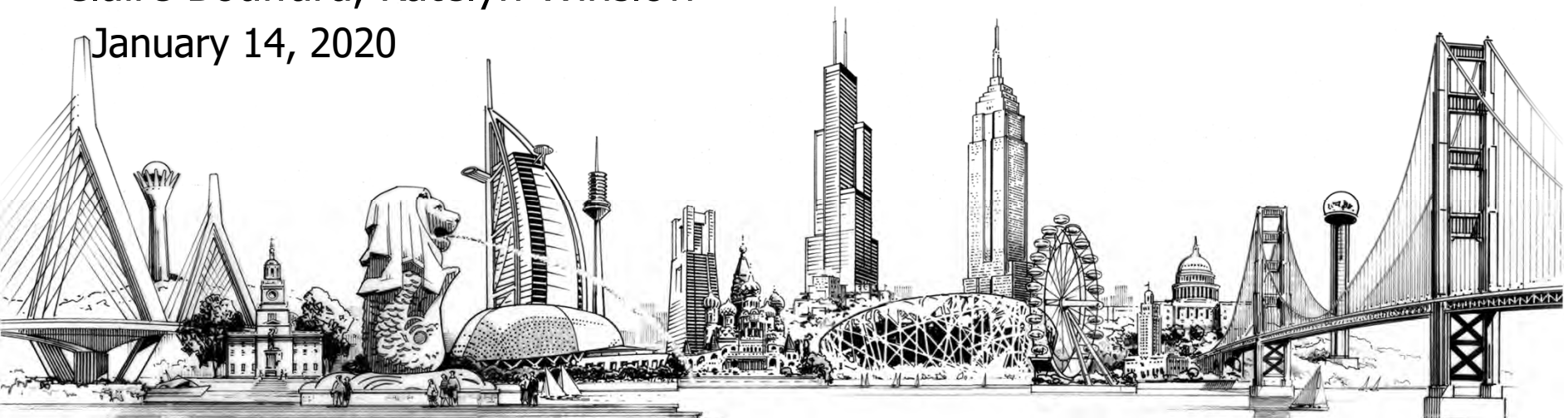

Presenter: Katelyn Winslow

# EXECUTIVE COMPENSATION PLANNING FOR AN ECONOMIC DOWNTURN

# Executive Compensation Planning for an Economic Downturn

While the economy continues to enjoy steady growth, financial experts warn that an economic slowdown is likely in the not too distant future. Preemptive action may cushion an otherwise bumpy financial ride. Therefore, it's time again to plan for an economic downturn. We have compiled several suggestions for executive compensation planning for a downturn.

# Align Incentive Compensation with an Economic Downturn Strategic Plan

Consider whether performance metrics should be updated to align with the company's strategic approach to addressing a downturn. For example, companies can review their incentive compensation programs to minimize executive risk-taking, emphasize nonfinancial measures, and underscore near-term successes and sustainability.

# Minimize the Need for Discretion in Performance-Based Awards

When setting performance goals for incentive compensation, think about how an economic downturn will affect the company's ability to meet the performance goals. Setting performance metrics with a view toward appropriate achievability in a variable economy may minimize the use of discretion later.

# Cap Payouts

Capping payouts under performance-based plans may alleviate unintended consequences, such as shareholder reaction to a payment substantially above target during a financial downturn. This can be an issue, for example, where one metric exceeds the maximum while another fails to hit the threshold.

# Equity Plan Share Reserve

Consider how a drop in stock price would affect the share reserve in the equity plan, and consider getting shareholder approval of a share reserve increase sooner rather than later.

# Denominate Awards in Dollars, Not Shares

If any equity grants are denominated in shares instead of dollars (for example, director grants), consider changing them to dollar amounts.

# Severance Plans/Policies

Review severance plans and policies, and update them to be ERISA-compliant severance plans. From an HR perspective, posting a new severance plan in "good times" presents less employee concern than presenting a new severance plan in the midst of an economic downturn.

# Employment Agreements

Review employment agreements and severance agreements to understand what the severance levels are, whether there is consistency among similarly situated employees, and how the "good reason" definitions would work in an economic downturn (for example, in the event of an across-the-board reduction in salaries).

# Executive Diligence

Executives should personally review their employment agreements and severance arrangements, and identify areas of concern that may need to be updated.

Presenter: Julie Stapel

# FIDUCIARY CONSIDERATIONS FOR POTENTIAL ECONOMIC DOWNTURN

# Fiduciary Considerations in Moving to Liability Driven Investments for Defined Benefit Plans

- Defined benefit pension plans can be particularly sensitive to economic downturns due to the complex investment assumptions and models.
- During a downturn, a pension plan may seek to focus more on how to manage and hedge a plan's liabilities. In contrast, in times of strong market performance, it may be hard to resist the outsized equity returns.
- Managing and hedging a plan's liabilities is often referred to as "liability driven investing," or LDI.

# Fiduciary Considerations in Moving to Liability Driven Investments for Defined Benefit Plans

- A move to an LDI strategy (or a move to increase the use of the LDI strategy) has many moving pieces for plan fiduciaries.
  - Consultants can play a valuable role in assessing LDI options.
  - The move to LDI (or to more LDI) will likely be multi-staged and depend on a variety of performance and/or funding triggers.
- There is generally a change in asset allocation, which will likely require asset rebalancing through sales, purchases and reallocation.
- This can take the form of the removal of some investment managers (such as equity managers) and the appointment of other investment managers (such as fixed income managers).
- Fiduciaries may wish to have assistance with these rebalancing activities.

# Fiduciary Considerations in Moving to Liability Driven Investments for Defined Benefit Plans

- A "transition manager" can provide valuable assistance in the rebalancing process.
- Think of a transition manager as a "single purpose" investment manager.
  - The transition manager does not decide what assets to buy or sell.
  - But can act as the fiduciary with authority over how assets are bought and sold in a rebalancing or reallocation.
- The transition manager focuses on:
  - The timing of the transactions
  - Market impact of the transactions
  - Opportunities for in-kind transfers
  - Managing trading costs

# Preparing for an Increase in Distressed Assets

- Both defined benefit and defined contribution plans may find themselves in the position of holding illiquid or otherwise impaired assets in the event of an economic downturn.
- For defined contribution plans, these issues may arise most commonly in stable value funds, money market funds or fixed income funds where defaults or other adverse events for securities held in those funds.
  - Impaired securities can be particularly challenging in DC plans where liquidity is needed to meet participant directions.
  - Financial crisis in 2007-2008 presented these issues.
- For defined benefit plans, these issues may also arise in fixed income investments, but also private fund investments (such as hedge funds and private equity funds).
  - Defined benefit plans (which do not involve participant direction) may be more able to "ride out" impaired assets, but still present issues for plan fiduciaries.

# Preparing for an Increase in Distressed Assets

- Plan fiduciaries may wish to engage their fund managers (or have the consultants engage the fund managers) to discuss current assets and their risk of becoming distressed.
  - Fiduciaries may wish to take proactive steps for assets that are at greatest risk of becoming distressed (or may already be distressed).
- Plan fiduciaries may also wish to reconsider investment guidelines to evaluate how "downturn-proof" they are.
  - The financial crisis revealed that some investment guidelines had "drifted" over time to riskier assets.
- ERISA does not require fiduciaries to see into the future . . .
- But it does require a prudent process for evaluating investment risks.

Presenter: Randy McGeorge

# STRATEGIES TO DEAL WITH MULTIEMPLOYER PENSION PLAN PARTIAL WITHDRAWAL LIABILITY RISKS IN AN ECONOMIC DOWNTURN

# What is Withdrawal Liability and How is it Triggered?

- An employer who ceases to contribute to a multiemployer pension plan must pay a proportionate share of the plan's unfunded vested liabilities, even where the employer has paid all contributions required to be made by it under the applicable CBA
- A "complete" withdrawal generally occurs when an employer either:
  - permanently ceases to have an obligation to contribute to the plan (e.g., CBA expires)
  - permanently ceases the business activity that gave rise to its participation in the plan (e.g., upon the employer's sale of the business in an asset deal)
- A "partial" withdrawal also triggers prorata withdrawal liability

# Quantitative Partial Withdrawal

- 70% contribution decline
  - an employer's "contribution base units" (e.g., hours worked)
  - in three consecutive years
  - is less than 30% of its average annual contribution base units for the two highest years in the preceding five years
- For example: A quantitative partial withdrawal will be triggered if a company's:
  - average annual contribution base units for the two highest years in the period from 2015-2019 were 1,000 hours; and its
  - Contribution base units for the three year period from 2020-2022 are each less than 300

# Qualitative Partial Withdrawals

- Facility Take-out – occurs when an employer ceases to have an obligation to contribute at one or more (but not all) facilities covered by the plan, if the employer continues to perform the same type of work at the facility
- Collective Bargaining Take-out – occurs when an employer cease to have an obligation to contribute under one or more (but not all) collective bargaining agreements covered under the plan, while continuing to perform the same type of work in the union's jurisdiction or transferring the work to another location
  - Partial withdrawal also occurs under this rule when work is transferred to another entity owned or controlled by the employer

# Special Industry Rules

- Construction Industry – partial only occurs if the employer's obligation under the plan is continued for no more than an insubstantial portion of its work in the craft and area jurisdiction of the collective bargaining agreement of the type for which contributions are required
- Entertainment Industry – no liability for partials unless prescribed by regulation
- Retail Food Industry – 70% contribution decline may be reduced to a 35% contribution decline if the plan adopts a plan amendment to that effect

Presenter: Claire Bouffard

# PLAN SPONSOR CONSIDERATIONS: EMPLOYEE BENEFITS AND ECONOMIC DOWNTURNS

# SECURE Act

- Will not be covered in today's presentation
- For more information regarding the SECURE Act:
  - https://www.morganlewis.com/pubs/secure-retirement-legislation-becomes-law-overview-of-provisions-affecting-retirement-plans
  - https://www.morganlewis.com/pubs/secure-act-increases-access-to-retirement-plans-with-pooled-employer-plans
  - A webinar regarding the SECURE Act will be scheduled in the near future

# Severance Plans, Voluntary and Involuntary Termination Programs

- Is the plan subject to ERISA? If so, what type of ERISA plan is it?
  - ERISA plan versus payroll practice (e.g., ongoing administrative scheme versus ad hoc/one-time payments)
  - If benefits are more than twice annual salary in year prior to termination or are paid for more than two years, ERISA pension plan may be created
- What requirements apply to an ERISA health and welfare severance plan?
  - Written plan document
  - Reporting and disclosure obligations
    - Form 5500
    - Summary plan description
  - Claims and appeals procedures
- Benefits of being subject to ERISA include:
  - More deferential standard of judicial review of claims
  - Preemption of conflicting state laws

# Partial Termination of Retirement Plan

- Facts and circumstances determination
  - Generally a rebuttable presumption that a partial plan termination occurs if employer terminates more than 20% of the plan participants within a specific period
    - Specific period generally is the plan year, but could be longer for related severances from employment (e.g., multiple, rolling lay-offs that are part of company-wide reduction in force)
  - Can also be caused by exclusion of previously-eligible employees or reduction of accruals that cause a reversion to the employer
- Requires full vesting of affected participants

# PBGC-Related Issues for Defined Benefit Pension Plans

- Certain changes in workforce may trigger ERISA Section 4043 reportable event reporting
  - Examples of reportable events include significant reductions in active plan participants, liquidation/insolvency of a controlled group member, loan default, etc.
  - Depending upon the type of reportable event and other facts and circumstances (e.g., plan's funded status, etc.) reporting may be required 30 days in advance of or following the change
  - Exceptions/waivers may apply to pre- and/or post-event reporting
- Certain workforce changes may trigger ERISA Section 4062(e) enhanced funding obligations
  - Applies if operations at a facility permanently cease, resulting in 15% or greater reduction in employees eligible to participate in any pension plan in the controlled group
  - Requires reporting to PBGC within 60 days (unless an exemption applies)

Presenter: Andy Anderson

# REVISITING SEVERANCE, COBRA, AND ASAS IN AN ECONOMIC DOWNTURN

# Economic Downturn – Generally

- Economic downturns can place an additional strain on (and increase costs for):
  - Health coverage
  - Mental health benefits
  - EAP utilization
  - STD benefits
  - LTD benefits
  - Loan requests
- Can also reawaken unused (and often dormant since the last downturn) policies and procedures that may need a checkup before they are widely used again

# Economic Downturn – Severance

- Severance benefits
  - Often include a period of continued (and subsidized) group health plan coverage
  - But, growing best practice is to:
    - Offer a taxable payment in lieu of continued group health plan coverage
    - Why?
      - Avoids any discrimination or 409A issues
      - Allows the recipients to determine their own "highest and best" use of the funds
        - Other need may outstrip continued group health coverage
        - Group health coverage may be available through a spouse
      - May remove their claims experience from their former employer's group health plan

# Economic Downturn – COBRA

- Check to be certain that COBRA notices:
  - Reflect current processes
  - Administrator nomenclature
  - Model notices
  - Case law
    - Note ongoing notice insufficiency cases
  - Best Practices

# Economic Downturn – Contracts

- Many different ways for vendors, TPAs, insurers to price their services
- Some services are priced in a fashion that is headcount-sensitive
  - Decreased headcount can:
    - Lead to increased costs
    - Withdrawal rights for vendor
- Review related contracts to determine what terms may apply—and how they work
- Price contract consequences into economic downturn planning

Presenter: Handy Hevener

# 15 TAX TIPS ABOUT LAYOFF, SEVERANCE AND OTHER POST-TERMINATION BENEFITS

# SUB-Pay (A Special Limited FICA/FUTA Exemption)

- A special administrative exception from FICA and FUTA taxes (but not from FITW) applies to "supplemental unemployment benefits" ("SUB pay") – defined to cover certain payments made upon the involuntary separation of an employee from the service of the employer.
- Per Rev. Rul. 56-249, 1956-1 C.B. 488 (and as limited by later rulings), the SUB pay applies only if the payments are designed to supplement the receipt of state unemployment compensation and are actually tied to either the actual receipt of state unemployment benefits, or to three additional situations where the employee is ineligible to receive state unemployment benefits; i.e., (1) where the employee does not have sufficient employment to be covered under the state system, (2) where the employee has exhausted the duration of state unemployment benefits, or (3) where the employee has not met the requisite waiting period.

# SUB-Pay (Cont.)

- Stated differently, the SUB-Pay benefits must not disqualify the employee from receiving unemployment benefits
- The plan may pay MORE unemployment benefits than are available under state programs, but must stop when unemployment benefits would stop
- Some employers set up "offset SUB Plans"- that reduce the SUB-pay benefit by the state unemployment benefits
- Others offer plans benefits as a flat percentage of former pay to the active employee, with no offset
- No "lump sum" benefits are available, per Rev. Rul. 90-72, 1990-2 C.B. 211

# Unemployment Insurance

- Some employers also offer unemployment insurance, which employees can either purchase on an after-tax basis (in which case the benefits are tax-free), or which the employer can provide on a tax-free basis (in which case the benefits are treated like SUB-Pay, and are taxable but eligible for the SUB-PAY FICA/FUTA exclusion)
- See PLR 201201003 (9/22/2011)
- All these SUB-Pay benefit programs are harder to track and operate than traditional severance benefit programs, and can be criticized by employees, since benefits stop when the employees get other jobs

# All Other Severance Benefits

- In all other cases, the IRS requires all severance benefits – whether for involuntary severance, early termination of employment contracts, severance with "good reason" – as "wage payments" subject to FITW, FICA and FUTA
- *See U.S. v. Quality Stores*, 572 U.S. 141 (2014)
- *See also* AOD 2019-02; 2019-41 IRB 806, in which the IRS, in reliance on *BNSF Railway v. Loos*, 139 S.Ct. 893, 203 L.Ed.2d 160 (2019), warned that any railroad's payment to an employee for working time lost due to an on-the-job injury is still subject to the RRTA (and, by analogy, that ANY payment related to an employee's past service is subject to FICA and FUTA)

# Reject Suggestions that Former Employees Can Simply Receive Forms 1099-MISC

- The fact that the payee is not an "active employee" at the time the payment is made is irrelevant, since the payroll tax regulations have provided since the 1950s that any amount paid by an employer to an employee, whether or not the employment relationship continues to exist at the time of payment. *See* Treas. Reg. §§ 31.3121(a)-1(i); 31.3401(a)-1(a)(5); 31.3401(a)-1(b)(4); 31.3306(b)-1(i) (amounts are wages "even though at the time paid the relationship of the employer and employee no longer exists.")
- Many circuit courts – both before and after Supreme Court's decision in Quality Stores (addressing involuntary severance pay) similarly concluded that "wages" includes any amount paid in connection with the entire employer-employee relationship.

# Reject Suggestions that Former Employees Can Simply Receive Forms 1099-MISC (Cont.)

- Thus, employers should reject all suggestions from former employees (including recipients of severance benefits, and recipients of settlement payments relating to employment disputes) that withholding can be avoided simply by reporting the benefits on a Form 1099-MISC.
- The IRS routinely looks for severance and settlement payments that might have been reported on Form 1099-MISC, and imposes withholding liability on the employer for having failed to withhold.
- Section 530 relief does not apply to benefit recipients who were previously employees of the payer.

# Possible Reduction of FITW on Cash Compensation Per Collection of New Form W-4

- Severance benefits can be subjected to FITW at the 22% flat supplemental rate – unless the former employee has not received wages from the employer in the payment year and the prior year. See Rev. Rul. 2008-19.
- *See* Treas. Reg. §31.3402(a), explaining the conditions under which 22% supplemental withholding rate cannot apply.
- But, some employers, to reduce FITW, offer former employees the ability to file a new Form W-4, which might help to minimize withholding, either by claiming significant numbers of exemptions, or "exempt status".
- Treas. Reg. §31.3402(f)(2)-1(e) provides that withholding certificates should be rejected where the "the employee clearly indicates [the W-4] to be false by an oral statement or a written statement made by him to the employer on or before the date on which the employee furnishes such certificate." But, if no such statement is made, technically the employer is authorized to accept the certificate. Also, Treas. Reg. §31.3401(e)-1(b) provides that: "The employer is not required to ascertain whether or not the number of withholding exemptions claimed [on a Form W-4] is greater than the number of withholding exemptions to which the employee is entitled."
- FICA and FUTA taxes still apply.

# Be Careful to Arrange For Withholding on Taxable Non-Cash Fringe Benefits

- If any taxable non-cash fringe benefits will be paid for extended periods after an employee terminates service (e.g., taxable health benefits, discriminatory life insurance, continued use of the employer's airplanes or cars), care should be taken to arrange for the payment to the employer of the required withholdings – since, as noted, above, FITW may not necessarily be eliminated, even if new Forms W-4 are collected, and FICA taxes may apply.
- Withholdings can be collected from continuing cash payments, but if noncash fringe continue after the cash payments stop, the severance plans and agreements could warn that if withholdings are not collected, the benefits will be terminated.

# Some Fringe Benefit Exclusions Apply to Laid-Off Employees: Health And Education Benefits

- Health Benefits (so consider proving non-discriminatory benefits, even if not purchased under COBRA). (Continuing physicals can be provided to former executives, even if discriminatory, per Treas. Reg. §1.105-11(g).)
- Educational Assistance. Treas. Reg. § 1.127-2(h)(1) provides that a "retired, disabled, or *laid-off*" employee must be treated as eligible to exclude educational assistance benefits under Code § 127. And Rev. Rul. 96-41, 1996-2 C.B. 8, generously extends this Code § 127 exclusion even to former employees who terminated voluntarily.
- "Working Condition Fringes" technically are NOT available except to persons "currently performing services"- so care should be taken to ensure that some continuing services will be provided in connection with such benefits.

# Some Fringe Benefit Exclusions Apply to Laid-Off Employees: Outplacement Services

- Outplacement Services (unlike working condition fringe generally) CAN be provided to former employees, per Rev. Rul. 92-69, 1992 2 C.B. 51, which provides an exclusion for employer-provided outplacement services, provided that such services are not limited only to executives (although executive outplacement programs may offer a different level of benefits).
- The exclusion was extended because the ruling concludes that the employer providing the outplacement services program derives a "substantial business benefit" from the program, other than merely providing compensation to the affected employees, by (a) promoting a positive corporate image; (b) maintaining employee morale; and/or (c) avoiding wrongful termination lawsuits.
- Note that this conclusion applies even though working condition fringes generally can be provided only to active employees. (*Cf.* PLR 8913008 (12/2/88), withdrawn for "study" by PLR 9040025 (7/6/90), and replaced by Rev. Rul. 92-69.)

# Some Fringe Benefit Exclusions Apply to Laid-Off Employees: Group Term Life Insurance

- Group Term Life Insurance can also be provided to former employees.
- Note: No FITW applies to group term life insurance, per Code §3401(a)(14). No FUTA taxes apply, per Code §3306(b)(2)(C).
- FICA taxes do apply, per Code §3121(a)(2)(C), to any taxable group term life insurance (i.e., protection in excess of the $50K exclusion, or protection under discriminatory plans).
- However, special rules for arranging for payment of employee-share FICA taxes apply under Code §3102(d) – which allows employers simply to report in special boxes on Form W-2, notifying the employees that they must self-pay the employee share of FICA in filing their Forms 1040.

# Some Fringe Benefit Exclusions Apply to Laid-Off Employees: Retirement Gifts

- Retirement "gifts"
- Although Code §102(c) denies any exclusion for "gifts" to employees, there are no final regulations defining "employee" for this purpose, to necessarily include "former employees" in this prohibition. (Regulations were proposed under this provision which also did not define "employee," but they were never scheduled to be finalized. *See* Notice 92-12, 1992-1 C.B. 500.)
- Also, In repealing any Code § 102 exclusion for "gifts" to an employee, § 122 of the 1986 Tax Reform Act "clarified" that the de minimis exclusion (typically reserved for "low value" and "hard to track" awards) "traditional awards (such as a gold watch) upon retirement for an employer." 1986 Act Blue Book at 33, 37 and 38; Prop. Reg. § 1.274-8(d)(2).

# Some Fringe Benefit Exclusions Apply to Laid-Off Employees: Late-Exercised ISOs

- Late-Exercised ISOs.
- Some employers ISO plans allow employees to exercise ISOs for periods extended beyond 3 months after termination of service.
- If any ISOs are exercised beyond that 3-month window, the option is taxable at exercise, and both FITW and state income tax withholding apply.
- However, per Code §3121(a)(22) (and the correlative FUTA exemption), no FICA taxes apply to any "remuneration on account of--(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) [or under an ESPP plan] or (B) any disposition by the individual of such stock.
- Since Code §422(b) discusses only an ISO's qualification at GRANT, technically these late-exercised ISOs could be exempted from FICA/FUTA.
- IRS agents often dispute this exemption – but the statute is clear, and no regulations have ever limited the exclusion.

# Section 162(m) Issues

- Tax Cuts & Jobs Act provides that all FORMER "top 5" executives (CEO, CFO, and highest paid 3 executives) continue to be treated as "covered employees," for whom deductions are denied, for payments of taxable compensation over $1M per year.
- Employers therefore should carefully schedule the timing of all payments to "covered employees" to avoid, if possible, this deduction disallowance for compensation exceeding $1M.
- The regulations under Code § 409A allow changes in deferred compensation payouts to avoid Code §162(m) deduction disallowance.
- Even more importantly, employers should be sure to identify any "grandfathered" severance benefits for "covered employees" (subject to the limitations in the proposed regulations under 162(m) for grandfathered severance, and also taking care not to "materially modify" any grandfathered severance.

# Section 409A Issues

- Most standard severance benefits are exempt from Code §409A, per Treas. Reg. §1.409A-1(b)(9).
- Any taxable post-termination reimbursements, and post-termination in-kind benefits may also be exempted, if structured to comply with Treas. Reg. §1.409A-3(i)(1)(iv).
- However, care should be taken, in designing and operating any severance program, to be sure that all benefits subject to Code §409A are paid at the time required under the deferred compensation plan and the Code §409A regulations, so as to avoid any problems with payments made either too early or too late.

# Section 3121(v)(2) Issues

- For any "non-account balance" deferred compensation plans, which can be subjected to FICA tax at the "resolution date" (which generally occurs at or near retirement), care should be taken to ensure that FICA taxes are correctly applied.
- If FICA taxes are not properly applied to the value of the deferral, then the IRS could argue that the distributions are subject to FICA.
- If FICA taxes are delayed until the year after an employee's retirement (even though severance might be paid out all in the retirement year), that delay could trigger additional Social Security taxes (up to the Social Security wage base) for both the employer and the employee, which could be avoided if the "resolution date" FICA taxes are collected in the employee's retirement year.

# Federal Prohibition on "State Source Taxation": Help for Retirees Relocating to Low-Tax States

- After the TCJA's elimination of all but a minimal deduction for state/local income taxes, retiring employees are paying close attention to the Federal prohibition on "state source taxation" of nonresidents in 4 U.S.C. § 114.
- This provision prohibits any state from imposing an income tax on any qualified retirement plan distributions, and on certain pensions or retirement income of an individual who is no longer a resident or domiciliary of such state.
- Distributions under nonqualified "excess plans" are protected, irrespective of the schedule of distributions, and distributions under salary-bonus deferral plans are protected if the payouts are over at least 10 years (or paid as an annuity). (Severance pay, and stock &stock option compensation are NOT protected.)
- Care must be taken, however, so as not to trigger any violation of Code §409A, in trying to accommodate employees who are also trying to avoid state taxes oon their deferred compensation payouts.

# QUESTIONS?

# Biography

**Julie K. Stapel** helps employee benefit plan sponsors and financial service providers with the investment, and management of employee benefit plan assets. She advises clients on ERISA fiduciary and prohibited transaction rules, and their impact on investment products and services, and helps those clients use investment documentation and other tools to manage potential fiduciary risks while providing top-quality benefits and services. She also works with plan sponsors and financial service providers to address ERISA–related compliance issues.

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# Biography

Leader of Morgan Lewis's health and welfare task force, **Andy R. Anderson** is often recognized for his work in counseling clients on employer, individual, and insurer issues created by the Affordable Care Act, and regulatory compliance issues in relation to the Internal Revenue Code, ERISA, COBRA, HIPAA, and Mental Health Parity. Tax-exempt organizations and Fortune 500 companies turn to Andy for handling their benefit plans,  and legal review surrounding welfare benefit plans, government self-correction programs, cafeteria plans, and VEBAs.

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# Biography

**Mary B. "Handy" Hevener** helps US and multinational enterprises minimize corporate payroll taxes and maximize benefits–related tax deductions. She focuses her practice on the tax and information reporting treatment of employee and independent contractor benefits outside qualified retirement plans, including stock options and other stock-based compensation; executive income deferrals; golden parachutes; and fringe benefits that range from health and life insurance, to employee loans, cars, planes, and prizes.

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# Biography

**Randall C. McGeorge** counsels clients on executive compensation and employee benefits concerns, including the design and implementation of qualified and nonqualified retirement plans, equity incentive plans, executive compensation arrangements, and health and welfare plans. Representing corporations and individuals, he negotiates and drafts employment and severance agreements. He also represents clients before the US Internal Revenue Service (IRS), Department of Labor (DOL), and Pension Benefit Guaranty Corp. regarding the qualification and operation of employee benefit plans.

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# Biography

**Claire E. Bouffard** counsels clients on employee benefits and executive compensation. She drafts and assists with design of tax-qualified pension and profit-sharing plans, cash or deferred arrangements, health and welfare arrangements, deferred compensation plans, and employment agreements. In addition, Claire reviews, edits, and ensures compliance with plan documents and amendments; drafts communications materials and notices to plan participants; and files voluntary correction program submissions.

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# Biography

**Katelyn D. Winslow** counsels public and private clients on a wide range of executive compensation and employee benefits matters. Among her areas of focus are negotiating and drafting executive incentive compensation arrangements and agreements in connection with complex corporate transactions, advising clients on the day-to-day administration of qualified and non-qualified employee benefit plans, and counseling public companies on executive compensation reporting and disclosure requirements.

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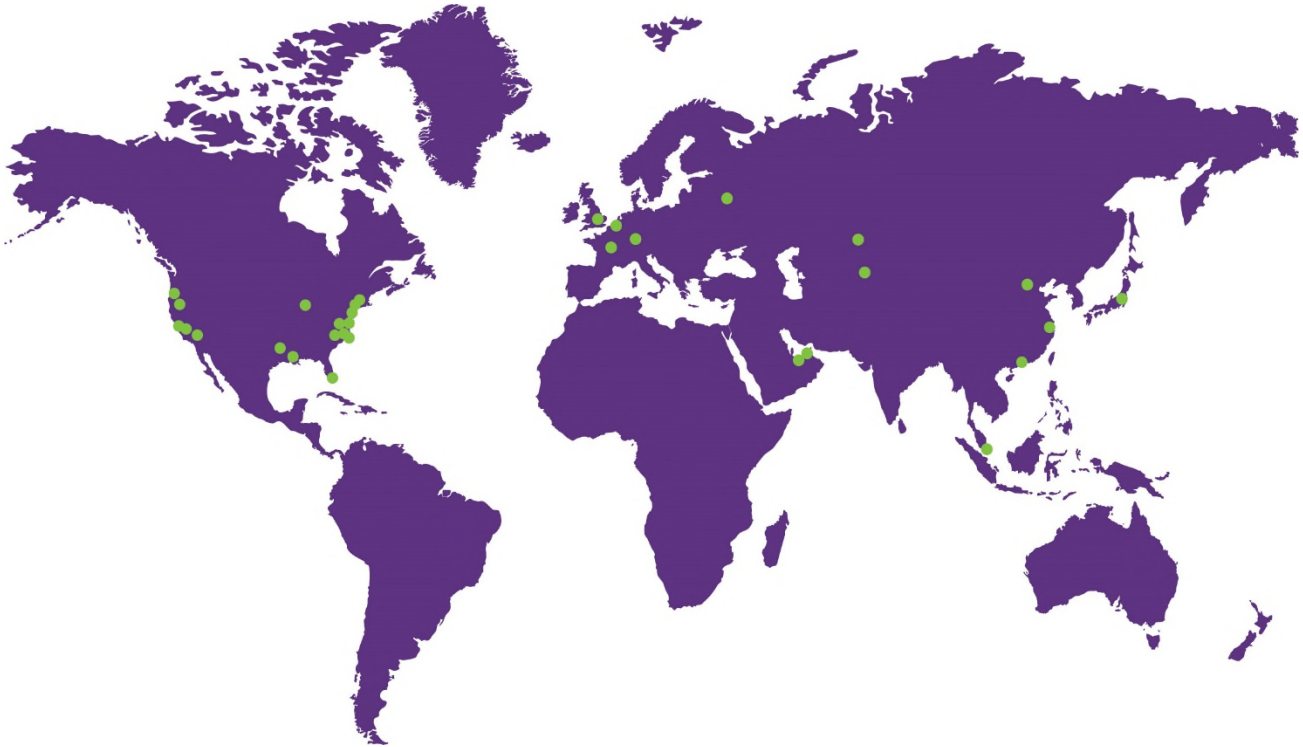

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