

## Executive Compensation & Benefits

Executive compensation and employee benefits are a foundation for any business that employs people. Winstead attorneys understand that people are critical to the success of a business but, equally important, are the financial implications of executive compensation and benefit structures to the goal of increasing shareholder value.

To that end, our executive compensation and benefits attorneys provide a multidisciplinary approach to their advice on what employers can and should do to resolve their unique business needs. Winstead attorneys don't just recite the regulations; we advise some of the country's largest employers on what they can do, structuring advice and plans that reflect their unique business needs and company cultures. Working with global brand-name retailers, airlines and energy corporations, as well as closely held employers, we help them efficiently manage all aspects of their numerous and complex plans.

Our multidisciplinary team approach means we focus on the employer's big picture, and provide answers that align with our client's specific business goals. Winstead collaborates with our clients as effectively as we do internally to provide the most effective and efficient service to our clients. Alternative fee arrangements and risk-sharing are a standard practice for us.

### Featured Client Stories

#### *A Multidisciplinary Approach to Executive Compensation for a Publicly Traded Airline*

Historically, clients have had to hire a number of advisors to handle their compensation matters (e.g., one for surveys and benchmarking, a different advisor to address tax matters, and another to address corporate governance and securities issues). This practice is costly and requires a fair amount of "back-and-forth" discussions at high hourly rates.

In contrast, our executive compensation attorneys take a multi-disciplinary approach to the practice, covering securities compliance and proxy disclosure, corporate governance and risk assessments, applicable listing rules, tax and accounting, surveys and benchmarking, and issues relating to shareholder advisory services. Thus, all of these issues are considered by our executive compensation attorneys when designing programs or analyzing current issues.

**Our Client's Opportunity:** In a desire to consolidate, streamline and save money, we were hired to represent an airline on all aspects of executive compensation, including proxy disclosure. The general counsel of the airline recognized that having securities counsel at one law firm and employee benefits counsel at another law firm caused operational problems. On many occasions in the past, the in-house team was unable to determine at the outset whether an issue was going to be securities-related or employee benefits-related. Whichever firm they called first would take the issue, resulting in confusion and duplication of effort, i.e., expense.

**Outcome:** Based on its experience with Winstead, this client recognized very quickly the value of our multi-disciplinary approach.

#### *Internal Revenue Service and Department of Labor Audits*

**Our Clients' Opportunity:** Many clients are seeking to reduce or eliminate penalties from the IRS and DOL that would otherwise number in the millions of dollars.

**Outcome:** We represented a publicly-traded airline to eliminate proposed penalties and loss of deduction of millions of dollars relating to an interpretation of the nondiscrimination testing applicable to 401(k) plans.

**Outcome:** We were able to save our client, a major hospital system, millions of dollars in proposed loss of deduction by negotiating aggressively with the Internal Revenue Service during an audit of the client's qualified retirement plan.

**Outcome:** During an IRS audit, it was determined that our client, a privately-held professional service company, had misclassified all of its workers as independent contractors. We were able to negotiate with the IRS so that no sanctions/fines/penalties would apply if the client properly classified its workers as employees on a prospective basis.

**Outcome:** In another situation, an energy service corporation had internally determined that it had misclassified a large number of its workers as independent contractors and, due to an impending corporate transaction, wanted to “come clean” with the IRS (our client would not have qualified for available statutory relief). We represented the client before the IRS and reduced the statutory penalties to \$33,279.00 from an amount exceeding \$2 million.

## Snapshot of Compensation and Benefits Strengths

Leading corporations rely on Winstead to give them practical direction so they can accomplish their goals in the structuring, administration and compliance of their executive compensation and welfare benefit plans. Our attorneys are adept at handling:

- Qualified retirement plans
  - Publicly Held Companies
  - Private Employers
  - Governmental and Tax-Exempt Entities
- Succession Planning with Employee Stock Ownership Plans
- Non-qualified deferred and equity compensation plans
- Fringe Benefits and Health/Welfare Benefit Plans
- Regulation and Compliance Audits Involving the IRS and Department of Labor (including multiple team audits by these agencies)
- Service Provider Audits
- Collective Bargaining Agreements and Provisions
- Surveys and Benchmarking
- Corporate Governance and Risk Assessments
- Securities Law Compliance and Disclosure for Executive Compensation (CD&A)
- Applicable Listing Rules
- Concerns from Institutional Shareholder Advisory Services
- Accounting Considerations and 280G Calculations

## Next Steps

Whether you're a multinational corporation with multiple, complex benefit and compensation plans or a smaller private company with a single plan focus, you want to motivate and reward your employees while minimizing plan complexity, cost and compliance worries. Winstead attorneys understand that your plans should reflect your company's culture—we will give you customized guidance and the always-responsive advice you need.