



Bernard F. O'Hare

Partner

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Brian O'Hare is a member of the American Bar Association, Section of Taxation, Committee on Employee Benefits, where he is past-chair of the Section 401(k) Subcommittee. Further, he headed the task force on the ERISA section 404(c) participant-directed account regulations at the Association of the Bar of the City of New York, Committee on Employee Benefits. He has published numerous articles in the employee benefits and executive compensation field and speaks frequently on such topics.

Mr. O'Hare has particular experience representing large pension funds in regulatory and fiduciary matters before the Internal Revenue Service and the United States Department of Labor. He is also experienced in addressing compensation matters at both for-profit and tax-exempt entities and has provided extensive advice on plan investment vehicles, including commingled funds and venture capital. In 2002, Mr. O'Hare was elected a Fellow of the American College of Employee Benefits Counsel. Mr. O'Hare has received Martindale-Hubbell's highest "AV" rating and has been recognized as a leading lawyer in *The Best Lawyers in America*® in the area of Employee Benefits Law and named in *Super Lawyers* in the area of Employee Benefits/ERISA. Mr. O'Hare was named to the "Irish Legal 100" in 2013, and years thereafter.

Representative Matters

Manufacturing Company

Designed a supplemental executive retirement program (or "SERP") as both a retention and compensation vehicle for Company's top-management including analysis of change of control and proxy reporting issues.

Advertising

Extensive design and implementation of employee and director stock option plans in preparation for an initial public offering, advice with respect to restructuring self-insured medical plan.

Technology Company

Implementation of plan design changes to permit the transferability of options under a company's director and employee stock option plans including review of Section 16(b) changes and financial pricing issues.

Pharmaceutical Company

Advice with respect to revamping fiduciary delegation procedures, including delegation of Board authority and claims review; design and extensive work in the early retirement and severance area, in particular advice with respect to structuring programs under the Older Workers Benefit Protection Act.

International Corporations

Review and preparation of an illustrative voluntary deferred compensation program for American officers of a

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Japanese corporation, with particular attention to accounting issues; due diligence review for Swiss corporation with respect to newly acquired U.S. subsidiary, including review of voluntary compliance issues.

Foundation

Executive compensation advice including extensive structuring of a deferred compensation arrangement to protect CEO against future decreases in the legal limits of qualified plan benefits while remaining within the special Internal Revenue Code restrictions placed on non qualified deferred compensation provided by tax exempt entities.

Venture Capital Fund

Helped design a pharmaceutical venture capital fund to comply with ERISA plan asset rules to attract pension fund investors - intended capitalization of 500 million dollars.

Arbitration

Act as a sole arbitrator upon the designation of two major financial institutions with respect to a multi-million dollar matter involving the transfer of pension business responsibilities and the impact of daily plan valuations between two ongoing concerns.

Company Stock Fund

Advise a publicly traded company with respect to the fiduciary and other regulatory issues pertaining to the establishment of a Section 401(k) company stock fund.

Association

Analysis of a very unique non-compete provision in a union setting.

Tax Exempt Employer

Advise and implementation of a Defined Contribution Plan as replacement of a Defined Benefit Pension Plan. Handle all aspects of a Department of Labor audit of a retirement plan.

Education

- Fordham University School of Law (J.D., 1980)
- Georgetown University (A.B., *magna cum laude*, 1977)
 - Phi Beta Kappa

Admissions

- New York

Professional Activities

HONORS: Recognized as a leading lawyer in *The Best Lawyers in America*® in the area of Employee Benefits Law and Named in *Super Lawyers* in the area of Employee Benefits/ERISA (2005-present); Named to the "Irish Legal 100" (2013). The Irish Legal 100 is compiled annually by *The Irish Voice* newspaper, and recognizes the achievements of legal professionals with Irish heritage practicing in the United States.

MEMBERSHIPS: Member, American Bar Association (Tax Section, Committee on Employee Benefits, Subcommittees on Fiduciary Responsibility and Qualified Cash and Deferred Arrangements; Past Vice-Chair, Chair, and Chair Emeritus, Subcommittee on Qualified Cash and Deferred Arrangements, 2001-2010);

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Association of the Bar of the City of New York (Committee on Employee Benefits; Chair, Subcommittee on ERISA Section 404(c) Regulations, 1992-1995); Fellow, American College of Employee Benefits Counsel, fellowship based upon demonstrating sustained commitment to promoting public awareness and understanding of employee benefits law; Lecturer, American Bar Association, City Bar Association and Human Resources Association of New York, New York University School of Continuing Education Conference on Employee Benefits and Executive Compensation, including a speech on Qualified Transportation Fringe Benefits and employee benefit plans under the Internal Revenue Code to the Human Resources Association of New York, August 1998; American Bar Association presentations on Section 401(k) Automatic Enrollments and Internal Revenue Code Automatic Rollovers, October 2000; Los Angeles ABA Fall Benefits Meeting; Chair of Legal Issues Presentation, Church Pensions Conference, Savannah, Georgia, 2000; Speaker on Employee Benefit Requirements Pertaining to Returning Veterans, Pension Conference, Orlando, Florida, December 2001; Presentation on EGTRRA Planning Opportunities, including catch-up contributions at the ABA Committee on Employee Benefits mid-winter conference, New Orleans, Louisiana, January 2002; Interviewed on CNN's "Lou Dobbs Money/Line" as an employee benefits commentator regarding Fiduciary obligations and "black-out" periods, February 2002; Quoted in an April 23, 2003 *Reuters* news article "American Airlines Looks to Repair Tarnished Image," regarding executive compensation matters and in a Dow Jones newswire story, "WorldCom Ruling Seen Changing Section 401(k) Plans," regarding employer fiduciary issues and employer stock, June 25, 2003; Speaker at ABA Joint Committee on Employee Benefits and the American College of Employee Benefits Counsel's TeleConference, "To Roth or Not: Recent Guidance on Roth 401(k) Arrangements," April 11, 2006; Speaker along with Government representatives on an ABA Tax Section Panel on Emerging Fiduciary and other Title I Issues, Winter Meeting, January 2007; Panel Speaker, "Current Issues in the Design and Operation of Defined Contributions Plans," ABA Section of Taxation Committee on Employee Benefits, Fall Meeting, San Francisco; Webinar Panelist, Current "Hot" Issues for 403(b) Plans, October 2008, 2017 Summer Church Pension Fund Conference Presentation on: Fiduciary Due Diligence for Defined Contribution Plans.

Pension Funds

Mr. O'Hare's experience includes the representation of large pension funds in complex matters. For example:

Pension Funds

Regular representation of several multi-billion dollar pension funds, including establishment of flexible benefit options for participating employers; review futures trading and commodities futures trading rules; negotiating investment management agreements, GIC contracts, venture capital/plan asset investments and overseas investments; drafting employment contracts and severance agreements. Helped design and implement complex early retirement programs.

Pension Fund

Advise multi-billion pension issues regarding "open" and "closed" multiple employer plans under ERISA and the Internal Revenue Code.

Church Pension Funds

Monitoring and revision to legislation on the national level impacting the operations of large multi-state denominational pension funds; similar projects undertaken at the state level; coordination of interests and participation in a national umbrella group of similar funds.

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Pension and Benefits Funds

Extensive project whereby a large non-collectively bargained multiple-employer welfare plan was restructured with particular attention to state insurance law and pending federal changes to health plans including attention to managed care issues; review plan design options to make a multi-billion dollar plus multiple-employer retirement program more flexible for individual employers, attention to HIPAA privacy, health non-discrimination issues and retiree medical issues. Worked extensively on issues presented by withdrawing employers from a multiple employer welfare fund.

Provide detailed Guidance on what constitutes Investment Education as opposed to Investment Advice under Department of Labor regulations.

Regulatory Rulings

Obtained a precedent setting IRS private letter ruling allowing a multi-billion dollar multiple employer pension fund to expand its basis of activities with no negative tax consequences. Also obtained several prohibited transaction exemptions for multi-billion dollar funds from the U.S. Department of Labor.

Strategic Planning

Advise a multi-billion dollar pension fund with respect to new benefit structures to be offered including attention to ERISA, Insurance Law and corporate organization concerns.

Litigation

Advise several pension funds with respect to investment-related litigation; advise other funds with respect to interpleader and related actions.

Articles

- Quoted: "Defined Contributions Plans Speakers Address Defined Contribution Issues On Annuities in 401(k) Plans, Waived RMDs," *Pension & Benefits Daily* (May 11, 2009)
- Author or Co-Author: "Fiduciaries in Conflict Situations Under ERISA," *Bloomberg BNA, Benefit Practitioners' Strategy Guide* (November 2012);
- "The Effects of the 401(k) Fair Disclosure and Pension Security Act of 2009 on Employers Sponsoring Defined Contribution Plans: 'Enhanced Communications to Participants or More Compliance Pitfalls?'" *Tax Management Compensation Planning Journal* (February 5, 2010);
- "Effects of the 401(k) Fair Disclosure and Pension Security Act," *New York Law Journal* (October 20, 2009);
- "Met Life and LaRue's Impact on Benefit Plan Determinations: More Clarity on More Court Time for Employers?" *Journal of Compensation and Benefits* (November/December 2008);
- "DOL Proposed Regulations Regarding Service Provider Disclosures: A New and Improved (?) Way of Doing Business for Both Service Providers and Plan Sponsors," *Tax Management Compensation Planning Journal* (August 2008);
- "Ask and Tell: Regulators Advise Plan Fiduciaries on Plan Consultant Fees," *BNA Tax Management Compensation Planning Journal* (December 2005);
- "Killing the Golden Goose: Proposed Nonqualified Reforms Would Greatly Impact Executive Deferred Compensation," *Journal of Compensation and Benefits* (January/February 2004);
- "The Role of the Independent Fiduciary in ERISA Conflict Situations" *BNA ERISA Compliance and Enforcement Library* (February 2003);
- "Caution: Severance Plans May Be Chocked Full of Liabilities," *New York Law Journal*(July 24, 2003);

- "Know the Ins and Outs of USERRA," *Law Firm Partnership and Benefits Report* (January 2002);
- "The Impact of the Economic Growth and Tax Relief Reconciliation Act of 2001," *Journal of Compensation and Benefits* (September-October 2001);
- "Nonqualified Deferred Compensation Plans and Tax-Exempt Entities," *Journal of Compensation and Benefits* (May-June 2001);
- "New IRS Revenue Ruling Relaxes Some Desk Rule for 401(k) Distributions," *The New York Law Journal* and *The Corporate Counsellor* (January 2001);
- "New Accounting Rules for Employee Stock Options," *Journal of Compensation and Benefits* (July-August 1999);
- "Plan Administrators be Advised: Treatment of Severance Pay as Plan "Compensation" Raises Complex Issues," *Tax Management Compensation Planning Journal* (June 1998);
- "New IRS 401(k) Guidance Provides Increased Flexibility, More Issues for Employers and Plan Administrators," *Journal of Compensation and Benefits* (May/June 1998);
- "IRS Guidance on Minimum Distribution Permits Employers Greater Discretion," *New York Law Journal* (May 1998);
- "The Application of the Same Desk Rule to Section 401(k) Distributions," *Tax Management Compensation Planning Journal* (January 1998);
- "To Forgive May Be Human After All: New IRS Program Encourages Self-Correction," *Journal of Compensation and Benefits* (May/June 1997);
- "New Requirements for Group Health Plans," *New York Law Journal* (June 2, 1997);
- "Benefits Practitioners Take Warning: Contributions of Unused Vacation Pay to Employee Benefit Plans Raise Complex Issues," *Tax Management Compensation Planning Journal* (March 1997);
- "IRS Issues New Guidance Regarding Plan Loans," *Journal of Compensation and Benefits* (May/June 1996);
- "Pension Plans for Outside Directors: A Valuable Benefit or an Outmoded Dinosaur?" *Directorship Significant Issues Facing Directors* (1996);
- "Coping with the Uniformed Services Employment and Reemployment Rights Act," *Journal of Compensation and Benefits* (January-February 1996);
- "Economically Targeted Investments Remain Rare," *New York Law Journal* (May 15, 1995);
- "IRS Announces Audit Program for § 403(b) Arrangements Maintained by Tax-exempt Institutions," *Tax Management Compensation Planning Journal* (October 1994);
- "Keeping Secrets About Early Retirement Programs May Result in ERISA Liability," *Journal of Compensation and Benefits* (September-October 1994);
- "Corporate Tax Changes: A Closer Look The Omnibus Budget Reconciliation Act of 1994," *Business Credit* (April 1994);
- "The Clinton Health Care Proposal: An Overview" *501(c)(3) Monthly Letter* (February 1994);
- "Health Care Reform: What the Director Should Know - Reform and the Large Corporation," *Directorship Significant Issues Facing Directors* (1994);
- "Employer Contributions Based on Age and Service: A 401(a)(4) Analysis," *Tax Management Compensation Planning Journal* (December 1993);
- "QDRO Procedures and 'Holds' on Participants Accounts," *BNA Weekly Report* (July 1993);
- "Pension Funds and Investment Partnerships - Caveat Emptor Or A Match Made In Heaven?" *Tax Management Compensation Planning Journal* (February 1993);
- "A Trap for the Unwary: Employer Liabilities in Selecting Annuity Providers," *BNA Weekly Report* (December 1992);

- "Early Retirement Windows and Testing under 401(a)(4) Regulations," *BNA Tax Management Weekly Report* (May 1992)