

Labor, Employment, Employee Benefits and ERISA

At Kerr Russell, we know that proactive, highly-skilled labor and employment counsel is crucial to building a productive working environment. More than ever, and especially in light of today's tight labor markets, the ability to train, retain, and inspire quality employees and effectively deal with those who are not performing up to expectations is one of the key differences between successful and struggling organizations.

Kerr Russell represents employers across the full realm of labor, employment, employee benefits and human resources legal matters. We work with in-house counsel, human resources representatives and executives, to provide practical ideas and fresh alternatives to resolve labor and employment issues arising in the workplace. Our employee benefit attorneys provide comprehensive employee benefit and ERISA representation to public and privately held corporations, multi-employer pension plans and other entities.

Labor and Employment

Kerr Russell's labor and employment attorneys work proactively with clients, before employee problems arise, in adopting policies which comply with employment laws and regulations. When employee problems do occur, our labor and employment attorneys help bring issues to quick resolution. When litigation or administrative actions are instituted, our attorneys provide aggressive, focused and efficient representation in state and federal courts, before administrative agencies and labor arbitrators.

Kerr Russell provides a broad range of services to employers in the following areas:

- *Disability Leave Requests*– advising employers on specific requirements under the Americans with Disabilities Act (ADA), and the Americans with Disabilities Act Amendments Act (ADAAA), including coverage issues, reasonable accommodation, undue hardship, and direct threat
- *Medical Leaves of Absence* – advising employers on Family Medical Leave Act (FMLA) coverage issues, employee leave requests, medical certifications, second opinions, intermittent leave requests and serious health conditions
- *Wage Hour and Overtime Issues*– advising employers on state and federal overtime requirements; various white collar, position-specific overtime exemptions; calculating overtime; calculating the regular rate, on-call time, travel time, breaks, meal periods, piece rate, child labor, commission pay, wage deductions, electronic deposit, prevailing wage issues; representation before the US Department of Labor and similar state administrative agencies
- *Employment Litigation*– representing employers in trials and appeals in federal and state court; lawsuits alleging discrimination in violation of age, race, sex, national origin, pregnancy anti-discrimination laws; claims of retaliation and harassment and Equal Pay Act (EPA) claims; claims brought under the FMLA and other state and federal employment anti-discrimination laws
- *Affirmative Action* – advising employers on specific requirements under Executive Order 11246 and the

Office of Federal Contract Compliance (OFCCP) regulations, such as contractor responsibilities, subcontractor status, construction contractor obligations, affirmative action requirements and representation in OFCCP audits

- *Personnel Policies and Handbooks* – drafting, revising handbooks, policies and procedures related to employment; reviewing application procedures selection and testing procedures for legal compliance
- *Harassment* – advising employers on how to respond to complaints of unlawful harassment in the workplace; drafting anti-harassment policies; and conducting investigations
- *Drug and Alcohol Policies* – drafting drug testing and alcohol procedures in compliance with the laws of various states, DOT policies and testing procedures; and advising clients regarding medical marijuana laws and their effect on the workplace
- *Reductions in Force and Downsizing* – advising employers on reductions in force, reorganizations, downsizing, plan design, employee selections, Older Worker Benefit Act (OWBPA) compliance, voluntary severance incentives, waivers, releases, Worker Adjustment Restraining Notification Act (WARN) notices, and state plant closing requirements
- *Employee Terminations* – advising employers on risks associated with employee terminations, Equal Employment Opportunity (EEO) concerns, contractual concerns, and performance management practices and procedures
- *Non-Compete and Trade Secrets* –drafting policies, confidentiality agreements, non-solicitation and non-competition requirements during and after termination of employment, and filing Temporary Restraining Orders (TRO) to enforce and defend restrictive covenants
- *Employee Violence* – advising employers on how best to respond to potentially dangerous and violent employees; conducting investigations; obtaining Personal Protective Orders and assessing risks
- *Record Keeping and Reports* –advising employers on various state and federal record keeping requirements, wage records, personnel records, disciplinary records and employee self-identification reports
- *Contracts and other Agreements* – drafting and negotiating executive employment agreements, just cause contracts, at-will arrangements and independent contractor agreements
- *Employee Privacy*– advising employers on employee privacy issues such as computer and internet monitoring, locker searches, employee genetic information, and personal conduct
- *Unemployment Compensation* – assisting employers opposing entitlement to unemployment benefit appeals
- *Workplace Litigation* –representation of employers in wrongful discharge claims brought under express and implied employment contracts; public policy claims, whistleblower claims; lawsuits brought under the Fair Labor Standard Act (FLSA), state wage and fringe benefit law; and claims under sales representative commission acts, among others
- *Administrative Complaints* – representation of employers before the Equal Employment Opportunities Commission (EEOC), similar state fair employment and practice agencies, the US Department of Labor, similar state agencies, and the OFCCP in complaints of discrimination retaliation and harassment
- *Union Organizing* – advising employers on union avoidance tactics; representing employees before the National Labor Relations Board (NLRB) in election matters, bargaining unit clarification hearings, and in recognition and decertification matters
- *Collective Bargaining* – advising employers at the bargaining table; representing employers in union negotiations; and representation of multi-employer units
- *Labor Litigation* – representing employers in unfair labor practice charges, bargaining unit clarification, and other matters before the NLRB and the MERC; representing employers in suits for damages against labor unions in 301 actions; and filing for injunctive relief due to labor unrest
- *Labor Arbitration* –appearing at arbitration hearings regarding issues such as contract interpretation, discipline, discharge, and other labor arbitration matters which arise out of the interpretation and administration of collective bargaining units

- *Work Stoppages* – advising and counseling employers during lockouts, organizing drives regarding picketing, hand billing, bannering regarding private property rights; advising neutral employers subject to secondary boycotts; and setting up reserve gates at construction sites

Employee Benefits and ERISA

Kerr Russell’s employee benefit and ERISA attorneys advise clients on all aspects of employee benefit and ERISA law, including documentation, administration and litigation issues.

We provide the following services:

- *Qualified Plans*– design and drafting of ERISA qualified plans, including 401K plans, ESOPs, pension and profit sharing; amendment and restatement of plans to keep plans qualified; advice on plan terminations, mergers and plan freezes
- *Distributions*– provide advice on distributions under Internal Revenue Code Section 401(a)(9); advise clients on Qualified Domestic Relations Orders (QDROs)
- *Non-Qualified Plans* – design and draft non-qualified executive benefit, “top hat” and other deferred compensation plans; compliance with IRC 409A
- *Welfare Benefit Plans*– health and life insurance plan consultation; drafting Health and Welfare Plans, advising employers regarding medical, dental, life and other insurance plans and cafeteria/flexible benefit plans; advising clients with respect to the design and implementation of Health Savings Accounts and Health Reimbursement Arrangements
- *Acquisitions* – analysis of fringe benefit exposure in corporate acquisitions and divestitures
- *Individual Counseling* – advising clients regarding Roth IRAs and Roth 401ks; individual retirement counseling for individuals with high, qualified plan balances
- *Multi-Employer*– advising on multi-employer benefit plans; advice on withdrawal liability
- *Severance* – drafting ERISA Employee severance plans; reduction in force and WARN Act notices
- *Charitable* – charitable planning using qualified retirement assets
- *Litigation* –litigation of claims under ERISA, including claim disputes, fiduciary duty, plan compliance, and denial of benefits issues; litigation of ERISA preemption issues; defending employer termination and modification of post termination retirement benefits; litigation of benefit denials under ERISA
- *Administrative Law* – representation of employers and fiduciaries before the US Department of Labor and the Internal Revenue Service; Advice on ERISA prohibited transactions and available exemptions, plan asset issues, fiduciary standards and filing of Form 5500 and other filings and disclosures; Advice on regulatory compliance on laws governing benefit plans including HIPAA, COBRA, employee disclosure, medical and other benefit plans

OF NOTE

[2023 Retirement Plan Limits](#)