GEORGETOWN UNIVERSITY LAW CENTER
SURVEY OF EMPLOYEE BENEFITS LAW
LAWG 3017-09 - SPRING 2017

COURSE INFORMATION

Professors:

Peter Elinsky
Israel Goldowitz
Anne Moran
John Paliga

The lead professor for the class is listed for each class, but the other professors may contribute to the class discussions as appropriate.

Required Reading Materials:

1. Please read any cases, Code or ERISA sections, regulations and other agency guidance, and secondary materials cited in the Syllabus. We will be discussing and referring to the Code and ERISA sections during our course discussions.

2. Required Reading will be provided by Georgetown via Canvas for individuals enrolled in this class and are designated as “Course Materials.” You may also want review certain of the statutory and regulatory references online. The Cornell University website, www.law.cornell.edu/uscode, is a good way to access the statutes and other guidance.

3. Please note that the length of the reading assignments for the classes varies, from a very few pages to many pages. We urge you to use your time wisely and read ahead as much as you can, so that you are able to cover all of the assigned material. We have attempted to limit the readings as much as possible, despite the complexity of subject matter.
Supplemental Course Materials:

1. Supplemental material designated as Required Reading may be distributed in class or on the Canvas site from time to time.

2. Supplemental material not designated as Required Reading generally will not be distributed in class or placed on reserve in the Library, as these items typically will be readily available in any law library and the internet.

3. We may post new information, such as regulatory developments, on the Canvas site, so please make sure you check the site periodically and watch for Announcements.

Attendance & Participation: You will be expected to attend and participate in class regularly. We welcome questions and comments and hope to have a natural give and take during class.

Final Exam and Grading: Grades are based on an open-book Final Exam that will consist of a combination of essay and short answer questions. You will be able to access the Exam at any time during Exam Period, and you will be required to submit your Answers by the second Thursday of Exam Period. In limited circumstances, we may adjust your grade by one-half level up or down to account for outstanding class participation or inadequate attendance (e.g., a B may be adjusted to a B+ or a B-).

Contacting Us: We are happy to answer your questions and to address other concerns before or after class. You can also e-mail any one of us at the above email addresses.

Class Dates: Wednesdays, 5:45-7:45. Our first class is January 18, and our last class is April 26 (review or (if needed) make-up class). There will be no class on February 22 or March 15.

Room: TBD - check Canvas
SYLLABUS AND COURSE OUTLINE

January 18, 2017 – Class 1 – Overview (Goldowitz)

Topics: (a) History of Employee Benefits Law and Regulation  
(b) Importance of Employee Benefits  
(c) Types of Plans  
(d) ERISA’s Relationship to Other Federal Laws

Required Reading:

- ERISA Sections 2, 3(1), (2), (3), (5), (34), (35), (37)(A), 4, 514(d), 4002(a), 4021(a), (b)(1)-(3)

- Internal Revenue Code Sections 401(a)(1)-(4), 402(a), (c)(1), 404 (a)(General Rule, flush language), 501(a)

Cases:

- *Donovan v. Dillingham*, 688 F.2d 1367 (11th Cir. 1982) (abridged)

January 25, 2017 – Class 2 – Requirements to Create Tax Qualified Retirement Plans (Paliga)

Topics:  
(a) Written Plan & Trust Requirement  
- Plan Requirements and Excerpt  
- Trust Requirements and Excerpt
(b) Section 401(a) of Internal Revenue Code
(c) IRS Determination of Qualification
(d) Remedial Amendment Period
(e) Employers, Controlled Groups, and Affiliated Service Groups

Required Reading:

ERISA Sections 3(2), (3), (5), (6), (7), (8), (42)

Internal Revenue Code Sections 401(a) (skim), 404(a), (b), 414(c), 501(a)

Optional Reading:


**February 1, 2017 – Class 3 – Requirements to Maintain and Operate Tax Qualified Retirement Plans (Paliga)**

Topics:

(a) Minimum Coverage
(b) Vesting
(c) Anti-Cutback
(d) Limits on Contributions and Benefits
(e) Nondiscrimination

Required Reading:

ERISA Sections 3(22), 3(23), 201, 202, 203, 204(h)

Internal Revenue Code Sections 401(a) (skim), 410, 411(d)(6), 415
Optional Reading:


**February 8, 2017 – Class 4 – Tax Qualified Retirement Plan Distributions (Paliga)**

Topics:

(a) Joint and Survivor Annuities

(b) Anti-Alienation and Exceptions including QDROs

(c) Bankruptcy Challenges

(d) Taxation

Required Reading:

ERISA Sections 205, 206(d)

Internal Revenue Code Sections 72(p), 401(a) (skim), 414(p)

Optional Reading:


February 15, 2017 – Class 5 – Reporting & Disclosure, Tax Practice, Civil Enforcement (Goldowitz)

Topics: (a) General and Specific Requirements  
(b) Tax Practice  
(c) Civil Enforcement  

Required Reading:

ERISA Sections 101(a), (b), (d), (f), (i)(skim), 102, 103 (skim), 104(a)(1), (b), 105(skim), 402, 502(a)(1)-(6), (c)(skim),(e)(1), (f), (g)(1), 4003(e)(1), (3), (f)(1), (6), 4043(a), (c), 4070(a), 4301(a), (c)  

Internal Revenue Code Sections 430(k), 6058  

Regulations and Agency Guidance:  

Cases:  

March 1, 2017 – Class 6 – Fiduciary Duty, Preemption, Claims Procedure (Goldowitz)

Topics: (a) Fiduciary Duty  
(b) Preemption  
(c) Claims Procedures  

Required Reading:

ERISA Sections 3(14), (21), 404(a), (c1)(A), 405, 406(a), (b), 408(a), 408(b)(skim), 409, 503, 514(a), (b)(1), (2), (4), (7), (c)
Internal Revenue Code Sections 4975 (a), (b), (c)(1), (2)

Regulations and Agency Guidance:

DOL Regulation: Claims Procedure, 29 CFR Sec.2560.503-1

Note: Department of Labor Rules on i) Savings Arrangements Established by States, and ii) “Fiduciary”/Conflict of Interest – Retirement Advice

Cases:


Note: The Insurance Savings Clause


Note: Judicial Review of Claims Denials


Note: The Duty of Loyalty

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**March 8, 2017 – Class 7 – Introduction to Welfare Benefit Plans (Moran)**

Topics:  
(a) Distinction Between Welfare and Pension Plans  
(b) Types of Welfare Plans & Fringe Benefits  
(c) Insured and Self-Insured Health Plans  
(d) Tax Treatment
Required Readings:

*Course Materials* – sections on Welfare Plans Overview, Preemption, Reporting & Disclosure, Tax Treatment and Cafeteria Plans

Internal Revenue Code section 132

**March 22, 2017 – Class 8 – COBRA, HIPAA, and the Affordable Care Act (Moran)**

Topics:  
(a) Predecessors to the Affordable Care Act—COBRA and HIPAA  
(b) Affordable Care Act – Background and Basic Rules  
(c) Implementing the Affordable Care Act Mandates  
(d) After the Election -- What’s Next for the Affordable Care Act?

Required Readings:  
Internal Revenue Code: Sections 104, 105, 106, 4980H

*Course Materials*, sections on COBRA, HIPAA, the Affordable Care Act, and Types of Health Plans

**March 29, 2017 – Class 9 – Putting it All Together- ERISA Welfare Plan Litigation and Challenges (Moran)**

Topics:  
(a) Employee Welfare Benefit Plan Protections  
(b) Retiree Health Litigation  
(c) Affordable Care Act Challenges
Required Readings:

Peralta v. Hispanic Business, Inc., 419 F 3d 1064 (9th Cir. 2005) (abridged)

Bland v. Fiatallis North America, Inc. 401 F. 3d 779 (7th Cir. 2005) (abridged)

Review Notes on Insurance Savings Clause and Judicial Review of Claims Denials from Class 6

April 5, 2017 – Class 10 – Introduction to Nonqualified Deferred Compensation (Elinsky)

Topics:

(a) Introduction to “Executive” Compensation

Required Readings:

Materials: “PRESENT LAW AND BACKGROUND RELATING TO EXECUTIVE COMPENSATION” (JCX-39-06) SEPTEMBER 05, 2006) Prepared by the Staff of the JOINT COMMITTEE ON TAXATION

These materials represent a good discussion of EXECUTIVE COMPENSATION ISSUES, some of which we will cover in class. This material should be read as background material only and there is no need for you to learn the how these plans work at this time.

(b) Nonqualified Deferred Compensation – Technical Tax Issues
Deferred and Contingent Cash Compensation
(2) Transfers of Property and Compensatory Trusts

Required Readings:

Internal Revenue Code: Sections 61(a) (1) 446, 404(a) (5), 404(b), 404(d), 451(a)
Internal Revenue Code: Sections 402(b), 83
Treasury Regulations: Sections 1.83-1, through 7
Treasury Regulations: Reg. Sections 1.451-2, 1.404(b)-1T Q&A - 2

Revenue Rulings: Rev. Rul. 60-31

Optional Readings (note: —these materials may be discussed in class but are not required)

IRS Letter Rulings 8313088 and 9104039 (Revocability of §83(b) election vs. rescission of grant)
Rev. Rul. 2007-48 (section 402(b) (4))

Other Optional Readings
Rev. Rul. 67-449
Rev. Rul. 69-650
Rev. Rul. 70-435
Rev. Rul. 71-419
Rev. Proc. 71-19
Rev. Proc. 92-65
Veit v. Comm’r, 8 TC 809 (1947)
E.T. Sproull v. Comm’r, 16 TC 422 (1951)
Martin v. Comm’r, 96 TC 814 (1991)
April 12, 2017 – Class 11 – Tax Aspects of Non-qualified Options and Incentive Stock Options (Elinsky)

Topics:

(a) Non-Qualified Stock Options
(b) Statutory Stock Options

Required Readings:

Internal Revenue Code: Sections 83(e), 421, 422, 423, and 424
Treasury Regulations: Sections 1.83-3(a) (2), 1.421-1, -2, 1.422-1-5
Rev. Rul.80-300, 1980-2 CB 165 (SAR)
IRS Letter Ruling 8829070

April 19, 2017 – Class 12 – Inclusion in Gross Income of Nonqualified Deferred Compensation under Section 409A (Elinsky)

Required Readings:

Internal Revenue Code: Section 409A
Treasury Regulations: Section 1.409A-3

Optional Reading:

Below is a link to ALL of the regulations under Section 409A. You are not responsible for reading all of these regulations, unless you would like:
(final regulations under 409A)

For a brief discussion of the history of Section 409A, see
Fallacies of Presumption: Unpacking the Impact of the Section
409A Proposed Regulations on Stock Appreciation Rights
Issued by Privately-Held Companies by Vanessa A. Scott The
Tax Lawyer VOL. 59 NO. Three SPRING 2006

April 26, 2017 – Class 13 – Review or (if needed) Make-up
Class