

Table of Contents

Volume 1

PART I. PLAN SELECTION

CHAPTER 1. FACTORS TO CONSIDER IN SELECTING METHODS OF COMPENSATING EMPLOYEES

- § 1:1 Generally
- § 1:2 Which employees is the employer trying to benefit
- § 1:3 —Owner-employees
- § 1:4 —Key employees
- § 1:5 —Rank and file employees
- § 1:6 What benefits best satisfy the needs of the selected group
- § 1:7 —Owner employed in the business
- § 1:8 —Key employees
- § 1:9 —Rank and file employees
- § 1:10 Statutory limitations on employee benefits
- § 1:11 —Discrimination based on race or sex
- § 1:12 —Discrimination based on age
- § 1:13 —Discrimination based on disability
- § 1:14 —Military service—Uniformed Service Employment and Reemployment Rights Act (USERRA)
- § 1:15 — —Reemployment rights under USERRA
- § 1:16 — —Pension benefits under USERRA
- § 1:17 — —Health plans
- § 1:17.50 — —HEART Act
- § 1:18 —Government contracts
- § 1:19 —Collective bargaining
- § 1:20 —ERISA
- § 1:21 Present benefits to employees
- § 1:22 —Direct compensation
- § 1:23 —Ownership interest in business
- § 1:24 —Fringe benefits
- § 1:25 Deferred benefits to employees
- § 1:26 —Deferred compensation
- § 1:27 —Future ownership interest in business
- § 1:28 —Retirement plans

- § 1:29 — —Qualified retirement plans
- § 1:30 — —Nonqualified retirement plans

CHAPTER 2. NONQUALIFIED EMPLOYEE BENEFIT PLANS (PLANS NOT DESCRIBED IN IRC §§ 401 TO 416 & 457)

- § 2:1 Generally
- § 2:2 Tax factors of incorporated v. unincorporated business—Tax and non-tax factors
- § 2:3 —Corporate taxes
- § 2:4 —Payroll taxes
- § 2:5 —Other tax factors
- § 2:6 —Professional practices
- § 2:7 —S corporation status
- § 2:8 Taxation of cash compensation
- § 2:9 Taxation of non-cash compensation under § 83
- § 2:10 —Amount and time includable in income
- § 2:11 —Transfer of property in connection with performance of services
- § 2:12 —Substantial risk of forfeiture
- § 2:13 —Section 83(b) election
- § 2:14 —Employer deduction
- § 2:15 —Option without readily ascertainable fair market value
- § 2:16 —Restrictions that will never lapse
- § 2:17 Taxation of cash compensation generally—Deductions by employer
- § 2:18 Taxation of executive compensation in excess of \$1,000,000
- § 2:19 Cash compensation—Present and deferred—Present compensation
- § 2:20 — —Deferred compensation
- § 2:21 — —Cash bonus or incentive awards
- § 2:22 — —Rabbi trusts
- § 2:23 Ownership interest in unincorporated business
- § 2:24 —Economic effects
- § 2:25 —Tax consequences
- § 2:26 Ownership interest in incorporated business
- § 2:27 —Non-qualified stock options
- § 2:28 —Non-qualified stock
- § 2:29 —Qualified stock option plans
- § 2:30 —Employee stock purchase plans—IRC § 423
- § 2:31 — — —Tax treatment
- § 2:32 — — —Requirements

TABLE OF CONTENTS

§ 2:33	—Incentive stock options—IRC § 422
§ 2:34	—Stock appreciation rights
§ 2:35	Life insurance
§ 2:36	—Tax treatment generally
§ 2:37	—Deductions to employer
§ 2:38	—Estate tax consequences
§ 2:39	—Death benefits from company owned life insurance
§ 2:40	—Group term life insurance plans—Tax treatment
§ 2:41	— —Requirements
§ 2:42	—Key man insurance
§ 2:43	—Split-dollar life insurance
§ 2:44	Medical and disability plans—Medical plans and insurance
§ 2:45	—COBRA continuation coverage
§ 2:46	—Health insurance portability requirements (HIPAA)
§ 2:47	— —Limitations on preexisting conditions, eligibility to enroll, and premiums
§ 2:48	— —Special enrollment periods
§ 2:49	— —Creditable coverage
§ 2:50	— —Failure of employer to meet certain group health plan requirements
§ 2:50A	—Affordable Case Act, etc.
§ 2:51	—Health insurance portability requirements (HIPAA)—Effect of ERISA Part 7 on state law
§ 2:52	—Qualified medical child support orders and Medicaid assignments
§ 2:53	—Medical expense plans—Tax treatment
§ 2:54	— —Requirements
§ 2:55	—Medical savings accounts (Archer MSAs)
§ 2:56 to 2:62	<i>[Reserved]</i>
§ 2:63	Medical and disability plans—Health savings accounts (HSAs)
§ 2:64	— —Requirements for HSAs
§ 2:65	— —Tax treatment of HSAs for employees
§ 2:66	— —Tax treatment of HSAs for employers
§ 2:67	—Medicare+Choice Medical Savings Accounts
§ 2:68	—Qualified long-term care
§ 2:69	— —Deduction of long-term care premiums
§ 2:70	— —Long-term care insurance contract
§ 2:71	— —Taxation of aggregate payments in excess of per diem limitation
§ 2:72	— —Consumer protection provisions required to be in qualified long-term care insurance contracts
§ 2:73	— —Long-term care services
§ 2:74	— —Reports

- § 2:75 Miscellaneous fringe benefits
- § 2:76 —Dependent care assistance programs
- § 2:77 —Cafeteria plans
- § 2:78 —Statutory limitations relating to certain fringe benefits
- § 2:79 —Voluntary Employees' Beneficiary Association (VEBAs)
- § 2:80 — —Employees' association and nondiscrimination
- § 2:81 — —Membership voluntary
- § 2:82 — —Provided life, sick, accident or other benefits
- § 2:83 — —No inurement to private shareholder or individual
- § 2:84 —Employer adoption assistance programs
- § 2:85 Additional requirements for welfare benefit plans
- § 2:86 —Reporting requirements for fringe benefit plans
- § 2:87 —Tax treatment of funded welfare plans
- § 2:88 —Excise tax on certain distributions from funded welfare plans
- § 2:89 —ERISA requirements of trust for funded welfare plan
- § 2:90 —Federal preemption of ERISA welfare plans

CHAPTER 3. BASIC TYPES OF QUALIFIED RETIREMENT PLANS

I. GENERALLY

- § 3:1 Generally
- § 3:2 —Tax advantages
- § 3:3 —Higher costs

II. PROFIT-SHARING PLANS

- § 3:4 Profit-sharing plans—Generally—Definition
- § 3:5 — —Example
- § 3:6 —Contribution formulas
- § 3:7 —Past service
- § 3:8 —Allocations to participants' accounts—In proportion to compensation
- § 3:9 — —Integration with Social Security
- § 3:10 — —Compensation
- § 3:11 — —Cross-testing or new comparability
- § 3:12 — —Forfeitures and plan or account earnings
- § 3:13 —Loans to participants—Basic requirements under plan to avoid prohibited transaction

TABLE OF CONTENTS

§ 3:14	— — Constructive distributions—IRC § 72(p)— Amount of loan
§ 3:14.50	— — — — Disaster Relief for Plan Loans
§ 3:15	— — — — Repayment
§ 3:16	— — — — Consequences of Violating IRC § 72(p); Distinction Between Taxable Deemed Distribution and Foreclosure; Other Rules
§ 3:17	— — J & S annuity and consent for loans
§ 3:18	— Participant contributions
§ 3:19	— Incidental benefits—Life insurance
§ 3:20	— Health benefits
§ 3:21	— Distributions
§ 3:22	— Deductions by employer

III. EMPLOYEE STOCK OWNERSHIP PLANS

§ 3:23	Employee Stock Ownership Plans—Introduction
§ 3:23.50	— Stock bonus plans, ESOPs, and leveraged ESOPs
§ 3:24	— ESOPs generally
§ 3:25	— Advantages and disadvantages of employee stock ownership plans
§ 3:26	— ESOP buyouts of private companies
§ 3:27	— Definition of ESOP and prohibited transaction exception
§ 3:28	— Definition of qualifying employer securities
§ 3:29	— Regulatory requirements for ESOPs
§ 3:30	— Exempt loan (leveraged ESOP) requirements
§ 3:31	— IRC § 409(e)—Voting rights
§ 3:32	— IRC §§ 409(o) and 409(h)—Distribution and repurchase requirements for stock bonus plans and ESOPs
§ 3:33	— IRC § 401(a)(28)(B)—Diversification requirement for ESOPs & IRC § 401(a)(35) diversification for 401(k) and KSOPs
§ 3:34	— Tax treatment of ESOPs—Deductions by employer under IRC § 404(a)
§ 3:35	— — Section 415 limitations
§ 3:36	— — Deductibility of dividend payments under IRC § 404(k)
§ 3:37	— — Net unrealized appreciation under IRC § 402(e)
§ 3:38	— — Deferral of gain on sale under IRC § 1042
§ 3:39	— — Transfers by charitable remainder trusts to ESOPs under TRA 1997
§ 3:40	— — Capital gain on sale by major shareholder; estate tax deduction

QUALIFIED RETIREMENT PLANS

- § 3:41 — —ESOP mergers and transfers of assets
- § 3:42 — —Lenders' interest exclusion (and repeal under Small Business Job Protection Act of 1996)
- § 3:43 — —Adequate consideration—Duty of prudence
- § 3:44 — —Fiduciary duties of ESOP trustees—Exclusive benefit rule
- § 3:45 — —ERISA's duty of prudence
- § 3:46 — —Defensive ESOPs and business judgment rule
- § 3:47 — —Securities issues affecting ESOPs
- § 3:48 — —ESOPs as shareholders of S corporations
- § 3:48.50 — —Abusive ESOP arrangements and practices
- § 3:49 — —KSOPs

IV. PENSION PLANS

- § 3:50 Pension plans—Generally
- § 3:51 — —Benefit formulas—Generally
- § 3:52 — —Flat benefit plan
- § 3:53 Benefit formulas—Unit benefit plan
- § 3:54 Pension plans—Benefit formulas—Cost of living adjustment
- § 3:55 — —Cash balance and other hybrid plans
- § 3:56 — —Section 412(e)(3) plan
- § 3:57 — —Target benefit plan
- § 3:58 — —Money purchase plan
- § 3:59 — —Past service
- § 3:60 — —Actuarial assumptions and funding
- § 3:61 — —Loans to participants
- § 3:62 — —Participant contributions
- § 3:63 — —Incidental benefits
- § 3:64 — —Death benefits
- § 3:65 — —Disability
- § 3:66 — —Shutdown and severance
- § 3:67 — —Retiree medical
- § 3:68 — — —Section 401(h) account
- § 3:69 — —Retiree medical and life insurance—Transfer to § 401(h) accounts
- § 3:70 — —Health benefits
- § 3:71 — —Distributions—Generally
- § 3:72 — —Distributions from pension plans during phased retirement
- § 3:73 — —Deductions by employer—Defined benefit pension plans
- § 3:74 — —Money purchase pension plan

V. ANNUITY PLANS

- § 3:75 Annuity plans—Generally

TABLE OF CONTENTS

- § 3:76 —Benefit formulas
- § 3:77 —Past service
- § 3:78 —Actuarial assumptions and funding
- § 3:79 —Loans to participants
- § 3:80 —Participant contributions
- § 3:81 —Incidental benefits
- § 3:82 —Distributions
- § 3:83 —Deductions by employer

VI. CASH OR DEFERRED PLANS (§ 401(K))

- § 3:84 Cash or deferred plans—Generally
- § 3:84.30 —One-time irrevocable elections of profit sharing plans
- § 3:85 —Types of Employers Who Can Sponsor 401(k) Plans; Eligibility Requirements and Long-Term Part-Time Employee Rules
- § 3:85.50 —Generally—Notice requirements
- § 3:86 —Contribution formula—Section 401(k) deferrals
- § 3:87 — —Roth Contributions
- § 3:88 — —Matching contributions
- § 3:88.50 — —Optional Treatment of Employer Matching or Nonelective Contributions as Roth contributions Under SECURE 2.0
- § 3:89 — —Age 50 “catch-up” contributions
- § 3:89.50 — —Catch-Up Contributions Required to be Roth Contributions for Higher Wage Participants under SECURE 2.0
- § 3:90 — —Contingent benefit rule and other rules
- § 3:90.50 — —SECURE 2.0 Treatment of Student Loan Payments as Elective Deferrals for Purposes of Matching Contributions
- § 3:91 — —Actual deferral percentage (ADP) tests— Highly compensated employees
- § 3:92 — — —ADP tests
- § 3:93 — — —Compensation used in the ADP test
- § 3:94 — — —IRC § 410(b) coverage, Plan Aggregation and Collectively-Bargained Plans
- § 3:95 — — —Contributions included
- § 3:96 — — —Example
- § 3:97 — —Actual contribution percentage (ACP) tests
- § 3:98 — —Multiple use test eliminated for plan years after 2001
- § 3:99 — —Nondiscrimination safe harbor for § 401(k) deferrals and § 401(m) contributions
- § 3:99.50 — — —Plan year requirement for safe harbor plan and mid-year changes

QUALIFIED RETIREMENT PLANS

- § 3:100 — — Automatic Contributions, EACAs and QACAs
- § 3:100.50 — — Mandatory Automatic Enrollment in New 401(k) Plans under SECURE 2.0 Act Beginning in 2025
- § 3:101 — — Excess contributions by highly compensated employees—Correction of excess contributions
- § 3:102 — — — Calculating the amount of excess deferral
- § 3:103 — — — Income on excess contributions
- § 3:104 — — — When distributions of excess contributions are includible in income
- § 3:105 — — — Failure to timely distribute
- § 3:106 — — — Recharacterization of excess contributions
- § 3:107 — — Excess Deferrals—Deferrals in excess of \$24,500
- § 3:108 — — Simple 401(k)—Requirements
- § 3:109 — — — Comparison with Simple IRA retirement arrangement
- § 3:110 — — Profit sharing contributions
- § 3:111 — Past service
- § 3:112 — Allocations to participants' accounts
- § 3:113 — Loans to participants
- § 3:114 — Participant contributions—Deferrals and after-tax contributions
- § 3:115 — — Employer stock
- § 3:116 — Incidental benefits
- § 3:117 — Distributions—Generally
- § 3:118 — — Special § 401(k) limitations
- § 3:119 — — Same desk rule
- § 3:120 — — Hardship withdrawals
- § 3:121 — — — Facts and circumstances method
- § 3:122 — — — Distribution deemed necessary to satisfy financial need
- § 3:122.50 — — — Pension-Linked Emergency Savings Accounts
- § 3:123 — — Roth accounts
- § 3:123.50 — — In-plan Roth rollovers
- § 3:123.70 — — Annuity Options for Defined Contribution Plans
- § 3:124 — Deductions by employer
- § 3:124.30 — Starter 401(k) plans for employers with no other retirement plans (beginning in 2024)

VII. COMBINED DEFINED BENEFIT AND SECTION 401(K) PLANS

- § 3:124.70 Combined Defined Benefit and Section 401(k)

TABLE OF CONTENTS

Plans—Establishment of combined defined
benefit and defined contribution plans

VIII. DEEMED IRAS

- § 3:125 Deemed IRAs—Generally
- § 3:126 —Requirements
- § 3:127 —Effect on qualified plan

IX. COMPARISON OF PLANS

- § 3:128 Comparison of qualified retirement plans
- § 3:129 —Characteristics of defined contribution and defined
benefit plans
- § 3:130 —Profit sharing or § 401(k) plans
- § 3:131 —SEPs and Simple IRAs
- § 3:132 —ESOPs
- § 3:133 —Money purchase plans
- § 3:134 —Defined benefit plans
- § 3:135 —Defined benefit and defined contribution plans
compared

CHAPTER 4. INDIVIDUAL RETIREMENT ARRANGEMENTS AND SIMPLIFIED EMPLOYEE PENSIONS

- § 4:1 Generally
- § 4:2 Deductions—Deductible contributions
- § 4:3 —Dollar limitations—Active participant in a
retirement plan
- § 4:4 — —Both spouses making contributions
- § 4:5 — —Compensation
- § 4:6 — —Time of contribution
- § 4:7 —Nondeductible contributions
- § 4:8 —Deductions
- § 4:9 Requirements of an IRA
- § 4:10 —Trust or custodial account
- § 4:11 —Contributions
- § 4:12 —Investments including conducting a business
- § 4:13 —Nonforfeatability of IRA assets and creditor claims
- § 4:14 —Distributions—Distributions to IRA owner
- § 4:15 — —Distributions after IRA owner's death
- § 4:15.50 — —Qualified Charitable Distributions
- § 4:16 —ERISA requirements
- § 4:17 Requirements of an IRA annuity—Annuity or
endowment

QUALIFIED RETIREMENT PLANS

- § 4:18 —Nonforfeitability
- § 4:19 —Premiums
- § 4:20 —Distributions
- § 4:21 Taxation with respect to an IRA—Income tax treatment and rollovers—Normal tax treatment
- § 4:22 — —Constructive distributions
- § 4:23 — —Reporting and withdrawal of non-deductible contributions
- § 4:24 — —Rollovers
- § 4:25 — —Transfer incident to divorce
- § 4:26 — —Unrelated business taxable income
- § 4:27 —Excise taxes and penalties—Excise tax on excess contributions
- § 4:28 — —Withdrawal of contributions
- § 4:29 — —Prohibited transactions
- § 4:29.50 — —Rollovers as business startup accounts
- § 4:30 — —Pre-age 59½ distributions
- § 4:31 — —Disability, medical expenses and medical insurance
- § 4:32 — —Higher education expenses
- § 4:33 — —First-time home purchase
- § 4:34 — —Failure to distribute after age 72
- § 4:35 —Estate and gift taxes—Estate tax treatment
- § 4:36 — —Gift tax exclusion
- § 4:37 —Reports
- § 4:37.50 My Retirement Accounts (myRAs) Instituted by Obama Administration and ended by Trump Administration
- § 4:38 Individual retirement bonds
- § 4:39 Tax treatment of individual retirement bonds—Redemptions
- § 4:40 — —Redemptions before age 59½
- § 4:41 — —Failure to distribute after age 72
- § 4:42 —Rollovers and transfers—Rollovers
- § 4:43 — —Transfer incident to divorce
- § 4:44 —Estate and gift tax—Estate tax
- § 4:45 — —Gift tax
- § 4:46 Simplified employee pension (SEP)
- § 4:47 —Requirements
- § 4:48 —Salary reduction
- § 4:49 —Tax treatment—Employee
- § 4:50 — —Employer deduction
- § 4:51 —Reports and forms
- § 4:52 Simple retirement account (Simple IRA)
- § 4:53 —Requirements

TABLE OF CONTENTS

§ 4:54	—Qualified salary reduction arrangement and employer contributions
§ 4:55	— —Employee deferral
§ 4:55.10	— —EACA
§ 4:56	— —Employer match or contribution
§ 4:57	— —Designated financial institution
§ 4:58	— —Exceptions to single plan rule
§ 4:59	— —Excess contributions
§ 4:60	—IRA trustee and reports
§ 4:61	—Tax treatment—Deductions and payroll taxes
§ 4:62	— —Taxation to employees
§ 4:63	— —Rollovers
§ 4:64	—Model forms
§ 4:65	Roth (tax-free) IRAs
§ 4:66	—Requirements—Many of same rules as for other IRAs
§ 4:67	— —Amount of permissible contribution
§ 4:68	— —Abusive transactions
§ 4:69	—Rollover-conversions
§ 4:69.50	—Rollover-conversions and transfers to designated Roth accounts compared
§ 4:70	—Distributions—Five year period
§ 4:71	— —Ordering rules
§ 4:72	— —Multiple beneficiaries
§ 4:73	— —Other rules
§ 4:74	—Coordination of 6% excise tax
§ 4:75	—Reports

CHAPTER 5. PLANS COVERING UNINCORPORATED BUSINESSES, S CORPORATIONS AND TOP-HEAVY PLANS

I. UNINCORPORATED BUSINESSES AND S CORPORATIONS

§ 5:1	Generally
§ 5:2	Unincorporated business—Definitions and limitations—Definitions—Self-employed individual as employee
§ 5:3	— — —Earned income
§ 5:4	— — —Owner-employee
§ 5:5	— —Income from the trade or business
§ 5:6	S corporation limitations
§ 5:6.50	One-participant (solo) § 401(k) plans

II. TOP-HEAVY PLANS

- § 5:7 Top-Heavy Plans—Generally
- § 5:8 Top-heavy plans—Generally—Top-heavy plan defined—
Definition
- § 5:9 — — —Exception for safe harbor § 401(k)/(m)
contributions
- § 5:10 — —Aggregating plans—Required and permissive
aggregation groups
- § 5:11 Top-Heavy Plans—Generally—Aggregating plans—
Example
- § 5:12 Generally—Aggregating plans—Operating rules
- § 5:13 Top-heavy plans—Key employee—Definitions
- § 5:14 Key employee—Officer
- § 5:15 Top-heavy plans—Key employee—Ownership
- § 5:16 —Vesting restrictions—Required schedules
- § 5:17 — —Vesting if plan ceases to be top-heavy
- § 5:18 Minimum benefits or contributions
- § 5:19 Top-heavy plans—Minimum benefits or contributions—
Defined benefit plan
- § 5:20 — —Defined contribution plan

CHAPTER 6. COLLECTIVELY BARGAINED, MULTIEMPLOYER, MULTIPLE EMPLOYER AND RELATED EMPLOYER PLANS

- § 6:1 Generally
- § 6:2 Collectively bargained plans—Definition
- § 6:3 —Participation
- § 6:4 —Discrimination
- § 6:5 —Exclusive benefit
- § 6:6 —Vesting
- § 6:7 —Funding
- § 6:8 —Deduction limitations
- § 6:9 —Employees of union
- § 6:10 —Plans covering a professional employee
- § 6:11 Multiemployer plans—Definition
- § 6:12 —Differences from other qualified plans
- § 6:13 Multiple employer plans—Definition
- § 6:14 —Participation / Coverage / Exclusive benefit /
Vesting
- § 6:15 —Funding and liability for excise tax / Deduction
limitations
- § 6:16 —MEPs and Regulatory Guidance (2012–2019)
- § 6:17 —SECURE Act of 2019 expansion of the use of MEPs
- § 6:18 —“One bad apple” rule and MEPs Exception

TABLE OF CONTENTS

§ 6:19	Related multiple employers treated as single employer—Treated as single employer for certain purposes
§ 6:20	—Applicability of controlled group rules and parent-child and brother-sister tests
§ 6:21	—Controlled Group attribution rules for option holders, 5% owners and family members
§ 6:22	—Controlled group liability issues regarding individual owners with an unincorporated trade or business
§ 6:23	—Controlled group liability issues re portfolio companies of multiple private equity owners
§ 6:24	—Affiliated service groups generally
§ 6:25	—Types of Affiliated Service Groups under IRC § 414(m)(2)
§ 6:26	—Affiliated service groups—Management organization affiliated service groups under IRC § 414(m)(5)
§ 6:27	—Leased employees
§ 6:28	— —Definition of leased employee
§ 6:29	— —Treatment of leased employees
§ 6:30	— —Treatment of PEO retirement plans under Revenue Procedure 2002-21
§ 6:30.5	— —Certified professional employer organizations
§ 6:31	—Safe harbor plan maintained by leasing organization
§ 6:32	—Anti-avoidance regulations (§ 414(o))
§ 6:33	—Independent contractors
§ 6:34	Qualified separate line of business—Overview
§ 6:35	—Separate lines of business—Identifying the qualified separate line of business
§ 6:36	— —Line of business
§ 6:37	— —Demonstrating separate lines
§ 6:38	— —Optional rule
§ 6:39	—Qualified separate lines of business
§ 6:40	— —Fifty-employee requirement
§ 6:41	— —Notice requirement
§ 6:42	— —Administrative scrutiny requirement
§ 6:43	—Individual administrative determinations
§ 6:44	— —Criteria for administrative scrutiny approval
§ 6:45	—Allocation of employees to a separate line of business
§ 6:46	— —Dominant line of business method
§ 6:47	— —Pro-rata method allocation
§ 6:48	— —Small group method

- § 6:49 —Application of separate line to business to certain sections of Internal Revenue Code—IRC § 410(b)
- § 6:50 — —IRC § 401(a)(26)
- § 6:51 — —IRC § 129(d)

PART II. PLAN QUALIFICATION

CHAPTER 7. REQUIRED PROVISIONS FOR QUALIFIED RETIREMENT PLANS

- § 7:1 Generally
- § 7:1.50 Same sex spouses: DOMA, U.S. v. Windsor and Obergefell v. Hodges
- § 7:2 Written plan—Internal Revenue Code requirements
- § 7:3 —ERISA requirements
- § 7:4 Trust—Internal Revenue Code requirements
- § 7:5 —ERISA requirements
- § 7:6 Permanency
- § 7:7 Exclusive benefit of employees
- § 7:8 —Reversions on termination—Defined contribution plans
- § 7:9 — —Defined benefit plans
- § 7:10 —Excise tax on reversions
- § 7:11 — —Qualified replacement plan
- § 7:12 — —Benefit increases in the terminating plan
- § 7:13 —Other reversions
- § 7:14 Funding policy
- § 7:15 Minimum participation standards
- § 7:16 Nondiscrimination
- § 7:17 —Optional benefit forms
- § 7:18 —Definition of compensation
- § 7:19 — —Safe harbor definitions
- § 7:20 — —Other definitions
- § 7:21 —Definition of highly compensated employees—Highly compensated employees
- § 7:22 — —Top-paid group
- § 7:23 Vesting
- § 7:24 Forfeitures
- § 7:25 Merger
- § 7:26 Alienation of interest; qualified domestic relations orders
- § 7:27 —Qualified domestic relations orders
- § 7:28 — —Requirements
- § 7:28.10 — —Requirements for issuance after participant's death, divorce, or annuity starting date

TABLE OF CONTENTS

§ 7:29	— —Taxation of QDROs
§ 7:30	—Creditor claims and other alienation of interest
§ 7:31	— —Guidry v. Sheet Metal Workers—Claims against plan for breach of fiduciary duty
§ 7:32	— — —Bankruptcy Abuse Prevention & Consumer Protection Act of 2005
§ 7:33	— —Allowability of post-bankruptcy contributions by a participant to a qualified retirement plan
§ 7:33.50	— —Garnishment of retirement benefits to comply with Federal legislation
§ 7:34	— —Pre-Patterson v. Shumate law
§ 7:35	— —Patterson v. Shumate
§ 7:36	Alienation of interest; creditor claims—IRAs and Bankruptcy
§ 7:37	Alienation of interest; qualified domestic relations orders—Section 403(b) and 457 plans
§ 7:38	—Marital agreements
§ 7:39	—Federal government claims and garnishment orders (exception to anti-alienation rule)
§ 7:39.50	Alienation of interest; waiver of benefit claims under ERISA
§ 7:40	Distribution of benefits—Participant’s consent— Pre-GATT rules
§ 7:41	—Interest and Mortality Assumptions
§ 7:42	—Pension Funding Equity Act of 2004
§ 7:42.50	—Annuity Options for Defined Contribution Plans to Avoid Participant Outliving Benefits
§ 7:43	—When plan must permit distribution
§ 7:44	—Required distribution after required beginning date
§ 7:45	— —Distributions commencing during an employee’s lifetime
§ 7:46	— —Death before required beginning date
§ 7:47	— —Determination of designated beneficiary
§ 7:48	— —Required minimum distributions from defined contribution plans
§ 7:48.50	— — —Purchase of qualified longevity annuity contracts under qualified plans
§ 7:49	— —Required minimum distributions from defined benefit plans or annuity contracts
§ 7:49.50	— —Use of lump sum payments to replace lifetime income being received by retirees under defined benefit pension plans (such as in pension de- risking lump sum windows)
§ 7:50	— —Rollovers and transfers
§ 7:51	— —Multiple plans and separate accounts

QUALIFIED RETIREMENT PLANS

- § 7:52 — —Special rules for IRAs
- § 7:53 — —IRA trustee or custodian reporting requirements
- § 7:54 — —25% excise tax
- § 7:55 —Abnormal delay in distribution
- § 7:56 —Missing participants
- § 7:57 Claims procedure
- § 7:57.50 Statutes of limitations for ERISA claims and period of limitations set forth in plan document
- § 7:58 Non-forfeiture and contributory plans
- § 7:59 Qualified annuities—Application
- § 7:60 —Explanation of “annuity”
- § 7:60.30 —Safest Available Annuity
- § 7:60.60 —Qualified Joint and Survivor Annuities
- § 7:61 —Qualified joint and survivor annuity and qualified optional survivor annuity requirement
- § 7:62 —Waiver of annuity—Time of waiver
- § 7:63 — —Comparison of different benefit forms
- § 7:64 — —Spousal Consent and Other considerations
- § 7:65 —Exceptions
- § 7:66 —Pre-retirement survivor annuity
- § 7:67 Limitation on annual benefits or contributions
- § 7:68 No decrease in benefits on account of increase in Social Security
- § 7:69 Unincorporated business
- § 7:70 S corporations
- § 7:71 Top-heavy provisions
- § 7:72 Multiple employers
- § 7:73 Summary plan description
- § 7:74 Direct plan to plan transfers—20% withholding
- § 7:75 —Direct transfers
- § 7:76 —Mandatory rollovers to IRAs if distribution exceeds \$1,000 and automatic portability transactions
- § 7:77 Plans covered by the PBGC—Plan amendments while the plan sponsor is in bankruptcy
- § 7:78 —Transfer of benefits for missing participants
- § 7:79 Diversification of investments and employer securities for defined contribution plans
- § 7:80 Participants who die while performing qualified military service
- § 7:81 State slayer statutes

CHAPTER 8. PARTICIPATION REQUIREMENTS

- § 8:1 Generally

TABLE OF CONTENTS

§ 8:2	Coverage under Internal Revenue Code and Title I of ERISA—Internal Revenue Code
§ 8:3	— —Governmental plan
§ 8:4	— —Church plan
§ 8:5	— —No employer contributions after September 2, 1974
§ 8:6	— —No employer contributions
§ 8:7	—ERISA—Exceptions to coverage
§ 8:8	— —Pension plan
§ 8:9	—Coverage under both Internal Revenue Code and ERISA
§ 8:10	Age requirements—Minimum age
§ 8:11	—Maximum age
§ 8:12	Service requirements for participation—Hours of service method
§ 8:13	—Year of service
§ 8:14	—Hour or day of service
§ 8:15	—Elapsed time method
§ 8:16	—Service for a predecessor employer
§ 8:17	—Breaks in service for participation
§ 8:18	— —One-year break in service
§ 8:19	— —Limiting participation following a break in service
§ 8:20	— —Parental leave
§ 8:21	—Employee, independent contractor, and employee reclassification
§ 8:22	Overall participation and coverage
§ 8:23	—Excludable groups
§ 8:24	—Plan definition and disaggregation
§ 8:25	— —Transition rule for mergers and reorganizations under IRC § 410(b)(6)(C)
§ 8:26	— —Definition of plan
§ 8:27	— —Plan disaggregation
§ 8:28	—Aggregation of plans
§ 8:29	—Minimum participation under IRC § 401(a)(26)
§ 8:30	— —Minimum participation test
§ 8:31	— —Exceptions
§ 8:32	— —Definition of plan
§ 8:33	— —Mandatory disaggregation of certain plans
§ 8:34	— —Permissive disaggregation of certain plans
§ 8:35	— —Employees deemed to benefit under a plan
§ 8:36	— —Excludable employees
§ 8:37	—Prior benefit structure of defined benefit plan
§ 8:38	—Testing former employees
§ 8:39	—Percentage tests—Ratio percentage (70%) tests
§ 8:40	— —Active employees

- § 8:41 — —Employees benefiting under plan
- § 8:42 — —Excludable employees
- § 8:43 — —Nondiscriminatory classification
- § 8:44 — —Reasonable classification
- § 8:45 — —Safe and unsafe harbors
- § 8:46 — —Facts and circumstances test
- § 8:47 — —Average benefit percentage ratio test
- § 8:48 — —Optional rules for determining benefit percentages
- § 8:49 — —Average benefit percentage ratio test computation
- § 8:50 — —Testing period, snapshot testing and three-year testing cycle

CHAPTER 9. ACCRUAL OF BENEFITS AND VESTING

- § 9:1 Generally
- § 9:2 Coverage under Internal Revenue Code and Title I of ERISA
- § 9:3 Accrued benefits for defined contribution plans
- § 9:4 — —Derived from employee contributions
- § 9:5 — —Derived from employer contributions
- § 9:6 — —Year of participation for benefit accrual
- § 9:7 — —Reduction in rate of contributions for money purchase plan
- § 9:8 Accrued benefits for defined benefit plans
- § 9:9 — —Derived from employee contributions—Voluntary contributions
- § 9:10 — —Mandatory contributions
- § 9:11 — —Derived from employer contributions
- § 9:12 — —Year of participation for benefit accrual
- § 9:13 — —Reduction in rate of accruals and ERISA § 204(h) and IRC § 4980F notice
- § 9:14 Rate of accrual for accrued benefits of defined benefit plans
- § 9:15 — —Normal retirement age
- § 9:16 — —Normal retirement benefits
- § 9:17 — —Accrual requirements
- § 9:18 — —3% rule
- § 9:19 — —133 percent rule
- § 9:20 — —Fractional rule
- § 9:21 — —Transitional rule
- § 9:22 Vesting (non-forfeitability) of accrued benefits
- § 9:23 — —When benefits become non-forfeitable
- § 9:24 — —5-year cliff vesting

TABLE OF CONTENTS

§ 9:25	— —3 to 7 year vesting
§ 9:26	— —2 to 6 year vesting or three year cliff vesting
§ 9:27	— —10-year cliff vesting (phased out)
§ 9:28	— —5 to 15 year vesting (phased out)
§ 9:29	— —Rule of 45 (phased out)
§ 9:30	— —Class year plan vesting (phased out)
§ 9:31	—Changes in vesting schedule
§ 9:32	Service for vesting
§ 9:33	—Year of service for vesting
§ 9:34	—Breaks in service for vesting
§ 9:35	— —One-year break in service defined
§ 9:36	— —Lost service for vesting after break in service
§ 9:37	Forfeiture of rights in non-vested accrued benefits
§ 9:38	—Forfeitable events
§ 9:39	—Cash-outs
§ 9:40	— —Involuntary cash-outs (\$7,000 or less)
§ 9:41	— —Voluntary cash-outs (over \$7,000)
§ 9:42	—Restoration of benefits and five consecutive one-year breaks in service
§ 9:43	— —Five consecutive one-year breaks in service
§ 9:44	— —Formulas for restoring forfeitures
§ 9:45	—Rule of parity
§ 9:46	—Relationship of forfeitures and timing of distributions
§ 9:47	Exceptions to vesting rules and reductions in accrued benefits
§ 9:48	—Protected and nonprotected benefits, rights, and features—Protected benefits
§ 9:49	— —Elimination of distribution options in defined contribution plans
§ 9:50	— —Elimination of distribution options in defined benefit plans
§ 9:51	— —Methods of protecting benefits
§ 9:52	— —Nonprotected benefits
§ 9:53	— —Prospective reductions
§ 9:54	— —Transfers of plan assets and mergers
§ 9:55	— —Other impermissible reductions
§ 9:56	—Exceptions to vesting rules—Forfeiture on account of death
§ 9:57	— —Suspension of benefits upon reemployment of retiree
§ 9:58	— —Retroactive amendments
§ 9:59	— —Withdrawal of mandatory contributions
§ 9:60	— —Limitations on 25 highest paid
§ 9:61	— —Reductions for increase in Social Security benefits

- § 9:62 — —Multiemployer plans
- § 9:63 — —Bad boy clauses
- § 9:64 — —Amendment to lump sum distribution provisions
- § 9:65 — —Early retirement subsidy

CHAPTER 10. DISCRIMINATION IN COVERAGE OR BENEFITS

- § 10:1 Generally
- § 10:2 Nondiscrimination in contributions or benefits
- § 10:3 —Nondiscrimination under IRC § 401(a)(4) final regulations
- § 10:4 —Nondiscrimination in contributions—Safe harbor requirements
- § 10:5 — —General testing for nondiscrimination in contributions
- § 10:6 —Nondiscrimination in benefits—Safe harbor requirements
- § 10:7 — —General test for nondiscrimination in amount of benefits
- § 10:8 —Nondiscriminatory availability of benefits, rights, and features
- § 10:9 —Plan amendments, grants of past service credit, and plan terminations—Plan amendments
- § 10:10 — —Required pre-termination restrictions
- § 10:11 —Defined benefit plans with employee contributions
- § 10:12 — —Determination of employer-derived and employee-derived benefits
- § 10:13 — —Nondiscrimination tests as to employee-derived benefits
- § 10:14 —IRC § 401(l) permitted disparity
- § 10:15 — —Defined contribution plans
- § 10:16 — —Defined benefit plans
- § 10:17 —Cross-testing
- § 10:18 — —Nondiscriminatory benefits under a defined contribution plan
- § 10:19 — —Target benefit plan safe harbor
- § 10:20 — —Nondiscriminatory contributions under a defined benefit plan
- § 10:21 — —Cash balance plans
- § 10:22 — —Defined benefit plans which are part of a floor-offset arrangement
- § 10:23 —Plan aggregation and restructuring
- § 10:24 —Testing of former employees
- § 10:25 —Certain additional rules
- § 10:26 — —Crediting service

TABLE OF CONTENTS

§ 10:27	— —Corrective amendments
§ 10:28	—Fresh-start rules
§ 10:29	Permitted disparity under IRC § 401(<i>l</i>)
§ 10:30	—Definitions
§ 10:31	— —Taxable wage base
§ 10:32	— —Covered compensation
§ 10:33	— —Integration level and offset level
§ 10:34	— —PIA
§ 10:35	— —Average annual compensation
§ 10:36	— —Final average compensation
§ 10:37	—Defined contribution plans—Permitted disparity rules
§ 10:38	— —Examples
§ 10:39	— —Target benefit plans
§ 10:40	—Defined benefit plans—Excess and offset plans
§ 10:41	— —Excess plans
§ 10:42	— —Offset plans
§ 10:43	— —Excess and offset plans—Requirements for both excess and offset plans
§ 10:44	— —Example of excess plan
§ 10:45	— —Example of offset plan
§ 10:46	—Total disparity limitation
§ 10:47	Limitations on benefits or contributions
§ 10:48	—Compensation defined
§ 10:49	—Defined benefit plan § 415(b) limitations—100 percent or \$200,000 annual limitation
§ 10:50	—Defined benefit plan § 415(b) limitations—\$10,000 annual limitation
§ 10:51	— —Reduction in benefit limitations
§ 10:52	— —Actuarially equivalent benefit forms
§ 10:53	— —Exceptions for certain plans
§ 10:54	— —Distributions beginning after age 65
§ 10:55	— —Cost of living adjustments
§ 10:56	— —Qualified cost-of-living arrangement
§ 10:57	—Defined contribution plan § 415(c) limitations
§ 10:58	—Qualified government excess benefit arrangements

CHAPTER 11. PROCEDURAL REQUIREMENTS OF ADOPTING OR AMENDING A PLAN

§ 11:1	Generally
§ 11:2	Notification of employees—Accuracy and timeliness
§ 11:3	—Internal Revenue Code requirements
§ 11:4	—ERISA Title I requirements

- § 11:5 Determination letter from IRS—Individual plans
- § 11:6 —Background on pre-approved prototype and volume submitter plans
- § 11:7 —General requirements of pre-approved plans
- § 11:8 —Pre-approved plans
- § 11:9 —Deadline for adopting preapproved plans
- § 11:10 —Application forms and user fees—Application forms
- § 11:11 — —User fees
- § 11:12 —Application procedure
- § 11:13 —IRS Address; Notice to interested parties
- § 11:14 —Review by IRS
- § 11:15 Review by tax court
- § 11:16 —Exhaustion of administrative remedies
- § 11:17 —Review of administrative determination
- § 11:18 Amendment after initial qualification
- § 11:19 —Retroactive amendments
- § 11:20 —Adoption of amendment resulting in significant underfunding
- § 11:21 — —Notification of employees
- § 11:22 — —Application to IRS
- § 11:23 Transition rules for tax acts
- § 11:24 Remedial amendment periods for tax acts—TEFRA 1982, TRA 1982, REA 1984
- § 11:25 —TRA 1986
- § 11:26 —USERRA, GATT 1994, SBJPA 1996, TRA 1997, RRA 1998 and CRTRA (or CRA) 2000
- § 11:27 Transition rules and remedial amendment deadlines for tax acts—EGTRRA 2001, PPA 2006, WRERA 2008, HEART Act and SBJA 2010
- § 11:28 Transition rules for tax acts—As of 2017 remedial amendment period end of the second plan year after required amendments list issued; remedial amendment period for SECURE Act of 2019, CARES Act of 2021 (December 31, 2025) and SECURE 2.0 Act (first plan year in 2025)

PART III. PLAN OPERATION

CHAPTER 12. MINIMUM FUNDING STANDARD

- § 12:1 Generally
- § 12:2 Coverage under the Internal Revenue Code and Title I of ERISA
- § 12:3 —ERISA

TABLE OF CONTENTS

§ 12:4	—Internal Revenue Code
§ 12:5	Actuarial assumptions and methods—Generally
§ 12:6	— —Importance of actuarial assumptions
§ 12:7	— —General actuarial assumptions issues
§ 12:8	—IRS small plan audit program
§ 12:9	— —Analysis of cases
§ 12:10	—Actuarial methods
§ 12:11	— —Accrued benefit cost method
§ 12:12	— —Projected benefit cost method
§ 12:13	— —Normal cost
§ 12:14	— —Supplemental liability
§ 12:15	— —Entry age normal method
§ 12:16	— —Additional actuarial variations
§ 12:17	—Changes in actuarial assumptions for plans subject to PBGC coverage
§ 12:18	Multiemployer plan financial information and withdrawal liability information required to be made available on request under PPA 2006
§ 12:19	Minimum funding standard account and additional funding requirements—Requirement of funding standard account
§ 12:20	—Charges to account
§ 12:21	—Credits to account
§ 12:22	—Additional funding requirements for underfunded plans with more than 100 participants which are not multiemployer plans—Plans subject to § 412(l)
§ 12:23	— —§ 412(l) charge
§ 12:24	Minimum funding rules for single-employer plans (PPA 2006, as amended by ARPA 2021 and SECURE 2.0)
§ 12:24.10	Minimum funding rules for single-employer plans under PPA 2006—Prefunding balance and funding standard carryover balance
§ 12:24.20	—At-risk limitations
§ 12:24.30	—Funding relief under the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010; <i>2019 Community Newspapers Pension Funding Relief</i> ; <i>CARES Act of 2020</i>
§ 12:25	Minimum funding rules for multiemployer plans
§ 12:25.10	—Penalties for underfunding for plans in endangered or critical status
§ 12:25.20	—Funding relief under the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010
§ 12:25.30	Permissible delays in multiemployer plan funding

QUALIFIED RETIREMENT PLANS

- in 2020–2022 and special financial assistance for financially troubled multiemployer plans under ARPA 2021
- § 12:26 Defined benefit plans—Valuation of lump sum distributions and other forms of distribution
- § 12:27 Accumulated funding deficiency for multiemployer plans in reorganization—Generally
- § 12:28 —Plan in reorganization status—Determination and effect of reorganization status
- § 12:29 — —Minimum contribution requirement
- § 12:30 — —Overburdened plan
- § 12:31 — —Reduction of accrued benefits
- § 12:32 —Insolvent plan
- § 12:33 — —Plan sponsor’s determination of plan insolvency
- § 12:34 — —Effects of insolvency determination
- § 12:35 Full funding limitation—Importance
- § 12:36 —Determination
- § 12:37 Alternative minimum funding standard account
- § 12:38 —Charges to account
- § 12:39 —Credits to account
- § 12:40 Reductions in minimum funding standard requirements
- § 12:41 —Change in funding method
- § 12:42 —Retroactive plan amendments
- § 12:43 —Variance from minimum funding standard
- § 12:44 —Extension of amortization
- § 12:45 —Benefits may not be increased
- § 12:46 —Pension Funding Equity Act of 2004
- § 12:47 — —Temporary replacement of interest rate used for certain pension plan purposes and alternative deficit reduction contribution for certain plans
- § 12:48 — —Multiemployer plan changes
- § 12:49 Payments and penalties for failure to meet required funding standard and liquidity shortfall—Quarterly payments
- § 12:50 —Plan’s lien against employer
- § 12:51 —Excise taxes under IRC § 4971 on accumulated funding deficiency
- § 12:52 — —Excise tax of 10%
- § 12:53 — —Excise tax of 100%
- § 12:54 — —Excise tax of 10% and 100% on liquidity shortfall
- § 12:55 —Excise tax under IRC § 4972 on nondeductible contributions

TABLE OF CONTENTS

§ 12:56	Funding disclosure rules for single-employer defined benefit plans under PPA 2006
§ 12:57	Funding disclosure rules for multiemployer defined benefit plans under PPA 2006
§ 12:58	FASB Statements Nos. 87 and 88
§ 12:59	—FAS 87 discussion—Accounting concepts
§ 12:60	— —Components of pension expense
§ 12:61	— —Disclosure
§ 12:62	— —Balance sheet treatment
§ 12:63	— —Selecting assumptions
§ 12:64	—FAS 88 discussion—Accounting concepts
§ 12:65	— —Accounting for a settlement
§ 12:66	— —Accounting for a curtailment
§ 12:67	— —Accounting for termination benefits
§ 12:68	— —Example
§ 12:69	—Compliance issues and strategies

CHAPTER 13. DEDUCTIBILITY OF EMPLOYER CONTRIBUTIONS

§ 13:1	Generally
§ 13:2	Deductibility of contribution—Deductibility under IRC § 404(a), and § 162 or § 212
§ 13:3	—Time of contributions
§ 13:4	Type of contributions
§ 13:5	—Cash
§ 13:6	—Property
§ 13:7	—Employer securities
§ 13:8	Which employer is entitled to deduction—Employer of participant
§ 13:9	—Affiliated employers maintaining a profit-sharing or stock bonus plan
§ 13:10	—Transferees of mergers and acquisitions
§ 13:11	Pension and annuity plans
§ 13:12	—Full and alternative funding limitations
§ 13:13	—Carryovers of excess contributions
§ 13:14	—Collectively bargained and multiple employer plans
§ 13:15	—Reversion to employer of pension plan assets
§ 13:16	Profit-sharing and stock bonus plans—Single plans
§ 13:17	—Collectively bargained and multiple employer plans
§ 13:18	Combined pension and defined contribution plans
§ 13:19	Special provisions and restrictions for self-employed individuals
§ 13:20	—Definitions
§ 13:21	—Contributions allocated for insurance protection

§ 13:22 Excise tax on nondeductible contributions

CHAPTER 14. PARTICIPANT CONTRIBUTIONS

- § 14:1 Generally
- § 14:2 Permissible amount of contributions
- § 14:3 —Limitations on contributions, allocations, and deductions
- § 14:4 —Limitations on excess aggregate contributions
- § 14:5 Type of contributions
- § 14:6 Tax treatment
- § 14:7 Distribution
- § 14:8 Qualified voluntary employee contributions

CHAPTER 15. TAXATION OF DISTRIBUTIONS TO PARTICIPANTS

- § 15:1 Generally
- § 15:2 Ordinary income tax treatment
- § 15:3 —Loans
- § 15:4 —Qualified domestic relations orders
- § 15:4.50 —Distributee taxable
- § 15:5 —Employer contributions only
- § 15:6 —Employer and employee contributions
- § 15:7 —Exclusion ratio method
- § 15:8 — —Annuity starting date
- § 15:9 — —Expected return
- § 15:10 — —Investment in the contract
- § 15:11 — —Example
- § 15:12 —Simplified exclusion ratio method
- § 15:13 —Amounts not received as annuities
- § 15:14 —Correction of overpayments to participant
- § 15:15 —Federal limitations on state taxation of retirement benefits
- § 15:16 Supplemental benefits
- § 15:17 —Health or accident benefits
- § 15:18 —Life insurance
- § 15:19 — —Taxation of risk element during lifetime
- § 15:20 — —Taxation of risk element at death
- § 15:21 Additional tax for certain distributions—Early distributions
- § 15:21.50 —Disaster Relief for Early Distributions
- § 15:22 —Age 72 distributions
- § 15:23 —Certain distributions to 5-percent owners
- § 15:24 —Excess distributions

TABLE OF CONTENTS

§ 15:25	— —Distributions not subject to tax
§ 15:26	— —Prior grandfather election
§ 15:27	Distributions if trust becomes nonqualified
§ 15:28	Lump sum distributions
§ 15:29	—Definition of lump sum distribution
§ 15:30	— —Balance to the credit of the employee
§ 15:31	—Election
§ 15:32	—Taxation
§ 15:33	— —Total taxable amount
§ 15:34	— —Initial separate tax
§ 15:35	— —Ordinary income portion
§ 15:36	— —Capital gain portion
§ 15:37	— —Multiple distributions and distributions of annuity contracts
§ 15:38	— —Estate taxes incurred
§ 15:39	Distributions not taxable when received
§ 15:40	—Employer securities
§ 15:41	— —Distribution
§ 15:42	— —Sale following distribution
§ 15:43	—Deferred annuities and retirement plan bonds
§ 15:44	Rollovers—Direct transfers from qualified retirement plans—Background
§ 15:45	— —Direct transfers
§ 15:45.50	— —Rollovers to Roth IRAs and Allocation of After-Tax Amounts to Rollovers
§ 15:46	— —Direct transfer election procedures
§ 15:47	—Rollovers following distribution from qualified plan to participant
§ 15:48	— —Contribution within 60 days
§ 15:49	— —IRS 60-day waiver procedure
§ 15:50	— —Rollover of proceeds of distributed property
§ 15:51	— —Miscellaneous rules
§ 15:52	—Distributions from IRAs
§ 15:53	— —Within 60 days of receipt
§ 15:53.30	—Rollovers between defined benefit plans and defined contribution plans
§ 15:54	—Transfers on account of death—Spouse
§ 15:55	— —Non-spouse
§ 15:56	—QDROs
§ 15:57	—§ 403(b) rollovers
§ 15:57.50	Income in Respect of Decedents (IRD)
§ 15:58	Gift and estate tax treatment—Estate tax—Normal treatment
§ 15:59	— —QTIP trust
§ 15:60	— —Excess accumulations under prior law

- § 15:61 —Gift tax
- § 15:61.10 Explanation to recipient of tax treatment on distribution
- § 15:62 Withholding and notice of plan distributions
- § 15:63 —Withholding on distributions
- § 15:64 —Distribution withholding rules when distribution is to non-U.S. address; Withholding on distributions to nonresident aliens
- § 15:65 —Responsibility for withholding and reporting

Volume 2

PART IV. PLAN ADMINISTRATION

CHAPTER 16. FIDUCIARY RESPONSIBILITY

- § 16:1 Generally
- § 16:2 Coverage under the Internal Revenue Code and Title I of ERISA
- § 16:3 —ERISA
- § 16:4 —Internal Revenue Code
- § 16:5 The fiduciary, general fiduciary duties, and plan assets
- § 16:6 —Plan assets must be held in trust
- § 16:7 —Asset “look-through” rule
- § 16:8 — —Application
- § 16:9 — —Definitions
- § 16:10 —Plan assets held by insurance company or deposited in bank—Assets held by insurance company
- § 16:11 — —Assets deposited in bank
- § 16:12 —Fiduciary defined—Internal Revenue Code
- § 16:13 — —Title I of ERISA, the five-part test, and challenges to the fiduciary rule and the Retirement Security Rule
- § 16:14 — —Non-fiduciary
- § 16:15 — —Employer as fiduciary
- § 16:16 —Prohibition on certain criminals serving as fiduciaries
- § 16:17 —Named fiduciary
- § 16:18 —Fiduciary duties under Internal Revenue Code and Title I of ERISA
- § 16:19 — —Exclusive purpose of providing benefits and defraying reasonable expenses

TABLE OF CONTENTS

§ 16:20	— — Knowledgeable prudent man standard
§ 16:21	— — Diversification
§ 16:22	— — Liquidity
§ 16:23	— — Fair investment return
§ 16:24	— — Indicia of ownership
§ 16:25	— — Act in accordance with plan documents
§ 16:25.30	— — Exercising shareholder rights with respect to plan investments
§ 16:25.50	— — Incorporating environmental, social or governance (ESG) factors
§ 16:25.70	— — Overturning of Chevron Deference by Loper Will Increase Challenges to Regulations
§ 16:26	— — Disclosure
§ 16:27	— — Other duties
§ 16:27.50	— — Indemnification
§ 16:28	— Participant directed individual account plan and ERISA § 404(c)—Directed Trustee
§ 16:29	— — Pre-404(c) regulations
§ 16:30	— — ERISA § 404(c) regulations
§ 16:30.30	— — Plans with default investments involving target date funds
§ 16:30.50	— — Regulations on participant fee disclosure
§ 16:30.70	— — Excessive Fees for Investment Funds
§ 16:31	Fiduciary responsibility, prohibited transactions and bonding—Relief of fiduciary responsibility for qualified default investment alternative (QDIA)
§ 16:32	The fiduciary, general fiduciary duties, and plan assets—Participant directed individual account plan and ERISA § 404(c)—Required notice of blackout period
§ 16:33	— Payment of fiduciary and administrative expenses
§ 16:34	Delegation of fiduciary duties
§ 16:35	— Delegation of trustee responsibilities
§ 16:36	— Delegation to non-trustee fiduciaries
§ 16:37	Liability for breach by co-fiduciary
§ 16:38	Prohibited transactions—Penalties
§ 16:39	— — Fifteen percent tax under Internal Revenue Code
§ 16:40	— — One hundred percent tax under Internal Revenue Code
§ 16:41	— — Twenty percent civil penalty under Title I of ERISA
§ 16:42	— Fiduciary
§ 16:43	— Party in interest and disqualified person
§ 16:44	— Prohibited transactions

QUALIFIED RETIREMENT PLANS

- § 16:45 Exceptions to prohibited transactions rules
- § 16:46 —Waivers by Treasury and Department of Labor
- § 16:47 — —Application for prohibited transaction exemption
- § 16:48 — —Review and publication of the requests
- § 16:49 — —Issuance of exemption
- § 16:50 — —Streamlined individual exemption procedure
- § 16:51 — —Examples of class exemptions
- § 16:52 —Statutory exemptions
- § 16:53 — —Investment advice provided to plan participants by fiduciary advisors
- § 16:54 — —Loans
- § 16:55 — —Services or property between the plan and party in interest or disqualified person
- § 16:55.50 — — —Fee disclosure by service providers to plan fiduciaries
- § 16:56 — —Securities trading and foreign exchange
- § 16:57 — —Qualifying employer securities or real property
- § 16:58 — —Distribution of benefits
- § 16:59 — —14 day correction period for certain types of financial transaction prohibited transactions
- § 16:60 —“Covered service provider” fees
- § 16:61 Acquisition or holding of employer securities or real property
- § 16:62 —Employer securities and qualifying employer securities
- § 16:63 —Employer real property and qualifying employer real property
- § 16:64 —Acquiring qualifying employer securities and qualifying employer real property
- § 16:65 Fiduciary liability, indemnification, and bonding
- § 16:66 —Fiduciary liability—Action for breach of fiduciary duty—ERISA § 409
- § 16:67 — —Statute of limitations
- § 16:68 —Indemnification
- § 16:69 —Bonding
- § 16:70 IRC § 4965—Excise tax

CHAPTER 17. CERTAIN PROHIBITED TRANSACTIONS AND UNRELATED BUSINESS TAXABLE INCOME

- § 17:1 Generally
- § 17:2 Denial of exemption to certain organizations which engage in prohibited transactions

TABLE OF CONTENTS

§ 17:3	—Prohibited transactions
§ 17:4	—Loss of exemption under IRC § 501(a)
§ 17:5	Tax on unrelated business income
§ 17:6	—Unrelated trade or business
§ 17:7	—Unrelated business taxable income
§ 17:8	— —Dividends, interest, annuities and royalties
§ 17:9	— —Rents
§ 17:10	— —Controlled organization income
§ 17:11	— —Capital gains
§ 17:12	— —Sales or exchanges of real property or mortgages
§ 17:13	— —Unrelated debt-financed income
§ 17:14	— —Specific deductions
§ 17:15	— —Net operating loss deduction
§ 17:16	— —Other exceptions
§ 17:17	Unrelated debt-financed income
§ 17:18	—Acquisition indebtedness—Average acquisition indebtedness
§ 17:19	— —Acquisition indebtedness
§ 17:20	—Exceptions for real property acquisitions
§ 17:21	—Debt-financed property
§ 17:22	—Average adjusted basis for year

CHAPTER 18. REPORTING AND DISCLOSURE REQUIREMENTS

§ 18:1	Generally
§ 18:2	Plan establishment
§ 18:3	—Internal Revenue Service
§ 18:4	—Labor Department
§ 18:5	—Pension Benefit Guaranty Corporation
§ 18:6	—Securities and Exchange Commission
§ 18:7	Plan operation
§ 18:8	—Internal Revenue Service
§ 18:9	—Labor Department
§ 18:10	—Pension Benefit Guaranty Corporation
§ 18:11	—Securities and Exchange Commission
§ 18:12	Plan termination
§ 18:13	—Internal Revenue Service
§ 18:14	—Labor Department
§ 18:15	—Pension Benefit Guaranty Corporation
§ 18:16	—Securities and Exchange Commission
§ 18:17	Securities issues under Section 16(b)
§ 18:18	—Section 16
§ 18:19	—New Section 16 Rules

- § 18:20 —Chart summarizing plan transactions under the
New Section 16 Rules

PART V. PLAN TERMINATION

CHAPTER 19. PENSION BENEFIT GUARANTY CORPORATION

- § 19:1 Generally
- § 19:2 Coverage—Plans covered
- § 19:3 —Exceptions to coverage
- § 19:4 — —Individual account plans
- § 19:5 — —Small professional service employer
- § 19:6 — —Governmental and church plans
- § 19:7 — —Other exceptions
- § 19:8 General description of the PBGC—Organization
- § 19:8.5 —PBGC Mediation Program
- § 19:9 —Appeal of decisions
- § 19:10 —Enforcement authority
- § 19:11 —Filing methods and notices, computing filing dates,
and record retention
- § 19:12 — —Methods of filing
- § 19:13 — —Time of filing
- § 19:14 — —Computation of time
- § 19:15 — —Record retention
- § 19:16 — —Trade Act eligible PBGC pension recipient
information
- § 19:17 Creation of separate funds

I. SINGLE-EMPLOYER PLANS

- § 19:18 Premiums—Amount of premiums—Fixed and
variable portions
- § 19:18.50 — —Certain terminated plans
- § 19:19 — —Number of participants
- § 19:20 — —Unfunded vested benefits
- § 19:21 —Liability for premium payments
- § 19:22 —Time of premium payments
- § 19:23 —Penalty for late payment of premiums
- § 19:24 Benefits guaranteed
- § 19:25 —Single-employer plans
- § 19:26 — —Guaranteed benefits
- § 19:27 — —Limitations on amount of guaranteed benefits
- § 19:28 Reportable events and reports—Single-employer
plans—Filing reports

TABLE OF CONTENTS

§ 19:29	— —Reportable events
§ 19:30	—Other reports—Certain plans with large liabilities
§ 19:31	— —Notice to participants of funding status for single-employer plans
§ 19:32	— —Participant notice Voluntary Correction Program (VCP)
§ 19:33	— —Terminating plans
§ 19:34	Asset allocation on termination of plan
§ 19:35	—Allocation among categories
§ 19:36	—Categories to which plan assets allocated
§ 19:37	— —Category 1 benefits
§ 19:38	— —Category 2 benefits
§ 19:39	— —Category 3 benefits
§ 19:40	— —Category 4 benefits
§ 19:41	— —Category 5 benefits
§ 19:42	— —Category 6 benefits
§ 19:43	Standard termination of single-employer plan
§ 19:44	—Requirements for standard termination
§ 19:45	—Notice of intent to terminate
§ 19:46	—PBGC response to standard termination notice
§ 19:47	—Notice of plan benefits
§ 19:48	—Distribution of benefits—Requirements
§ 19:49	— —Common reasons found by the PBGC for errors in calculating lump sum distributions
§ 19:50	—Missing participants
§ 19:51	Distress termination of single-employer plan
§ 19:52	—Requirements for distress termination
§ 19:53	—Notice of intent to terminate
§ 19:53.50	—Request for information by affected party
§ 19:54	—PBGC action in response to notice of intent to terminate
§ 19:55	—Notice of benefit distribution
§ 19:56	—Redetermination of plan sufficiency
§ 19:57	—Closeout of plan
§ 19:58	—Missing participants
§ 19:58.50	PBGC Interest and Mortality Assumptions for Pension Plan Terminations and Withdrawals
§ 19:59	Termination by PBGC
§ 19:60	—When PBGC can terminate
§ 19:61	—Appointment of trustee
§ 19:62	—Powers and duties of trustee
§ 19:63	—Termination of plan
§ 19:64	Contingent liability of employer
§ 19:65	—Termination of single-employer plan

QUALIFIED RETIREMENT PLANS

- § 19:66 — —Liability for unfunded guaranteed benefits
- § 19:66.20 — — —Substantial cessation or reduction in operations at a facility
- § 19:67 — —Liability for unpaid contributions
- § 19:68 — —Special liability rules
- § 19:69 —Termination of multiple employer plan
- § 19:70 —Withdrawal of substantial employer from multiple employer plan

II. MULTIEMPLOYER PLANS

- § 19:71 Generally
- § 19:71.30 Requirement to file reports and provide information for multiemployer plans
- § 19:71.50 Penalty for failure to provide required notices and information
- § 19:72 Premiums
- § 19:73 Contributions
- § 19:74 Benefits guaranteed
- § 19:75 Termination
- § 19:76 Reorganized or insolvent multiemployer plans
- § 19:77 MEPRA 2014 multiemployer plan funding rules and benefit suspensions
- § 19:77.30 American Rescue Plan Act of 2021—Special Financial Assistance to Multiemployer Plans
- § 19:78 Mergers and transfers of assets
- § 19:79 —Merger or transfer of assets between multiemployer plans
- § 19:80 —Transfer between a multiemployer plan and a single-employer plan
- § 19:81 —New rules to facilitate multiemployer plan mergers
- § 19:82 —Partition of a multiemployer plan-pre-MEPRA rules
- § 19:83 —Rules for partitions of multiemployer plans as modified by MEPRA 2014
- § 19:84 —Transfers pursuant to a change in bargaining unit representative
- § 19:85 Procedures for determination and collection of withdrawal liability—Determination of withdrawal liability
- § 19:86 —Resolution of disputes
- § 19:87 Determination of amount of withdrawal, mass withdrawal, or termination liability
- § 19:88 —Complete withdrawal defined
- § 19:89 —Mass withdrawal defined

TABLE OF CONTENTS

§ 19:90	—Partial withdrawal defined
§ 19:91	—Amount of liability on complete withdrawal
§ 19:92	— —Presumptive method (and withdrawal from multiemployer plans in critical status)
§ 19:93	— —Modified presumptive method
§ 19:94	— —Rolling-5 method
§ 19:95	— —Direct liabilities method
§ 19:96	—Amount of liability on partial withdrawal
§ 19:97	—Determination of schedule of liability payments
§ 19:98	—Tax deduction of liability payments
§ 19:99	Court actions

CHAPTER 20. PLAN DISCONTINUANCE, TERMINATION, AND COMPLIANCE RESOLUTION WITH THE IRS, VOLUNTARY FIDUCIARY COMPLIANCE WITH THE DOL, AND PLAN AUDITS

§ 20:1	Generally
§ 20:2	Suspension or discontinuance of contributions and freezing of accrued benefits
§ 20:3	—Suspension versus complete discontinuance
§ 20:4	— —Plans not covered by IRC § 412
§ 20:5	— —Plans covered by IRC § 412
§ 20:6	— —All plans
§ 20:7	—Freezing the plan
§ 20:8	Partial termination—Effect of partial termination
§ 20:9	—What constitutes a partial termination
§ 20:10	— —Twenty percent or more reduction in workforce or coverage
§ 20:11	— —Other reasons
§ 20:12	Substitution, merger and consolidation of plans
§ 20:13	—Substitution
§ 20:14	—Consolidation, merger, or spin-off
§ 20:15	— —Defined contribution plans
§ 20:16	— —Defined benefit plans
§ 20:17	Termination
§ 20:18	Retroactive disqualification
§ 20:19	—Tax effects of retroactive disqualification
§ 20:20	—Example
§ 20:21	Employee Plans Compliance Resolution System (EPCRS)—SCP, VCP, and Audit CAP
§ 20:22	— —Self-Correction Program (SCP)—Self- correction only if within 3 years or for insignificant operational violations (prior to

QUALIFIED RETIREMENT PLANS

- SECURE 2.0); Correction by Retroactive Amendment
- § 20:23 — — —Expansion by SECURE 2.0 of the Self-Correction Program even after the three years period for all eligible inadvertent failures
- § 20:23.50 — — —Overpayments
- § 20:24 — — —Voluntary Correction Program (VCP)—Voluntary Correction Program requirements, submissions and user fees
- § 20:25 — — —Plan loan failures under EPCRS; Prior Anonymous submission procedures
- § 20:26 — — —Audit CAP
- § 20:27 — — —Correction methods—Specifically prescribed in revenue procedures
- § 20:28 — — —Restorative payments
- § 20:29 —New 90-day Pre-Examination Compliance Pilot Program
- § 20:30 Voluntary Fiduciary Correction Program—Advantages and disadvantages
- § 20:31 —Eligibility for VFC
- § 20:31.30 —Delinquent contributions and loan repayments
- § 20:31.50 —Loans and participant loan failures
- § 20:31.70 —Asset transactions, valuation errors, and plan expenses
- § 20:32 —Permissible methods of correction
- § 20:33 Voluntary fiduciary compliance—Notice to affected participants of correction
- § 20:34 Voluntary Fiduciary Correction Program—Pre-submission contacts and informal guidance
- § 20:35 —Prohibited transaction class exemption under VFC program
- § 20:36 Plan audits
- § 20:37 —Annual plan audit by CPA
- § 20:38 —IRS audits
- § 20:39 —DOL audits
- § 20:40 Orphan plans
- § 20:41 Scrivener's Errors

PART VI. ENFORCEMENT

CHAPTER 21. ENFORCEMENT

- § 21:1 Generally
- § 21:2 Action by participant or beneficiary
- § 21:3 —Initial and continuing qualification

TABLE OF CONTENTS

§ 21:4	—Access to information—Summary plan description and other information needed for benefit claims and appeals
§ 21:5	— —Summary annual report
§ 21:6	— —Release from liability
§ 21:7	— —Electronic distribution of information
§ 21:8	—Exhaustion of administrative remedies
§ 21:9	—Beneficiary claims
§ 21:10	—Civil suit—State law
§ 21:11	— —Federal law
§ 21:12	— —Arbitration
§ 21:13	—ERISA preemption—ERISA § 514
§ 21:14	— —Deemer clause of § 514
§ 21:15	— —Examples of claims preempted and not preempted
§ 21:16	—Permissible parties
§ 21:17	—Causes of action and remedies
§ 21:18	— —Recovery of benefits due a participant or beneficiary (ERISA §§ 502(a)(1)(B) and 502(a)(2))
§ 21:19	— —Enjoining act or practice which violates Title I of ERISA or terms of plan (ERISA § 502(a)(3))
§ 21:20	— —Right to Jury trial in ERISA claims
§ 21:21	— —Requiring plan administrator to provide certain information to participant
§ 21:22	— —Requiring fiduciary restore plan losses for which liable
§ 21:23	— —Appropriate relief under ERISA § 510 where action taken against participant for exercising rights under plan or ERISA
§ 21:24	— —No relief under ERISA
§ 21:25	—Attorney-client privilege
§ 21:26	—Venue
§ 21:27	—Statute of limitations—Claim for benefits—ERISA § 502
§ 21:28	— —Breach of fiduciary duty—ERISA § 413
§ 21:29	— —Action by fiduciary of multiemployer plan—ERISA § 502(g)(2)
§ 21:30	— —Interference with ERISA rights—ERISA § 510
§ 21:31	—Settlement
§ 21:32	—Standard of review—Firestone Tire & Rubber
§ 21:33	— —De novo review or arbitrary and capricious standard of review
§ 21:34	—Attorney’s fees—Factors in determining whether fee will be awarded
§ 21:35	— —Amount of fee

QUALIFIED RETIREMENT PLANS

- § 21:36 — —Other matters
- § 21:37 Action by Internal Revenue Service
- § 21:38 —Initial and continuing plan qualification
- § 21:39 —Excise taxes
- § 21:40 —Civil action
- § 21:41 Action by Department of Labor
- § 21:42 —Plan qualification
- § 21:43 —Obtaining returns, reports and other information
- § 21:44 —Civil action
- § 21:45 —Criminal penalties
- § 21:46 Action by Pension Benefit Guaranty Corporation
- § 21:47 Action by fiduciary
- § 21:48 —Civil action
- § 21:49 — —Injunction
- § 21:50 — —Appropriate relief
- § 21:51 — —Multiemployer plan contributions under ERISA
§ 515
- § 21:52 Action by employer
- § 21:53 —Equitable estoppel

PART VII. OTHER PLANS

CHAPTER 22. GOVERNMENTAL, CHURCH, AND EXEMPT ORGANIZATION RETIREMENT PLANS

- § 22:1 Generally
- § 22:2 —Definitions of governmental and church plans
- § 22:3 — —Governmental plan
- § 22:4 — —Church plan
- § 22:5 —Social security for state and local governmental
employees
- § 22:6 Section 403(b) plans
- § 22:7 Plan document
- § 22:8 Section 403(b) plans—Annuity contract
- § 22:9 —Custodial account
- § 22:10 —Retirement income account
- § 22:11 —Internal Revenue Code requirements
- § 22:12 — —Binding deferral agreement
- § 22:13 — —Annuity contracts
- § 22:14 —Exchange of contracts and transfers between
plans
- § 22:15 —Internal Revenue Code requirements—
Employee's rights nonforfeitable

TABLE OF CONTENTS

§ 22:16	— —Nondiscrimination requirements and universal availability requirement
§ 22:17	— —Deferral limitation
§ 22:18	Section 403(b)—Internal Revenue Code requirements—Roth accounts and rollovers to designated Roth accounts
§ 22:19	Section 403(b) plans—Internal Revenue Code requirements—Exclusion allowance (20% of includable compensation) eliminated
§ 22:20	— —Alternatives to 20% exclusion allowance eliminated
§ 22:21	— —Annuity contracts aggregated
§ 22:22	— —Custodial account
§ 22:23	— —Retirement income account
§ 22:24	— —Distributions
§ 22:25	— —Required minimum distribution
§ 22:26	— —Voluntary correction of section 403(b) failures
§ 22:27	—ERISA Title I requirements
§ 22:28	— —Participation and coverage
§ 22:29	— —Vesting
§ 22:30	— —Benefit accruals
§ 22:30.50	— —Fiduciary liability and disclosure with respect to participant directed investments
§ 22:31	— —Maintain records and provide information on benefits
§ 22:32	— —Funding requirements
§ 22:33	— —Qualified annuities
§ 22:34	— —Distributions
§ 22:35	— —Assignment and alienation of benefits
§ 22:36	— —Merger and consolidation of plan assets
§ 22:37	— —Plans maintained by more than one employer, predecessor plans, and employer groups
§ 22:38	—Tax treatment
§ 22:39	Section 457 plans
§ 22:40	—Internal Revenue Code requirements
§ 22:41	— —Coverage limited to employees and independent contractors
§ 22:42	— —Limitation on deferrals
§ 22:43	— —Catch-up deferrals
§ 22:44	— —Deferral agreement
§ 22:45	— —Time of distribution
§ 22:45.50	—Death benefit for active military service personnel
§ 22:46	—Internal Revenue Code requirements—\$7,000 cash out

QUALIFIED RETIREMENT PLANS

- § 22:47 — —Loans to participants
- § 22:48 — —Trust for governmental plan; plan assets
property of employer for tax-exempt entity
- § 22:49 — —Plan to plan transfers
- § 22:50 — —Penalty and excise taxes
- § 22:51 — —Failure to meet § 457 requirements
- § 22:52 — —QDROs
- § 22:52.50 — —Roth accounts and rollovers to designated
Roth accounts
- § 22:53 — —Rollover provisions
- § 22:53.50 — —Voluntary correction of Section 457 failures
- § 22:54 — —ERISA Title I and Title IV requirements
- § 22:55 — —Tax treatment of distributions
- § 22:56 — —Section 457(f) plans
- § 22:57 — —Qualified governmental excess benefit
arrangement
- § 22:58 Qualified retirement plans
- § 22:59 — —Coverage
- § 22:60 — —Vesting
- § 22:61 — —Other rules
- § 22:62 — —Prohibited transactions
- § 22:63 — —Plan Termination

CHAPTER 23. INTERNATIONAL ASPECTS OF EMPLOYEE BENEFITS

- § 23:1 Generally
- § 23:2 — —Summary of U.S. foreign tax treatment—Tax
treatment of U.S. citizens and residents working
abroad
- § 23:3 — —U.S. tax treatment of foreign subsidiaries
- § 23:4 Foreign deferred compensation plans (IRC § 404A)
- § 23:5 — —Requirements for qualified foreign plans
- § 23:6 — —Written plan
- § 23:7 — —Exclusive benefit of employees
- § 23:8 — —Ninety percent nonresident alien foreign service
- § 23:9 — —Elections
- § 23:10 — —Rules and deductions with respect to qualified
funded plans
- § 23:11 — —Timing of deductions
- § 23:12 — —Payments to certain entities
- § 23:13 — —Limitations on deductions and carryovers
- § 23:14 — —Rules and deductions with respect to qualified
reserve plans
- § 23:15 — —Additional limitations on both qualified funded and

TABLE OF CONTENTS

	qualified reserve plans—U.S. and foreign law limitations
§ 23:16	— —U.S. employees and U.S. employment
§ 23:17	— —Required information
§ 23:18	— —Actuarial assumptions; accounting methods
§ 23:19	Employees of foreign affiliates covered by § 3121(l) agreements (IRC § 406)
§ 23:20	—Inclusion of foreign affiliate employees under plan of American employer
§ 23:21	— —Social Security coverage agreement
§ 23:22	— —Benefits provided pursuant to plan
§ 23:23	— —Sole benefit coverage
§ 23:24	—Nondiscrimination requirements
§ 23:25	—Tax treatment of domestic employee
§ 23:26	—Deductibility of contributions
§ 23:27	Employees of domestic subsidiaries stationed abroad (IRC § 407)
§ 23:28	—Inclusion of domestic subsidiary employees under plan of U.S. parent
§ 23:29	—Nondiscrimination requirements
§ 23:30	—Tax treatment of domestic employee
§ 23:31	—Deductibility of contributions
§ 23:32	Exclusion of income and housing allowance by qualified U.S. persons (IRC § 911)
§ 23:33	—Definition of foreign earned income
§ 23:34	—Exclusion of foreign earned income
§ 23:35	—Exclusion or deduction of housing cost
§ 23:36	—Both spouses qualified individuals
§ 23:37	—Special rules for countries with U.S. restrictions on travel
§ 23:38	Taxation of compensation paid non-U.S. person
§ 23:39	—U.S. resident defined
§ 23:40	— —Legal immigrant
§ 23:41	— —Substantial presence
§ 23:42	—Taxation of nonresident alien
§ 23:43	—Nonresident alien engaged in U.S. trade or business
§ 23:44	—Coordination with income tax treaties
§ 23:45	—Withholding and payroll tax requirements
§ 23:46	Summary of employee benefits provided by certain non-U.S. countries
§ 23:47	—European Union
§ 23:48	— —Belgium
§ 23:49	— —Denmark
§ 23:50	— —France

- § 23:51 — —Germany
- § 23:52 — —Republic of Ireland
- § 23:53 — —Italy
- § 23:54 — —The Netherlands
- § 23:55 — —Spain
- § 23:56 — —The United Kingdom

PART VIII. PLANS IN MERGERS AND ACQUISITIONS

CHAPTER 24. EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION IN MERGERS AND ACQUISITIONS

- § 24:1 Generally
- § 24:2 Qualification rules in M & As
- § 24:3 —Anti-cutback rule (IRC § 411(d)(6))
- § 24:4 —Minimum participation rule for defined benefit plans (§ 401(a)(26))
- § 24:5 —Minimum coverage rule (§ 410(b))
- § 24:5.50 —Top-Heavy Rules (§ 416)
- § 24:6 —Definition of highly compensated employee (§ 414(q))
- § 24:7 —Nondiscrimination rules § 401(a)(4))
- § 24:8 —ADP/ACP nondiscrimination rules (§§ 401(k)(3) & 401(m))
- § 24:9 —Limit on Elective Deferrals (§ 402(g))
- § 24:10 —Annual Compensation Limit (§ 401(a)(17))
- § 24:10.50 —Benefit limits in years of plan consolidation (§ 415(b) & (c))
- § 24:11 —Plan mergers, spinoffs and transfers of assets—Non-diminution rule (§ 414(l)(1))
- § 24:12 —Intra-company spinoff from overfunded plan (§ 414(l)(2))
- § 24:12.50 —Catch up contributions under § 414(v) and Roth-Only Rule
- § 24:13 —Service with predecessor employer (§ 414(a))
- § 24:14 —Rollovers (§ 402)
- § 24:15 —Terminations and partial terminations (§ 411(d)(3))
- § 24:16 —Service credit (§ 411(a)(4)) and amendments to vesting schedule (§ 411(a)(10))
- § 24:17 —Notice of significant reductions in benefit accruals (ERISA § 204(h))

TABLE OF CONTENTS

§ 24:18	—In-service distribution restrictions (§ 401(k)(2)(B))
§ 24:19	—Restrictions on mandatory distributions over \$7,000 and automatic rollover of cashouts (§ 411(a)(11))
§ 24:20	—Notice and insider trading restrictions for pension blackout periods under SOA § 306
§ 24:21	—Multiple employer plans (§ 413(c))
§ 24:22	—Net unrealized appreciation and transfers of employer securities (§ 402(e)(4))
§ 24:23	—Limitations on contributions and benefits (§ 415) and post-termination payments to plan
§ 24:24	Methods of dealing with pension plans in M & As
§ 24:25	—Assumption of plan; plan spinoff; merger of plans; non-adoption of plan; freezing of old plan; terminating or partially terminating plan; clone- offset plan; transfer of assets and liabilities; inclusion of acquired employees in buyer's plan
§ 24:26	—Rollovers versus trust-to-trust transfers for defined contribution plans
§ 24:27	Hidden pension liabilities
§ 24:28	—Pension plan underfunding and contribution to plan versus purchase price adjustment
§ 24:29	—Capitalizing assumed liabilities in asset acquisitions (Webb)
§ 24:30	—Capitalizing severance paid in connection with a transaction (INDOPCO)
§ 24:31	—Minimum funding
§ 24:32	—PBGC termination liability
§ 24:33	—Controlled group rules
§ 24:34	—PBGC reportable events and notices
§ 24:35	—Multiemployer withdrawal liability
§ 24:36	—Multiple employer withdrawal liability and § 4062(e) liability
§ 24:37	—PBGC insurance premiums
§ 24:38	Other issues for qualified plans
§ 24:39	—Participant entitlement to benefits following corporate transactions
§ 24:40	—Pension parachutes
§ 24:41	—Reversion upon plan termination
§ 24:42	—Merger of overfunded and underfunded defined benefit plans, spinoffs from overfunded plans and pension buyouts
§ 24:43	Prohibited transactions, exemptions, ERISA plan asset rules and § 404(c) relief and corporate transactions

QUALIFIED RETIREMENT PLANS

- § 24:44 Employment, change in control and severance agreements in M & As
- § 24:45 —Assumption or renegotiation of agreements in transactions; retention agreements
- § 24:46 —Employment agreements generally
- § 24:47 —Change in control provisions and change in control agreements
- § 24:48 —Noncompete provisions and agreements
- § 24:49 —§ 409A consequences for employment and severance arrangements
- § 24:50 —Golden parachute rules (§ 280G)
- § 24:51 —Severance arrangements generally (case law regarding validity of severance arrangements, right to amend severance plans, asset sale as termination of employment, single and double triggers, and severance as ERISA welfare or pension plans)
- § 24:52 Nonqualified plans in M & As
- § 24:53 —Pre-AJCA constructive receipt rules
- § 24:54 —Transfer of deferred compensation arrangements in transactions
- § 24:55 —IRC § 409A deferred compensation rules
- § 24:56 —Deferred compensation as ERISA Plan for top-hat group
- § 24:57 —SEC registration
- § 24:58 —Rabbi trusts
- § 24:59 —Restricted stock grants and taxation under IRC § 83
- § 24:60 —Nonqualified stock options
- § 24:60.50 —Qualified equity grant deferrals
- § 24:61 —Incentive stock options
- § 24:62 —Stock appreciation rights
- § 24:63 —Restricted stock units and phantom stock
- § 24:64 —Performance unit and performance share plans
- § 24:65 —Profits interest awards
- § 24:66 —Liability for short-swing profit and SEC Rule 16b-3, and applicability to corporate transactions
- § 24:67 —\$1 million deduction limitation on executive compensation under IRC § 162(m)
- § 24:68 —Stock exchange rules for stock plans; Shareholder concerns with stock plans
- § 24:69 —Prohibitions of loans to executives under Sarbanes-Oxley Act
- § 24:70 Welfare plans in M & As
- § 24:71 —Excluding disabled employees in an asset sale and Lessard case

TABLE OF CONTENTS

§ 24:72	—MEWAs as result of transaction
§ 24:73	—Retiree health and ASC 715-60 and ASC 712
§ 24:74	—Prefunding retiree health
§ 24:75	—Modification of retiree welfare plans
§ 24:76	—Negotiating over retiree health obligations
§ 24:77	—Treatment in an asset sale of employees on disability or leave of absence
§ 24:78	—Cafeteria plans
§ 24:79	—COBRA continuation coverage rules
§ 24:80	—Health Insurance Portability & Accountability Act
§ 24:80.50	—Affordable Care Act
§ 24:81	—Withholding issues in acquisitions
§ 24:82	WARN Act and applicability to mergers and acquisitions
§ 24:83	Labor law issues in mergers and acquisitions
§ 24:84	General successor liability and application to pension and welfare obligations
§ 24:85	Other hidden liabilities and transactional considerations (letters of intent, ESOPs as acquisition tools, and general asset sale issues)
§ 24:86	ERISA representations; due diligence
§ 24:87	Employee benefit issues in loan agreements

Volume 3

I.R.S. PRE-APPROVED VOLUME SUBMITTER PLANS

Appendix A.	401(k) and Profit Sharing Plan and Summary Plan Description
Appendix B.	Defined Benefit Pension Plan And Summary Plan Description
Appendix C.	IRS Sample Language for Qualified Plans
Appendix D.	Sample ERISA Representations and Warranties
Appendix E.	IRS 401(k) Plan Correction Methods

Table of Laws and Rules

Table of Cases

Index