

Q&A With Choate's Arthur Meyers

Law360, New York (March 21, 2013, 2:29 PM ET) -- Arthur Meyers is a partner in Choate Hall & Stewart LLP's labor and employment benefits practice group. In his practice, he advises senior executives and boards on matters related to executive compensation; advises public and closely held entities on equity compensation; counsels profit and not-for-profit employers on retirement, deferred compensation and welfare benefit plans; and serves as Employee Retirement Income Security Act counsel to plan fiduciaries and private funds.

Q: What is the most challenging case you have worked on and what made it challenging?

A: A few years ago, I negotiated a new employment and change-of-control agreement for the president of a U.S. subsidiary of a foreign public company. At the same time that I was representing the U.S. employer, the parent company was renegotiating the terms of employment for the CEO of the parent company. Logically, one would expect the CEO's agreement to be handled first with the president's agreement to follow, but that isn't what happened. Instead, the parent company allowed the negotiations of the two agreements to go forward at about the same time.

The parent company was represented by non-U.S. outside counsel, and the two executives had separate lawyers. The parent company wanted the U.S. president's agreement to contain certain terms that were identical to those set forth in principal by the board for the CEO, but they failed to anticipate differences in the benefit plans among the two companies and the differences in tax laws across the two countries. Needless to say, the task proved much more complex and, at times, more difficult than everyone anticipated.

Foreign jurisdictions often have greater restrictions on an employer's right to terminate employees and some concepts of foreign employment law do not have a U.S. analog. Foreign tax laws, on the other hand, often provide more flexibility on the time and form of payments than U.S. tax laws. Cultural differences, as well as the U.S. president's higher (U.S. centric) expectations on compensation levels and severance pay, further complicated discussions. Ultimately, the assignment was successfully completed.

Q: What aspects of your practice area are in need of reform and why?

A: The rules governing tax-qualified retirement plans need an overhaul. First, the overall scheme of regulation is far too complicated. Congress, the Internal Revenue Service and the U.S. Department of Labor should simplify the requirements on many topics such as reporting and nondiscrimination testing.

Second, the qualified plan rules need to be modified to encourage business owners and executives to maintain employer-based retirement plans. Substantially raising or eliminating the ceiling on compensation that applies to tax-qualified plans would be a good place to start.

Finally, the rules on plan funding need to be aligned with “real-world” assumptions. For example, the rate of return on assets that can be assumed for actuarial and financial accounting disclosure (particularly government plans) warrants a close look.

Q: What is an important issue or case relevant to your practice area and why?

A: Executive compensation litigation is a very important issue today for those of us who represent management and boards. In recent months, plaintiffs’ securities lawyers have sought to enjoin public company shareholders’ meetings by raising executive compensation disclosure concerns that go beyond the well-established requirements of applicable law and exchange listing requirements.

Naturally, it can be an uphill struggle to convince a court that the plaintiffs have not stated a valid claim such that the court should grant a company’s motion to dismiss. There are steps that companies can take to increase their odds in court, but too often, the practicalities are such that the cases settle quickly for not much more than attorneys’ fees.

Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.

A: Jim O’Reilly, in-house corporate and securities counsel at Danaher Corporation, immediately comes to mind. Jim researches the relevant issues ahead of time and is always well prepared to work with outside counsel. He does a great job of drafting equity plan documents and agreements for review and issue spotting. Because of his diligence, he is able to reduce Danaher’s legal bills compared to many other in-house counsel.

Q: What is a mistake you made early in your career and what did you learn from it?

A: As a freshly minted law school graduate, I didn’t ask enough questions of senior lawyers who mentored me very early in my career. I tried too hard (often off the clock) to figure it out on my own. While a newer lawyer must do a certain amount of background research, thoughtful inquiries posed to more experienced lawyers leads to a better work product and greater practice efficiencies. Notwithstanding the occasional gruff response from some lawyers, most senior lawyers are quite willing to make the path easier for their successors.

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