

TABLE OF CONTENTS

Volume 1

Introduction	lv
--------------------	----

CHAPTER 1

What Is a Pension Plan?

§ 1.01	Pension Plan Defined	1-3
§ 1.02	The Basic Ingredients of a Pension Plan.....	1-5
[1]	Plan Established by Employer	1-6
[2]	Definitely Determinable Benefits.....	1-6
[3]	Incidental Benefits.....	1-7
[4]	Systematic Payment of Benefits.....	1-8
[5]	What Is a “Qualified Joint and Survivor Annuity”?	1-8
[a]	Election to Waive.....	1-11
[i]	Waiver of Thirty-Day Period for QJSA Explanation.....	1-12
[ii]	Provision of QJSA Explanation After Annuity Starting Date	1-12
[b]	Spousal Consent.....	1-13
[c]	Spousal Consent for Plan Loans	1-14
[d]	Restrictions on Cash-Outs	1-14
[i]	Immediate Distribution of the Present Value of a QJSA or QPSA	1-15
[ii]	Proposed Regulations	1-16
[e]	IRS Issues Final Regulations on Notice/Consent Rules	1-16

EMPLOYEE BENEFITS LAW

	[f]	Special Rules Under Code Section 417(a)(7) for Written Explanations Provided by Qualified Retirement Plans After Annuity Starting Dates.	1-16
	[6]	What Is a “Qualified Preretirement Survivor Annuity”?	1-17
	[a]	Election to Waive.	1-18
	[b]	Spousal Consent	1-18
	[c]	Restrictions on Cash-Outs	1-18
	[d]	Increased Costs.	1-18
	[7]	When Must Payment Begin?	1-19
	[8]	Payment of Benefits on Termination of Employment	1-20
	[9]	Withdrawals During Employment	1-20
	[10]	IRS Sample Plan Provisions.	1-21
	[11]	Qualified Optional Survivor Annuity.	1-22
§ 1.03		Kinds of Pension Plans.	1-22.1
	[1]	Fixed-Benefit Plans.	1-22.1
	[2]	Unit-Benefit Plans.	1-23
	[3]	Variable or Equity Annuities	1-25
	[4]	Cash Balance Plans.	1-25
	[a]	Single Sum Distributions	1-26
	[b]	How Do Cash Balance Plans Differ from 401(k) Plans?	1-27
	[c]	Conversion of a Defined Benefit Plan to a Cash Balance Plan.	1-28
	[d]	Pension Protection Act Changes to Minimum Vesting and Accrual Rules.	1-29
	[i]	New Definitions Under Proposed Regulations	1-29
	[ii]	PPA Changes Addressed by the Regulations	1-30
	[iii]	Market Rate of Return Limitation	1-31
	[iv]	Safe Harbor from Age Discrimination.	1-33
	[v]	Plan Conversions.	1-35
	[e]	Final Regulations for Computing Accrued Benefits and Age Discrimination Testing in Cash Balance Plans.	1-37

TABLE OF CONTENTS

vii

	[i] Statutory Hybrid Plans	1-38
	[ii] Safe Harbor from Age Discrimination	1-39
	[iii] Conversion Amendment	1-41
	[iv] Interest Credits	1-41
	[v] Preservation of Capital Rule	1-42
	[vi] Anti-Cutback Rules	1-43
	[f] SECURE 2.0 Act of 2022	1-43
[5]	Eligible Combined Defined Benefit Plans and Qualified Cash or Deferred Arrangements	1-44
	[a] Generally	1-44
	[b] Requirements That Apply to the Defined Benefit Plan	1-45
	[c] Requirements That Apply to the Applicable Defined Contribution Plan	1-45
	[d] Annual Reporting Requirements That Apply to Eligible Combined Plans	1-47
	[e] Reasons Why Eligible Combined Plans Were Established	1-47
§ 1.04	Optional Benefits Prior to Normal Retirement Age	1-48
	[1] Early Retirement	1-48
	[2] Disability Retirement	1-48
	[3] Death Benefits	1-49
	[4] Health and Accident Benefits	1-49
	[5] Incidental-Payment Test for Beneficiaries	1-50
§ 1.05	Ceiling on Benefits	1-52
	[1] Limitation for Defined-Benefit Plans	1-52
	[a] Qualified Plan Benefit Limits Increased by EGTRRA	1-52
	[b] Qualified Plan Benefit Limits Prior to EGTRRA	1-54
	[2] Excise Tax on Excess Distributions	1-60
	[3] Application of Limitations to Combination of Plans	1-61
	[4] Special Rule for Combinations of Plans in Effect on September 2, 1974	1-63
	[5] Aggregation of Plans for Purposes of Limitations	1-63
	[6] Employer 50% Common Control Test	1-64
	[7] Affiliated Service Group	1-64

CHAPTER 2

What Is a Profit-Sharing Plan?

§ 2.01	Profit-Sharing Plan Defined	2-8
§ 2.02	Qualified Profit-Sharing Plans	2-10
[1]	Plan Established by Employer	2-10
[2]	Availability of Profits	2-10
[3]	Employer Contribution Formula	2-11
[4]	Allocation of Funds	2-11
	[a] Definite Predetermined Formula	2-12
	[b] Earmarked Investments	2-12
[5]	Distribution of Funds	2-12
[6]	Hardship Distributions	2-14
[7]	Qualified Birth and Adoption Distributions	2-20
[8]	Domestic Abuse Victim Distributions	2-21
[9]	Terminally Ill Individual Distributions	2-22
[10]	Long Term Care Contracts Purchased with Retirement Plan Distributions	2-23
[11]	Qualified Disaster Recovery Distributions	2-24
[12]	Emergency Personal Expense Distributions	2-25
[13]	Distribution at the Option of the Trustee or Pension Committee	2-26
[14]	Loans	2-26
	[a] In General	2-26
	[b] Department of Labor Regulations	2-35
	[i] Availability	2-36
	[ii] Adequate Security	2-36
	[iii] Additional Measures	2-37
	[iv] Reasonable Rate of Interest	2-37
	[v] Specific Plan Provisions	2-38
	[vi] Timeliness of Loan Repayments	2-38
	[c] Repaying Exempt Loan with Salary Reduction Contributions	2-38
	[d] Expansion of Loans to Business Owners	2-39
[15]	Methods of Distribution	2-39
[16]	Contributions to the Plan	2-47
	[a] Contribution Limits Increased by EGTRRA	2-49
	[i] Defined Contribution Plans	2-49
	[ii] Elective Deferral Limitations	2-49
	[iii] Tax-Exempt Organization and State or Local Governmental Plans	2-50

TABLE OF CONTENTS

ix

		[iv] Compensation Limit	2-51	
		[v] State “Non-Conformity” with EGTRRA	2-52	
	[b]	Catch-up Contributions Enacted by EGTRRA	2-52	
[17]		Allocation Formulas	2-55	
	[a]	Salary Plus Years of Service	2-55	
	[b]	Salary Weighted for Years of Service	2-56	
	[c]	Formula With a Years-of-Service Factor	2-56	
	[d]	Disabled Employees	2-60	
[18]		Investment Diversification	2-60	
[19]		IRS Sample Plan Provisions	2-60	
[20]		Military Spouse Eligibility Credit	2-61	
[21]		Startup Cost Credit and Employer Contribution Credit	2-61	
	[22]	Optional Treatment of Profit Sharing Contributions as Roth Contributions	2-62	
§ 2.03		Thrift or Savings and Investment Plans	2-64	
§ 2.04		Stock Bonus Plans	2-66	
	[1]	Employee Stock Ownership Plans	2-66	
		[a] Generally	2-67	
		[b] Allocation of Employer Securities	2-69	
		[c] Loans to a LESOP	2-69	
		[d] Participant Right	2-69	
		[e] Right of First Refusal	2-69	
		[f] Valuation of Employer Securities	2-70	
		[g] Uses for LESOPs	2-70	
		[h] Diversification of Investments	2-72	
			[i] Nature of Diversification	2-72
			[ii] Alternative Method	2-72
		[i] Independent Appraiser	2-73	
		[j] Timing of Distributions	2-73	
			[i] Commencement of Distribution	2-73
			[ii] Limited Distribution Period	2-74
		[k] Put Option Requirements	2-74	
		[l] Pass-Through Voting Rights	2-75	
		[m] Prohibited Allocations	2-75	
		[n] S Corporations	2-76	
		[o] Gratuitous Transfers	2-76	
			[i] Qualified Gratuitous Transfer	2-76
			[ii] Plan Requirement	2-77
			[iii] Treatment of Transferred Stock and Allocation Rules	2-77
	[2]	The Tax Credit ESOP	2-78	

EMPLOYEE BENEFITS LAW

	[a]	Basis for Employer Contributions	2-78
	[b]	Voluntary Employee Contributions . . .	2-79
	[c]	Allocation of Employer Securities. . . .	2-80
	[d]	Plan Expenses	2-80
	[e]	Participant Rights	2-80
	[f]	Adoption Date	2-81
	[g]	Distributions	2-81
	[h]	Fiduciary Rules	2-81
	[i]	Tax Credit Repeal	2-82
[3]		The KSOP	2-82
[4]		Employee Stock Purchase Plans	2-83
	[a]	Introduction	2-83
	[b]	Statutory Requirements for Section 423 Plans	2-84
	[i]	Eligible Employees	2-85
	[ii]	Shareholder Approval	2-85
	[iii]	Limitations on Options Granted to 5% Owners	2-86
	[iv]	Nondiscrimination Rules	2-87
	[v]	Rights and Privileges	2-87
	[vi]	Option Exercise Price	2-88
	[vii]	Term of Options	2-89
	[viii]	Purchase Limitations	2-90
	[ix]	Nontransferability	2-92
	[c]	Tax Consequences	2-93
	[i]	Employee	2-93
	[ii]	Employer	2-96
	[d]	Accounting Treatment	2-96
	[i]	APB Opinion No. 25	2-96
	[ii]	FAS 123	2-97
	[e]	Application of Federal Securities Laws	2-98
	[i]	Introduction	2-98
	[ii]	Registration Requirements	2-99
	[iii]	Section 16 Requirements	2-100
§ 2.05		Money Purchase Pension Plans	2-102
	[1]	Principles of Money Purchase Plans	2-102
	[2]	Transfers and Rollovers from Money Purchase Plans to Profit Sharing Plans	2-104
§ 2.06		Target-Benefit Plans	2-105
§ 2.07		Cash or Deferred Plans	2-106
	[1]	Cap on Elective Deferrals	2-109
	[2]	Current Nondiscrimination Tests	2-109
	[3]	Meeting the ADP/ACP Tests	2-111
	[a]	Treatment of Excess Contributions . . .	2-111
	[b]	Treatment of Excess Aggregate Contributions	2-112

TABLE OF CONTENTS

xi

[c]	Testing Techniques to Avoid Excess Contributions and Excess Aggregate Contributions	2-113
[i]	Restructuring	2-113
[ii]	Recharacterization	2-114
[iii]	Reclassification	2-114
[iv]	QMACs and QNECs	2-114
[d]	Risk-Reducing Design Features	2-115
[e]	Contribution Rate Adjustments	2-115
[f]	Fail-Safe Mechanisms	2-116
[i]	Limitations on Elective Contributions	2-116
[ii]	Irrevocable Elections	2-117
[g]	Safe-Harbor Nondiscrimination Rules	2-117
[i]	ADP Safe-Harbor Test	2-117
[ii]	ACP Safe-Harbor Test	2-119
[iii]	Other Matters	2-119
[h]	Current or Prior Year Testing Method	2-119
[i]	Generally	2-119
[ii]	Determination of ADP and ACP for NHCEs Using Prior Year Data	2-121
[iii]	Use of Current Year Testing Method	2-122
[iv]	Use of QNCs and QMACs under Prior Year Testing Method	2-123
[v]	First Plan Year Rule under Prior Year Testing Method	2-124
[vi]	Changes in the Group of Eligible NHCEs Where Plan Uses Prior Year Testing Method	2-125
[vii]	Change from Current Year to Prior Year Testing Method	2-129
[viii]	Anti-Abuse Provision	2-132
[ix]	Plan Provisions Regarding Testing Method	2-133
[x]	Distribution of Excess Contributions and Excess Aggregate Contributions	2-134
[xi]	Repeal of Multiple Use Test for 401(k) Plans	2-136
[i]	Changes to Rules for 401(k) Testing	2-137

EMPLOYEE BENEFITS LAW

	[i]	Taxation of Corrective Distributions	2-137
	[ii]	EACA Distributions.	2-138
	[iii]	Gap-Period Income	2-138
	[iv]	Annual Addition Violations . . .	2-139
[4]		Penalty Taxes Relevant to Cash or Deferred Arrangements	2-139
[5]		Uniform Definition of Highly Compensated Employee	2-140
	[a]	IRS Notice 97-45	2-141
		[i] Introduction and Summary . . .	2-141
		[ii] Required Amendments	2-142
		[iii] Definitions of Determination Year and Look-Back Year. . .	2-142
		[iv] Elections: Top-Paid Group or Calendar-Year Data Election	2-142
		[v] Consistency Requirement for Elections	2-143
		[vi] HCE Status Determination: Miscellaneous Issues.	2-144
		[vii] Family Aggregation.	2-145
	[b]	Periods for Determining HCE Status	2-146
		[i] Determination Years and Look-Back Years	2-146
		[ii] Applicable Year.	2-146
	[c]	Implementation of Elections	2-147
		[i] Top-Paid Group Election.	2-147
		[ii] Calendar-Year Data Election . . .	2-147
		[iii] No Separate Notification Requirement	2-147
	[d]	Consistency Requirement for Elections.	2-148
		[i] Generally	2-148
		[ii] Interaction of Top-Paid Group Election and Calendar-Year Data Election.	2-148
		[iii] Multiemployer Plans	2-148
		[iv] Transition Relief for Years Prior to 2000	2-148
	[e]	Qualified Retirement Plan Amendments for HCE Definition	2-148
		[i] Qualified Plans That Must Be Amended	2-148
		[ii] Amendment Date.	2-149

TABLE OF CONTENTS

xiii

	[f]	Other Issues Relating to Determination of HCE Status	2-149
	[i]	Determining HCE Status for 1997	2-149
	[ii]	Highly Compensated Former Employees	2-150
	[iii]	Family Attribution and Determining 5% Ownership Interest	2-150
	[g]	Examples	2-150
	[6]	Wraparound Plans and Similar Arrangements	2-154
	[7]	Automatic Enrollment in Cash or Deferred Plans	2-154
	[a]	Generally	2-154
	[b]	Incentive for Adoption	2-159
	[c]	Investment of Contributions	2-160
	[8]	Retirement Savings Initiative	2-165
	[a]	Generally	2-165
	[b]	New Savings Initiatives	2-165
	[i]	Expand Automatic Enrollment in Section 401(k) and Other Retirement Savings Plans	2-165
	[ii]	Create Easier Ways to Save Tax Refunds	2-166
	[iii]	Allow Unused Leave to Be Converted to 401(k) Savings	2-167
	[iv]	Explain Saving Options	2-167
	[c]	Building on Existing Proposals	2-167
	[d]	IRS Revenue Ruling 2009-30	2-168
	[i]	Generally	2-168
	[ii]	First Example	2-168
	[iii]	Second Example	2-169
	[iv]	Analysis	2-170
	[9]	Automatic Enrollment Requirements under Code Section 414A	2-172
	[10]	Section 401(k) Fix-It Guide	2-174
	[11]	Contingent Benefit Rule	2-174
	[12]	Long-Service Part-Time Employees	2-175
§ 2.08		Nondiscrimination Requirements for Employer Matching Contributions and Employee Contributions	2-178
	[1]	The Nondiscrimination Test	2-178

EMPLOYEE BENEFITS LAW

	[2]	Alternative Method of Satisfying Special Nondiscrimination Test for Matching Contributions.	2-180
	[3]	After-Tax Contributions	2-180
§ 2.09		Recovery of After-Tax Employee Contributions.	2-181
§ 2.10		SIMPLE 401(k) Plans.	2-182
§ 2.11		Valuation and Adjustment to Individual Accounts	2-184
§ 2.12		Limitations on Contributions to Defined- Contribution Plans	2-185
	[1]	In General	2-185
	[2]	Contribution Limits Increased by EGTRRA	2-187
	[a]	Defined Contribution Plans	2-187
	[b]	Elective Deferral Limitations.	2-187
	[c]	Tax-Exempt Organization and State or Local Governmental Plans	2-188
	[i]	Code Section 457 Plans	2-188
	[ii]	Tax-Sheltered Annuities	2-189
	[3]	Deduction Limits Increased by EGTRRA.	2-189
	[a]	Money Purchase Plans	2-190
	[b]	Definition of Compensation.	2-190
	[c]	Tax on Nondeductible Contributions.	2-191
	[d]	Elective Deferrals Not Taken Into Account for Purpose of Deduction Limits.	2-191
§ 2.13		2004 Final Section 401(k)/401(m) Regulations and Proposed 2009 Amendments.	2-193
	[1]	Generally.	2-193
	[2]	Effective Date.	2-193
	[3]	Summary of Changes.	2-193
	[a]	Prefunding of Contributions.	2-193
	[b]	“Targeted Contributions” (“Bottom-Up Contributions”)	2-194
	[c]	Gap Period Income.	2-195
	[d]	General Anti-Abuse Rule.	2-195
	[e]	401(k) Safe Harbor Provisions	2-196
	[4]	Suspension or Reduction of Safe Harbor Nonelective Contributions	2-200
	[a]	Elective and Nonelective Contributions	2-200
	[b]	Matching Contributions	2-201
	[c]	Tax Exempt Plans	2-202
	[d]	Proposed Regulations.	2-203
§ 2.14		Roth 401(k) Contribution Program	2-205
§ 2.15		Section 403(b) Plans.	2-208
	[1]	Written Plan Document Requirement.	2-208
	[2]	Audits	2-209

TABLE OF CONTENTS

xv

	[3] Field Assistance Bulletin 2009-02— Transitional Relief Regarding Reporting Requirements	2-210
§ 2.16	Section 414(x) Plans	2-212
§ 2.17	Starter 401(k) Plans	2-216

CHAPTER 3

Pension or Profit-Sharing—What to Consider

§ 3.01	In General	3-7
§ 3.02	Common Considerations	3-8
	[1] What Eligibility Requirements Will Be Set Up?	3-8
	[a] Methods of Limiting Eligibility	3-8
	[i] Age	3-8
	[ii] Service	3-9
	[iii] Other Classifications	3-9
	[b] Participation Tests	3-10
	[i] Plans Beginning After 1988	3-10
	[ii] Plans Beginning After 1988	3-12
	[2] What Vesting Will Be Provided?	3-14
	[a] Plan Years Beginning Prior to 1989	3-14
	[i] 5-to-15-Year Vesting	3-14
	[ii] 10-Year Vesting	3-14
	[iii] Rule of 45 Vesting	3-14
	[b] Plan Years Beginning After 1988	3-15
	[c] Plan Years Beginning After 2006	3-15
	[d] Deferral of Distribution	3-16
	[e] Noncompetition and Dishonesty Provisions	3-16
	[f] Spendthrift Clause	3-17
	[g] Death or Disability	3-17
	[h] Faster Vesting of Employer Matching Contributions	3-17
	[3] Employee Contributions	3-19
	[a] Amount of Employee Contributions	3-20
	[b] Allocation of Accrued Benefits	3-21
	[c] Interest Rate on Employee Contributions	3-21
	[d] Employee Voluntary Contributions to Deemed IRAs	3-21
	[4] Distribution Rules for Qualified Plans	3-24
	[a] Distributions Prior to Age 59½	3-24
	[b] Before-Death Distribution Rules	3-25
	[c] After-Death Distribution Rules	3-26

EMPLOYEE BENEFITS LAW

[d]	Minimum Distribution Rules	3-28
[i]	Small Business Job Protection Act of 1996	3-28
[ii]	IRS Guidance on Employees Who Attained Age 70½ Before January 1, 1997, and Who Have Not Retired	3-29
[iii]	Additional IRS Guidance	3-30
[iv]	Life Expectancy Tables Modified	3-34
[v]	IRS Regulation	3-34
[vi]	Final Regulations	3-40.1
[e]	Elimination of “Same Desk” Rule	3-40.5
[f]	Rollovers Disregarded as Cash-Out Amounts	3-40.6
[g]	Optional Forms of Benefits	3-40.7
[i]	Conditions Under which Distribution Options May Be Eliminated	3-40.7
[ii]	Elimination of Optional Forms of Benefits where a Defined Contribution Plan Offers a Single-Sum Distribution	3-40.8
[iii]	Regulations Required on Plan Amendments Reducing Benefits	3-40.8
[iv]	Final Regulations on Elimination of Forms of Distribution in Defined Contribution Plans	3-40.9
[v]	Factors Considered in Judging Whether Amendment Has a More than <i>De Minimis</i> Effect	3-40.10
[h]	Distributions During Working Retirement	3-40.11
[i]	Retirement Age	3-40.11
[ii]	Anti-Cutback Relief	3-40.12
[i]	Retiree Cash-Out Windows	3-40.13
[i]	IRS Guidance	3-40.13
[ii]	Implications	3-40.14
[5]	Limits on Benefits and Contributions	3-40.15
[a]	Defined Benefit Plan Limits	3-40.15
[i]	Normal Retirement Age	3-40.15
[ii]	Early Retirement Reductions	3-40.15
[iii]	Increases for Later Retirement	3-40.16

TABLE OF CONTENTS

xvii

	[iv]	Ten-Year Phase-In	3-40.16
	[v]	Governments and Tax-Exempt Organizations	3-40.16
	[b]	Defined Contribution Plan Limits	3-40.17
	[i]	Dollar Limit	3-40.17
	[ii]	Employee Contributions	3-40.17
	[iii]	Post-Retirement Medical Benefits	3-40.17
	[c]	COLA Arrangements	3-40.17
	[d]	Incorporation by Reference	3-40.18
	[e]	Preservation of Accrued Benefit	3-40.18
	[f]	Combined Limit	3-40.18
	[g]	1994 Changes to Defined Benefit and Defined Contribution Plan Limits and Highly Compensated Employee Thresholds	3-40.19
	[h]	1994 Interest Rate and Mortality Table Changes and post-RPA Guidance on RPA's Changes	3-40.20
	[i]	Restoration Payments	3-40.21
	[j]	2005 Contribution, Benefit and Compensation Limits	3-40.22
[6]		Selection of the Funding Medium	3-40.22
[7]		Uses of Life and Medical Insurance	3-40.23
	[a]	Incidental Benefit Rule	3-40.23
	[b]	Nondiscrimination Rules for Group Term Life Insurance	3-40.24
	[i]	Eligibility Requirements	3-40.25
	[ii]	Benefit Requirements	3-40.25
	[iii]	Consequences of Discriminatory Classification	3-40.25
	[iv]	Revised Imputed Income Table	3-40.25
[8]		Plan Investments	3-40.26
[9]		Should the Employer Set Up an Administrative Committee?	3-40.27
[10]		Selection of Insurance Carriers for Annuity Purchases	3-40.28
§ 3.03		Pension Plan Considerations	3-40.32
	[1]	What Retirement Benefits Should the Plan Provide?	3-40.32
	[2]	Integration with Social Security	3-40.32
	[a]	Defined Contribution Plans	3-40.33
	[b]	Defined Benefit Plans—Excess Plans	3-40.33

	[c]	Defined Benefit Plans—Offset Plans	3-40.33
	[3]	Definition of Compensation	3-40.34
	[4]	Past-Service Credit	3-40.35
	[5]	Benefit Formulas	3-40.35
	[6]	Death Benefits and Their Estate Tax Consequences	3-40.35
	[7]	Disability Retirement	3-40.36
	[8]	Other Plan Benefits	3-40.37
	[9]	Methods of Paying Retirement Benefits	3-40.37
	[a]	Qualified Joint and Survivor Option	3-40.37
	[b]	Straight Life Annuity	3-40.38
	[c]	Period-Certain Option	3-40.38
	[d]	Fixed-Amount or Fixed-Period Installments	3-40.38
	[e]	Level-Income Benefit	3-40.38
	[f]	Qualified Optional Survivor Annuity	3-40.38
	[g]	Single Sum Distribution	3-40.38
	[10]	When Should a Participant Retire?	3-40.38
	[a]	Early Retirement	3-40.39
	[b]	Deferred Retirement	3-40.39
	[11]	ERISA's Minimum Funding Standards	3-40.40
	[12]	Methods of Accruing Benefits	3-40.41
	[13]	Plan Termination Insurance	3-40.41
	[a]	Covered Benefits	3-40.42
	[b]	Employer Liability to the PBGC	3-40.42
§ 3.04		Profit-Sharing Plan Considerations	3-40.43
	[1]	What Profits Will Be Contributed?	3-40.43
	[2]	Treatment of Forfeitures	3-41
	[3]	How Will the Contributions Be Allocated?	3-42
	[4]	What Valuation and Accounting Procedures Can Be Used?	3-42
	[5]	Should the Plan Permit Loans or Withdrawals?	3-43
	[6]	How and When Should Benefits Be Paid?	3-44
	[7]	Should the Trust Invest in Employer Stock?	3-46
§ 3.05		SECURE Act Makes Significant Pension Law Changes	3-47
	[1]	Changes to the Required Minimum Distribution (RMD) Rules	3-48
	[a]	Lifetime RMDs	3-48
	[b]	Distributions After Death but Before Participant's Required Beginning Date	3-49

TABLE OF CONTENTS

xix

	[i] Prior Rules	3-49
	[ii] New Rules	3-50
	[c] Distributions When Death Occurs After Participant's Required Beginning Date	3-53
	[d] Effect of New Rules on Planning	3-53
	[e] Planning Considerations to Address New Rules	3-54
[2]	New Type of Multiple Employer Plan	3-56
[3]	New Mandate to Cover Long-Term Part-Time Employees	3-57
[4]	Tax Credit for Small Employers Who Establish New Plans	3-57
[5]	Changes to 401(k) Plan Rules	3-57
	[a] Changes to Qualified Automatic Contribution Arrangement ("QACA")	3-57
	[i] Current Rule	3-57
	[ii] New Rule	3-58
	[iii] Effective Date	3-58
	[b] Nonelective Safe Harbor Change	3-58
	[i] Current Rule	3-58
	[ii] New Rule	3-58
	[iii] Effective Date	3-58
	[c] Portability of Lifetime Options	3-58
	[i] Current Rule	3-58
	[ii] New Rule	3-59
	[iii] Effective Date	3-59
[6]	Modification of Non-Discrimination Testing Rules for "Soft" Frozen Defined Benefit Plans	3-59
[7]	Provisions Relating to Lifetime Income Options	3-59
[8]	Ten-Fold Increase in Form 5500 Increased Penalties	3-60
[9]	Plans Can be Adopted When Tax Return Due	3-61
[10]	Remedial Amendment Period	3-61
§ 3.06	SECURE Act Impacts Employer-Provided Retirement Plans	3-62
	[1] Coverage and Contributions	3-62
	[a] Required Automatic Enrollment and Escalation Provisions for New Plans	3-62
	[i] Mandatory Provisions	3-62
	[ii] New Plan Defined	3-63
	[iii] Exceptions	3-63

EMPLOYEE BENEFITS LAW

	[iv]	Mergers, Spinoffs and MEPs . . .	3-63
	[v]	Excluded Classes and Universal Availability	3-63
	[b]	Saver's Matching Contribution	3-64
	[c]	Increase in Catch-Up Contributions	3-64
	[d]	Optional "Rothification" Employer Matching and Nonelective Contributions	3-65
	[e]	Matching Contributions for Student Loan Payments	3-65
	[f]	<i>De Minimis</i> Incentives to Improve Retirement Plan Participation	3-65
	[g]	Improving Coverage for Long-Service Part-Time Employees	3-65
	[h]	Emergency Savings Accounts Linked to Retirement Plans	3-66
	[i]	IRS Notice 2024-22	3-66
	[ii]	DOL Q&A Guidance	3-67
	[i]	Tax Credits for Small Employers	3-68
[2]		Retirement Plan Distributions	3-69
	[a]	Increase in Required Beginning Date	3-69
	[b]	Elimination of Pre-Death Required Minimum Distributions for Roth Amounts	3-69
	[c]	Withdrawals for Certain Emergency Expenses	3-69
	[d]	Increase in Small Benefit Cashout Limit and Offer of Automatic Portability Provision	3-69
	[e]	Remove Required Minimum Distribution Rule Barriers to Lifetime Income	3-69
	[f]	Expand Availability of Qualified Longevity Annuity Contracts	3-70
	[g]	Reliance on Employee Certification of Hardship	3-70
	[h]	Penalty-Free Withdrawals from Retirement Plans for Cases of Domestic Abuse	3-70
	[i]	Penalty-Free Withdrawals for Individuals with Terminal Illnesses	3-70
	[j]	Permanent Rules for Relief in Connection with Qualified Federal Disasters	3-71

TABLE OF CONTENTS

xxi

[k]	Participant Disclosure Requirements for Lump Sum Distribution Windows	3-71
[l]	Requirement to Periodically Provide Paper Benefit Statements.	3-71
[3]	Multiple Employer Plans, Pooled Employer Plans, and Groups of Plans	3-71
[a]	403(b) Plan Multiple Employer Plans and Pooled Employer Plans	3-71
[b]	Contribution Collection Procedures for PEPs	3-72
[c]	Retirement Plan Startup Costs Tax Credit	3-72
[d]	Group of Plans Audit Requirement	3-72
[e]	Participation in MEPs and PEPs Becomes an Option	3-72
[f]	Auto-Enrollment for 403(b) Plans	3-73
[g]	Special MEP and PEP Requirements	3-73
[4]	Retirement Plan Rules and Administration	3-73
[a]	Recovery of Overpayments	3-73
[b]	Reduction in Excise Taxes for Required Minimum Distribution Failure	3-74
[c]	Expansion of Employee Plans Compliance Resolution System . . .	3-74
[d]	Amendments to Increase Benefit Accruals for Previous Plan Year Allowed Until Employer Tax Return Due Date	3-74
[e]	Establishment of Retirement Savings Lost and Found	3-75
[f]	Streamline Notice Requirements to Unenrolled Employees.	3-75
[g]	Elimination of Barriers for 403(b) Plans to Utilize Certain Investment Vehicles	3-75
[h]	Safe Harbor for Corrections of Employee Elective Deferral Failures	3-75
[i]	Provisions Relating to Plan Amendments	3-76

CHAPTER 3A

Tax Consequences

§ 3A.01	Tax Treatment of Employer Contributions	3A-11
[1]	Nonqualified Plans	3A-11
[a]	General Rule	3A-11
[b]	FICA and FUTA Withholding from Nonqualified Deferred Compensation Plans	3A-12
[c]	Post-2004 Changes for Amounts Deferred Under Nonqualified Deferred Compensation Plan	3A-14
[i]	Notice 2007-78	3A-14
[ii]	Notice 2007-86	3A-19
[iii]	Notice 2007-89	3A-20
[iv]	Notice 2007-100	3A-24
[d]	IRS Deferred Compensation Regulations	3A-27
[i]	Code Section 409a - General Overview	3A-28
[ii]	Options and Other Stock Rights	3A-29
[iii]	Severance	3A-30
[iv]	Code Section 457	3A-33
[v]	Reimbursement and Tax Gross-Up	3A-36
[vi]	Legal Settlement	3A-36
[vii]	Indemnification Arrangements	3A-37
[viii]	Revised Plan Aggregation Rules	3A-37
[ix]	Corporate Transactions	3A-37
[x]	Plan Termination And Liquidation	3A-38
[xi]	Coverage of Deferred Compensation Rules	3A-38
[xii]	Calculation of Income Inclusion for Failure to Satisfy 409A	3A-39
[xiii]	Voluntary Correction Program for 409A Operational Failures—IRS Notice 2008-113	3A-40
[xiv]	Voluntary Correction Program for 409A Document Failures—IRS Notice 2010-6	3A-42

TABLE OF CONTENTS

xxiii

[e]	Treasury Executive Compensation	
	Restrictions Under TARP	3A-48
[i]	Compliance and Certification . . .	3A-49
[ii]	Enhanced Conditions on Executive Compensation Going Forward	3A-49
[iii]	Long-Term Regulatory Reform: Compensation Strategies Aligned With Proper Risk Management and Long-Term Value and Growth.	3A-51
[iv]	TARP and Section 409A.	3A-52
[2]	Qualified Plans	3A-54
[a]	Time for Payment.	3A-54
[b]	What Constitutes Payment?	3A-54
[c]	Deductible Limits	3A-55
[i]	Pension or Defined- Benefit Plans	3A-55
[ii]	Profit-Sharing and Stock Bonus Plans or Defined- Contribution Plans	3A-58
[iii]	Deduction Limits Increased by EGTRRA.	3A-59
[iv]	Overall Limitation	3A-63
[v]	Excise Tax on Nondeductible Contributions.	3A-65
[vi]	Overstatement of Pension Liabilities.	3A-66
[d]	Employee Stock Ownership Plans. . . .	3A-66
[i]	Tax-Free Rollover on Sale to ESOP.	3A-69
[ii]	Deductibility of Dividend Distributions	3A-70
[iii]	Interest Exclusion on ESOP Loans	3A-70.2
[iv]	Estate Tax Treatment of Transfers of Employer Securities to an ESOP	3A-70.8
[e]	Employer/Employee Deduction for Contributions to Individual Retirement Accounts	3A-70.11
[i]	AGI Phase-out Limits	3A-70.12
[ii]	10% Early Withdrawal Tax . . .	3A-70.14
[iii]	Married Couples	3A-70.15

EMPLOYEE BENEFITS LAW

	[iv]	Employer or Union Sponsored IRA	3A-70.15
	[v]	Deduction and Distribution Limitations	3A-70.16
	[vi]	Roth IRA	3A-70.17
	[vii]	Nonspouse Beneficiaries	3A-70.18
	[f]	Employee Deduction for Contributions to Qualified Plans . . .	3A-70.21
	[g]	Employer/Employee Deduction for Contributions to Simplified Employee Pensions	3A-70.22
	[h]	Savings Incentive Match Plan for Employees (SIMPLE Plans)	3A-70.25
	[i]	Rules for SIMPLE IRA	3A-70.25
	[ii]	SIMPLE Plan as 401(k) Plan . . .	3A-70.29
	[i]	Multiemployer Plans	3A-70.35
	[j]	Credit for Plan Start-Up Costs of Small Employers	3A-70.35
	[i]	Eligible Plan	3A-70.36
	[ii]	Eligible Employer	3A-70.36
	[iii]	Qualified Start-Up Costs	3A-70.36
	[iv]	Claiming the Credit	3A-70.37
	[k]	Credit for Elective Deferrals and IRA Contributions	3A-70.37
	[i]	Applicable Percentage	3A-70.38
	[ii]	Qualified Retirement Savings Contributions	3A-70.38
	[iii]	Eligible Individuals	3A-70.40
[3]		Welfare Benefit Plan	3A-70.40
	[a]	Deductions for Contributions to Funded Benefit Plans	3A-70.40
	[b]	Excise Taxes on Funded Benefit Plans	3A-70.41
	[c]	Tax Treatment of Exempt Benefit Organizations	3A-70.42
	[d]	Treatment of Gain on Employer's Sale of Property to Welfare Benefit Fund	3A-70.43
	[e]	Collectively-Bargained Welfare Benefit Funds	3A-70.43
[4]		Golden Parachute Contracts	3A-70.44
	[a]	Penalty on change of Ownership or Control	3A-70.44
	[b]	Definition of "Highly Compensated Individuals"	3A-70.44
	[c]	Exemption for Payments from Qualified Plans	3A-70.45

TABLE OF CONTENTS

xxv

	[d]	Reasonable Compensation for Services to Be Rendered at or After the Change in Control	3A-70.45
	[e]	Exemptions for Small and/or Closely Held Businesses	3A-70.45
[5]		Contribution Limits Increased by EGTRRA	3A-70.46
	[a]	Defined Contribution Plans	3A-70.46
	[b]	Elective Deferral Limitations	3A-70.46
	[c]	Tax-Exempt Organization and State or Local Governmental Plans	3A-70.47
	[i]	Code Section 457 Plans	3A-70.47
	[ii]	Tax-Sheltered Code 403(b) Annuities	3A-70.47
	[d]	Compensation Limit	3A-70.50
[6]		Qualified Plan Benefit Limits Increased by EGTRRA	3A-70.50
[7]		Catch-up Contributions Enacted by EGTRRA	3A-70.52
[8]		Faster Vesting of Employer Matching Contributions	3A-70.54
[9]		Repeal of Multiple Use Test for 401(k) Plans	3A-70.55
§ 3A.02		Impact of Taxation on Employees	3A-70.57
	[1]	Qualified Plans	3A-70.57
	[a]	When Will Benefits Be Subject to Income Tax?	3A-70.57
	[i]	Distribution	3A-70.57
	[ii]	Life Insurance Coverage	3A-70.59
	[iii]	Benefits Are “Made Available”	3A-70.60
	[b]	Types of Distributions	3A-70.61
	[c]	Taxability of Non-Lump-Sum Distributions	3A-70.62
	[i]	Simplified Method of Determining Basis	3A-70.64
	[ii]	Limitation on Aggregate Exclusions	3A-70.64
	[iii]	Three-Year Basis Recovery Rule	3A-70.65
	[iv]	<i>Pro Rata</i> Basis Recovery Rule	3A-70.65
	[d]	Taxability of Lump-Sum Distributions	3A-70.67
	[i]	Lump-Sum Distribution	3A-70.70
	[ii]	Balance to the Credit	3A-70.70
	[iii]	“Separation from Service”	3A-70.71

EMPLOYEE BENEFITS LAW

	[iv]	Distribution of an Annuity Contract	3A-70.72
	[v]	Calculation of Lump-Sum Treatment	3A-70.72
	[vi]	Computing the Tax on the Ordinary-Income Element . . .	3A-70.73
	[vii]	Computing the Capital Gain Element	3A-70.74
	[viii]	The Effect of the Tax Reform Act of 1986	3A-70.74
[e]		Rollovers Prior to 1993	3A-70.76
[f]		Rollovers After 1992	3A-70.79
	[i]	Rules Governing Rollovers . . .	3A-70.79
	[ii]	Mandatory Withholding	3A-70.80
	[iii]	Explanation to Participants . . .	3A-70.81
	[iv]	Required Plan Provisions	3A-70.81
	[v]	Failure to Give Rollover Notice Not Recoverable Benefit Under ERISA	3A-70.82
[g]		Plan Rollover and Withholding Rules	3A-70.82
	[i]	Required Plan Provisions	3A-70.84
	[ii]	Definition of “Eligible Rollover Distribution”	3A-70.84
	[iii]	Procedures for Providing a Section 402(f) Notice	3A-70.85
	[iv]	Procedures for Accomplishing a Direct Rollover	3A-70.85
	[v]	Effective Dates	3A-70.86
	[vi]	Safe Harbor Explanation	3A-70.86
[h]		EGTRRA Revisions to Rollover Rules	3A-70.86
	[i]	Rollovers Between 403(b) Plans and Other Qualified Plans Allowed	3A-70.86
	[ii]	After-Tax Contributions to Qualified Plans Eligible for Rollover	3A-70.88
	[iii]	Rollovers of Nondeductible IRA Contributions	3A-70.89
	[iv]	Notice Requirements Expanded for Eligible Rollover Distributions	3A-70.90
	[v]	Automatic Rollover of Certain Mandatory Distributions	3A-70.91
	[vi]	Hardship Exception to Sixty-Day Rule	3A-70.98

TABLE OF CONTENTS

xxvii

	[vii]	Hardship Distributions Ineligible for Rollover	3A-70.98
[i]		Additional Tax on Early Distributions	3A-70.99
	[i]	Periodic Payment Exception . . .	3A-70.100
	[ii]	Early Retirement Exception . . .	3A-70.100
	[iii]	ESOP Exceptions	3A-70.100
	[iv]	Cash-Outs	3A-70.101
	[v]	Other Exceptions	3A-70.101
[j]		Tax on Excess Distributions	3A-70.101
	[i]	“Excess Distributions” Defined	3A-70.101
	[ii]	Grandfather Provision	3A-70.103
	[iii]	Excise Tax Upon Death	3A-70.105
	[iv]	Interrelationship with Early Distribution Tax	3A-70.106
[k]		Tax on Asset Reversions	3A-70.107
	[i]	In General	3A-70.107
	[ii]	Exception for Transfers to ESOPs	3A-70.108
[l]		Plan Loans to Participants	3A-70.109
	[i]	Loan Amount	3A-70.109
	[ii]	Loan Amortization	3A-70.109
	[iii]	Principal Residence Plan Loan	3A-70.109
	[iv]	Deductibility of Interest	3A-70.110
	[v]	Loan Agreement	3A-70.110
	[vi]	Deemed Distribution	3A-70.110
	[vii]	Installment Payments	3A-70.112
[m]		Minimum Distribution Rules	3A-70.112
	[i]	Required Beginning Date	3A-70.114
	[ii]	Designated Beneficiary	3A-70.116
	[iii]	Life Expectancy	3A-70.118
	[iv]	Life Expectancy Tables Modified	3A-70.119
	[v]	Minimum Required Distribution	3A-70.120
	[vi]	Treatment of Rollovers and Transfers	3A-70.121
	[vii]	TEFRA Section 242(b)(2) Elections	3A-70.122
	[viii]	Excise Tax on Distribution Shortfall	3A-70.122
[n]		Death Benefits	3A-70.124
	[i]	Incidental Death Benefit Requirement	3A-70.124

EMPLOYEE BENEFITS LAW

	[ii]	Exclusion for Employer Provided Death Benefit	3A-70.128
[2]		Qualified Domestic Relations Order	3A-70.128
[3]		Group Term Life Insurance	3A-70.129
[4]		Cafeteria Plans.	3A-70.129
	[a]	Health and Insurance Coverage Election	3A-70.133
		[i]	HIPAA Enrollment 3A-70.133
		[ii]	Status Changes. 3A-70.134
		[iii]	Court Ordered Changes. 3A-70.134
		[iv]	Scope of Regulations. 3A-70.134
	[b]	Coordination with FMLA Requirements	3A-70.135
		[i]	Revoking Elections 3A-70.135
		[ii]	Premium Payments 3A-70.136
		[iii]	Health Flexible Spending Arrangements 3A-70.137
		[iv]	Uniform Coverage Rule 3A-70.137
	[c]	IRS Re-Proposed Regulations	3A-70.138
		[i]	Written Plan Requirement. 3A-70.139
		[ii]	Nondiscrimination in Operation 3A-70.140
		[iii]	Deferral of Compensation. 3A-70.140
		[iv]	Nondiscrimination Rules. 3A-70.141
		[v]	Paid Time Off 3A-70.143
		[vi]	Eligible Participants. 3A-70.143
		[vii]	Cafeteria Plan Elections 3A-70.144
		[viii]	Plan Year 3A-70.145
		[ix]	“Use-or-Lose” Rule. 3A-70.145
		[x]	Run-Out Period Requirements. 3A-70.145
		[xi]	Flexible Spending Account Rules 3A-70.146
		[xii]	Dependent Care Assistance Plans (“DCAPS”) 3A-70.146
[5]		Exclusions for Certain Employer Provided Fringe Benefits	3A-70.146
[6]		Transportation Fringe-Benefit Law Changes.	3A-70.148
	[a]	Background.	3A-70.149
	[b]	Transportation Fringes in Lieu of Compensation.	3A-70.149
	[c]	Transportation Fringe-Benefit Program Requirements	3A-70.150
	[d]	Transportation Fringes Offered Through Cafeteria Plans and VEBAs	3A-70.151

TABLE OF CONTENTS

xxix

	[e]	Gross Income Inclusion of Amounts Excluded Under Section 132(f) in Section 415 Compensation	3A-70.151
	[f]	Retroactive Application of the Election of Transportation Fringes	3A-70.152
	[g]	Practical Application of TEA 21	3A-70.153
	[h]	Adjustments for Inflation	3A-70.153
	[i]	Conclusion	3A-70.154
	[7]	Golden Parachute Contracts	3A-70.154
	[a]	Exception for Small Business Corporations	3A-70.154
	[b]	Exception for Corporations with No Readily Tradable Securities	3A-70.155
	[c]	Exception for Payments Under Qualified Plans	3A-70.155
§ 3A.03	[8]	Severance Pay	3A-70.155
		Estate and Gift Tax Consequences	3A-70.159
	[1]	Gift Tax Consequences	3A-70.159
	[2]	Estate Taxation of Distributions from Qualified Plans	3A-70.159
	[a]	Prior Law	3A-70.159
	[b]	Basic Estate Tax Changes Affecting Qualified Plans	3A-70.159
	[c]	Basic Estate Tax Changes Affecting IRAs	3A-70.160
	[3]	ERTA Changes in the Estate and Gift Tax Rules	3A-70.163
	[a]	Increase in Unified Credit	3A-70.163
	[b]	Reduction of Maximum Tax Rate to 50%	3A-70.163
	[c]	Unlimited Marital Deduction	3A-70.164
	[d]	Qualified Terminable Interest Property	3A-70.164
	[e]	Charitable Remainder Trusts	3A-70.165
	[f]	Increase in Annual Gift Tax Exclusion	3A-70.165
	[g]	Gifts Within Three Years of Death	3A-70.166
	[h]	Jointly Held Property	3A-70.166
§ 3A.04		Governmental Plans	3A-71
	[1]	Background	3A-71
	[2]	Statutory Definition of “Governmental Plan”	3A-72
	[a]	“Agency or Instrumentality of the United States”	3A-73
	[b]	Definitions of “State” and “Political Subdivision of a State”	3A-74

EMPLOYEE BENEFITS LAW

[c]	Definition of “Agency or Instrumentality of a State or a Political Subdivision of a State” . . .	3A-75
[3]	Judicial Determinations of Governmental Entity Status	3A-77
[4]	Agency Guidance Regarding Governmental Entity Status	3A-79
[5]	Exclusion of Governmental Plans from ERISA	3A-80
[6]	Exemption of Governmental Plans from Certain Qualified Plan Rules	3A-81
[7]	Governmental Plan Qualification Requirements	3A-82
[8]	Exemption of Governmental Plans from Other Employee Benefit Rules Relating to Retirement Plans	3A-83
[9]	Requirements for Establishing and Maintaining a Section 414(d) Governmental Plan	3A-84
[a]	Rules for Changes in Status	3A-84
[b]	Limitations to Specific Types of Employers	3A-87
[10]	ERISA Fiduciary Standard of Care Applicable to Government Plans	3A-88
[11]	NYC Pension Funds Sued for ESG-Related Divestment	3A-89
[a]	Complaint Allegations	3A-89
[b]	Relief Requested	3A-91
[c]	Argument	3A-91
[d]	Impact of the Divestment Actions on Plan Participants and Beneficiaries	3A-93
[e]	Lack of Standing	3A-93
[f]	No Context-Specific Pleading	3A-94
[g]	Closing Observation	3A-94
[12]	U.S. Supreme Court Lack of Standing Analysis Adopted by Kentucky Supreme Court	3A-95
[a]	Background	3A-95
[b]	Analysis	3A-97
[i]	Direct Injury to Plaintiffs	3A-98
[ii]	Representative Standing	3A-102
[iii]	Standing as Trust Beneficiaries	3A-107
[c]	Conclusion	3A-109

CHAPTER 4

Participation

§ 4.01	The Tests for Participation	4-3
§ 4.02	Minimum Participation Standards	4-4
	[1] Maximum Age.	4-4
	[2] Year of Service	4-4
	[3] Counting Hours	4-5
	[4] Equivalency Method	4-5
	[a] Working Time Equivalencies.	4-5
	[b] Periods of Employment Equivalencies	4-6
	[c] Earnings Equivalencies	4-6
	[5] Elapsed-Time Method.	4-7
	[6] Decoupling.	4-8
	[7] Time of Participation	4-8
	[8] Breaks in Service	4-9
	[9] Service with Other Employers	4-10
	[10] Leased Employees.	4-10
§ 4.03	Minimum Coverage Requirements.	4-12
	[1] Prior Law, TRA '86 and SBJBA '96 Changes	4-13
	[a] Prior Law	4-13
	[b] TRA '86 and SBJBA '96 Changes	4-13
	[2] Ratio Percentage Test	4-16
	[3] Average Benefits Test.	4-17
	[a] Nondiscriminatory Classification Test	4-17
	[i] Safe Harbor Test	4-18
	[ii] Facts and Circumstances Test.	4-19
	[iii] Examples	4-20
	[b] Average Benefit Percentage Test.	4-21
	[4] Components of the Coverage Tests	4-22
	[a] Plan	4-22
	[i] Mandatory Disaggregation	4-22
	[ii] Permissive Aggregation.	4-23
	[iii] Plans Automatically Meeting the Minimum Coverage Requirement	4-23
	[b] Employer.	4-23
	[c] Employee	4-24
	[i] Employees Who Benefit Under a Plan.	4-24
	[ii] Excludable Employees.	4-25
	[5] Former Employees	4-26.4

EMPLOYEE BENEFITS LAW

	[6]	Plans Maintained by More than One Employer.	4-26.4
	[7]	Testing Methods	4-26.5
	[8]	Family Member Aggregation Rule.	4-26.5
	[9]	Acquisitions and Divestitures	4-26.6
	[10]	Eligibility to Contribute	4-26.6
	[11]	Sanctions	4-26.6
	[12]	Effective Dates	4-26.6
§ 4.03A		Minimum Participation Requirements	4-26.8
	[1]	Applicable to Plans Separately.	4-26.8
	[2]	Plans Excepted from Section 401(a)(26)....	4-26.9
	[a]	Plans Benefiting No Highly Compensated Employees.	4-26.9
	[b]	Multiemployer Plans	4-26.9
	[c]	Underfunded Defined Benefit Plans ...	4-26.9
	[d]	Acquisitions and Deposits	4-26.9
	[3]	Minimum Participation Requirements	4-26.9
	[4]	Testing Former Employees.	4-26.10
	[5]	Testing Methods	4-26.11
	[6]	Retroactive Correction	4-26.11
	[7]	Plans Maintained by More Than One Employer.	4-26.11
§ 4.03B		Separate Line of Business Rules	4-26.13
§ 4.04		Contributory Plans.	4-26.14
	[1]	Mandatory Contributions	4-26.14
	[2]	Voluntary Contributions	4-26.15
§ 4.05		Other Coverage Requirements	4-26.17
	[1]	Employees Working Beyond Retirement Age	4-26.17
	[2]	Plan Must Have Covered Employees.	4-26.17
	[3]	Right to Deny Future Participation	4-26.18
	[4]	Continuation of Participation During Leave of Absence	4-26.18
	[5]	Period During Which the Plan Must Meet the Coverage Requirements	4-26.20
§ 4.06		Comparability	4-27
	[1]	Traditional Comparability Plans.	4-27
	[2]	New Comparability Plans	4-29
§ 4.07		Applicability and Effective Dates	4-30

CHAPTER 5**Vesting**

§ 5.01	In General	5-3
§ 5.02	Statutory Full Vesting	5-4

TABLE OF CONTENTS

xxxiii

	[1]	Termination and Partial Termination of the Plan and Complete Discontinuance of Contributions.	5-4
	[2]	Attainment of Normal Retirement Age	5-5
	[3]	Employee Contributions	5-6
§ 5.03		Minimum Vesting Standards	5-8
	[1]	Minimum Vesting Standards Prior to 1988.	5-8
	[a]	10-Year Vesting	5-8
	[b]	5-to-15-Year Vesting	5-8
	[c]	Rule of 45.	5-8
	[d]	Four-Forty Vesting.	5-9
	[e]	Class Year Plan: Five-Year Vesting.	5-10
	[f]	Three-Year Eligibility Plan: 100% Vesting.	5-10
	[2]	Minimum Vesting Standards After 1988.	5-11
	[a]	The 5-Year Rule.	5-11
	[b]	3-to-7-Year Graduated Vesting	5-11
	[c]	Immediate Vesting	5-11
	[d]	Top Heavy Plans	5-11
	[e]	Multiemployer Plans	5-12
	[f]	Class-Year Plans.	5-12
	[g]	Changes in Vesting Schedule	5-12
	[h]	Discriminatory Vesting	5-13
	[i]	PBGC Insurance.	5-13
	[3]	Top Heavy Plans.	5-13
	[4]	Payroll-Based Employee Stock Ownership Plans	5-14
	[5]	Exception to Vesting Requirements: Early Termination of Plan	5-14
	[6]	Service for Vesting Purposes	5-15
	[a]	Counting Hours of Service	5-16
	[i]	Proper Computation Period.	5-17
	[ii]	Equivalencies.	5-17
	[iii]	Elapsed Time Method.	5-17
	[b]	Controlled Group Rule.	5-20
	[c]	Excludable Service.	5-21
	[7]	Breaks in Service	5-23
	[a]	Elapsed Time	5-25
	[b]	Significance of Incurring a One-Year Break in Service.	5-25
	[i]	One-Year Holdout Rule.	5-25
	[ii]	Freezing Pre-Break Service.	5-25
	[iii]	Rule of Parity	5-26
	[8]	Changes in Vesting Schedule.	5-26
	[9]	Forfeitures of Vested Rights.	5-27
	[a]	Permissible Conditions.	5-27

EMPLOYEE BENEFITS LAW

	[i]	Cash-Out Rule Restrictions on Mandatory Distributions . . .	5-30
	[ii]	Look-Back Rule	5-30.1
	[iii]	Cash-Out Rule and Service Crediting for Accruals	5-30.1
	[iv]	Plan Amendments	5-30.2
	[v]	Benefits Protected from Reduction of Elimination . . .	5-30.2
[b]		Break in Service Rules	5-30.2
	[i]	Five Consecutive One-Year Breaks in Service	5-31
	[ii]	Cash-outs	5-31
	[iii]	Separate Account Rule	5-33
[c]		Employee Consent	5-35
[d]		Conditional Vesting	5-35
[e]		Lost Beneficiary	5-35
[f]		“Bad Boy” Clauses	5-35
[g]		Suspension of Benefits	5-36
[h]		Anti-Cutback Rule	5-36
	[i]	Generally	5-36
	[ii]	Retirement-Type Subsidy	5-36
	[iii]	Optional Forms of Benefit	5-37
	[iv]	Age 70 1/2 In-Service Distributions	5-37
	[v]	IRS Issues Final Regulations for Benefit Plan Amendments	5-38
	[vi]	Special Rules for ESOPs	5-40
[10]		Allocation of Forfeitures	5-41
[11]		When a Vested Benefit is Payable	5-41
[12]		Faster Vesting of Employer Matching Contributions	5-42

CHAPTER 6**Qualifying the Plan**

§ 6.01	Purpose of Qualifications	6-10.2
§ 6.02	The Determination Letter Process	6-11
[1]	Requesting a Determination Letter	6-13
	[a] IRS Guidance on Plan Amendments for EGTRRA	6-13
	[i] The GUST Remedial Amendment Period	6-13
	[ii] Amendments to EGTRRA	6-14
	[iii] EGTRRA Plan Amendments May Be Needed Sooner	6-15

TABLE OF CONTENTS

xxxv

	[iv]	Simplification of Determination Letter Procedure	6-16
	[b]	Revenue Procedure 98-14	6-18
	[c]	Revenue Procedure 93-39	6-19
	[d]	Form 5300	6-21
[2]		Notice to Interested Parties.	6-21
[3]		Remedial Amendment Period.	6-22
[4]		Appeals Procedure.	6-23
[5]		Timing Amendments Pursuant to the Tax Reform Act of 1986 and Subsequent Legislation.	6-24
	[a]	Conditions.	6-24.1
	[b]	Collectively Bargained Plans.	6-24.1
	[c]	Model Amendments	6-24.2
[6]		IRS User Fee Program	6-24.2
[7]		Voluntary Compliance Resolution Programs	6-24.4
	[a]	Background.	6-24.5
	[b]	CAP Monetary Sanction	6-24.6
	[c]	IRS Administrative Policy Regarding Self-Correction (APRSC)	6-24.6
	[i]	Administrative Policy Regarding Sanctions	6-24.6
	[ii]	Administrative Policy Regarding Self-Correction	6-24.7
	[d]	Voluntary Compliance Resolution (VCR) Program	6-24.10
	[e]	Plans Eligible for VCR	6-25
	[f]	Scope of the VCR Program.	6-26
	[g]	VCR Correction Principles and Requirements	6-26
	[i]	Information to be Provided to the IRS	6-26
	[ii]	Description of Proposed Corrections Method	6-27
	[iii]	Standardized VCR Procedure (SVP).	6-28
	[iv]	Compliance Fee.	6-30
	[h]	VCR Review and Compliance Statement	6-30
	[i]	Voluntary Consideration Under CAP	6-31
	[i]	Scope of the Voluntary Consideration Under CAP (Walk-In CAP).	6-31
	[ii]	Procedures for a Walk-In CAP.	6-31

EMPLOYEE BENEFITS LAW

	[iii]	Scope of Correctional Procedure and Amount of Monetary Sanctions	6-32
	[j]	CAP—Use of Trust Assets to Pay Sanctions	6-33
	[k]	What to Do	6-33
	[l]	Further Developments in IRS Plan Auditing/Compliance Examinations	6-34
	[i]	Voluntary Compliance Program for Section 403(b)	6-34
	[ii]	IRS Guidelines to Examine Employee Plans	6-36
	[iii]	Delinquent Filers Voluntary Compliance Program (DFVC)	6-36
	[iv]	CAP Procedures for Restorative Payments to Plan	6-36.1
	[v]	IRS Procedures for Failure to Amend	6-36.1
[8]		Employee Plans Compliance Resolution System	6-36.2
	[a]	Types of Retirement Plan Failures	6-36.2
	[i]	Qualification Failure	6-36.2
	[ii]	Plan Document Failure	6-36.2
	[iii]	Operational Failure	6-36.2
	[iv]	Demographic Failure	6-36.3
	[b]	Principles for Correcting Retirement Plan Failures	6-36.3
	[i]	Restoration of Benefits	6-36.3
	[ii]	Reasonable and Appropriate Correction	6-36.3
	[iii]	Principles Regarding Corrective Allocations and Corrective Distributions	6-36.4
	[iv]	Special Exceptions to Full Correction	6-36.4
	[v]	Reporting	6-36.5
	[c]	Matter Subject to Excise Taxes	6-36.5
	[d]	Effect of IRS Examination	6-36.6
	[i]	Under Examination	6-36.6
	[ii]	Aggregation With a Plan Under Examination	6-36.6
	[iii]	Termination of a Plan— Form 5310 Filed	6-36.6
	[iv]	Examination by the Exempt Organization Division of the IRS	6-36.7

TABLE OF CONTENTS

xxxvii

[e]	Voluntary Self-Correction (APRSC) . . .	6-36.7
[i]	Insignificant Operational Failure	6-36.7
[ii]	Significant Operational Failures	6-36.8
[f]	Voluntary Correction With IRS Approval.	6-36.8
[i]	VCR Program	6-36.8
[ii]	Operational Failures and Corrections Under SVP	6-36.9
[iii]	Walk-In CAP Requirements . . .	6-36.11
[iv]	Application Procedures for VCR and Walk-In CAP	6-36.12
[v]	Egregious Failures	6-36.16
[g]	Correction on Audit (Audit CAP) . . .	6-36.16
[i]	Audit CAP Requirements	6-36.16
[ii]	Maximum Payment Amount . . .	6-36.16
[iii]	Determination of Sanction. . . .	6-36.16
[h]	VCR/SVP/Walk-In CAP Checklist . .	6-36.17
[i]	IRS Policies for Walk-in CAP Cases . .	6-36.19
[i]	No IRS Examination under Walk-in CAP.	6-36.20
[ii]	The IRS Will Not Request Copies of the Plan Sponsor's Self-Audit Compliance Report	6-36.20
[iii]	Plan Sponsors Must Verify Correction of Failures Before the Closing Agreement Is Signed	6-36.20
[iv]	The Closing Agreement Will Specifically Describe All Issues Addressed in the Case and How Each Issue Was Resolved	6-36.20
[j]	Involving a Plan Document Failure under Walk-in CAP.	6-36.20
[k]	Cases Involving a Qualification Failure Discovered During the Determination Letter Process	6-36.20
[i]	The IRS Discovers the Qualification Failure.	6-36.20
[ii]	The Plan Sponsor Informs the IRS of the Qualification Failure	6-36.21
[l]	Cases Involving Excise Taxes under Walk-in CAP and Audit CAP. . . .	6-36.21

	[i]	Excise Tax: Minimum Required Distribution	6-36.21
	[ii]	Other Excise Taxes	6-36.21
[9]		IRS Extends Employee Plans Correction Program to 403(b) Plans	6-36.21
	[a]	Types of 403(b) Plan Failures	6-36.22
		[i] Demographic Failure	6-36.22
		[ii] Eligibility Failure	6-36.22
		[iii] Operational Failure	6-36.22
		[iv] Other Definitions	6-36.23
	[b]	IRS 403(b) Fix-It Guide	6-36.23
	[c]	Correction Methods	6-36.25
		[i] Applicability of EPCRS	6-36.25
		[ii] Correction of Excess Amounts	6-36.26
		[iii] Correction of a Plan of an Ineligible Employer	6-36.27
	[d]	Self-Correction (APRSC)	6-36.27
		[i] In General	6-36.27
		[ii] Special Rules for APRSC	6-36.27
	[e]	TVC Program	6-36.28
		[i] In General	6-36.28
		[ii] TVC Requirements	6-36.28
		[iii] Eligibility for TVC	6-36.28
		[iv] Failures Covered by TVC	6-36.28
		[v] Correction of Excess Amounts	6-36.29
	[f]	Application Procedures for TVC	6-36.29
		[i] In General	6-36.29
		[ii] Submission Requirements	6-36.29
		[iii] Required Documents	6-36.29
		[iv] Checklist	6-36.29
	[g]	Fees for TVC	6-36.30
		[i] Compliance Correction Fee	6-36.30
		[ii] Fee for Operational Failures	6-36.30
		[iii] Fee for Certain Excess Amounts	6-36.30
		[iv] Fee for Demographic and Eligibility Failures	6-36.30
		[v] Fee for Multiple Failures	6-36.31
		[vi] Fee for Egregious Failures	6-36.31
	[h]	Audit CAP for 403(b) Plans	6-36.32
		[i] Audit CAP Requirements	6-36.32
		[ii] Payment of Sanction	6-36.32
	[i]	What This Correction Program Means to Employers	6-36.32
	[j]	Effective Date	6-36.33

TABLE OF CONTENTS

xxxix

[10]	Changes to the Employee Plans Compliance Resolution Program	6-36.33
[a]	Basic Elements of EPCRS	6-36.33
[b]	IRS Improvements to EPCRS	6-38
	[i] Refinement of Factors Considered for Determining Audit CAP Sanction Amount	6-38
	[ii] Exceptions to Full Correction . . .	6-39
	[iii] Terminated Plans	6-39
	[iv] Changes to Anonymous Submission Procedures	6-40
	[v] VCGroup Procedures	6-40
	[vi] Transferred Assets in Merger or Other Corporate Transactions	6-41
	[vii] Favorable Letter	6-42
[c]	IRS Updates and Expands EPCRS Qualified Plan Correction Program—Revenue Procedure 2008-50	6-42
	[i] Expanded Definition of “Reasonable and Appropriate” Correction	6-42
	[ii] Excess Amount and Excess Allocation	6-42.1
	[iii] Exceptions to Full Correction	6-42.2
	[iv] Broader Definition of “Overpayment”	6-42.2
	[v] Exclusions of Eligible Employee from Contributions or Accruals . . .	6-42.2
	[vi] Guidance on Loan Failures	6-42.3
	[vii] New Streamlined Voluntary Correction Program Application Procedures	6-42.4
	[viii] Changes to Definitions and Procedures	6-42.4
	[ix] VCP Procedural Changes	6-42.6
[d]	Revenue Procedure 2013-12	6-42.7
	[i] IRS Self-Correction Program . . .	6-42.7
	[ii] IRS Audit CAP Monetary Sanctions	6-42.7
	[iii] Impact on Financial Statement	6-42.8

EMPLOYEE BENEFITS LAW

	[iv]	IRS Updates Employee Plans Compliance Resolution System.....	6-42.9
[e]		Revenue Procedure 2015-27	6-42.13
	[i]	Summary	6-42.13
	[ii]	IRS Description of Modifications to EPCRS ...	6-42.13
	[iii]	Modifications to Rev. Proc. 2013-12	6-42.16
	[iv]	Effective Date	6-42.29
[f]		Rev. Proc. 2015-28.....	6-42.29
	[i]	Summary	6-42.29
	[ii]	Description of Modifications to EPCRS	6-42.31
	[iii]	Modifications to Rev. Proc. 2013-12	6-42.34
	[iv]	Effective Date	6-42.39
[g]		Revenue Procedure 2015-32	6-42.39
	[i]	Background	6-42.39
	[ii]	Penalty Relief Under Rev. Proc. 2014-32	6-42.41
	[iii]	Permanent Penalty Relief Program	6-42.41
	[iv]	Program Eligibility	6-42.43
	[v]	Procedural Requirements.....	6-42.44
	[vi]	Effective Date	6-42.47
[h]		Revenue Procedure 2016-37	6-42.47
	[i]	Summary	6-42.47
	[ii]	Background	6-42.48
	[iii]	Individually Designed Plans ...	6-42.52
	[iv]	Pre-Approved Plans.....	6-42.62
[i]		Revenue Procedure 2016-51	6-42.74
	[i]	Determination Letter Application Program.....	6-42.74
	[ii]	Other Changes to EPCRS.....	6-42.75
[j]		Revenue Procedure 2018-52	6-42.76
	[i]	VCP Submission Procedures....	6-42.76
	[ii]	Other Modifications to EPCRS.....	6-42.77
[k]		Revenue Procedure 2019-19	6-42.78
	[i]	Plan Document Failures	6-42.79
	[ii]	Operational Errors	6-42.79
	[iii]	Plan Loans	6-42.79
[l]		Revenue Procedure 2021-30	6-42.80
	[i]	Significant Changes.....	6-42.80
	[ii]	Elimination of Anonymous VCP Submission Procedure.....	6-42.81

TABLE OF CONTENTS

xli

[iii]	Free and Anonymous VCP Pre-Submission Conference Procedure.	6-42.81
[iv]	Extended Correction Period for Significant Failures Under SCP	6-42.81
[v]	Expanded Ability to Correct by Plan Amendment Under SCP	6-42.82
[vi]	New Guidance on Recoupment of Overpayments.	6-42.82
[vii]	Overpayments from Defined Benefit Plans.	6-42.82
[viii]	Overpayments from Defined Contribution Plans	6-42.83
[ix]	Extended Availability of Safe Harbor Correction Method for Elective Deferrals under Automatic Contribution Features	6-42.83
[11]	Requirements for Amending Defined Benefit Plans to Comply with GATT and SBJPA under Revenue Ruling 98-1.	6-42.84
[a]	Background.	6-42.84
[b]	Effective Date for Plan Amendments (Q&A-1).	6-43
[c]	Employer Options for Plan Amendments	6-44
[i]	Option 1: Retroactive Application to All Plan Benefits (Q&A-10).	6-44
[ii]	Option 2: Protection of Accrued Benefits (Q&A-12)	6-44
[12]	USERRA Qualification Requirements	6-48
[a]	Elective Deferrals.	6-49
[b]	Compensation During a Period of Qualified Military Service.	6-49
[c]	What Is Not Required by USERRA	6-50
[d]	USERRA Procedural Matters	6-50
[i]	Effective Date	6-50
[ii]	The Remedial Amendment Period	6-50
[iii]	Model Amendments.	6-50

	[e]	Operational Compliance with USERRA	6-51
	[f]	Required USERRA Notice.....	6-51
[13]		EGTRRA Amendments.....	6-52
[14]		IRS 90-Day Pre-Examination Compliance Pilot Program	6-52.1
	[a]	Under EPCRS (SCP, VCP and Audit CAP)	6-52.1
	[b]	Under 90-Day Pre-Examination Compliance Pilot Program	6-52.2
	[c]	How to Take Advantage of the Pilot Program.....	6-52.2
§ 6.03		Requirements for Qualification.....	6-52.3
	[1]	Plan Instruments Must Be Written.....	6-52.3
	[a]	Requirements for Valid Trusts.....	6-52.3
	[b]	Plans and Trusts	6-53
	[c]	Requirements for a Valid Plan	6-53
	[2]	Plan Must Be Permanent and Continuing.....	6-54
	[3]	Plan Must Be Communicated.....	6-55
	[4]	Plan Must Prohibit Diversion or Reversion to Employer	6-55
	[a]	Restrictions on Group Annuity Contracts	6-56
	[b]	Initial Qualification of a Plan	6-57
	[c]	Contributions Made by Mistake of Fact	6-57
	[5]	Plan Must Be for the Exclusive Benefit of Employees or Their Beneficiaries	6-58
	[a]	Definition of “Employee”	6-58
	[b]	Parity Between Corporate and Self-Employed Plans	6-59
	[c]	Shareholders and Officers	6-62
	[d]	Professional Corporations	6-63
	[e]	Insurance Agents	6-64
	[f]	Attorneys, Accountants, etc.	6-64
	[g]	Plan for Former Employees.....	6-64
	[h]	Definition of “Beneficiaries”	6-65
	[i]	Meaning of “Exclusive Benefit”	6-66
	[j]	Employer Control of, or Benefit from, a Qualified Plan.....	6-66
	[k]	Leased Employees	6-67
	[i]	Determination of Leased Employee Status	6-67
	[ii]	“Safe Harbor Plan” Exception.....	6-69
	[iii]	Effect of Leased Employee Status.....	6-70

TABLE OF CONTENTS

xliii

	[iv] Recordkeeping Requirements . . .	6-70
	[1] Affiliated Service Groups	6-71
[6]	Prohibition Against Assignment and Alienation	6-72
	[a] QDRO's	6-72
	[b] Offset of a Participant's Benefit	6-74.1
[7]	Definitely Determinable Benefits	6-74.2
[8]	Feeder Plans	6-74.3
[9]	Employers Covered Under a Single Plan . .	6-74.3
[10]	Compensation	6-76
	[a] Tax Reform Act of 1986	6-76
	[i] Uniform Definition	6-76
	[ii] \$200,000 Limit	6-77
	[b] Compensation Limits Increased by EGTRRA	6-77
	[i] General Rule	6-77
	[ii] Definition of Compensation . . .	6-79
[11]	Highly Compensated Employees	6-80
	[a] Special Rule for the Current Year. . .	6-80
	[b] Special Rule for Officers	6-80
	[c] Special Rule for Family Members. . .	6-81
	[d] Top-Paid Group	6-81
[12]	Repeal of Special Definition of Highly Compensated Employee	6-82
[13]	IRS Sample Plan Provisions	6-82
§ 6.04	[RESERVED]	6-83
§ 6.05	Nondiscrimination Requirements After 1988	6-105
	[1] Nondiscrimination in Amount of Contributions or Benefits	6-106
	[a] Overview	6-106
	[b] General Safe Harbor Requirements . . .	6-107
	[i] Defined Contribution Safe Harbors	6-108
	[ii] Defined Benefit Safe Harbors . . .	6-111
	[c] Other Safe Harbor Testing Methods . . .	6-113
	[i] Target Benefit Plans	6-113
	[ii] Cash Balance Plans	6-113
	[iii] Plans Offsetting Benefits with Benefits Provided Under Other Plans	6-114
	[iv] ADP/ACP "Safe Harbor" Design-Based Alternatives . . .	6-114
	[d] General Test and Restructuring Rules	6-128
	[i] General Test	6-128
	[ii] Determination of Accrual Rates	6-128

EMPLOYEE BENEFITS LAW

	[iii] Restructuring	6-129
	[iv] Accrual Rates	6-129
[2]	Nondiscriminatory Availability of Benefits, Rights and Features	6-130
	[a] “Features” to Be Tested	6-132
	[b] Current Availability	6-133
	[c] Effective Availability	6-134
[3]	Nondiscriminatory Effect of Plan Amendments and Terminations	6-134
	[a] Amendments	6-135
	[b] Past Service Credits	6-136
[4]	Employee Contributions	6-136
[5]	Permitted Disparity	6-136
	[a] Adjusting Allocations to Impute Disparity	6-137
	[b] Grouping	6-138
[6]	Cross-Testing Defined Benefit and Defined Contribution Plans	6-139
[7]	Definition of a Plan and Plan Aggregation. . .	6-139
[8]	Plan Restructuring	6-140
[9]	Testing of Plans with Respect to Former Employees	6-141
[10]	Additional Rules	6-141
[11]	Transition and Fresh-Start Rules	6-143
[12]	Effective Dates	6-144
	[a] Nondiscrimination in Benefits	6-144
	[b] Nondiscrimination in Benefits, Rights and Features	6-145
	[c] Past Service Credits	6-146
	[d] Contributory Plans	6-146
	[e] Restricted Benefits	6-147
	[f] Section 401(a)(4) Safe Harbor	6-147
	[g] Related Code Provisions	6-147
	[i] Section 410(b) Minimum Coverage Requirements	6-147
	[ii] Separate Line of Business	6-148
	[iii] Section 401(a)(17) Compensation Requirements	6-148
	[iv] Section 401(a)(26) Minimum Participation Requirement	6-149
	[h] Restrictions on Early Termination	6-149
	[i] PIA Offset Plans and Section 401(I)	6-150
	[j] Section 414(q)	6-150
	[k] Section 414(s)	6-150
[13]	EGTRRA Modification of Top-Heavy Rules	6-150

TABLE OF CONTENTS

xlv

	[a]	Definition of Top-Heavy Plan	6-151
	[b]	Definition of “Key Employee”	6-151
	[c]	Minimum Benefits for Non-Key Employees	6-152
	[14]	Nondiscrimination Relief For Closed Defined Benefit Plans	6-153
	[a]	General	6-153
	[b]	Requested Relief.	6-154
	[c]	Comments Requested.	6-154
§ 6.06		Compensation Requirements.	6-154.2
	[1]	Definition of Compensation	6-154.2
	[a]	Compensation Safe Harbors Under Section 415(c)(3).	6-154.2
	[b]	Compensation Under Section 414(s)	6-155
	[i]	Definitions of Compensation that Satisfy Section 414(s)	6-155
	[ii]	Reasonable Definition of Compensation	6-156
	[iii]	Use of Rate-of-Pay Definition for Purposes of Section 414(s).	6-156
	[iv]	Pre- and Post-Participation and Leave of Absence	6-157
	[v]	Nondiscrimination Requirement	6-157
	[vi]	Employees Taken into Account for Nondiscrimination Purposes	6-158
	[vii]	Availability of Elective, Employee and Matching Contributions.	6-158
	[2]	Limitation on Annual Compensation for Qualified Plans	6-159
	[a]	Annual Adjustment of Compensation Limit	6-159
	[i]	1989 to 1994	6-159
	[ii]	After 1993	6-160
	[b]	Proportional Reduction in Limit	6-160
	[c]	Multiemployer and Multiple Employer Plans	6-161
	[i]	Compensation Limit	6-161
	[ii]	Correction of Plans Maintained by More than One Employer.	6-161
	[iii]	Compensation of Self-Employed Individuals	6-161

EMPLOYEE BENEFITS LAW

	[3]	Effective Dates	6-162
	[4]	Compensation Limits Increased by EGTRRA.	6-162
	[a]	General Rule.	6-162
	[b]	Definition of Compensation.	6-164
§ 6.07		[RESERVED]	6-166
§ 6.08		Multiemployer Plan Qualification Requirements. . . .	6-167
	[1]	IRS Multiemployer Examination Program. . . .	6-167
	[a]	Imposition of Monetary Sanctions. . . .	6-167
	[b]	IRS Field Directive	6-168
	[c]	Fiduciary Insurance Coverage	6-169
	[d]	Administrative Policy Regarding Sanctions	6-169
	[e]	Voluntary Compliance Program	6-170
	[2]	Preventing Sanctions and Disqualification. . . .	6-170
	[a]	Compliance Audit/Operational Review	6-170
	[b]	Establishing Internal Controls	6-171

CHAPTER 7**[RESERVED]****CHAPTER 8****Funding**

§ 8.01	Employee Trusts	8-2.5
§ 8.02	Definitions	8-3
	[1] Trustee	8-3
	[2] Trustor	8-3
	[3] Fiduciary	8-3
	[4] Beneficial Interest	8-4
	[5] Agent-Trustee Relationship.	8-4
§ 8.03	Funding Instruments	8-6
	[1] Trusts	8-6
	[2] Individual-Contract Plans	8-6
	[3] Group Annuity Contracts	8-8
	[a] Group Annuity Plan	8-8
	[b] Deposit-Administration Group Annuity Plan	8-8
	[c] Group Permanent Pension Plan	8-8
	[4] Split Funding Contract	8-9
	[5] Employers Participating in a Single Plan	8-9
	[5A] PEPs and MEPs: Employers Participating in a Single Plan Under the SECURE Act	8-12.5

TABLE OF CONTENTS

xlvii

	[a] What Are PEPs?.....	8-12.5
	[i] Benefits	8-12.5
	[ii] Fiduciary Responsibilities	8-12.6
	[b] What Are MEPs?.....	8-12.6
	[i] Benefits	8-12.6
	[ii] Restrictions.....	8-12.7
	[c] Governance Requirements	8-12.7
	[d] Fiduciary Responsibilities	8-12.8
	[e] Litigation and Regulatory Activity ...	8-12.9
	[f] Key Takeaways	8-12.9
	[g] Statutory Basis for SECURE Act	
	Changes	8-12.10
	[i] ERISA § 3(43) Pooled	
	Employer Plan.....	8-12.10
	[ii] ERISA § 3 (44) Pooled	
	Plan Provider.....	8-12.11
	[iii] IRC § 413(e) Application of	
	Qualification Requirements	
	for Certain Multiemployer	
	Plans with Pooled Plan	
	Providers	8-12.13
	[6] Multiple Trusts Under One Plan	8-12.16
	[7] Pooled Fund Arrangements.....	8-12.16
	[8] Funding Through Custodial Accounts and	
	Annuity Contracts.....	8-12.17
	[9] Variable Annuities.....	8-12.17
§ 8.04	[RESERVED]	8-13
§ 8.05	Funding Rules for Single-Employer Defined	
	Benefit Pension Plans Under the Pension	
	Protection Act of 2006.....	8-14
	[1] In General	8-14
	[a] Funding Under PPA.....	8-14
	[b] Underfunded, At-Risk Plans and Not	
	Well Funded Plans	8-45
	[c] Actuarial Valuation Under PPA	8-45
	[2] Funding Rules for Plan Years Beginning	
	After 2007.....	8-47
	[a] Minimum Required Contribution.....	8-47
	[b] Shortfall Amortization Charge.....	8-49
	[i] Shortfall Amortization	
	Installments	8-49
	[ii] Shortfall Amortization Base ...	8-49
	[iii] Shortfall Amortization Charge	
	May Not Be Less Than	
	Zero.....	8-50

	[iv]	Exception to Shortfall Amortization Base for Well-Funded plan	8-50
	[v]	Early Deemed Amortization of Funding Shortfalls for Preceding Years	8-51
	[vi]	Shortfall Amortization Charge Included in Termination Liability to PBGC Trustee . . .	8-52
[c]		Waiver Amortization Charges	8-52
[d]		Credit Balances.	8-53
	[i]	Funding Standard Carryover Balance	8-53
	[ii]	Prefunding Balance	8-54
	[iii]	Determining Increase in Prefunding Balance.	8-54
	[iv]	Credit Balance Adjusted for Investment Experience	8-54
	[v]	Election to Apply Credit Balance Against Minimum Required Contribution	8-55
	[vi]	Agreement with PBGC May Prevent Use of Credit Balance to Reduce Plan Assets	8-55
	[vii]	Election to Waive Credit Balance.	8-55
[e]		Interest Rate Assumptions: Segmented Yield Curve.	8-56
[f]		Mortality Table.	8-58
[g]		Accounting for Probability of Lump-Sum Benefit Payments	8-59
[h]		Changes in Actuarial Assumptions Require IRS Approval.	8-59
[i]		Special Assumptions for At-Risk Plans.	8-60
	[i]	Funding Target for At-Risk Plans	8-61
	[ii]	Phase-in Rules for At-Risk Liability.	8-62
[j]		Valuation Date	8-62
[k]		Value of Plan Assets	8-62
[l]		Timing Rules for Contributions.	8-63
[m]		Excise Tax on Failure to Make Minimum Required Contributions. . .	8-63
[3]		Benefit Limitations Under Single-Employer Defined Benefit Pension Plans	8-64

TABLE OF CONTENTS

xlix

	[a] Plant Shutdown and Other Unpredictable Contingent Event Benefits	8-64
	[b] Plan Amendments Increasing Benefit Liabilities	8-65
	[c] Prohibited Payments	8-65
	[d] Cessation of Benefit Accruals	8-66
	[e] Adjusted Funding Target Attainment Percentage	8-67
	[i] In General	8-67
	[ii] Special Rule for Fully Funded Plans	8-67
	[iii] Presumptions as to Funded Status	8-68
	[f] Reduction of Funding Standard Carryover and Prefunding Balances	8-69
	[i] Election to Reduce Balances. . .	8-69
	[ii] Deemed Reduction of Balances in the Case of Collectively Bargained Plans	8-69
	[iii] Deemed Reduction of Balances in the Case of Other Plans . . .	8-69
	[g] Contributions Made to Avoid a Benefit Limitation	8-69
	[i] In General	8-69
	[ii] Security as Alternative to Additional Contributions . . .	8-70
	[h] Treatment of Plan as of Close of Prohibited or Cessation Period . . .	8-70
	[i] Notice to Participants	8-70
	[4] Restrictions on Funding of Nonqualified Deferred Compensation Plans by Employers Maintaining Underfunded or Terminated Single-Employer Plans . . .	8-71
	[5] MAP-21 Funding Stabilization Provisions. . .	8-73
§ 8.06	Funding Rules for Multiemployer Defined Benefit Plans Under the Pension Protection Act of 2006	8-74.2
	[1] Funding Rules for Multiemployer Defined Benefit Plans	8-74.2
	[a] In General	8-74.2
	[b] Amortization Periods	8-74.2
	[c] Actuarial Assumptions	8-74.2
	[d] Extension of Amortization Periods . . .	8-74.2

EMPLOYEE BENEFITS LAW

[e]	Interest Rate Applicable to Funding Waivers and Extension of Amortization Periods	8-75
[f]	Controlled Group Liability for Required Contributions	8-75
[g]	Shortfall Funding Method	8-75
[h]	Effective Date	8-76
[2]	Additional Funding Rules for Multiemployer Plans in Endangered or Critical Status	8-76
[a]	In General	8-76
[b]	Reorganization Status	8-76
[c]	Insolvency	8-77
[d]	Additional Funding Rules for Significantly Underfunded Multiemployer Plans	8-77
[e]	Annual Certification of Status; Notice; Annual Reports	8-78
[f]	Endangered Status	8-79
[i]	Definition of Endangered Status	8-79
[ii]	Information to Be Provided to Bargaining Parties	8-79
[iii]	Funding Improvement Plan and Funding Improvement Period	8-80
[iv]	Requirements Pending Approval of Plan and During Funding Improvement Period	8-81
[v]	Effect of and Penalty for Failure to Adopt a Funding Improvement Plan	8-82
[vi]	Excise Tax on Employers Failing to Make Required Contributions	8-82
[vii]	Application of Excise Tax to Plans in Endangered Status/Penalty for Failure to Achieve Benchmarks	8-83
[viii]	Waiver of Excise Tax	8-83
[g]	Critical Status	8-83
[i]	Definition of Critical Status	8-83
[ii]	Additional Contributions During Critical Status	8-84
[iii]	Reductions to Previously Earned Benefits	8-85

TABLE OF CONTENTS

li

	[iv]	Information to Be Provided to Bargaining Parties	8-86
	[v]	Rehabilitation Plan	8-86
	[vi]	Rehabilitation Period	8-87
	[vii]	Rules for Reductions in Future Benefit Accrual Rates	8-87
	[viii]	Requirements Pending Approval and During Rehabilitation Period	8-88
	[3]	Measures to Forestall Insolvency of Multiemployer Plans	8-90
	[4]	Withdrawal Liability Reforms	8-91
	[a]	Repeal of Limitation on Withdrawal Liability in Certain Cases	8-91
	[b]	Withdrawal Liability Continues If Work Contracted Out	8-92
	[c]	Application of Forgiveness Rule to Plans Primarily Covering Employees in Building and Construction	8-92
	[d]	Procedures Applicable to Disputes Involving Withdrawal Liability	8-93
	[e]	Prohibition on Retaliation Against Employers Exercising Their Rights to Petition the Federal Government	8-95
	[5]	Special Rule for Certain Benefits Funded Under an Agreement Approved by the PBGC	8-96
	[6]	Exception from Excise Tax for Certain Multiemployer Pension Plans	8-96
§ 8.07		Interest Rate Assumptions	8-97
	[1]	Interest Rate Assumption for Determination of Lump-Sum Distributions	8-97
	[2]	Interest Rate Assumption for Applying Benefit Limitations to Lump-Sum Distributions	8-98
§ 8.08		Pension Benefit Guaranty Corporation (PBGC) Guarantee and Related Provisions	8-100
	[1]	PBGC Premiums	8-100
	[a]	Flat-Rate Premium	8-100
	[b]	Variable-Rate Premium (single-employer plans only)	8-100
	[2]	In General	8-100
	[a]	Flat-Rate Premium	8-100
	[b]	Variable-Rate Premium	8-101
	[c]	Termination Premium	8-101

EMPLOYEE BENEFITS LAW

	[d]	Pension Protection Act of 2006 (PPA) Changes	8-101
		[i] Variable Rate Premium	8-101
		[ii] Termination Premium	8-102
	[e]	MAP-21 Premium Increases	8-102
	[3]	Limitations on PBGC Guarantee of Shutdown and Other Benefits	8-102
	[4]	Rules Relating to Bankruptcy of the Employer	8-103
		[a] Guaranteed Benefits	8-103
		[b] Asset Allocation	8-104
		[c] Pension Protection Act of 2006 (PPA) Changes	8-104
	[5]	PBGC Premiums for Small Plans	8-105
	[6]	Rules for Substantial Owner Benefits in Terminated Plans	8-105
	[7]	Acceleration of PBGC Computation of Benefits Attributable to Recoveries from Employers	8-106
		[a] In General	8-106
		[b] Plan Underfunding Recoveries	8-106
		[c] Recoveries for Due and Unpaid Employer Contributions	8-107
		[d] PPA Changes	8-107
	[8]	Treatment of Certain Plans When There Is a Cessation or Change in Membership of a Controlled Group	8-107
	[9]	Missing Participants	8-108
§ 8.09		Defined Benefit Plan Funding Notice	8-109
	[1]	In General	8-109
	[2]	Access to Multiemployer Pension Plan Information	8-111
	[3]	Additional Annual Reporting Requirements and Electronic Display of Annual Report Information	8-113
		[a] Annual Report	8-113
		[b] Electronic Display of Annual Report	8-114
		[c] Summary Annual Report	8-114
		[d] Multiemployer Plan Summary Report	8-114
	[4]	Section 4010 Filings with the PBGC	8-115
	[5]	Disclosure of Plan Termination to Plan Participants	8-116
	[6]	Notice of Freedom to Divest Employer Securities	8-118

TABLE OF CONTENTS

liii

[7]	Periodic Pension Benefit Statements	8-119
[a]	In General	8-119
[b]	Requirements for Defined Contribution Plans	8-120
[c]	Requirements for Defined Benefit Plans	8-120
[d]	Form of Benefit Statement.	8-121
[8]	Notice to Participants or Beneficiaries of Blackout Periods.	8-121
[a]	In General	8-121
[b]	Definition of Blackout Period	8-122
[c]	Timing of Notice	8-123
[d]	Form and Content of Notice	8-123
[e]	Penalty for Failure to Provide Notice	8-124

TABLE OF CONTENTS

Volume 2

CHAPTER 9

Plan Termination

§ 9.01	Impact on Qualification	9-6.3
[1]	Business Necessity	9-6.3
[2]	IRS Notification	9-7
[3]	Vesting on Termination	9-7
[4]	Actual Terminations	9-8
[5]	Complete Discontinuance	9-10
[6]	Proposed Termination	9-10
[7]	Effect on Prior Status if Terminated with Valid Reason	9-10
[8]	Effect on Prior Status if Terminated without Valid Reason	9-12
[9]	Termination Limitations	9-13
[a]	Pre-Termination Limitations	9-13
[i]	Dollar Limitations	9-13
[ii]	Restricted Employee	9-13
[iii]	Benefit	9-14
[iv]	Nonapplicability in Certain Cases	9-14
[b]	Early Termination Limitations	9-14
[i]	When Does the Limitation Apply?	9-14
[ii]	Affected Employees	9-15
[iii]	Dollar Limitations	9-15
[iv]	Definitions	9-16
[v]	Required Plan Provision	9-16.1
[vi]	Conditional Nature of Limitations	9-16.1
[vii]	Amendments	9-16.2
[viii]	Reallocation of Excess Funds on Termination	9-16.2
[ix]	Insured or Noninsured Benefits	9-16.3

EMPLOYEE BENEFITS LAW

	[x]	Substitution of One Type of Plan for Another	9-16.3
	[xi]	Effect of ERISA	9-16.3
[10]		Discrimination in Operation	9-16.4
	[a]	Curtailment—Partial Terminations . . .	9-16.5
	[b]	Narrowing Eligibility	9-17
	[c]	Reducing Employer Contributions with or without Reducing Benefits. . . .	9-17
	[d]	Reducing Vesting	9-18
	[e]	Class of Employees Eliminated from Participation	9-19
	[f]	Division Closed or Sold	9-19
	[g]	Business Moved to New Location . . .	9-19
	[h]	Other Changes in Plans	9-19
	[i]	Decisional Authority on Partial Terminations	9-20
	[i]	Tipton and Kalambach, Inc. v. Commissioner	9-20
	[ii]	Weil v. Terson Co. Retirement Plan Committee	9-21
	[j]	IRS Ruling on Plan Terminations . . .	9-23
[11]		Suspensions	9-24
	[a]	Pension and Annuity Plans	9-24.1
	[b]	Profit-Sharing and Stock Bonus Plans	9-25
[12]		Frozen Plans	9-25
[13]		Missing Participants	9-26
	[a]	Generally	9-26.1
	[b]	Required Search Methods	9-26.1
	[c]	Other Search Options	9-26.2
	[d]	Distribution Options	9-26.3
	[e]	100% Income Tax Withholding— Unacceptable Method	9-26.4
	[f]	DOL Guidance on Missing Participants	9-26.4
	[i]	Compliance Assistance Release Describing DOL Missing Participant Investigations	9-26.5
	[ii]	DOL Temporary Enforcement Policy on Fiduciaries of Abandoned Insolvent Plans	9-26.10
	[iii]	DOL Best Practices for Locating and Tracking Missing Participants and Retirees	9-26.13
§ 9.02		Single-Employer Plan Termination Insurance Program	9-26.17
	[1]	Insuring Agent	9-26.17

TABLE OF CONTENTS

vii

	[a] PBGC Objective	9-27
[2]	Benefits Guaranteed	9-27
[3]	Premiums	9-28
	[a] Premium Rates	9-28
	[b] Premium Filing Deadline	9-30
	[c] PBGC Flat-Rate Premium Due Date	9-30
[4]	Plans Insured by the PBGC	9-30.1
[5]	Reportable Events	9-31
	[a] Post-Event Notice of Reportable Events	9-31
	[b] Advance Notice of Reportable Events	9-34
	[c] Contents of Notice	9-34
	[d] Reduction in Benefit Accruals	9-35
[6]	Plan Termination	9-35
	[a] In General	9-35
	[b] Enrolled Actuary Certification Program	9-36
[7]	Standard Termination	9-38
	[a] In General	9-38
	[b] Required Notices	9-38
	[i] Notice of Intent to Terminate to Affected Parties	9-39
	[ii] Notice to PBGC	9-40
	[iii] Notice to Participants and Beneficiaries of Benefit Liabilities	9-40
	[iv] PBGC Notice of Noncompliance	9-41
	[v] Timing Requirements Under PBGC Regulations	9-42
	[vi] Final PBGC Regulations	9-42
	[vii] Final PBGC Regulations on Standard Terminations	9-42
	[c] Benefit Liabilities	9-43
	[d] Final Distribution of Assets	9-44
	[e] Facilitating Plan Sufficiency	9-45
	[f] Lost Participants	9-45
	[g] Special Temporary Rule Regarding Reversions	9-47
	[h] PBGC Audits	9-48
[8]	Distress Termination	9-48
	[a] In General	9-48
	[b] Distress Termination Criteria	9-48.1
	[c] Limitations on Bankruptcy Reorganizations in Qualifying for Distress Termination	9-49

EMPLOYEE BENEFITS LAW

	[d]	Employer Liability Under Distress Termination	9-50
	[e]	Implementation of Distress Termination	9-50
	[f]	Administration During Interim Period	9-51
	[g]	Prohibition on Benefit Increases Where Plan Sponsor is in Bankruptcy	9-52
	[h]	Bankruptcy Laws	9-53
	[9]	Plan Termination by the PBGC (Involuntary Termination)	9-53
	[10]	Termination Date	9-54
	[11]	Annual Report	9-55
	[12]	Allocation of Assets on Plan Termination	9-56
	[13]	Plan Termination Liability	9-56
	[a]	In General	9-56
	[b]	Liability to PGBC	9-57
	[i]	“Collective Net Worth”	9-57
	[ii]	“Pre-Tax Profits”	9-58
	[c]	Liability to Participants and Beneficiaries	9-58
	[d]	Liability to Section 4042 Trustees	9-59
	[e]	Tax Deductibility of Payments	9-59
	[f]	Transactions to Evade Liability	9-60
	[g]	Effect of Corporate Reorganizations	9-60
	[h]	Enforcement Authority	9-60
	[i]	Actions Against the PBGC	9-61
	[j]	Funding Waivers and Amortization Period Extensions	9-61
	[i]	Exception	9-61
	[ii]	Interest Rate	9-62
	[k]	Lien for Liability	9-62
	[l]	Shifting of Liability to PBGC	9-62
	[m]	Spinoff Terminations	9-63
	[n]	Implementation Guidelines	9-63
	[o]	Substantial Cessation of Operations	9-65
	[14]	Plan Mergers and Splits	9-66
§ 9.03		Multiemployer Plan Termination Program	9-68
	[1]	In General	9-68
	[2]	Multiemployer Plan Defined	9-68
	[3]	Employer Withdrawal Liability	9-69
	[a]	Complete Withdrawal Defined	9-70
	[i]	Limited Exemption for Certain Industries	9-70
	[ii]	Special Sale of Assets Rule	9-72
	[iii]	Reduction or Waiver	9-75
	[iv]	Events That Are Not Withdrawals	9-75
	[b]	Partial Withdrawal Defined	9-78

TABLE OF CONTENTS

ix

	[i] 70% Contribution Decline	9-78
	[ii] Cessation of Obligation to Contribute	9-78
	[iii] Cessation of Obligation to Contribute at a Facility.	9-79
	[iv] Special Rules	9-79
[c]	Determination of Complete Withdrawal Liability.	9-79
	[i] Basic or Presumptive Method.	9-80
	[ii] First Alternative (Modified Presumptive) Method	9-82
	[iii] Second Alternative (Rolling Five-Year) Method.	9-83
	[iv] Third Alternative (Direct Attribution) Method	9-84
	[v] Other Computation Methods Actuarial Assumptions.	9-84
	[vi] Abatement of Withdrawal Liability.	9-85
[d]	Determination of Partial Withdrawal Liability.	9-85
	[i] Reduction of Abatement of Partial Withdrawal Liability.	9-86
	[ii] Credit Against Future Withdrawal Liability.	9-88
[e]	Six-Year “Free Look” Rule	9-88
[f]	<i>De Minimis</i> Rules.	9-89
	[i] Mandatory <i>De Minimis</i> Rule	9-89
	[ii] Discretionary <i>De Minimis</i> Rule	9-89
[g]	Dollar Limitations on Withdrawal Liability.	9-90
	[i] Asset Sales to Unrelated Parties	9-90
	[ii] Insolvency Rule.	9-90
	[iii] Individual Employers	9-91
[h]	Sale of Corporate Assets.	9-91
	[i] Liability of Seller	9-92
	[ii] Liability of Purchaser	9-92
	[iii] Exemption Process	9-93
[i]	Payment of Withdrawal Liability	9-93
	[i] Notice and Collection by Plan Sponsor.	9-93
	[ii] Payment Schedule Formula. . . .	9-93
	[iii] When Payment is Due	9-94
	[iv] Deductibility of Payments.	9-95

EMPLOYEE BENEFITS LAW

	[j]	Arbitration of Disputes	9-95
	[k]	Approval of Amendments	9-97
	[l]	Special Payment Funds Authorized . . .	9-98
	[i]	Private Withdrawal Liability Payment Fund	9-98
	[ii]	Other Insurance Not Prohibited	9-98
	[m]	Limitations on Controlled Group Withdrawal Liability	9-98
	[i]	The Multiemployer Pension Plan Amendments Act	9-99
	[ii]	Facts of Sun Capital Case	9-100
	[iii]	Analysis By The Courts	9-100
	[iv]	Conclusions	9-104
[4]		Reorganization of Multiemployer Plans . . .	9-104
	[a]	Reorganization Status	9-104
	[i]	Vested Benefits Charge	9-105
	[ii]	Net Charge to the Funding Standard Account	9-106
	[b]	Notice of Reorganization	9-106
	[c]	Minimum Contribution Requirements	9-106
	[i]	Cash Flow Rule	9-107
	[ii]	Ceiling on Required Increases	9-107
	[iii]	Overburden Credit	9-108
	[d]	Adjustments in Accrued Benefits . . .	9-109
	[e]	Insolvent Plans	9-110
	[f]	Mass Withdrawal Terminations	9-111
[5]		Benefits Guaranteed	9-112
	[a]	Requirements for Guarantee	9-112
	[b]	Level of Guarantee	9-113
	[c]	Supplement Guaranteed Benefits . . .	9-114
[6]		Premiums	9-114
	[a]	Acceleration of Phase In	9-114
	[b]	Insufficient Premiums	9-115
	[c]	Premium Filing Deadline	9-115
[7]		Termination of Multiemployer Plans	9-116
	[a]	Benefits Under Terminated Plans . . .	9-117
	[b]	Continued Maintenance of Terminated Plan	9-118
[8]		Enforcement	9-118
	[a]	Civil Actions	9-118
	[b]	Liquidated Damages	9-119
	[c]	Penalty for Failure to Provide Notice .	9-119
	[d]	Expanded Annual Reports	9-119
[9]		Multiemployer Pension Reform Act of 2014 .	9-120

TABLE OF CONTENTS

xi

[a]	Background.	9-120
[i]	Amendments to the PPA Critical and Endangered Status Funding Rules	9-121
[ii]	Benefit Suspensions for Plans in Critical and Declining Status	9-123
[iii]	Plan Partitions	9-125
[iv]	Plan Mergers	9-126
[10]	Challenges to Multiemployer Plan Withdrawal Liability Assumptions	9-126
[a]	Fifth Circuit Upholds Challenge to DOL Fiduciary Rule SEC Issues Fiduciary Regulations Similar to DOL Rule	9-126
[b]	D.C. District Court Upholds Different Assumptions for Funding and Withdrawal Liability	9-127
[c]	Ohio District Court Orders Plan to Recalculate Based on Funding Assumptions	9-130
[d]	Second Circuit Prohibits Retroactive Changes to Withdrawal Liability Assumptions	9-131
[e]	D.C. Circuit Invalidates UMWA Fund's Method of Calculating Withdrawal Liability	9-133
[i]	Summary	9-133
[ii]	Background	9-134
[iii]	Decision	9-134.2
[11]	PBGC Issues Final Regulations on Simplified Withdrawal Liability Calculation Methods	9-134.9
[a]	Background.	9-134.10
[b]	Overview of Final Regulation.	9-136
[c]	Regulatory Changes to Reflect Benefit Decreases	9-137
[i]	Requirement to Disregard Adjustable Benefit Reductions and Benefit Suspensions	9-137
[ii]	Simplified Methods for Disregarding Adjustable Benefit Reductions and Benefit Suspensions	9-138
[d]	Regulatory Changes to Reflect Surcharges and Contribution Increases	9-143

EMPLOYEE BENEFITS LAW

	[i]	Requirement to Disregard Surcharges and Certain Contribution Increases and the Annual Withdrawal Liability Payment Amount . . .	9-143
	[ii]	Simplified Methods for Disregarding Certain Contribution Increases in the Allocation Fraction	9-144
	[iii]	Simplified Methods After Plan Is No Longer in Endangered or Critical Status	9-148
[12]		PBGC Finalizes Multiemployer Pension Rescue Rule for Financially Troubled Plans	9-150
	[a]	Background	9-151
	[b]	Overview of the Final Rule	9-151
	[c]	Impact of the Final Rule	9-153

CHAPTER 10**Reporting and Disclosure**

§ 10.01	In General	10-4.2
§ 10.02	Plans Covered by the Reporting and Disclosure Requirements	10-5
	[1] Statutory Exemptions	10-6
	[2] Practices and Arrangements	10-6
	[3] Severance Payments	10-7
	[4] Gratuitous Payments to Retirees	10-9
	[5] Limited Exemptions	10-10.1
	[a] Small Unfunded Welfare-Benefit Plans	10-10.1
	[b] Group Insurance Arrangements Involving Small Welfare Plans . . .	10-11
	[c] Apprenticeship Training Plans	10-12
	[d] Unfunded Plans for Select Groups of Management or Highly Compensated Employees	10-12
	[i] Percentage of Work Force	10-14
	[ii] Ability to Influence	10-14
	[iii] Dollar Level of Compensation	10-14
	[iv] “Plan” v. Employment Contract	10-14.1
	[e] Plans Providing Day Care Centers . . .	10-14.1
	[f] Simplified Employee Pensions	10-14.1

TABLE OF CONTENTS

xiii

	[6]	Courts Rule on ERISA Coverage	10-14.2
	[a]	Group Health Insurance Not Subject to ERISA	10-14.2
	[b]	Group Insurance Plan Subject to ERISA	10-14.3
§ 10.03		Reporting to Governmental Agencies	10-14.7
	[1]	Initial Filings with the Internal Revenue Service	10-14.7
	[a]	Forms 5300, 5303 and 8717	10-14.7
	[b]	Notice to Interested Parties	10-14.7
	[2]	Initial Filings with the Department of Labor	10-15
	[a]	Summary Plan Descriptions	10-15
	[i]	Contents of the Summary Plan Description	10-16
	[ii]	Final Regulations on Summary Plan Description Content	10-21
	[iii]	General Format	10-25
	[iv]	Multiple Classes of Participants	10-26
	[v]	Merged Former Plans	10-27
	[vi]	Health Maintenance Organizations	10-28
	[3]	Initial Filings with the Pension Benefit Guaranty Corporation	10-28
	[a]	Form PBGC-1	10-28
	[4]	Ongoing Filings with the Internal Revenue Service	10-28
	[a]	Form 5500, the Annual Report	10-28
	[b]	Contents of the Annual Report	10-29
	[i]	Generally	10-29
	[ii]	Schedules for Small Pension Plans	10-33
	[iii]	Schedules for Large Pension Plans	10-34
	[iv]	DOL Q&A's on Small Pension Plan Audit Waiver Regulation	10-34
	[v]	Limited Pension Plan Reporting	10-35
	[vi]	Chart for Form 5500 Schedules and Attachments	10-36
	[c]	Statements of Distribution	10-39
	[d]	Withholding Requirements	10-39
	[i]	Obligations to Withhold	10-40
	[ii]	Amount of Withholding	10-41
	[iii]	Election and Notification Requirements	10-42

EMPLOYEE BENEFITS LAW

		[iv] Periodic Distributions	10-42
		[v] Nonperiodic Distributions	10-42.3
		[vi] Withholding Certificates	10-42.4
		[vii] Penalties for Noncompliance	10-42.5
		[viii] Reporting and Recordkeeping Requirements	10-42.5
		[e] Rollover Rules	10-42.6
	[5]	Ongoing Filings with the Department of Labor	10-42.6
		[a] Form 5500	10-42.6
		[i] Exemptions and Simplifications	10-43
		[ii] Penalty for Failure to File	10-43
		[b] Updated Plan Description	10-46
	[6]	Form PBGC-1	10-47
	[7]	PBGC Section 4010 Filings	10-48.1
		[a] Persons Required to Provide Information to PBGC	10-48.1
		[b] Additional Information Required in Section 4010 Report	10-48.1
		[c] Effective Date	10-48.2
		[d] Disclosure of Information and Notice To Congress	10-48.2
§ 10.04		Special-Event Reporting	10-49
	[1]	Internal Revenue Service	10-49
		[a] Approval of Amendments	10-49
		[b] Annual Registration Statement (Schedule SSA)	10-49
		[c] Termination or Curtailment of Plan (Forms 5500 and 5310)	10-49
		[d] Notice of Change in Plan Status (Form 5500)	10-51
		[e] Notice of Merger, Consolidation, or Transfer of Plan Assets or Liabilities	10-51
		[f] Penalties for Failure to File	10-53
		[i] Annual Registration (Schedule SSA)	10-53
		[ii] Notification of Change in Status (Form 5500)	10-53
		[iii] Actuarial Statement in Case of Mergers (Form 5310)	10-54
		[iv] Information Relating to Certain Trusts and Annuity Purchase Plans (Form 5500)	10-54
		[g] Penalties for Missing Information	10-54
	[2]	Department of Labor	10-54
		[a] Material Modifications	10-54

TABLE OF CONTENTS

xv

	[3]	Pension Benefit Guaranty Corporation	10-54.2
	[a]	Reportable Event Notice—Pre-1994 Rules	10-54.2
	[b]	Additional Reportable Events— Effective On or After February 6, 1995	10-54.5
	[c]	Plan Termination	10-54.5
	[d]	Notice to Interested Parties by Trustee	10-54.6
	[e]	Reports to Trustee	10-54.6
	[f]	Notice of Inability to Pay Basic Benefits	10-54.7
	[g]	PBGC Reporting Requirements for Controlled Groups Maintaining Underfunded Plans	10-54.7
	[i]	Conditions That Trigger the Filing Requirement	10-54.7
	[ii]	Required Information	10-54.7
	[iii]	Filing Deadlines	10-54.8
	[iv]	Members of the Controlled Group That Must File.	10-54.9
	[v]	Exemptions from Filing	10-54.9
	[vi]	Waivers or Extensions.	10-54.10
	[vii]	Confidentiality of Filed Information	10-54.10
	[viii]	Penalties for Noncompliance . . .	10-54.10
§ 10.05		Disclosure to Participants.	10-54.12
	[1]	In General	10-54.12
	[2]	Participant Covered Under the Plan	10-54.14
	[a]	Welfare Plans	10-54.14
	[b]	Pension Plans	10-54.15
	[c]	Retirees and Terminated Vested Employees	10-54.16
	[d]	Non-Vested Employee	10-54.17
	[3]	“Automatic” Disclosure.	10-54.18
	[a]	Summary Plan Description	10-54.18
	[b]	Summary of Material Modifications. . .	10-54.19
	[c]	Summary Annual Report	10-54.19
	[i]	Contents, Style and Format . . .	10-54.19
	[ii]	Foreign Languages	10-54.19
	[iii]	Furnishing of Additional Documents to Participants and Beneficiaries.	10-54.20
	[iv]	Defined Benefit Plans	10-54.20
	[v]	Annual Funding Notice for Defined Benefit Plans.	10-54.20
	[vi]	DOL Guidance for Pension Funding Disclosures	10-55
	[vii]	ERISA Section 4011 Repeal. . .	10-56.2

EMPLOYEE BENEFITS LAW

	[d]	Benefits Statements for Terminating Vested Employees	10-56.2
	[e]	Written Explanation of Claims Denial	10-56.3
	[f]	Notice to Interested Parties	10-57
	[g]	Joint and Survivor Explanation	10-59
	[i]	Notice and Election Requirements	10-59
	[ii]	Spousal Consent	10-60.3
	[iii]	Content	10-60.3
	[iv]	Elections for Transitional Coverage	10-60.4
	[v]	Distribution to Participants	10-60.5
	[h]	Notice of Eligibility for Rollover Treatment Prior to 1993	10-60.5
	[i]	Notice of Eligibility for Rollover Treatment After 1/1/93	10-60.5
	[j]	Notice of Eligibility for Rollover Treatment After EGTRRA	10-60.6
	[k]	Underfunded Defined Benefit Plans—Notification of Funding Status	10-60.7
	[l]	Significant Reduction in the Benefit Accrual Rate	10-60.8
	[m]	Claims Procedure Final Regulations	10-60.9
	[i]	Who May Represent a Claimant	10-60.10
	[ii]	Structure and Scope of the Final Regulation	10-60.11
	[iii]	Limitations on Arbitration and Multiple Appeals	10-60.14
	[iv]	Claim Determinations and Appeals	10-60.16
	[v]	Content of Notices of Adverse Benefit Determinations	10-60.21
	[vi]	Preemption of State Law	10-60.22
	[vii]	PWBA Issues Guidance on Claims Processing Regulations	10-60.23
	[n]	Blackout Notice	10-60.24
[4]		Disclosure Upon Request	10-60.25
	[a]	Plan Description Form EBS-1	10-60.25
	[b]	Plan Documents	10-60.25
	[c]	Plan Amendments	10-60.25
	[d]	Personal Pension Benefits Statement	10-60.25
	[e]	Plan Termination Report	10-60.26
[5]		Disclosure Upon Examination	10-60.26
	[a]	In General	10-60.26

TABLE OF CONTENTS

xvii

	[b]	Who Can Examine Plan Documents?	10-60.27
	[c]	Where Documents Must Be Made Available	10-60.28
[6]		Electronic Disclosure	10-60.29
	[a]	DOL Rules—Health, Welfare Plans and Pension Plans	10-60.29
	[i]	Disclosure Through Electronic Media	10-60.30
	[ii]	Electronic Recordkeeping	10-60.30
	[iii]	Final Regulations Regarding Electronic Notices and Recordkeeping	10-60.31
	[b]	IRS Rules for Pension and Profit Sharing Plans	10-60.33
	[i]	Use of Electronic Media for Delivery of Notices	10-60.33
	[ii]	Paper Notices	10-60.34
	[iii]	Flexibility for Timing Requirements in Providing Notices	10-60.34
	[iv]	Participant’s Consent Under Section 411(a)(11)	10-60.35
	[v]	Additional Guidance	10-60.35
	[vi]	Common Law “Mailbox” Rule to Determine if Plan Received Participant’s Benefit Form	10-60.38
	[c]	Electronic Display of Annual Report Form 5500 Information	10-60.38
	[d]	DOL Final Regulations on E-Disclosure of Retirement Plan Documents	10-60.39
	[i]	New Voluntary Safe Harbor	10-60.39
	[ii]	Two Options for Electronic Delivery	10-60.39
	[iii]	Participant Protections	10-60.40
[7]		Pension Benefit Statements—Reporting of Permitted Disparity	10-60.41
[8]		Disclosure of Termination Information to Plan Participants	10-60.41
§ 10.06		Liability for Inaccurate Disclosure	10-60.43
	[1]	In General	10-60.43
	[2]	Potential Liability	10-60.43
	[3]	Promissory Estoppel	10-62
	[4]	Disclaimer as Protection	10-63
	[5]	Misleading Communications	10-64
	[6]	Duty to Inform of Plan Termination	10-67

EMPLOYEE BENEFITS LAW

	[a]	Fiduciary Duty to Inform Employees	10-67
	[b]	Compliance with ERISA's Procedural Requirements	10-69
	[7]	Rules to Follow	10-70
	[8]	Monetary Damages Available for Inadequate Disclosure	10-71
§ 10.07	[RESERVED]		10-72
§ 10.08	[RESERVED]		10-73
§ 10.09	[RESERVED]		10-74

CHAPTER 11**[RESERVED]****CHAPTER 12****Fiduciary Responsibility**

§ 12.01	In General	12-8.27
§ 12.02	Coverage	12-9
§ 12.03	Identifying the ERISA Fiduciary	12-12
	[1] Directors as Fiduciaries	12-13
	[2] Investment Advice and Fiduciary Status	12-14
	[a] Regulatory Guidance	12-14
	[b] Decisional Law	12-15
	[i] Individualized Investment Advice	12-16.1
	[ii] Mutual Agreement	12-16.2
	[iii] "Regular Basis" Requirements	12-16.3
	[iv] Advice as to the Value of Securities	12-16.3
	[v] Receipt of Compensation	12-16.4
	[c] Changes Mandated by the Pension Protection Act of 2006 with Respect to Investment Advice	12-16.4
	[d] Changes Mandated by the Pension Protection Act of 2006 with Respect to "Blackout" Period Investments and Mapping	12-16.8
	[e] DOL Proposal for New Definition of Fiduciary with Respect to Providers of Investment Advice	12-16.8
	[f] PBGC Investment Policy	12-16.10
	[i] Overview of Investment Objectives and Governance	12-16.10

TABLE OF CONTENTS

xix

	[ii]	Rules Governing Asset Allocations and Investments	12-16.11
	[iii]	Lessons for Fiduciaries	12-16.12
[3]		Parties-in-Interest	12-16.12
[4]		IRS Disqualified Persons Definition	12-16.13
[5]		Claims Administrator with Discretionary Control Is Functional Fiduciary	12-17
	[a]	Discretionary Authority	12-20
	[b]	Control Over Assets	12-20.1
	[c]	Impact of Decision	12-20.1
§ 12.04		Particular Plan Requirements	12-20.3
	[1]	In General	12-20.3
	[2]	Mandatory Plan Requirements	12-20.3
	[a]	Named Fiduciaries	12-20.3
	[b]	Funding Procedure	12-20.3
	[c]	Plan Operation	12-20.4
	[d]	Plan Amendment Procedure	12-20.4
	[e]	Payments Basis	12-20.4
	[f]	Voluntary Requirements	12-20.4
[3]		Plan Amendment Litigation	12-20.4
	[a]	Plan Amendment Procedure Requirement	12-20.4
	[b]	Plan Amendment Does Not Create Separate Plan	12-20.9
	[c]	Plan Reformation Is Available Remedy Under ERISA to Recalculate Participant Benefits	12-20.13
[4]		Mandatory Trust Requirements	12-20.18
	[a]	Exemption of Certain Plans or Plan Assets	12-20.18
	[b]	Authority and Discretion of Trustee	12-20.19
	[c]	Delegation of Authority to Investment Manager	12-20.20
[5]		Requirement That Plan Assets Be Held for Exclusive Benefit of Plan Participants	12-20.20
	[a]	In General	12-20.20
	[b]	Allocation, Upon Termination, of Assets of Uninsured Plan	12-20.20
	[c]	Allocation, Upon Termination, of Assets of Welfare Plan	12-20.21
	[d]	Instances Where Contribution Can Be Returned to Employer	12-20.21
[6]		Standard of Fiduciary Review	12-20.22
	[a]	The <i>Aetna</i> Decision	12-20.22
	[b]	The <i>MetLife</i> Decision	12-21

EMPLOYEE BENEFITS LAW

	[c]	Plan Imposed Limitations on Litigation of Benefit Claims	12-22.1
	[i]	The Heimeshoff Decision	12-22.2
	[ii]	The Moyer Decision	12-22.5
	[d]	When Application of Limitations Provision Creates Impossible Accrual Date	12-22.8
	[i]	Background	12-22.9
	[ii]	Decision	12-22.9
	[e]	Appeal of District Court Remand Order to Plan Administrator	12-22.13
	[i]	Background	12-22.13
	[ii]	Decision	12-22.13
	[f]	Supreme Court Affirms Ninth Circuit Decision on Fiduciary Breach Statute of Limitations “Actual Knowledge” Requirement	12-22.16
	[i]	Background	12-22.17
	[ii]	Ninth Circuit Decision	12-22.18
	[iii]	Supreme Court Decision	12-22.22
	[g]	Importance of Prudent Administrative Procedures and Substantive Decisions in Responding to ERISA Benefit Claims	12-22.25
	[i]	<i>Rizzo v. First Reliance</i> <i>Standard Life Insurance Co.</i>	12-22.25
	[ii]	<i>Mathews v. The Northwestern</i> <i>Mutual Life Insurance Co.</i>	12-22.27
	[7]	[RESERVED]	12-22.29
	[8]	Terminated Plan Participants May Pursue Fiduciary and Prohibited Transaction Claims Arising from Hostile Takeover	12-22.29
	[9]	Updated DOL Procedures for Finding Missing Participants	12-22.31
	[10]	Service Provider “Guide” to Assist Plan Fiduciaries in Reviewing Initial Disclosure	12-22.31
	[a]	Background	12-22.32
	[b]	The Final Regulations	12-22.32
	[c]	The Proposed Amendment	12-22.33
§ 12.05		Fiduciary Standards	12-22.41
	[1]	General Standards	12-22.41
	[2]	Prudent Man Rule	12-22.41
	[a]	Special Rules Where Participant or Beneficiary Directs Investment	12-22.43
	[i]	Participant Control Over Investments	12-22.44

TABLE OF CONTENTS

xxi

	[ii]	Broad Range of Investment Alternatives	12-22.45
	[iii]	Investment-Related Information	12-22.47
	[iv]	Fiduciary Requirements for Disclosure in Participant-Directed Individual Account Plans	12-22.51
	[v]	Service Provider “Guide” to Assist Plan Fiduciaries in Reviewing Initial Disclosure	12-22.60
	[b]	Prohibition Against Transferring Plan Assets Outside United States. . .	12-22.63
[3]		Diversification of Plan Investments	12-22.63
	[a]	In General.	12-22.63
	[b]	Permissible Degree of Concentration	12-22.64
	[c]	Where There Is More Than One Investment Manager	12-22.65
[4]		Adherence to Plan Documents.	12-22.65
[5]		Duty to Provide Accurate Benefit Information	12-22.65
[6]		Labor Department Guidance on Fiduciary Duties in Connection with Mutual Fund Abuses	12-22.67
[7]		DOL ERISA Lawsuits for Failure to Remit Participant Salary Deferrals	12-22.69
	[a]	DOL Lawsuit Against MEP Sponsor and Plan Administrator for Failure to Remit Deferrals	12-22.69
	[b]	DOL Judgment Against Plan Fiduciaries for Missed Contributions.	12-22.70
	[c]	DOL Suit Against NYC Courier For Failure to Remit Contribution	12-22.70
§ 12.05A		Litigation Over Hidden Section 401(k) Fees.	12-22.71
	[1]	Compliance with ERISA Reporting and Disclosure Requirements	12-22.71
	[2]	Rejection of Reporting and Disclosure Safe Harbor	12-22.73
	[3]	Employer Cannot Hide Behind Investment Consultant’s Advice	12-22.73
	[a]	District Court Decision	12-22.74
	[b]	Ninth Circuit Decision	12-22.76
	[c]	Solicitor General Brief Endorsing Appeal	12-22.78
	[d]	Supreme Court Decision	12-22.79

EMPLOYEE BENEFITS LAW

	[i]	Background	12-22.80
	[ii]	Decision	12-22.81
	[iii]	Implications	12-22.83
	[e]	\$13.16 in Total Damages	12-22.84
[4]		\$35 Million Verdict in 401(k) Fee Case	12-22.85
	[a]	Failure to Monitor Recordkeeping Expenses	12-22.86
	[b]	Failure to Negotiate Rebates	12-22.87
	[c]	Generating More Revenue Sharing by Replacing Funds	12-22.88
	[d]	Monetary Relief	12-22.88
	[e]	Lost Float Income	12-22.88
	[f]	U.S. Supreme Court Denial of Fiduciary Liability Review	12-22.89
	[g]	ABB Inc. Still Fighting Over Money Owed for 401(k) Fund Swap	12-22.89
[5]		Bundled Vendor May Be ERISA Fiduciary with Responsibility to Monitor Own Compensation	12-22.90
	[a]	TLIC Is a Fiduciary Accountable for Reasonableness of Its Fees	12-22.91
	[b]	Ability to Change Fee Schedule Is “Discretionary” Activity	12-22.91
	[c]	Ability to Add or Delete Investment Options Is Fiduciary “Discretionary” Activity	12-22.91
	[d]	Having or Exercising Discretion Are Both Fiduciary Functions	12-22.92
[6]		Service Provider Not a Fiduciary in Negotiating Its Contract	12-22.92
[7]		Fiduciary Breach Claims Barred by ERISA’s Six-Year Statute of Limitations	12-22.92
[8]		Lockheed Agrees to Pay \$62 Million to Settle for \$1.3 Billion ERISA Class Action	12-22.93
[9]		Boeing Settles Excessive-Fee Suit for Near-Record \$57 Million	12-22.95
	[a]	Background	12-22.96
	[b]	Settlement Terms	12-22.96
[10]		Novant Reaches \$32 Million Settlement in Plan Fees Case	12-22.97
	[a]	Monetary Relief	12-22.98
	[b]	Non-Monetary Relief	12-22.98
[11]		Anthem Agrees to \$23.65 Million Settlement Over 401(k) Fees Paid to Vanguard	12-22.99
	[a]	Background	12-22.100
	[b]	Plan Investments	12-22.101

TABLE OF CONTENTS

xxiii

	[i]	Excessive Fees Compared to Lower-Cost Share Classes of the Plan's Identical Mutual Fund Options	12-22.101
	[ii]	Excessive Fees Compared to Other Mutual Funds	12-22.102
	[iii]	Excessive Fees Compared to Separate Accounts	12-22.102
	[iv]	Excessive Fees Compared to Collective Trusts	12-22.103
	[c]	Excessive Administrative Fees	12-22.104
	[d]	Imprudent Retention of Money Market Fund	12-22.106
	[e]	ERISA'S Fiduciary Standards	12-22.107
	[f]	Complaint Allegations	12-22.108
	[i]	Breach of Duties of Loyalty and Prudence-Unreasonable Investment Management Fees	12-22.108
	[ii]	Breach of Duties of Loyalty and Prudence-Unreasonable Administrative Fees	12-22.109
	[iii]	Breach of Duties of Loyalty and Prudence-Failure to Consider the Use of a Stable Value Fund Instead of a Money Market Fund	12-22.110
	[iv]	Failure to Monitor Fiduciaries	12-22.111
[12]		"Eligible Worksite Employees" Accuse Insperity 401(k) Plan of Excessive Fee	12-22.113
	[a]	Background	12-22.113
	[b]	Causes of Action	12-22.115
	[i]	Breach of Duties of Loyalty and Prudence—Unreasonable Administrative and Recordkeeping Fees	12-22.115
	[ii]	Breach of Duties of Loyalty and Prudence—Unreasonable Investment Management Fees	12-22.116
	[iii]	Breach of Duties of Loyalty and Prudence—Use of a Microscopically Low-Yielding Money Market Fund and Adding an Imprudent Stable Value Fund	12-22.117

EMPLOYEE BENEFITS LAW

	[iv]	Failure to Monitor Fiduciaries	12-22.118
	[v]	Prohibited Transactions between the Plan and Parties In Interest	12-22.119
	[vi]	Prohibited Transactions between the Plan and Fiduciaries	12-22.120
	[c]	Insuperity Motion to Dismiss Denied	12-22.122
	[i]	Count I: Breach of Duties of Loyalty and Prudence— Selection and Retention of Untested, Excessive-Cost, and Poorly Performing Proprietary Target Date Funds	12-22.123
	[ii]	Count II: Breach of Duties of Loyalty and Prudence—Unreasonable Administrative and Record Keeping Fees	12-22.127
	[iii]	Count III: Breach of Duties of Loyalty and Prudence— Unreasonable Investment Management Fees	12-22.129
	[iv]	Count IV: Breach of Duties of Loyalty and Prudence— Use of a Microscopically Low-Yielding Money Market Fund Without Consideration or Use of a Stable Value Fund Until Adding a Stable Value Fund and Then Adding an Imprudent One	12-22.131
	[v]	Count V: Holdings' Failure to Monitor Fiduciaries	12-22.132
	[vi]	Counts VI: ERISA § 406(a)-Prohibited Transactions Between the Plan and Parties in Interest, and VII: ERISA § 406(b)-Prohibited Transactions Between the Plan and Fiduciaries	12-22.133
	[d]	Class Certification	12-22.133
[13]		Principal Life Not Liable for 401(k) Fees . . .	12-22.134
	[a]	Background	12-22.134

TABLE OF CONTENTS

xxv

	[b]	Class Action Complaint	12-22.135
		[i] Principal Separate Accounts . . .	12-22.136
		[ii] Excessive Fees Associated with the Separate Accounts . . .	12-22.137
		[iii] Allegations	12-22.138
	[c]	District Court Decision	12-22.140
		[i] Assessment of Fees Plaintiff Allegedly Authorized	12-22.141
	[d]	DOL Amicus Brief	12-22.147
		[i] Principal Acted as a Fiduciary in Choosing Plan Investment Options and Setting Associated Fees	12-22.147
		[ii] Principal Acted as a Fiduciary When it Selected Fund Investments from the Larger List of Possible Investments	12-22.148
		[iii] Principal Acted as a Fiduciary When it Set its Own Fees	12-22.152
	[e]	Eighth Circuit Decision	12-22.154
[14]		Hidden Fees Charged to Welfare Benefit Plan	12-22.156
[15]		DOL Sues MEWA Fund Over Excessive Fees	12-22.159
[16]		Defining the Limits of Broad, Complete ERISA Preemption in Health Care Excessive Fee Cases	12-22.160
[17]		Union Retirement Plan Sued Over Excessive 401(k) Fees	12-22.163
		[a] Background	12-22.163
		[b] Allegations	12-22.164
§ 12.05B		Offering of Proprietary or Affiliated Products in 401(k) and Retirement Plans	12-22.166
	[1]	Two Class Actions Against TIAA for Fiduciary Breach	12-22.166
		[a] <i>Malone v. Teachers Insurance & Annuity Ass'n of America</i>	12-22.166
		[b] <i>Richards-Donald v. Teachers Insurance and Annuity Ass'n of America</i>	12-22.168
	[2]	BB&T Agrees to \$20.85 Million Settlement for Fiduciary Breach	12-22.169
	[3]	Allianz \$12 Million Settlement in ERISA Class Action	12-22.170
	[4]	Putnam Sued by Its Participants for Alleged ERISA Violations	12-22.171
		[a] District Court Decision	12-22.171

EMPLOYEE BENEFITS LAW

	[b]	First Circuit Decision	12-22.172
	[i]	Background	12-22.172
	[ii]	Decision	12-22.173
[5]		Prudential Sued Over Alleged Undisclosed Profits	12-22.185
[6]		Prudential Defeats 401(k) Fee Lawsuit Over Revenue Sharing	12-22.187
[7]		Fidelity Sued Over 401(k) Fees, Investment Strategy	12-22.188
[8]		Deutsche Bank Agrees to \$21.9 Million Settlement In 401(k) Fee Class Action	12-22.189
	[a]	Breach of Fiduciary Duty Claims (Counts I and IV)	12-22.191
	[i]	ERISA Recoverable Losses	12-22.192
	[ii]	Objective Prudence	12-22.193
	[b]	Prohibited Transaction Claims (Counts II and III)	12-22.193
	[c]	Settlement Terms	12-22.193
[9]		Great-West Sued for Alleged ERISA Violations	12-22.194
[10]		Oracle Agrees to \$12 Million Settlement in 401(k) Fees Litigation	12-22.195
	[a]	Denial of Motion to Dismiss and Class Status Granted	12-22.195
	[b]	Ruling on Testimony of Expert Witness	12-22.196
	[c]	Settlement	12-22.197
[11]		MassMutual Agrees to \$9.5 Million in ERISA Fiduciary Breach in Determining its Own Compensation	12-22.197
[12]		M&T Bank Agrees to \$20.85 Million Settlement in 401(k) Fee Class Action	12-22.203
	[a]	Complaint Allegations	12-22.203
	[b]	Defendants' Violations of ERISA in Managing the Plan	12-22.205
	[i]	Defendants Added Seven Proprietary M&T Affiliated Investments to the Plan in 2011 in Violation of Their Fiduciary Duties	12-22.205
	[ii]	Defendants Retained High Cost and Poorly Performing Proprietary Mutual Funds in the Plan in Their Own Self-Interest and at the Expense of Plan Participants	12-22.206

TABLE OF CONTENTS

xxvii

	[iii]	Defendants Failed to Use the Lowest Cost Share Class of Several Mutual Funds in the Plan	12-22.209
	[iv]	Defendants Failed to Investigate the Use of Separate Accounts and Collective Trusts	12-22.210
[13]		American Century Wins 401(k) Lawsuit Over In-House Funds	12-22.212
	[a]	Background.	12-22.213
	[b]	Decision	12-22.213
[14]		Voya Wins Motion to Dismiss for Manipulating 403(b) Plan Stable Value Fund Crediting Rates	12-22.214
	[a]	VRIAC's General Account Stable Value Funds.	12-22.215
	[b]	Separate Account Products	12-22.216
	[c]	Another Voya Settlement.	12-22.217
[15]		Franklin Resources Agrees to Pay \$13.85 Million Over In-House 401(k) Litigation	12-22.218
[16]		American Airlines Agrees to \$22 Million Settlement Over 401(k) Fees for Affiliated Investment Company	12-22.219
	[a]	Motion to Dismiss Denied.	12-22.220
	[b]	Settlement Agreement	12-22.222
[17]		Morgan Stanley Litigation Over 401(k) Fees	12-22.222
	[a]	<i>Patterson v. Morgan Stanley</i>	12-22.222
	[b]	<i>Orellana v. JPMorgan Chase & Co.</i>	12-22.225
	[c]	<i>Stirsman v. JPMorgan Chase</i>	12-22.228
[18]		Wells Fargo Wins in Appeal Over 401(k) In-House Funds.	12-22.229
	[a]	Background.	12-22.229
	[b]	Decision	12-22.230
	[i]	Whether the Wells Fargo TDFs Were an Imprudent Choice	12-22.230
	[ii]	Whether the Wells Fargo Defendants Engaged in Unlawful Conduct.	12-22.231
[19]		SunTrust Agrees to \$29 Million Settlement in 401(k) Fee Case	12-22.232
	[a]	Background.	12-22.232
	[b]	Investment Manager Released from SunTrust 401(K) Suit	12-22.233
	[c]	Settlement	12-22.233

EMPLOYEE BENEFITS LAW

[20]	Eighth Circuit Rules that Principal is Fiduciary of its Stable Value Product	12-22.233
[21]	Charles Schwab Cannot Send 401(k) Fund Lawsuit to Arbitration	12-22.235
[a]	Background.	12-22.236
[b]	Decision	12-22.237
[c]	Appeal to Ninth Circuit Court of Appeals	12-22.241
[d]	Ninth Circuit Decision.	12-22.241
[i]	Background	12-22.242
[ii]	Ninth Circuit Changes its Position on the Enforceability of Arbitration Breach of Fiduciary Duty Claims Under ERISA	12-22.245
[21A]	Court Rules Arbitration Provision Too One-Sided to be Enforced	12-22.248
[a]	Background.	12-22.248
[b]	Decision	12-22.249
[i]	Arbitrability of Statutory ERISA Claims.	12-22.250
[ii]	The Amendment and Whether it Constitutes a Valid Agreement.	12-22.251
[21B]	Employer Status For Purposes of Withdrawal Liability Not Subject to Arbitration	12-22.256
[a]	Background.	12-22.256
[b]	Decision	12-22.258
[21C]	ERISA Fiduciary Claims Not Subject to Arbitration	12-22.261
[a]	Background.	12-22.261
[i]	Factual Background.	12-22.261
[ii]	The Arbitration Agreement.	12-22.262
[iii]	Procedural History	12-22.263
[b]	Second Circuit Opinion	12-22.263
[i]	Meaning of the Agreement's phrase "Relating to Employment"	12-22.264
[ii]	Additional language in the Agreement.	12-22.264
[iii]	Limits of the phrase "relating to employment" in the context of an arbitration agreement	12-22.265
[21D]	Supreme Court Limits Federal Courts Jurisdiction Over Arbitration Awards	12-22.266
[a]	Background.	12-22.267
[b]	Decision	12-22.267

TABLE OF CONTENTS

xxix

[21E]	Eighth Circuit Vacates Arbitration Awards After Supreme Court Decision	12-22.268
[a]	Background.	12-22.269
[b]	Decision	12-22.270
[21F]	Third Circuit Arbitration Decisions.	12-22.271
[a]	<i>Henry v. Wilmington Trust NA</i>	12-22.272
[i]	Summary	12-22.272
[ii]	Background	12-22.272
[iii]	Appellate Jurisdiction	12-22.273
[iv]	Decision	12-22.275
[v]	Analysis	12-22.275
[b]	<i>Berkelhammer v. ADP TotalSource Group, Inc.</i>	12-22.277
[i]	Background	12-22.277
[ii]	Decision	12-22.278
[21G]	Split Second Circuit Supports Arbitration Denial.	12-22.280
[a]	Majority Opinion	12-22.281
[b]	Background.	12-22.282
[i]	Defendants' Alleged Breaches	12-22.282
[ii]	The Plan.	12-22.283
[iii]	District Court Proceedings	12-22.284
[c]	Analysis	12-22.285
[i]	The Federal Arbitration Act	12-22.286
[ii]	ERISA Section 502(a)(2) Claims	12-22.288
[iii]	Application of Sections 17.10(f) and (g).	12-22.292
[iv]	Conclusion	12-22.300
[d]	Dissenting Opinion	12-22.301
[21H]	Sixth Circuit Questions if Kellogg Arbitration Pact is Invalid	12-22.303
[a]	Summary	12-22.304
[b]	Statement of the Case	12-22.304
[i]	Factual Background.	12-22.304
[ii]	Procedural History	12-22.306
[iii]	Legal Background.	12-22.307
[c]	Summary of the Argument	12-22.309
[d]	Argument	12-22.310
[i]	District Court Erred in Compelling Arbitration.	12-22.310
[ii]	District Court Erred By Forcing Arbitration.	12-22.317
[22]	Other Complaints Filed Against Financial Institutions.	12-22.320
[23]	DST Systems and Investment Advisor Settle \$79 Million Investment Suit	12-22.320
[a]	Background.	12-22.320

EMPLOYEE BENEFITS LAW

	[b]	Settlement	12-22.322
[24]		Genentech Wins 401(k) Fee Suit	12-22.323
	[a]	Background	12-22.324
	[b]	Decision	12-22.325
	[i]	Duty of Prudence	12-22.325
	[ii]	Duty of Loyalty	12-22.330
	[iii]	Failure to Adequately Monitor Other Fiduciaries . . .	12-22.330
	[iv]	Liability As Non-Fiduciaries . . .	12-22.331
[25]		Land O'Lakes Loses Dismissal of Excessive Fee Case	12-22.331
	[a]	Background	12-22.332
	[i]	Breach of Fiduciary Duties . . .	12-22.332
	[ii]	Plaintiff Allegations	12-22.334
	[b]	Decision	12-22.334
	[i]	Standing	12-22.334
	[ii]	Failure to Investigate and Select Lower Cost Alternative Funds	12-22.335
	[iii]	Recordkeeping Compensation	12-22.337
	[iv]	Duty of Loyalty	12-22.338
	[v]	Failure to Monitor	12-22.338
[26]		Ninth Circuit Decision Requiring Consideration of Indirect Compensation . .	12-22.339
	[a]	Connection between the Ninth Circuit Decision and PTE 2020-02 . . .	12-22.340
	[b]	<i>Bugielski v. AT&T</i>	12-22.340
	[c]	Commentary and Analysis	12-22.341
	[d]	PTE 2020-02	12-22.342
	[i]	New Disclosure Requirements . .	12-22.342
	[ii]	Acknowledgment of Fiduciary Status	12-22.342
	[iii]	Statement of Best Interest Standard of Care	12-22.343
	[iv]	Description of Services to Be Provided and Material Conflicts of Interests	12-22.343
	[v]	What to Do	12-22.343
§ 12.05C		Universities and Healthcare Systems Facing Retirement Plan Class Actions	12-22.345
	[1]	NYU Decision	12-22.345
	[2]	Columbia Lawsuit Advances After NYU Decision	12-22.347
[2A]		University of Chicago Agrees to \$6.5 Million Settlement	12-22.348
[3]		Vanderbilt Agrees to \$14.5 Million Settlement in Retirement Plan Fees Litigation	12-22.349

TABLE OF CONTENTS

xxxi

	[a] Background.	12-22.350
	[b] Request for Jury Trial Denied.	12-22.350
[4]	MIT Agrees to \$18.1 Million Settlement in Fees Litigation	12-22.351
[5]	Brown University Agrees to \$3.5 Million Settlement	12-22.352
	[a] Background.	12-22.352
	[b] Motion to Dismiss	12-22.352
[6]	Northwestern Beats Workers' Bid to Revive Excessive-Fee Suit	12-22.353
[7]	Penn Retirement Plan Fee Lawsuit	12-22.353
[8]	Lockton and Norton Healthcare Agree to Pay \$5.75 ERISA Settlement	12-22.356
	[a] Background.	12-22.356
	[b] Settlement.	12-22.357
[9]	Mercy Health Agrees to \$3.9 Million Settlement on Behalf of Three Retirement Plans	12-22.357
	[a] Background.	12-22.358
	[b] Settlement.	12-22.360
[10]	Southcoast Hospitals Group Settles Excessive Fee Lawsuit for \$2 Million.	12-22.360
	[a] Background.	12-22.360
	[b] Settlement Terms	12-22.361
[11]	CHS/Community Health System Reaches Settlement in 401(k) Excessive Fee Suit.	12-22.363
	[a] Background.	12-22.363
	[b] Settlement Terms	12-22.364
[12]	Bronson Healthcare Group Agrees to \$3 Million Settlement.	12-22.365
	[a] Background.	12-22.365
	[b] Settlement Terms	12-22.365
[13]	Barnabas Health Settles Excessive Fee Lawsuit	12-22.366
	[a] Settlement.	12-22.366
	[b] Decision	12-22.367
	[i] Standing.	12-22.367
	[ii] Duty of Prudence	12-22.369
	[iii] Duty of Loyalty.	12-22.372
	[iv] Failure to Monitor.	12-22.372
[14]	Universal Health Services Loses Motion to Dismiss Excessive Fee Litigation	12-22.373
	[a] Background.	12-22.373
	[b] Decision	12-22.374
[15]	Washington University Agrees to 7.5 Million Settlement in Excessive Fee/Underperforming Investment Litigation	12-22.381

EMPLOYEE BENEFITS LAW

	[a]	Settlement	12-22.381
	[b]	Eighth Circuit Decision	12-22.381
	[i]	Background	12-22.381
	[ii]	Decision	12-22.382
[16]		Yale Workers Ask Second Circuit to Order New Trial in ERISA Suit	12-22.386
	[a]	Background.	12-22.386
	[b]	Plaintiffs Brief on Appeal to the Second Circuit.	12-22.387
	[i]	Statement of the Case	12-22.387
	[ii]	Summary of the Argument.	12-22.392
	[c]	DOL Amicus Brief.	12-22.403
§ 12.05D		Employer Stock Litigation	12-22.405
	[1]	Generally	12-22.405
	[2]	ERISA Requirements	12-22.407
	[a]	ERISA Fiduciaries	12-22.407
	[i]	Statutory Definition.	12-22.407
	[ii]	Named Fiduciary and Functional Fiduciaries.	12-22.408
	[iii]	Fiduciary Status Can Be Limited in Scope	12-22.409
	[iv]	D&Os as Fiduciaries	12-22.410
	[b]	ERISA Fiduciary Duties	12-22.410
	[i]	Exclusive Purpose	12-22.410
	[ii]	Prudence.	12-22.411
	[iii]	Diversification	12-22.411
	[iv]	Terms of the Plan	12-22.412
	[v]	ERISA Breach of Fiduciary Duty.	12-22.412
	[3]	Disclosure Obligations	12-22.413
	[a]	Securities Law—Disclosure Requirements.	12-22.414
	[b]	ERISA—Disclosure Requirements	12-22.415
	[4]	Compliance with ERISA Plan Document Rule	12-22.417
	[5]	The <i>Moench</i> Presumption.	12-22.418
	[6]	Potentially Workable <i>Moench</i> Standard.	12-22.418
	[7]	Pro-Fiduciary Presumption of Prudence	12-22.419
	[a]	Appeal to Supreme Court	12-22.420
	[b]	District Court Decision	12-22.421
	[c]	Sixth Circuit Decision	12-22.422
	[8]	Presumption Gradually Narrowed	12-22.423
	[a]	Second Circuit Decision	12-22.424
	[b]	Ninth Circuit Decision.	12-22.425
	[c]	Solicitor General Brief.	12-22.427
	[9]	Supreme Court Rejects Special “Presumption of Prudence” for Employer Stock.	12-22.427
	[a]	Background.	12-22.428

TABLE OF CONTENTS

xxxiii

	[b] Supreme Court Decision	12-22.429
	[c] Impact of <i>Fifth Third Bancorp v. Dudenhoeffer</i> Decision.	12-22.439
	[d] <i>Halliburton v. Erica P. John Fund</i>	12-22.439
	[i] In General	12-22.439
	[ii] Supreme Court Decision.	12-22.441
	[e] What Can You Do?	12-22.448
	[f] Stock Drop Litigation Following Supreme Court Rejection of Prudence Presumption	12-22.456
	[i] Supreme Court Orders Ninth Circuit to Reconsider Amgen	12-22.456
	[ii] Supreme Court Orders Second Circuit to Reconsider Lehman Brothers	12-22.459
	[iii] Fifth Circuit Vacates BP Stock Drop Case.	12-22.467
	[iv] No Fiduciary Breach for Sell-Off of Company Stock in 401(k) Plan	12-22.468
	[v] Fiduciary Breach for Sell-Off of Company Stock in 401(k) Plan	12-22.469
	[vi] J.C. Penney ESOP Participants Claim Stock Price Artificially Inflated	12-22.475
§ 12.05E	Litigation Over Actuarial Assumptions.	12-22.483
	[1] Generally	12-22.483
	[2] Reasonableness of Actuarial Factors for Calculating Joint and Survivor Annuities	12-22.484
	[a] Overview.	12-22.484
	[b] Allegations in the Complaint.	12-22.484
	[i] Background	12-22.484
	[ii] Arguments	12-22.486
	[iii] Retirees' Claims Under ERISA	12-22.488
	[iv] Must Use Reasonable Actuarial Factors.	12-22.490
	[v] The IRS Regulations Do Not Govern Calculation of Actuarial Equivalence.	12-22.493
	[c] District Court Decision	12-22.497
	[3] Early Retirement Pensions Not "Actuarially Equivalent".	12-22.498
	[a] Summary	12-22.498
	[b] Background.	12-22.498

EMPLOYEE BENEFITS LAW

	[c]	Decision	12-22.499
	[i]	“Actuarial Equivalence”	12-22.499
	[ii]	“Forfeitability”	12-22.501
	[iii]	“Failure to Monitor” Claim	12-22.501
[4]		Another Motion to Dismiss Denied	12-22.501
	[a]	Summary	12-22.501
	[b]	Background	12-22.502
	[c]	Actuarial Assumptions	12-22.503
	[d]	ERISA & Treasury Regulations	12-22.504
	[e]	Anti-Forfeiture	12-22.505
	[f]	Breach of Fiduciary Duty	12-22.506
	[g]	“Narrow Issues” Preventing Class Certification	12-22.506
[5]		Mixed Order on Motion to Dismiss	12-22.507
	[a]	Summary	12-22.507
	[b]	Meaning of “Actuarial Equivalent”	12-22.508
[6]		Raytheon Agrees to \$59M Settlement in Outdated Mortality Rate Suit	12-22.509
	[a]	Background	12-22.509
	[b]	Settlement Terms	12-22.511
	[c]	Litigation Trend	12-22.513
[7]		DuPont Used Outdated Actuarial Formulas to Calculate Benefits	12-22.513
	[a]	Magistrate Judge Report and Recommendation	12-22.514
	[i]	Background	12-22.515
	[ii]	Discussion	12-22.516
	[b]	District Court Memorandum Order	12-22.525
[8]		Duke Denied Mortality Data Lawsuit Motion to Dismiss	12-22.526
	[a]	Background and Summary	12-22.526
	[b]	Decision	12-22.527
	[i]	Plaintiff’s Claims	12-22.527
	[ii]	Motion to Dismiss for Lack of Standing	12-22.528
	[iii]	Motion to Compel Arbitration	12-22.531
§ 12.05F		Process Prevails in Supreme Court Decision and ERISA Excessive Fee Victories	12-22.537
	[1]	Generally	12-22.537
	[2]	<i>Hughes v. Northwestern University</i>	12-22.537
	[a]	Background	12-22.539
	[b]	The Supreme Court Decision	12-22.540
	[c]	Conclusion	12-22.541
	[3]	<i>Alas v AT&T Services, Inc.</i>	12-22.542
	[a]	Background	12-22.543
	[b]	Decision	12-22.543
	[i]	Duty of Prudence	12-22.543
	[ii]	Prohibited Transactions	12-22.544

TABLE OF CONTENTS

xxxv

[4]	<i>Reetz v. Lowe's Companies Inc.</i>	12-22.547
	[a] Background.	12-22.547
	[b] Decision.	12-22.547
[5]	<i>Smith v. CommonSpiritHealth</i>	12-22.549
	[a] Background.	12-22.550
	[b] District Court Decision	12-22.550
	[i] Factual and Procedural Background	12-22.550
	[ii] Decision	12-22.552
	[aa] Fidelity Active Suite	12-22.555
	[bb] American Beacon Small Cap Value Fund	12-22.559
	[cc] AllianzGI NFJ Small Cap Fund	12-22.559
	[i] Overly Expensive Investment Menu	12-22.560
	[ii] Excessive Recordkeeping Costs	12-22.562
	[c] Sixth Circuit Decision	12-22.564
[6]	<i>Albert v. Oshkosh Corp.</i>	12-22.571
	[a] Background.	12-22.572
	[i] Statutory Context.	12-22.573
	[ii] Facts	12-22.574
	[iii] Procedural History	12-22.575
	[b] Decision	12-22.576
	[i] Duty of Prudence Claims	12-22.576
	[ii] Duty of Loyalty Claims	12-22.580
	[iii] Duty to Monitor Claims	12-22.582
	[iv] Prohibited Transaction Claims	12-22.582
	[v] Duty to Disclose Claim.	12-22.584
[7]	<i>Matousek v. MidAmerican Energy Co.</i>	12-22.585
	[a] Background.	12-22.585
	[b] Decision	12-22.586
[8]	Process Prevails In ERISA Excessive Fee Bench Trial	12-22.591
	[a] Specific Findings	12-22.591
	[b] Background.	12-22.592
	[i] Summary	12-22.592
	[ii] Procedural History	12-22.593
	[iii] Findings of Fact.	12-22.593
[9]	The Plan's Investment Options	12-22.595
	[a] Overview of the Plan's Investment Options.	12-22.595
	[b] The Committee's Review of Investment Options.	12-22.596
	[c] Share Classes and Revenue Sharing. . .	12-22.597
[10]	The Plan's Recordkeeping Fees	12-22.597

EMPLOYEE BENEFITS LAW

	[a]	The Plan's Recordkeepers and Recordkeeping Compensation Arrangements	12-22.597
	[b]	The Committee's Review of Recordkeeping Fees	12-22.599
	[c]	Prudence of Investment Options	12-22.601
	[d]	Prudence of Recordkeeping Fees	12-22.603
	[e]	Decision	12-22.605
	[f]	Conclusions of Law	12-22.607
	[g]	Importance of Decision	12-22.607
§ 12.06		Allocating Fiduciary Responsibility	12-22.608
	[1]	Cofiduciary Responsibility	12-22.608
	[2]	Categorizing Fiduciary Responsibility	12-23
	[a]	Fiduciaries Not Named	12-23
	[b]	Trustees	12-23
	[c]	Named Fiduciaries	12-24
	[3]	Limiting Responsibility	12-24
	[4]	Limited Responsibility	12-25
	[5]	Non-Fiduciary Liability	12-26.1
§ 12.07		Indemnification and Fiduciary Liability Insurance	12-27
	[1]	Accountability	12-27
	[2]	Increased Risk of Liability	12-27
	[a]	Broader Court Remedies and Participant Relief	12-27
	[b]	Measures of Loss for Breach of Fiduciary Duty	12-28
	[c]	Statute of Limitations	12-31
	[d]	Contractual Periods in ERISA Plans	12-31
	[i]	Facts at Issue	12-31
	[ii]	Supreme Court Decision	12-32
	[e]	Reliance on IRS Determination Letter	12-32.1
	[f]	ERISA's Equitable Remedies Provision	12-32.1
	[i]	<i>CIGNA Corp. v. Amara</i> (2011 U.S. Supreme Court Decision)	12-32.1
	[ii]	District Court Decision	12-32.2
	[iii]	Second Circuit Decision	12-32.2
	[iv]	U.S. Supreme Court Decision	12-32.2
	[g]	<i>U.S. Airways, Inc. v. McCutchen</i> (2013 U.S. Supreme Court Decision)	12-32.3
	[i]	District Court Decision	12-32.4
	[ii]	Third Court Decision	12-32.4
	[iii]	Supreme Court Decision	12-32.4

TABLE OF CONTENTS

xxxvii

[h]	Sixth Circuit Affirms \$3.8M Disgorgement Under ERISA'S Equitable Remedies Provision	12-32.5
[i]	District Court Decision	12-32.5
[ii]	Sixth Circuit Decision	12-32.5
[iii]	Dissenting Opinion	12-32.6
[3]	Insurance Permitted	12-32.6
[a]	Sponsor Indemnification	12-32.7
[b]	Sponsor Insurance	12-32.7
[i]	General	12-32.7
[ii]	What Types of Liability Insurance Should Plans Have?	12-32.8
[iii]	Who Is Insured by a Fiduciary Liability Policy?	12-32.10
[iv]	Who Purchases Fiduciary Liability Insurance?	12-32.11
[v]	What Does Fiduciary Liability Insurance Cover?	12-32.12
[vi]	What Other Provisions Are Frequently Included in a Fiduciary Liability Policy?	12-32.13
[vii]	What Else Might Not Be Covered by Fiduciary Liability Insurance?	12-32.15
[viii]	How Much Is the Policy Deductible and How Should It Be Applied?	12-32.20
[ix]	What Factors Should Be Considered When Selecting a Liability Limit?	12-32.21
[x]	What Liability Limits Are Available?	12-32.21
[xi]	How Is the Premium Determined?	12-32.22
[xii]	What Is a Reasonable Premium?	12-32.22
[xiii]	What if a Policy Is Canceled?	12-32.23
[xiv]	Extended Coverage	12-32.23
[c]	Bonding Requirements	12-32.24
[d]	Fiduciary Liability and Employee Benefits Liability	12-32.24
[i]	Bonding Requirements Under ERISA	12-33
[ii]	Fiduciary Liability Versus Employee Benefits Liability	12-33
[iii]	IRS Liability Insurance	12-34

EMPLOYEE BENEFITS LAW

	[iv]	Compliance Audit Insurance Can Be Paid with Plan Assets.	12-35
§ 12.08		Rules Prohibiting Transactions Between Plan and Party-in-Interest	12-36
	[1]	In General	12-36
	[2]	Prohibited Transactions	12-37
	[a]	Sale, Exchange or Lease	12-38.1
	[b]	Loans.	12-40
	[c]	Furnishing of Goods, Services or Facilities	12-41
	[d]	Transfers of Plan Assets	12-43
	[i]	In General	12-43
	[ii]	Plan Assets Defined	12-43
	[iii]	Release of Future Claims Against Employer	12-44
	[e]	Certain Acquisitions of Employer Securities or Realty	12-44.1
	[f]	Block Trading.	12-46
	[g]	Electronic Communication Network	12-46
	[h]	Service Providers	12-46.1
	[i]	Foreign Exchange Transactions.	12-46.1
	[j]	Cross-Trading	12-46.2
	[3]	Fiduciary Self-Dealing Transactions	12-46.3
	[4]	Special Rules Covering Financial Institutions.	12-47
	[5]	Insurance/Annuities.	12-48
	[a]	In General.	12-48
	[b]	Plan Assets and Insurance Company General Accounts.	12-48
	[6]	Contribution of Property Constitutes Prohibited Transaction	12-50
	[7]	Administrative Exemptions	12-54
	[a]	In General.	12-54
	[b]	Joint Procedure.	12-55
	[c]	Retroactivity.	12-55
	[d]	Exemption Procedure.	12-56
	[i]	Who May Apply for Exemptions	12-56.1
	[ii]	Exemption Application Contents—General Information	12-56.2
	[iii]	Proposed Regulations for Exemption Procedure	12-56.5
	[e]	Processing of Exemption Request.	12-56.10
	[i]	Examples of Individual Exemptions Created by the Department of Labor	12-56.11

TABLE OF CONTENTS

xxxix

	[ii]	Examples of Exemption Requests Not Approved by the Department of Labor	12-56.18
	[f]	Streamlined Exemption Procedure . . .	12-56.19
	[g]	Class Exemptions	12-56.21
[8]		Adoption and Expansion of the DOL Voluntary Fiduciary Correction Program (“VFCP”)	12-56.35
	[a]	Prior to 2005	12-56.35
	[b]	Department of Labor 2005 Revisions to the Voluntary Fiduciary Correction Program	12-56.37
	[i]	Generally	12-56.37
	[ii]	Effective Date	12-56.38
	[iii]	Summary of Revisions	12-56.38
§ 12.09		Cybersecurity Risks for Employee Benefit Plans . . .	12-57
	[1]	Overview	12-57
	[a]	Scope of Liability	12-58
	[b]	Analysis and Observations	12-58
	[2]	The Duty of Prudence Analysis Under ERISA	12-59
	[a]	Duty to Monitor Analysis Under ERISA	12-60
	[b]	Analysis of the Fiduciary Duties of Corporate Directors and Officers	12-63
	[3]	Analysis of Litigation Challenges	12-64.1
	[a]	Venue Analysis	12-64.1
	[i]	The Target Litigation	12-64.1
	[ii]	The Home Depot Litigation . . .	12-64.2
	[b]	Jurisdictional Analysis	12-64.3
	[i]	Overview of ERISA Preemption Analysis	12-64.3
	[ii]	Complete Preemption Under ERISA § 502(a)(2)	12-64.4
	[iii]	Conflict Preemption Under ERISA § 514(a)	12-64.5
	[c]	Conclusion	12-64.6
	[4]	Fraudulent Plan Distributions	12-64.7
	[a]	Summary	12-64.7
	[b]	Fraudulent Distribution to Ex-Spouse Not a Forfeiture	12-64.7
	[i]	Background	12-64.7
	[ii]	Tenth Circuit Decision	12-64.8
	[c]	Lawsuit Against Estee Lauder for 401(k) Distribution Fraud	12-64.11
	[i]	Background	12-64.11
	[ii]	Claims for Relief	12-64.11
	[5]	DOL Authority to Investigate ERISA Cybersecurity Breaches	12-64.12

EMPLOYEE BENEFITS LAW

	[a]	Background	12-64.13
	[b]	Decision	12-64.15
	[i]	Subpoena Authority	12-64.15
	[ii]	Indefinite and Burdensome	12-64.16
	[c]	Abbott Labs Wins ERISA Suit Over Fraudulent 401(k) Plan Distribution	12-64.22
	[i]	Background Based on Complaint Allegations	12-64.23
	[ii]	Analysis	12-64.24
§ 12.10		Plan Expenses	12-65
	[1]	Fiduciary Duty to Identify and Monitor Plan Expenses	12-65
	[a]	Annual Reporting and Disclosure— Schedule C	12-65
	[b]	ERISA Section 408(b)(2)—Fee Disclosure	12-66
	[i]	Final Regulations	12-66
	[ii]	Judicial View of Fiduciary Duties	12-88
	[c]	Disclosure in Participant-Directed Individual Account Plans	12-94
	[d]	DOL Field Assistance Bulletins 2012-2 and 2012-02R on Fee Disclosure	12-98.4
	[e]	Revenue Sharing Payments as Plan Assets	12-98.20
	[i]	Background	12-98.21
	[ii]	Plan Asset Question	12-98.21
	[iii]	Settlor Accounts	12-98.22
	[f]	Plan Fiduciary Best Practices to Monitor Plan Fees and Expenses	12-98.23
	[2]	Allocation of Plan Expenses Among Plan Participants and Beneficiaries	12-98.24
	[a]	ERISA and the DOL Regulations	12-98.24
	[b]	<i>Pro Rata</i> versus <i>Per Capita</i>	12-98.25
	[c]	Allocation of Expenses Among All Participants versus Solely to an Individual Plan Participant	12-98.26
	[3]	Reporting and Disclosure Implications	12-98.26
	[4]	FAB 2003-3 and Its Relationship to the Internal Revenue Code	12-98.27
	[5]	IRS Guidance on Plan Expenses in Response to DOL FAB 2003-3	12-98.28
§ 12.10A		Litigation on Plan Forfeitures	12-98.29
	[1]	Clorox Motion to Dismiss 401(k) Forfeiture Suit	12-98.29
	[a]	Summary	12-98.30
	[b]	Background	12-98.31
	[i]	The Plan	12-98.31

TABLE OF CONTENTS

xli

	[ii] The Plaintiff and His Allegations	12-98.32
	[c] Argument	12-98.33
	[i] Plaintiff Lacks Standing to Bring His Claims	12-98.33
	[ii] The Complaint Fails to State a Claim	12-98.35
[2]	Thermo Fisher Motion To Dismiss 401(k) Forfeiture Suit	12-98.46
	[a] Summary	12-98.46
	[b] Background.	12-98.47
	[c] Standing	12-98.47
	[d] Argument	12-98.48
	[i] Plaintiff Has Alleged an Injury to Her Own Plan Account	12-98.48
	[ii] Thermo Fisher Caused the Injury to Plaintiff's Account	12-98.48
	[iii] Plaintiff's Injury is Likely to be Redressed	12-98.49
[3]	California District Court Rejects Motion to Dismiss Fiduciary Forfeiture Suit	12-98.49
	[a] Background.	12-98.51
	[b] Legal Standard	12-98.51
	[c] Discussion.	12-98.52
	[i] Claim One	12-98.52
	[ii] Claim Two	12-98.53
	[iii] Claim Three.	12-98.54
	[iv] Claims Four and Five	12-98.56
	[v] Claim 6	12-98.60
	[vi] Conclusion	12-98.60
[4]	HP Prevails in "Novel" 401(k) Forfeiture Allocation Suit	12-98.61
	[a] Background.	12-98.62
	[b] Discussion.	12-98.63
	[i] Whether Plaintiff's Claims Are Foreclosed by Settled Law	12-98.63
	[ii] Whether Defendants Acted as Fiduciaries	12-98.64
	[iii] Breach of Fiduciary Duties (Claims 1 and 2).	12-98.65
	[iv] Violation of ERISA's Anti-Inurement Provision (Claim 3)	12-98.69
	[v] Prohibited Transactions (Claims 4 and 5).	12-98.73
	[vi] Failure to Monitor (Claim 6)	12-98.75

EMPLOYEE BENEFITS LAW

[5]	Bank of America Sued Over Misuse of Forfeited 401(k) Funds	12-98.75
[a]	Nature of Action	12-98.76
[b]	Factual Allegations.	12-98.76
[c]	First Claim for Relief—Breach of Fiduciary Duty	12-98.76
[d]	Second Claim for Relief-Breach of ERISA's Anti-Inurement Provision.	12-98.77
[e]	Third Claim For Relief-Breach of ERISA's Prohibited Transactions.	12-98.78
[f]	Fourth Claim for Relief-Failure to Monitor Fiduciaries.	12-98.78
[g]	Request for Relief	12-98.79
[6]	Intuit Loses Motion to Dismiss 401(k) Forfeiture Suit	12-98.79
[a]	Summary	12-98.81
[b]	Background.	12-98.81
[c]	Analysis	12-98.83
[i]	Plaintiff Has Stated Claims for Breach of Fiduciary Duties Under ERISA	12-98.83
[ii]	Plaintiff Has Adequately Pleaded a Claim for Breach of ERISA's Anti-Inurement Provision	12-98.88
[iii]	Plaintiff Has Adequately Pleaded a Claim for Prohibited Transactions under ERISA.	12-98.89
[7]	BAE Wins Motion to Dismiss 401(k) Plan Forfeiture Suit	12-98.92
[a]	Allegations	12-98.92
[b]	Decision	12-98.93
[c]	Background.	12-98.94
[d]	Defendant's Motion to Dismiss.	12-98.95
[i]	Breach of Fiduciary Duties Relating to Forfeitures	12-98.96
[ii]	Breach of Fiduciary Duties Relating to Excessive Fees.	12-98.100
[e]	Plaintiff's Motion to Disqualify Defendant's Counsel.	12-98.102
[8]	ERISA Forfeitures Lawsuit against Honeywell Dismissed	12-98.102
[a]	Background.	12-98.103
[b]	Procedural History.	12-98.104
[c]	Legal Standard	12-98.104
[d]	The Complaint Alleges Honeywell Acted as a Fiduciary.	12-98.105
[e]	Plaintiff Fails to Allege Breaches of Fiduciary Duties	12-98.106

TABLE OF CONTENTS

xliii

	[f]	Plaintiff Fails to Allege a Violation ERISA's Anti-Inurement Provision	12-98.108
	[g]	The Complaint Fails to Allege Claims for Prohibited Transactions	12-98.109
[9]		Amazon Sued For Alleged Mismanagement of Forfeited 401(k) Funds	12-98.110
	[a]	Background.	12-98.111
	[b]	Factual Allegations Common to All Causes of Action.	12-98.112
	[c]	Allegations	12-98.116
	[i]	First Claim: Breach of the Duty of Loyalty	12-98.116
	[ii]	Second Claim: Breach of the Duty of Prudence	12-98.116
	[iii]	Third Claim: Self-Dealing / Prohibited Transactions	12-98.117
	[d]	Relief Requested.	12-98.117
§ 12.11		Sanctions	12-99
	[1]	Civil Penalties	12-99
	[2]	Criminal Penalties.	12-100
	[3]	Excise Tax	12-101
§ 12.12		Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.	12-105
§ 12.13		Dodd-Frank Meets ERISA.	12-107
	[1]	Introduction	12-107
	[2]	CTFC Regulations.	12-109
	[3]	Department of Labor ERISA Fiduciary Regulations	12-110
	[4]	Final Rules for Swap Dealers and Major Swap Participants Dealing with Special Entities.	12-113
	[5]	Master Trusts.	12-114
	[6]	Collective Investment Vehicles	12-114
	[7]	Employee Benefit Plan and Governmental Plan Special Entity Definitions	12-115
	[8]	Impact of the Final Regulations.	12-117
§ 12.14		DOL Fiduciary Investment Adviser Definition.	12-118
	[1]	Summary of Final Rule	12-118
	[a]	What Is Covered Investment Advice	12-119
	[b]	What Is Not Covered Investment Advice	12-120
	[i]	Education	12-120
	[ii]	General Communications	12-121
	[iii]	Platform Providers.	12-121

EMPLOYEE BENEFITS LAW

	[iv]	Transactions with Independent Plan Fiduciaries with Financial Expertise	12-121
	[v]	Swap and Security-Based Swap Transactions	12-122
	[vi]	Employees of Plan Sponsors, Affiliates, Employee Benefit Plans, Employee Organizations, or Plan Fiduciaries	12-122
	[c]	The Best Interest Contract Exemption (BICE)	12-122
	[d]	Additional Exemptive Relief	12-123
	[e]	Applicability Date	12-124
[2]		Litigation Challenging DOL Fiduciary Investment Advisor Definition	12-124
	[a]	National Association for Fixed Annuities v. Perez	12-124
	[i]	NAFA Complaint	12-125
	[ii]	DOL Response to NAFA Complaint	12-143
	[b]	Fifth Circuit Upholds Challenge to DOL Fiduciary Rule SEC Issues Fiduciary Regulations Similar to DOL Rule	12-165
	[i]	Background of the DOL's New Fiduciary Rule	12-165
	[ii]	The Decision Vacating the New Fiduciary Rule	12-165
	[iii]	The Impact of SEC Proposed Fiduciary Regulation	12-166
	[iv]	SEC Proposed Protections	12-167
[3]		2023 Proposed Rule to Redefine DOL Investment Advice Fiduciary Definition	12-168
	[a]	Background	12-168
	[b]	Implications of Proposed New Test	12-168.1
	[i]	Elimination of "Regular Basis" Requirement	12-168.1
	[ii]	Elimination of "Mutual Agreement, Arrangement or Understanding" and "Primary Basis" Requirement	12-168.1
	[iii]	Informal Advice Outside the Scope of a Manager's Engagement	12-168.2
	[iv]	Acknowledgement of Fiduciary Status	12-168.2

TABLE OF CONTENTS

xliv

	[v]	No Disclaimers	12-168.2
	[vi]	Fee or Other Compensation, Direct or Indirect	12-168.2
	[c]	Impact On Fiduciary Status.	12-168.3
	[d]	Compliance Overkill	12-168.3
§ 12.15		Increase in 401(k) Cyber Attacks and Fraudulent Plan Distributions.	12-169
	[1]	Summary	12-169
	[2]	Plan Sponsor Liability	12-169
	[3]	Emerging Litigation	12-170
	[4]	Plan Administrator and Custodian Liability for Cybersecurity Theft of Participant Accounts.	12-171
	[5]	DOL Guidance	12-172
	[6]	Conclusion.	12-172
§ 12.16		Consideration of Environmental, Social and Governance Factors	12-173
	[1]	DOL Final Rule on Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights.	12-173
	[a]	Background.	12-173
		[i] The 2020 Rules	12-173
		[ii] President Biden’s Executive Orders	12-174
		[iii] Department of Labor Review of 2020 Rules and Enforcement Policy	12-175
		[iv] The 2021 Notice of Proposed Rulemaking	12-175
	[b]	Overview of the Final Rule.	12-176
		[i] Changes to Clarify Permissibility of Consideration of ESG Factors	12-176
		[ii] Removal of Pecuni-ary/Non- Pecuniary and Related Terminology	12-177
		[iii] Changing the Standard for When to Apply “Tiebreaker” Test	12-177
		[iv] Removal of Tiebreaker Documentation Requirement	12-177
		[v] Changes to Qualified Default In-vestment Alternative Provisions	12-178
		[vi] Changes to Clarify the Applica-tion of the Duty of Loyalty	12-178

EMPLOYEE BENEFITS LAW

	[vii] Provisions on Shareholder Rights Including Proxy Voting	12-179
[2]	American Airlines Pilot Files Class Action Over 401(k) Plan ESG Investing	12-180
	[a] Summary	12-181
	[i] Allegations	12-181
	[ii] Parties	12-183
	[b] Factual Background	12-185
	[i] The Plan	12-185
	[ii] ESG Funds	12-188
	[iii] ESG Proxy Voting and Share-holder Activism	12-189
	[iv] ERISA Fiduciary Duties	12-189
	[c] Causes of Action	12-193
	[d] Prayers for Relief	12-196
[3]	Multiple Plaintiffs Challenge DOL ESG Rule	12-196
	[a] <i>Utah v. Walsh</i>	12-197
	[i] Factual Background	12-198
	[ii] The Biden Administration's 2021 Executive Orders and Proposed Rule	12-202
	[iii] The 2022 Investment Duties Rule	12-204
	[iv] Claims for Relief	12-215
	[v] Request for Relief	12-217
	[b] <i>Braun v. Walsh</i>	12-218
	[i] Statement of Claim	12-219
	[ii] Causes of Action	12-229
	[iii] Relief Requested	12-232
[4]	"Disloyal, Not Imprudent" American Airlines ESG Investment Decision	12-232
	[a] Background	12-233
	[b] Summary of Decision	12-233
	[i] Prudence Claim	12-234
	[ii] Loyalty	12-234
	[c] Conclusions of Law	12-235
	[i] Applicable Law	12-235
	[ii] Fiduciaries of the Plan	12-236
	[iii] Duty of Prudence	12-238
	[iv] Duty of Loyalty	12-243
	[v] Conclusion	12-248

CHAPTER 13**Plan Mergers**

§ 13.01	In General	13-4
§ 13.02	Forms of Corporate Reorganizations.	13-4.1
	[1] Buyer Acquires Subdivision of Seller	13-4.1
	[a] Impact on Seller's Plan	13-5
	[i] Full Impact.	13-5
	[ii] Partial Impact	13-5
	[b] Impact on Buyer's Plan	13-6
	[2] Buyer Acquires All of the Assets of Seller.	13-6
	[a] Impact on Seller's Plan	13-6
	[i] Termination	13-6
	[ii] Assumption	13-7
	[b] Impact on Buyer's Plan	13-7
	[3] Buyer Acquires Stock of Seller or Merges Seller in to Buyer or a Subdivision of Buyer	13-7
	[a] Impact on Seller's Plan	13-7
	[i] Termination	13-7
	[ii] Freeze	13-7
	[iii] Continuation.	13-7
	[b] Impact on Buyer's Plan	13-7
	[4] Reorganization Impact Chart.	13-8
§ 13.03	Considerations to Be Applied in Reviewing Alternative Courses of Action.	13-9
	[1] The Impact of the Course of Action Upon Purchase or Sale Price	13-9
	[2] Future Risk	13-9
	[3] Tax Deductions	13-9
	[4] Administrative Burdens	13-9
	[5] Employee Communication	13-10
§ 13.04	Tax Requirements and Qualifications for Deductibility.	13-11
	[1] Fundamental Principle	13-11
	[2] Mergers	13-12
	[3] Transfer of Assets or Liabilities.	13-12
	[4] Separate Accounting Assets.	13-13
	[5] Merger of Defined Benefit Plans	13-13
	[6] De Minimis Rule for Merger of Defined Benefit Plans	13-19
	[7] Defined Contribution Plans	13-19
	[8] Spinoffs	13-20
	[9] Merger and Spinoff Rules Apply to Transfer of Assets and Liabilities	13-21
§ 13.05	Contingent Liabilities in the Merger of Employee Benefit Plans.	13-22

	[1]	Section 4062 Liability.	13-22
	[2]	The Controlled Group Concept	13-23
§ 13.06		Acquisition Patterns; the Seller's Point of View.	13-24
	[1]	Plan Termination.	13-24
	[a]	Full Termination.	13-24
	[b]	Partial Termination.	13-26
	[c]	"Comparable Plan" if Buyer Precludes Termination	13-26
	[2]	Freezing Plans	13-27
	[a]	Full Freeze	13-27
	[b]	Partial Freeze	13-28
	[3]	Assumption	13-28
	[a]	Full Assumption.	13-28
	[b]	Partial Assumption.	13-29
	[4]	Continuation	13-29
§ 13.07		Acquisition Patterns; the Buyer's Point of View	13-30
	[1]	Plan Termination.	13-30
	[a]	Full Termination.	13-30
	[b]	Partial Termination.	13-32
	[2]	Freezing Plans	13-32
	[a]	Full Freeze	13-32
	[b]	Partial Freeze	13-33
	[3]	Assumption	13-33
	[a]	Full Assumption.	13-33
	[b]	Partial Assumption.	13-34
	[4]	Continuation	13-34
	[5]	Potential Liabilities.	13-34
§ 13.08		Reporting and Disclosure Requirements for Employee Benefit Plans in Mergers and Acquisitions	13-36
	[1]	Plan Termination.	13-36
	[a]	Full Termination.	13-36
	[b]	Partial Termination.	13-37
	[2]	Freezing Plans	13-38
	[a]	Full Freeze	13-38
	[b]	Partial Freeze	13-39
	[3]	Assumption	13-39
	[4]	Merger, Consolidation or Transfer of Plan Assets.	13-39
§ 13.09		Requirements for Multiemployer Plans	13-41
	[1]	Mergers with and Transfers Between Multiemployer Plans	13-41
	[a]	PBGC Final Rule Amends Regulation on Multiemployer Plan Mergers, Transfers	13-41
	[b]	Notice Requirements for Mergers, Transfers	13-42
	[c]	Prohibited Transactions	13-42

TABLE OF CONTENTS

xlix

[2]	Mergers with and Transfers to Single Employer Plans	13-42
[a]	Liability of Multiemployer Plan	13-42
[b]	Exception to Liability	13-43
[c]	Transferee Consent.	13-43
[d]	Limitations on Transfers	13-43
[3]	Partition of Multiemployer Plan.	13-44
[4]	Asset Transfer Rules.	13-44
[5]	Transfers Relating to Change in Bargaining Representative	13-45
[a]	Prohibited Transfers	13-46
[b]	Election to Apply Regular Merger Rules	13-46
§ 13.10	Mergers and Acquisitions (Cash Balance and Other Hybrid Plans).	13-47
[1]	Cash Balance and Other Hybrid Plans	13-47
[2]	Mergers and Acquisitions.	13-47
	KEY TO ABBREVIATIONS	KA-1
	INDEX	I-1