




---

---

---

---

---

---

---

---

**Agenda**

- General Advice for Employee Benefits Issue
- Top Five List – ERISA and Employee Benefit Issues
- General Advice for Labor and Employment Issues
- Top Five List – Labor and Employment Considerations

2/4/10 Mary K. Samsa 2

---

---

---

---

---

---

---

---

**General Advice for Employee Benefit Issues**

- Benefit issues typically never stop the deal (exception being ESOP deals)
  - Focus is on resolution of the issue or how to account for and handle the issue post-close in the best interests of the client/company you are representing
- However, compared to ten years ago, there is a lot more “stuff” to comply with and the IRS and DOL are getting more aggressive in their audit activity
  - Don't short cut the due diligence in this area

2/4/10 Mary K. Samsa 3

---

---

---

---

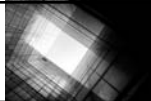
---

---

---

---

### Top Five List – ERISA and Employee Benefit Issues – Issue #1



- Understand the actual liability associated with the seller's defined benefit plan
  - Defined Benefit – Single Employer
    - Ongoing liability (frozen or live)
    - Termination liability (what are we talking to shut it down)
    - Funding
  - Defined Benefit – Multi Employer
    - Withdrawal liability (what are we talking to pull out)

---

---

---

---

---

---

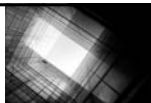
---

---

---

---

### Top Five List – ERISA and Employee Benefit Issues – Issue #2



- Are any payments to executives/officers triggered as a result of the transaction?
  - Excess parachute payments
    - Generally applies to public companies
      - Does not apply if company could have elected Subchapter S status
      - Does not apply if arrangement approved by 75% of shareholders
    - The threshold of three times the base amount is exceeded
      - Loss of tax deduction
      - Subjects employee recipient to a 20% excise tax
    - Only applies to disqualified individual
      - 1% or greater shareholders
      - Officers (generally top 50 – like top-heavy rules)
      - Highly compensated employees (top 1% or top 250 employees)
    - Payment contingent upon a change of control (expressly or presumed)
  - Although meant to dissuade takeovers, critics argue that these arrangements actually encourage key employees to favor takeover that may not be in the best interests of the company

---

---

---

---

---

---

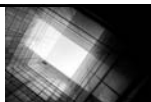
---

---

---

---

### Top Five List – ERISA and Employee Benefit Issues – Issue #3



- Understand the actual liability associated with the seller's post-retirement medical benefit plan
  - Retiree Medical
    - Vested v. reservation of rights

---

---

---

---

---

---

---

---

---

---

### Top Five List – ERISA and Employee Benefit Issues – Issue #4



- Compliance of the seller's qualified plans
  - Qualification issues
    - Always get representation with teeth
    - For retirement plans, secure copy of most recent determination letter
  - Operational compliance
    - Always get representation with teeth
    - Any issue raised by auditors in the last five (5) years that have not been addressed or corrected
    - VCP filings?
  - DOL reporting
    - 5500 filings
    - SPDs and legally required notices (even if not per se penalties)

2/4/10

Mary K. Samsa

7

---

---

---

---

---

---

---

---

---

---

### Top Five List – ERISA and Employee Benefit Issues – Issue #5



- HIPAA (Health Insurance Portability and Accountability Act) Compliance
 

<p>Subject to HIPAA Privacy</p> <ul style="list-style-type: none"> <li>• Medical plan</li> <li>• Dental plan</li> <li>• Vision plan</li> <li>• Health Care Spending Accounts</li> <li>• EAP</li> <li>• Wellness programs</li> </ul>	<p>NOT Subject to HIPAA Privacy</p> <ul style="list-style-type: none"> <li>• Short-term disability plan</li> <li>• Long-term disability plan</li> <li>• Life Insurance plan</li> <li>• 401(k) plan</li> <li>• Workers' Compensation</li> <li>• FMLA</li> <li>• Employment Drug Test</li> <li>• Stop-loss insurance</li> </ul>
---	---

  - American Recovery and Reinvestment Act of 2009 (ARRA)
    - Private right of action given to states' attorney general
    - Vendors must comport with HIPAA security provisions and some HIPAA privacy provisions
    - Increase penalties for failures
    - Notification of breach to individual
    - Mandatory HHS audits for group health plans and providers

2/4/10

Mary K. Samsa

8

---

---

---

---

---

---

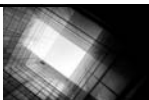
---

---

---

---

### General Advice for Labor and Employment Issues



- From Buyer's perspective
  - Stock deal: Buyer basically steps into the shoes of the Seller
    - No termination of employment occurs
    - Only the shareholders change
  - Asset deal: Buyer is acquiring the underlying assets and liabilities of the target company
    - In the US
      - Buyer must identify whether offers of employment will be made to employee for them to follow business
      - Buyer can take all or just some employees
    - Outside the US
      - Automatic transfers (local law provides that in sale, the employees transfer automatically with the business) v. offer/acceptance
      - Hybrid jurisdictions – potential differentiations as to whether "management or executive"
- Understand the playing field

2/4/10

Mary K. Samsa

9

---

---

---

---

---

---

---

---

---

---

### Top Five List – Labor and Employment Issues – Issue #1



- Approvals, Consultations and Notices
  - In the US
    - Unions and negotiations therewith
  - Outside the US
    - Works councils and employees representatives who must be consulted prior to close
      - Potential notice periods
      - Sometimes permission is required and sometimes just notification (assist in facilitation)
      - Occasionally, an employee can object to the automatic transfer

---

---

---

---

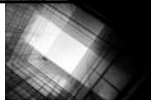
---

---

---

---

### Top Five List – Labor and Employment Issues – Issue #2



- Noncompetes and Nonsolicitations
  - What is in place?
  - Are they enforceable?
  - Does something need to be created prior to close and as a condition precedent to close?
  - If nothing in place and Buyer loses key members of executive team, what exposure is there?

---

---

---

---

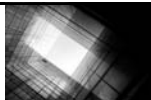
---

---

---

---

### Top Five List – Labor and Employment Issues – Issue #3



- Severance/Termination Indemnities
  - Depending on what the Buyer intends to do, this can be a substantial liability
  - In the majority of non-US jurisdictions, severance is provided for under local statutory law and cannot be waived by the employee
  - In most instances, the Seller requests indemnification for the Buyer since its actions trigger the obligations
    - Buyer of course always argues it is an expense of Seller and offset to the purchase price
  - Remember: Buyer's actions post-close can be a constructive termination and hence a trigger

---

---

---

---

---

---

---

---

### Top Five List – Labor and Employment Issues – Issue #4



- Employee Handbooks
  - Poorly drafted handbooks can actually add to the risk of liability
    - Should not indicate it is a "contract" of employment. Is there a disclaimer?
    - Terms should be consistent with underlying plan/program terms (so sometime less is more)
    - Does it account for federal AND state law?
    - Last time it was updated?
    - Do all employees have a copy?
    - Should have been drafted by legal counsel – if not, have it reviewed
  - When will a bad handbook likely cause the most problems? When there is a changing of the guard at the company.

---

---

---

---

---

---

---

---

---

---

### Top Five List – Labor and Employment Issues – Issue #5



- Employee Classifications
  - Single largest IRS audit area for next three years
  - Lines are not always clear cut as to whether employee or independent contractor
  - If misclassifications exist, Seller may later face expensive lawsuits to defend or that eventually lead to required retroactive compensation for rights not provided in the past
  - Considerable penalties may be owed to governmental agencies (FICA, FUTA, etc.)

---

---

---

---

---

---

---

---

---

---

QUESTIONS?

---

---

---

---

---

---

---

---

---

---

## **LABOR/EMPLOYMENT AND EMPLOYEE BENEFITS DUE DILIGENCE CHECKLIST**

### **General Labor and Employment Information**

1. Structure of HR and Labor Relations management within the company. Include in-house legal functions dedicated to labor and employment issues. Identify staffing structure, incumbents in key positions.
2. Budgets (and actual costs) for the last three years for outside labor and employment counsel and settlement costs for all labor and employment litigation matters.
3. All audit letters by company counsel with any responsibility for labor and employment matters for the last five years.

### **Employment Discrimination Complaints, Related Local, State or Federal Administrative Charges & Proceedings and Related Company Training and Compliance Programs**

1. Copies of all charges of discrimination filed with the EEOC and/or any state or local human rights agency in the last five years, and a record of their disposition. Include all “open” charges still pending or threatened, a summary of their current status, potential exposure from an adverse determination, an assessment of the likely outcome, the names of the company representative(s) handling the matter and copies of all position statements or other submissions on behalf of the Company. Include copies of any settlement agreement or conciliation agreements which have not been fully satisfied.
2. Copies of all internal complaints filed under the company’s EEO policies (including sexual harassment policy) in the last five years, and a record of their disposition. Include complaints that later became the subject of discrimination charges before local, state or federal agencies. For all pending complaints that are still open or under investigation, indicate the potential exposure if the allegations are found to be true, and an assessment of the likely outcome based on the current state of the investigation. Highlight any charges of harassment or discrimination lodged against company officers, directors or managers.
3. Copies of all company EEO and anti-harassment training programs delivered within the last five years, and a record of the employees who have received such training, the identity of the trainers (internal personnel or outside vendor).

### **Employment Litigation**

1. Record of all employment-related lawsuits filed in state or federal court in the last five years or that are still pending (or threatened), and indicate for each the nature of the claim, date filed, forum, date of disposition, and summary of the resolution of the case, including any

injunctive remedy or monetary awards or settlements. Include not only discrimination cases, but all other types of employment litigation as well, such as claims for breach of an individual contract of employment, retaliatory discharge, FLSA suits, covenants not-to-compete, etc. For any cases which are pending or threatened, include a summary of the stage of proceedings, a copy of the court docket sheet, potential exposure to the company from an adverse finding, current settlement demands/proposals of the parties, an evaluation of the likely outcome, summary of the company's principal defenses, and the names of the company's representative(s) in the litigation. We may wish to review demand letters, settlement offers and selected pleadings and briefs for any cases which are determined to be "material." Include copies of any settlement agreement or conciliation agreements which have not been fully satisfied.

### **FLSA or Other Wage and Hour Compliance Matters**

1. Record of any state or federal Department of Labor wage and hour on-site visits, investigations or audits during the last five years (for compliance with the Fair Labor Standards Act, and any other state and federal wage and hour laws). Include for the same period any internal Company audits or reviews of compliance with the FLSA or other state or federal wage and hour laws.
2. Necessary information to assess classification of employees as exempt and non-exempt for FLSA purposes, including any recent company studies or reports or DOL audits on this issue.
3. Disciplinary policies and records affecting FLSA exempt employees necessary to verify compliance with "salary basis" exemption (i.e., no partial day or partial week suspensions without pay, in most circumstances).
4. Company policies and procedures for non-exempt employee timekeeping and payment for overtime.
5. Company policies relative to determining the "regular rate" of pay for non-exempt (i.e., overtime eligible) employees - what components of compensation are included in the calculation of the "regular" hourly rate of pay for overtime purposes (e.g., treatment of specialty pay, shift premiums, longevity pay, bonuses, etc.)?
6. Cost impact analyses of any pending state or federal minimum wage legislation that would require increases in compensation to hourly employees (either directly or as a function of the "ripple" effect).
7. Analyses regarding compliance with any applicable local "living wage" ordinances (generally only applicable to companies that provide services to municipal or county governments with such ordinances, such as security firms, janitorial services, solid waste disposal companies, etc., but some apply to recipients of municipal financial aid, including tax abatements).

## **Workers Compensation and Worker Safety Matters.**

1. A record of all work-related injuries/illnesses for the last five years by location and job category. Include summary of the injury and workers compensation benefits/settlements paid. Include standard industry data on percentage of work time lost due to industrial accidents/injuries by location and job classification. Include for the same period the workers compensation premiums or rate paid by location, by year (gross amount as well as percent of payroll). Include any annual reports on workers compensation and/or worker safety prepared during the last five years.
2. Provide copies of workers compensation insurance policies and description of how workers compensation claims are administered and who the decision-makers are in the day-to-day administration of claims (insurance company, outside administrator, in-house professional, etc.).
3. Provide details of any vocational rehabilitation, employee ergonomic training, light duty or other return-to-work programs designed to limit workers compensation accidents and expenses and accelerate successful return to work following work-place injuries.
4. Record of all OSHA (or similar state agency with jurisdiction over work place safety issues) inspections, investigations and audits, as well as self-audits done by the Company involving worker safety issues by location for the last five years. Include any “open” OSHA citations which are unresolved. Include any pending or threatened inspections by state or federal agencies.
5. Copies of Company worker safety programs.
6. Copies of Company training programs for work place safety and record of delivery of such training programs at all locations for the last five years.
7. Copy of any Company management manual of policies and procedures in the health and safety area.

## **Temporary Workers, Independent Contractor and Potential Joint or Co-Employer Arrangements**

1. Information about any contractual arrangements (written or oral) which the company has with temporary employment agencies that supply temporary workers at any location, independent contractors with employees working on company premises or any other arrangement involving individuals working on site which the company considers to be temporary employees or independent contractors. Provide, for each location, any contractual agreements regarding such arrangements and the job positions, functions and numbers of individuals currently involved in such arrangements, as well as compensation paid by the company for services rendered under such arrangements.



**Workforce Demographics, Turnover, Unemployment Compensation, Retention and Recruitment Data (including WARN issues and market analysis of pay and benefits)**

1. Current list of employees by location, and within location, by job classification. Indicate for each employee, whether their position is regular full-time, part-time, temporary or seasonal, date of hire, date of birth, date of appointment to current position, current rate of pay, date of last increase and whether they are exempt from overtime under the FLSA. Include other EEO data (such as race or national origin) which are maintained for EEO, affirmative action or other compliance purposes (e.g., EEO-1 reports).
2. Employment turnover data, showing for each location for the last five years, the average number of personnel by position each year, and the number of new hires and terminations or layoffs by position for each year.
3. List of all facilities, departments, operations that have been closed down within the last year where such closure has resulted in the displacement of employees, and the number of employees displaced as a result (to assess WARN liability).
4. Current list of budgeted positions which are vacant and length of time they have been vacant.
5. Any studies prepared by or for the company in the last three years analyzing compensation of employees relative to (a) internal fairness or equity as among various company locations; (b) external market as defined by industry standards; (c) external market as defined by direct competitors (real or perceived “peer” group); and (d) external market as defined by wages and benefits for similar positions within the locales where the company’s employees are employed. Any similar study designed to analyze the competitiveness of the company’s pay and benefit packages for any level of employees at any location.
6. Data on unemployment compensation insurance or claims expenses for the last three years and information on how such claims are administered (self-insured, administered through state agency program with rates established based on past claims, etc.). Describe any unusual claims experience in the last three years. Include any annual reports on unemployment compensation for the last three years.
7. Provide copy of employment application forms used, and form offer letters.
8. Describe typical recruiting sources for employees at various levels of the organization (e.g., hourly, technical/professional, executive).
9. Provide copy of employee orientation and training programs use for new hires.

**Affirmative Action Plans, Diversity Initiatives and Related Government or Internal Investigations and Audits**

1. Is the Company a government contractor, and if so, does the Company have an affirmative action plan for any of its locations? If so, provide a copy of the current plan and workforce analysis.

2. Provide last three years of EEO-1 reports (consolidated and by location) and/or any other available breakdown (consolidated and/or by location) of the current full- and part-time work force, showing job classification, age, race, sex, pay and other demographic characteristics that are monitored.
3. For companies with affirmative action plan obligations, are any OFCCP affirmative action audits pending or threatened? If so, provide details as to locations, current status and names of company representative(s) handling same.
4. Have there been any OFCCP affirmative action audits or compliance reviews within the last five years? If so, provide copy of the government report and any follow-up documentation of compliance with government recommendations.
5. Has the company conducted its own affirmative action or diversity audit within the last five years. If so, please provide details, copies of any reports, and copies of any documentation of follow-up to implement internal recommendations and the extent to which such recommendations or objectives have been implemented/achieved.

### **Individual Employment & Consulting Agreements**

1. Copies of all current individual contracts of employment (including all executive compensation agreements), severance or “change of control” agreements, non-competition agreements, confidentiality agreements, trade secret protection agreements, assignments of patents or other intellectual property rights or other restrictive employment covenants or agreements for all employees at all locations.
2. Copies of all current consultants’ agreements or engagement letters dealing in any way with labor and employment matters, including but not limited to agreements with vendors providing employee training, outside labor counsel, and employment audits of any kind (see employee benefits section for service contracts related to employee benefits plans).

### **Personnel Policies/Employee Handbooks**

1. Copies of all employee handbooks or personnel policy manuals which apply on a corporate-wide basis. Include any supplemental personnel policies and/or procedures of a corporate-wide nature which have been promulgated or which are generally followed as a matter of practice, but which do not yet appear in the handbooks or manuals.
2. Copies of any employee handbooks or personnel policy manuals which apply to any individual division, facility, etc. (i.e., any such documents which exist but which are not corporate-wide in their application). Include any supplemental personnel policies and/or procedures of a corporate-wide nature which have been promulgated or which are generally followed as a matter of practice, but which do not yet appear in the handbooks or manuals.

3. Copies of any work rules, disciplinary policies or guidelines (which are not otherwise included in the text of personnel policy manuals or employee handbooks).
4. Human Resources Management Manuals or similar documents used by HR and Labor Relations staff of the company as statements of management policy and procedure in HR and Labor Relations matters.

### **Internal Complaint and Alternative Dispute Resolution Procedures**

1. Does the company have any internal complaint procedures, corporate hotline reporting numbers, etc? If so, provide breakdown of all internal complaints received in the last three years (consolidated and by location) summarizing (both on a consolidated as well as by individual location) type of complaint and disposition.
2. Does the company employ any voluntary or mandatory alternative dispute resolution (ADR) procedures for the resolution of employment disputes, such as advisory or binding arbitration of employment claims, etc? If so, provide a copy of any such procedures, any agreements employees sign relative to the use of such ADR procedures, and a summary of cases handled during the past three years and cases currently pending.

### **Immigration Matters**

1. Copy of the company's immigration compliance programs and procedures.
2. Immigration and Naturalization Service (INS) on-site investigations to ensure compliance with I-9 hiring information - details of any such investigations within the last five years and the outcome thereof, including any INS citations or reports.
3. INS raids or seizures of illegal aliens working at the Company - provide details of any such raids or seizures within the last five years and the outcome thereof, including any INS citations or reports.

### **Employee Benefits Plans**

The following is a list of possible plans, programs, and arrangements, and an inventory of documents applicable to each for consideration in connection with mergers and acquisitions. It should be noted that not all plans of a particular type will necessarily have each of the documents listed for that type.

1. Bonus and Incentive Plans
  - a. Plan document and amendments
  - b. List of employees entitled to bonus and amount of award

- c. Form of agreement under plans; representation on 409A compliance
  - d. Accounting statements
  - e. Latest registration statement (if any) with SEC (e.g. Form S 8)
2. Deferred Compensation Plans and Contracts
- a. Plan document and amendments; representation on 409A compliance
  - b. Financial statement of liabilities
  - c. Specific assets or insurance contracts segregated to provide for plan benefits
  - d. Rabbi trust or secular trust
3. Defined Contribution Plans (including Employee Stock Ownership Plans, 401(k) Plans, Thrift Plans, Money Purchase Pension Plans, Profit Sharing Plans and Stock Bonus Plans)
- a. Plan document and amendments
  - b. Trust agreement and amendments
  - c. Latest IRS determination letter
  - d. Annual Return/Report (IRS Form 5500) for the last three years
  - e. Contract(s) with insurance company
  - f. Agreement(s) with investment manager(s)
  - g. Summary plan description and any summary of material modifications
  - h. Custodial agreement and amendments
  - i. Latest registration statement (if any) with SEC (Form S 8)
4. Defined Benefit Plans
- a. Plan document and amendments
  - b. Trust agreement and amendments
  - c. Latest IRS determination letter
  - d. Latest PBGC Form 1
  - e. Annual Return/Report (IRS Form 5500) for the last three years
  - f. Actuarial reports for the last three years

- g. Contract(s) with insurance company
  - h. Agreement(s) with investment manager(s)
  - i. Custodial agreement and amendments
  - j. Summary plan description and any summary of material modifications
  - k. Annual funding notice
  - l. Most recent AFTAP certification
  - m. Applications for funding waivers, security agreements with the PBGC and related documents
  - n. SFAS 87 financial disclosure in annual report
  - o. Information regarding any full or partial plan terminations occurring within the past five years
5. Employment Contracts and Severance Agreements (including Change of Control Agreements)
- a. Copies of agreements and amendments; representation on 409A compliance
  - b. List of employees with agreements
6. Employee Terminations
- a. Information regarding compliance with the Worker Adjustment Retraining Notification Act
  - b. Information concerning any reductions in force within the past year
  - c. Copies of and information concerning any early retirement window plans or other exit incentive programs; copies of and information concerning severance programs
7. Unfunded Pension Arrangements
- a. Plan document and amendments; representation on 409A compliance
  - b. Actuarial or financial reports
  - c. Rabbi trust or secular trust
  - d. SFASB 87 financial disclosure in annual report
8. Foreign Plans
- a. Copies of agreements and amendments

- b. Trust agreement and amendments
  - c. Funding vehicles
  - d. Insurance contracts
  - e. Actuarial or financial reports
9. Loans to Employees and Directors
- a. Copies of agreements and amendments
  - b. List of individuals with loans and amounts owed
10. Master Trust Agreement
- a. Copies of agreements and amendments
  - b. Latest financial statement
11. Multiemployer Plans
- a. Plan document (if available)
  - b. Trust agreement (if available)
  - c. Agreement requiring participation
  - d. Estimate of withdrawal liability
  - e. Summary plan description and any summary of material modifications
  - f. Contribution history and contribution units
12. Stock Plans
- a. Plan documents and amendments
  - b. List of employees under plan, type and amount of awards
  - c. Form of Agreement(s)
  - d. Latest registration statement (if any) with SEC (e.g. Form S 8)
  - e. Proxy description of plan
13. Voluntary Employees' Beneficiary Association under Code 501(c)(9) (VEBA)
- a. Trust agreement and amendments

- b. Plan document(s) and amendment(s)
  - c. Latest IRS determination letter
  - d. IRS Form 990 return and IRS Form 5500 for the last three years
14. Welfare Plans (including Cafeteria Plans, Dependent Care Assistant Plans, Group Legal Service Plans, Group Life Insurance Plans, Short- or Long-Term Disability Plans, Medical Plans, Dental Plans, Vision Plans, Retiree Life Insurance Plans, Retiree Medical Plans, Severance Pay Plans and Programs and Vacation Plans)
- a. Plan document and amendments
  - b. Insurance company contract(s) and riders
  - c. Summary plan description and any summary of material modifications
  - d. Annual Return/Report (IRS Form 5500) for the last three years
  - e. Employee manual or employee handbook
  - f. Financial Accounting Statement 106 Reports, and current annual payments under the plan
15. Collective Bargaining Agreements
- a. Collective bargaining agreements, and related documents (including agreements that expired within the last six months)
16. Claims/Litigation/PBGC Reports
- a. Any records concerning disputed benefits or claims against any plan
  - b. Any records concerning past, pending or threatened litigation concerning any plan
  - c. Information concerning any recent or pending audits, investigations or reviews being conducted by the IRS, DOL or PBGC with respect to any plan and any administrative proceedings in connection therewith
  - d. All notices to the PBGC concerning reportable events under ERISA
17. Violations
- a. Information concerning any potential prohibited transactions under the Code or ERISA
  - b. Information concerning any potential violations of COBRA
  - c. Information concerning any funding waivers (or applications for waivers) or violations of the minimum funding requirements

- d. Information concerning any plan contributions or payments held to be nondeductible (or under investigation) by the IRS

### **Employee Benefits Litigation**

1. List all pending, threatened or past lawsuits (within the last five years) involving disputes over employee benefits of any type, for active, laid-off, terminated or retired employees. Indicate for all closed cases, the case name, docket number, court, and disposition. For all pending or threatened cases, include a summary of the stage of proceedings, a copy of the court docket sheet, potential exposure to the company from an adverse finding, current settlement demands/proposals of the parties, an evaluation of the likely outcome, summary of the company's principal defenses, and the names of the company's representative(s) in the litigation. We may wish to review demand letters, settlement proposals, and selected pleadings and briefs for any cases which are determined to be "material." Include copies of any settlement agreement which have not been fully satisfied.





## Mary K. Samsa

Partner

### Chicago

(312) 460-5873

## Mary K. Samsa

[msamsa@seyfarth.com](mailto:msamsa@seyfarth.com)

### Practice Areas

**Employee Benefits & Executive Compensation**; International Employee Benefits, Equity & Executive Compensation, Retirement Plans, Corporate Transactions, Employee Stock Ownership Plans (ESOPs)

**Healthcare**

Ms. Samsa is a partner in the Employee Benefits & Executive Compensation Department in the Chicago office of Seyfarth Shaw LLP. Her primary practice is in the area of executive compensation (both domestically and internationally and with respect to for-profit as well as not-for-profit entities). She also focuses her practice in the areas of qualified retirement plans (such as 401(k) and pension plans) and employee stock ownership plans. Ms. Samsa has been named by Chambers as one of Illinois' "Up and Coming" attorneys in Employee Benefits for 2008 and 2009.

**Executive Compensation Practice.** As stated above, Ms. Samsa's primary practice is in executive compensation. She regularly advises clients on (i) nonqualified deferred compensation arrangements (for both taxable entities and tax-exempt entities), (ii) executive employment agreements (for both taxable entities and tax-exempt entities), (iii) equity compensation arrangements and alternatives in conjunction with SEC reporting, (iv) Code Section 162(m) requirements, (v) change-in-control issues, (vi) executive security devises, and (vii) golden parachutes.

Ms. Samsa speaks and writes regularly on executive compensation issues. She sits on the Editorial Advisory Boards for *The Benefits and Compensation Law Alert Journal* and *The Benefits and Compensation Law for Nonprofits Journal* where she contributes a bi-monthly column.

Ms. Samsa has also been extremely active in working with tax-exempt entities and professional employee benefit associations with respect to proposing regulatory changes to Code Section 457(f) plans and

attempting to place tax-exempt nonqualified deferred compensation on par with for-profit entities under Code Section 451.

***International Employee Benefits Practice.*** Ms. Samsa has developed significant expertise in international employee benefits issues. In particular, she has experience in (i) assisting multinationals in the integration of their global employee benefit plans (including pension plans as well as medical/dental/life/disability plans) acquired and/or disposed of as a result of a merger and/or acquisition, (ii) extending nonqualified deferred compensation arrangements overseas, (iii) analyzing split-pay arrangements for mobile executives relocating in foreign jurisdictions, and (iv) designing foreign deferred compensation plans.

Ms. Samsa's experiences in this area over the past 10 years have provided her with professional relationships with attorneys in over 100 countries. Her network enables her to provide rapid turnaround on time-sensitive international benefit issues.

***International Employee Equity Plans Practice.*** Ms. Samsa has also been assisting large multinational employers (originating in the U.S. as well as overseas) with the extension of their international employee equity plans overseas for the past 10 years. She has published a book regarding the legal ramifications (domestic and international) of extending equity-based compensation plans to employees and nonemployees and periodically supplements this book with a semi-annual newsletter regarding changes in regulatory issues across the globe.

Ms. Samsa is also the Chapter Coordinator of the Global Equity Organization (GEO) Midwest Chapter. Based on her approach to the Midwest Chapter by listening to what the corporate issuers want from GEO and delivering the appropriate peer network for the corporate issuers, Ms. Samsa was successful in securing the approximately 60 new *Fortune* 1000 corporate issuers as members in the Midwest.

***Qualified Retirement Plans.*** As with all employee benefit practitioners, Ms. Samsa also maintains a core practice with respect to qualified retirement plans, for both taxable entities and tax-exempt entities. Her clients range from large *Fortune* 200 publicly held companies to 100-employee ESOPs.

***Background.*** Prior to joining Seyfarth, Ms. Samsa was a partner with a nationally recognized law firm for six years. Ms. Samsa is a certified public accountant with an MST. Prior to attending law school, she

worked as a tax accountant for the public accounting firm of Laventhol & Horwath and is well-versed in financial statement analysis and preparation. During law school, she worked as a tax researcher and planner for Amoco Corporation's Tax Department, developing tax strategies for the company's numerous acquisitions and divestitures.

## Education

J.D., DePaul University – College of Law, High Honors (1996)

M.S.T., DePaul University – College of Commerce (1992)

B.S., University of Illinois, *magna cum laude* (1988)

## Admissions

Illinois

## Courts

U.S. District Court for the Northern District of Illinois

## Affiliations

American Bar Association (Tax and International Section)

American Benefits Council (Policy Committee)

Boardroom Bound

Empowering Women Network (EWN)

Global Equity Organization (Founder, Midwest Chapter; Chair, Service Provider Council; Member, Board of Directors)

Illinois State Bar Association (Employee Benefits Section)

International Bar Association

National Association of Stock Plan Professionals

Society for Human Resource Management (SHRM)

## Publications

"Overcoming the New 403(b) Challenges—2009 Audits and Form 5500 Filings," *Benefits & Compensation Law for Nonprofits* (April 2009)

Co-Author, "Chapter Entitled: United States," Part of the Globe Business Publishing series called *Buy-Ins and Buy-Outs —The Elimination of Defined Benefit Pension Scheme Liability* (July 2009)

Co-Author, "Chapter Entitled: Protecting Your Stock Plan," Part of the *GEOConference Industry Book* (June 2009)

"Year-End Defined Contribution Plan Checkup," *Journal of Compensation and Benefits Law Alert* (October 2008)

Co-Author, "Can Medical Tourism Cure What Ails You," *Benefits & Compensation Law Alert* (November 2007)

Co-Author, "Chapter Entitled: 2006 Pension Reform in the United States," Part of the *Ius Laboris* series called *Deficit Reductions Across the World* (October 2007)

Author, "Identifying Your Disqualified Persons for Excess Benefit Transactions," *Benefits & Compensation Law for Nonprofits* (May 2007)

"Gearing Up for the New SEC Disclosure Requirements—Part II," *Benefits & Compensation Law Alert* (January 2007)

"Gearing Up for the New SEC Disclosure Requirements—Part I," *Benefits & Compensation Law Alert* (December 2006)

Editor, "The Employer's Immigration Handbook," *Kluwer Law International*. First Ed. (October 2006)

"U.S. Compensation and Benefits Trends," *Ius Laboris Multinational Article Contribution* (October 2006)

"PPA Provisions Affect Qualified Retirement Plan of Nonprofits," *Benefits & Compensation Law for Nonprofits*, Vol. 22, No. 10 (October 2006)

"Redesign Options for Nonqualified Plans," *Benefits & Compensation Law for Nonprofits* (June 2006)

"Executive Compensation Audits: New Developments, Best-Practice Guides," *Benefits & Compensation Law for Nonprofits* (March 2006)

"Now's the Time to Give Your Retirement Plans a Checkup," *Benefits & Compensation Law for Nonprofits* (February 2006)

Editor and Author of U.S. Chapter at 571, "International Employee Equity Plans: Participation Beyond Borders," *Kluwer Law International* First Ed. 2003, June 2004. Analyzed the legal ramifications (domestic and international) of extending equity-based compensation plans in over 30 jurisdictions

Co-Author, "Use of Electronic Media for Employee Benefit Notices, Elections and Consents," *Benefits and Compensation Law Alert* (October 2005)

"Keep Your Eye on the Ball with Your 457(f) Plan," *Benefits and Compensation Law Alert* (July 2005)

Co-Author, "Five Key Contractual Issues to Consider When Switching 403(b) Vendors," *BNA Tax Management* (Spring 2005)

Co-Author, "Department of Treasury Issues Proposed Regulations on the Tax Treatment of Supplemental Wages," *Benefits & Compensation Law for Nonprofits* (December 2005)

Editor & Author, *World Law Group Publications*, August 2003, February 2004, March 2005.

Semi-annual newsletter dedicated to providing legal updates to clients and friends regarding equity compensation regulatory issues across the globe

Co-Author, "Equity Alternatives for U.S. ESOP Companies with Non-U.S. Employees," *The Journal of Employee Ownership Law and Finance*, Volume 16, No. 4, NCEO (Fall 2004)

Co-Author, "IRS and Congress Plan Investigation of Nonprofits Paying Excessive Compensation," *Benefits & Compensation Law for Nonprofits* (Summer 2004)

## Presentations

"Say on Pay: Part Deux," Global Equity Organization Midwest One-Day Meeting, Chicago, IL (September 22, 2009)

"Moving Employees Internationally Here Today, Gone Tomorrow – But Still Needing Benefits," Southern Employee Benefits Conference, Aventura, FL (May 8, 2008)

"403(b) Best Practices and Update," Blue Prairie Group Webinar (February 26, 2008)

"2008 The Year for Tax-Exempt Compliance: New Requirements for Tax-Except Compensation and Benefits Programs, and How to Comply," Seyfarth Shaw Conference (February 14, 2008)

"Integrating and Encompassing Corporate Governance Standards Into Your Global Equity Program," Global Equity Organization's Annual Conference, London, UK (June 29, 2007)

"European Legal Stock Updates, Global Equity Organization Midwest Chapter Meeting," Chicago, IL (May 15, 2007)

"Stock Option Backdating: New Rules and Enforcement Trends," M. Lee Smith Publishers LLC Audio Conference (April 25, 2007)

"Spring is Coming: Time to Tune-up Your Company's Stock Option Plan and Practices," NASPP Boston Chapter, Boston, MA (March 15, 2007)

"SEC Executive Compensation Disclosure Rules," Seyfarth Shaw Teleconference, National (January 24, 2007)

"Multinational Executives," John Marshall Law School, Chicago, IL (November 9, 2006)

“Knock, Knock...Who's There?” The IRS - Planning and Internal Compliance Review, M. Lee Smith Publishers Teleconference, National (October 18, 2006)

“Compensation: Covering the Globe – A Symposium, Chicago Compensation Association's Compensation Symposium,” Chicago, IL (September 13, 2006)

“The Pension Protection Act of 2006: The Good, The Bad and The Ugly,” Seyfarth Shaw Teleconference, National (August 17, 2006)

“Reshaping the Remuneration Committee Agenda,” Global Equity Organization's Annual Conference, New York, NY (April 28, 2006)

“Navigating Challenges in Your Global Stock Plans,” Global Equity Organization's Annual Conference, New York, NY (April 27, 2006)

“Governance Issues and Compensation Committee Approaches – Changing Corporate Behavior in Equity Award Grants,” Global Equity Organization's US One-Day Event, Chicago, IL (April 11, 2006)

“Employee Benefit Issues in International Mergers and Acquisitions,” John Marshall Law School, Chicago, IL (March 25, 2006)

“IRS Executive Compensation Enforcement,” Illinois Hospital Association, Naperville, IL (October 7, 2005)

“Executive and Physician Compensation – IRS Developments and Activities,” HR Advisory Board Meeting, Chicago, IL (October 4, 2005)

“Monitoring and Maintaining an International Stock Plan,” Insurope International Seminar, Catigny Golf Course, IL (September 29, 2005)

“Addressing Recent Litigation in Your Award Agreements (A Multijurisdictional Panel Discussion),” GEO Annual Conference, London, England (September 23, 2005)

Preparing for an IRS Compliance Audit, Plan Sponsor Advisors Full-Day Seminar, “Getting Ahead of the Curve with Your 401(k) Plan,” Chicago, IL (September 15, 2005)

“Legal and Regulatory Update,” (Jointly with PricewaterhouseCoopers) Global Equity Organization Midwest Chapter Meeting, Chicago, IL (September 8, 2005)

“Compliance Issues Facing Multinationals in Jurisdictions Other Than Europe,” Global Equity Organization Midwest Chapter Meeting, Chicago, IL (June 12, 2005)

“The American Jobs Creation Act of 2004: How the New Legislation Impacts Your Organization's Nonqualified Deferred Compensation Plans,” Chicago, IL (April 27, 2005)

“Current Issues with Section 457(f) Plans: Legislative and Regulatory Update, Enrolled Actuaries Meeting,” Washington, D.C. (April 4, 2005)

“Now that Sarbanes-Oxley is Behind Us – What’s Next? – A Look at Section 409A’s Application to Equity Plans,” GEO Midwest Chapter Meeting, Chicago, IL (March 18, 2005)

“Implementing a Global Stock Plan,” Chicago Bar Association, Chicago, IL (June 2004)