

## LABOR AND EMPLOYMENT COUNSELING

Sheppard, Mullin, Richter & Hampton LLP offers clients one of the largest and most experienced Labor and Employment practices in the country. We represent employers of all sizes—from Fortune 100 companies to high tech and traditional business start-ups—in all aspects of employment counseling. Our collection of clients is diverse and reflects major industries such as banking, healthcare, high tech, biotechnology, insurance, real estate, manufacturing, retail, media, aerospace, entertainment and transportation, among many others.

Our attorneys provide day-to-day counseling to employers on a variety of human resource matters, such as worker classification, sexual harassment, stock options, leave of absence and employee hiring, discipline and termination. As part of the firm's counseling function, our attorneys regularly draft critical employment agreements, including executive compensation agreements, employee handbooks, sexual harassment policies, independent contractor agreements, Internet/e-mail usage policies, separation agreements, equity compensation and employee arbitration agreements. In addition, we advise clients on preventative action and management issues pertaining to disability and access accommodation, drug and alcohol testing, OSHA, reductions in force and workplace violence, among many others.

We consistently focus on working with clients to prevent problems before they occur. As labor laws and regulations are increasing in number and becoming more complicated every year, we strive to keep our clients informed on how these laws ultimately affect their business and procedures. As a result, we provide educational advice and training programs on such diverse human resource issues as harassment and discrimination, privacy, diversity and the like.

We also provide ongoing consultation on all policy and benefit matters through informal conferences, formalized programs and frequent written updates on all the latest legal developments. Our attorneys assist in the review and drafting of organization policies, manuals, contracts, trade secret agreements, compensation and benefit plans. We also assist in merger, acquisition and disposition endeavors by conducting labor and employment audits prior to the sale of an existing business, as well as advice and guidance on prospective legal obligations under existing collective bargaining agreements, potential or existing employee lawsuits and issues of liability relating to plant closings or mass layoffs.

### **Hiring, Discipline and Termination**

Sheppard Mullin attorneys advise clients on all phases of the employment relationship—from recruitment to termination. We offer "new hire" packets for clients which assist them in the employee hiring function and which include customized offer letters, arbitration agreements, confidentiality agreements and other documents critical to the hiring process. Sheppard Mullin also counsels clients through the post-hire phase, from devising customized performance evaluation forms to implementing performance improvement plans to advising clients on appropriate employee discipline. We are also highly seasoned in guiding clients through the employee separation phase, whether the separation is due to misconduct, poor performance, layoff or early retirement program.

### **Handbooks and Personnel Manuals**

As part of an employer's critical employment infrastructure, handbooks and manuals communicate core information to employees and, when done properly, can serve as a company's best defense in employment law disputes. Sheppard Mullin constantly monitors the ever-changing employment law landscape, and we continually update clients on employment law developments to ensure that handbooks and manuals stay current.

### **Wage and Hour Regulations**

Many of our Labor and Employment attorneys are recognized experts in this area. For example, we literally "wrote the book" on wage/hour law for California employers. Federal and state wage/hour regulations involve every aspect of the employment relationship, including minimum wage law, exemptions, overtime, work hours, dress codes and

uniforms, tools, reporting pay, holiday and vacation pay, pay upon termination, pay days, etc.

Sheppard Mullin also remains current on all changes to the wage and hour laws and how it affects the daily operations of our clients' businesses. The firm regularly represents clients before the California Division of Labor Standards Enforcement ("DLSE"), the New York Division of Labor Standards and the federal Department of Labor ("DOL"). We have also resolved potential challenges at both the administrative level and in state and federal courts.

### **Harassment Investigation and Training**

Sheppard Mullin is a recognized leader in providing sexual harassment training to companies and their employees. Our Labor and Employment attorneys have published articles and lectured extensively on the subject of sexual harassment. We understand sexual harassment law and all of its nuances. No one company is the same as another. Our attorneys assist in devising a customized sexual harassment program tailored especially for each unique workforce, industry and culture.

Employers want to conduct prompt, thorough and fair investigations whenever an employee makes an allegation of sexual or other harassment. Our Labor and Employment attorneys have substantial experience conducting legally mandated investigations and coordinating investigations done by outside consultants.

### **Employment Agreements and Executive Compensations**

Our Labor and Employment attorneys draft all types of employment agreements. We have expertise drafting independent contractor agreements, executive employment agreements, consulting services agreements, incentive and non-qualifying stock option agreements, confidentiality/non-disclosure agreements, employee privacy statements, mandatory arbitration agreements, non-solicitation agreements and all other types of employment related agreements.

Companies are often faced with creating compensation programs for talented employees and executives in order to attract and retain crucial talent. Our attorneys assist organizations to establish tailored incentive and compensation plans to win and keep the executives its competition wants most. We advise on establishing compensation plans designed to advance company interests, while at the same time rewarding employees for productive contributions. We draft stock option plans and establish procedures for administering such plans. We also assist employers in developing tailored bonus and commission plans that reward employees for contributing to the growth and increased revenue of an organization.

Our approach to employment and executive contracts takes into consideration the current market standards of a variety of different industries, as well as the relevant tax, securities and intellectual property issues prevalent in today's work environment.

### **Employee Benefits**

Sheppard Mullin has represented employers, plan sponsors, investment managers, plan fiduciaries, plan trustees and syndicators of investment vehicles in connection with all aspects of qualified and nonqualified retirement plans and employee benefit matters under the Employee Retirement Income Security Act of 1974 ("ERISA") and the Internal Revenue Code of 1986. As a result, we have had the opportunity to analyze issues, provide advice, draft documents and negotiate positions from many different perspectives. Our well rounded expertise in this highly complex area of the law has benefited our clients for the last several decades. Our experience includes:

- Defined contribution and benefit plans
- Profit sharing and 401(k) plans
- Supplemental executive retirement plans ("SERPs")
- Employee Stock Ownership Plans ("ESOPs")
- Rabbi trusts
- Deferred compensation plans

- Split dollar plans
- 403(b) tax sheltered annuities
- Self funded and insured health and welfare benefit plans

Our advice spans the design, implementation and administration of all such plans. It includes all work associated with the defense of employee benefit disputes, the evaluation of benefit claims and securing determinations from the Internal Revenue Service and, where necessary, the Department of Labor.

### **Affirmative Action**

Executive Order 11246 requires most federal contractors to take affirmative action to recruit, hire and promote women and minorities whenever those groups are "underutilized" in the employer's work force. This program is administered and enforced by the Office of Federal Contract Compliance Programs ("OFCCP"). This highly specialized area of human resource management generally involves two categories of legal input and involvement: drafting the affirmative action plan ("AAP") and interfacing with the OFCCP.

Our Labor and Employment attorneys' expertise spans drafting these plans from scratch to simply reviewing and approving annual updates. Careful drafting and/or review of the AAP is critical to efficiently passing OFCCP scrutiny, as well as reducing litigation risks in Title VII cases. Preparation and knowledge are critical to the audit and negotiation process. We have developed an effective and economical approach to OFCCP audits. We assist our clients in preparing for the audit, counseling managers who are to be interviewed, and assisting at all stages of dialogue and negotiation with the OFCCP.

### **Health and Safety Regulations**

Adhering to federal and state health and safety rules and regulations is an essential component of doing business today. Noncompliance with health and safety laws and regulations can create both civil and criminal liability. It is essential for a business to take proactive measures to both understand the requirements and their impacts, and to take action to comply with these rules. Failure to do so can put an organization's own legal health at risk.

Our legal expertise and representation of clients in this area covers such diverse subjects as death and serious injury incidents, Occupational Safety & Healthy Agency ("OSHA") requirements, investigations and proceedings, drafting of Injury Prevention Programs ("IPPs"), written hazard communication programs, video display terminals, secondary smoke ordinances and issues involving AIDS and other communicable diseases, fetal protection policies and pregnancy transfer rights.

Federal and state laws have recently been amended to create major financial and criminal exposure to corporate clients and their individual managers. Our attorneys have the experience and requisite expertise to resolve these matters. The firm represents clients in OSHA matters, including administrative consultations, inspections, injunction and subpoena proceedings, appeal proceedings and other administrative and judicial matters. In addition, we advise on workers' compensation issues, including leaves of absence, benefits, retaliation and "serious and willful" conduct allegations.