

American Bar Association
Health Law Section
Employee Benefits and Executive Compensation
Interest Group

2007- 2008 Action Plan

Chair:	Phyllis C. Borzi
Vice Chair:	Gregory Needles
Vice Chair:	Christopher S. Sears
Vice Chair:	Eugene Holmes
I.G. Leader:	C. Joyce Hall
Council Liaison:	Daniel A. Cody

I. Name and Purpose:

- A. The name of the interest group shall be the **Employee Benefits and Executive Compensation Interest Group** (“EBEC”).
- B. The purpose of the Interest Group (IG) shall be to examine the special problems that hospitals, physicians, and other health care providers have in providing employee benefits for members of their workforce through qualified pension plans, non-qualified executive compensation and other deferred compensation arrangements, and welfare plans.

The Interest Group focuses on the applicability of the rules governing health and other welfare benefit plans to health care providers and institutions as employers, with particular emphasis on the rules under (1) Title I of the Employee Retirement Income Security Act of 1974 (ERISA), (2) the Internal Revenue Code (IRC), (3) the Health Insurance Portability and Accountability Act of 1996 (HIPAA), (4) the health insurance continuation provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), and (5) Medicare, especially the Medicare Secondary Payor rules and the Medicare Part D requirements affecting employers. In addition, the Interest Group reviews issues related to both qualified and non-qualified retirement programs and the wide-ranging types of executive compensation arrangements offered by health care entities. In connection with these programs, the Interest Group examines the special problems that not-for-profit employers in the health care industry experience in providing employee benefits to their employees, including a focus on Internal Revenue Code Section 403(b) and 457 plans.

Moreover, the Interest Group considers the application of ERISA concepts to various forms of managed health care, the impact of state health care initiatives on employer-sponsored health plans, and the ramifications of alternative workforce arrangements on a health care provider’s or health care institution’s employee benefit plans. In connection with these issues, the Interest Group explores the definition of a common law employee, leased employees, controlled groups and affiliated service groups.

The Interest Group also participates in all activities of the ABA's Joint Committee of Employee Benefits (JCEB), including the annual meetings with the federal government agencies regulating employee benefits in which employee benefit practitioners representing the constituent ABA Sections that comprise the JCEB.¹

With regard to the areas of the law described above, the IG will monitor enforcement activity, and serve as a forum for the exchange of information and debate on these topics. During the 2007-2008 ABA year, the IG intends to undertake the activities listed below.

II. Administration/Organization:

A. Appointments of Key Leadership Positions

1. Editorial Board Member to work with The Health Lawyer and other publications of the ABA Health Law Section: Howard D. Bye
2. Liaison to the Legislative Affairs Committee of the HLS: Phyllis C. Borzi
3. Liaison to Government Submissions and Policy Committee of the HLS: Linda E. Rosenzweig
4. Membership Liaison: Eugene Holmes
5. Due to various membership changes, we need to fill the following positions:
 - a. Technology Liaison to work with the Section's Webmaster Alan Goldberg in updating the IG's portion of the ABA Health Law Section's website, keeping the IG's portion of the ABA Health Law Section's website current, and posting substantive and informative content to the website from the IG.
 - b. A Young Lawyer Liaison to communicate and work with Young Lawyers of the ABA YLD Healthcare Law Committee and/or related committees of the Young Lawyer's Division. It is a stated goal and objective of the ABA Health Law Section to reach out to, and network with, Young Lawyers, to market programs of the ABA Health Law Section, and to provide leadership opportunities for Young Lawyers to become involved in the ABA HLS.
 - c. An In-House Counsel Liaison to communicate activities of, and opportunities within the IG, to In-House Counsel members of the

¹ Founded in 1981, the JCEB was originally composed of representatives of the employee benefits committees of the Sections of Business Law, Health Law, Labor and Employment Law, Real Property, Probate and Trust Law, and Taxation. The Tort Trial and Insurance Practice Section joined in 1988. The Health Law Section is the newest member of the JCEB, having joined in 1997.

IG, as well as to communicate concerns of In-House Counsel members to the IG's leadership.

- B. Develop lists of volunteers for IG projects and activities. Each activity or project of the IG will have a designated leader or point of contact (POC) (*i.e.*, Vice Chair) who will be responsible for shepherding the specific project or activity to completion.
- C. The leadership of the IG will also work to enlarge and enhance the membership within the IG leadership for purposes of providing opportunities to IG members to showcase writing and/or speaking talents, as well as to develop future leadership for the IG and the ABA Health Law Section. Regular list-serve e-mails will be sent soliciting writers and speakers.
- D. The IG leadership will continue its practice of scheduling bi-monthly leadership conference calls for the next ABA Bar year. The purpose of such conference calls will be to provide the leadership with a regular opportunity to monitor progress on the IG's Action Plan and to plan for upcoming events (*e.g.*, DC Health Care Summit, EMI, IG conference topical conference calls), as well as to discuss substantive educational content.
- E. The IG leadership will work to enhance communication and coordination both within the IG membership as well as between this IG and other IG's within the ABA Health Law Section. Email (list serve) and telephone will be the preferred method of communication, and IG leadership intends to communicate with members of the IG on at least a monthly basis with regard to breaking news or government announcements, updating the membership on IG projects and activities underway, and opportunities for future projects and/or activities of the IG with which to become involved.

IV. Publications and E-Communications

- A. IG leadership has been given the responsibility to coordinate the content/publication of the May 2008 Health eSource newsletter and will solicit IG membership for active participation and articles (see II.C. above).
- B. IG leadership will be responsible for updating the website for IG activities and projects as well as posting substantive material and information developed by IG members. This will be done largely under the direction of the IG's Technology Liaison.
- C. IG leadership will set up a formalized and accountable method to monitor new developments in employee benefits and will utilize the list serve to update IG members on substantive law developments, government announcements, and/or court decisions as they occur.
- D. IG leadership will utilize the list serve to update members of the IG regarding ABA Health Law Section activities and projects underway, and opportunities for

future activities and projects both in this and other IG's with which to become involved.

- E. IG leadership will identify at least one IG member to write an article for The Health Lawyer on employee benefits and executive compensation issues, and assist in the preparation of that article to conclusion.
- F. To the extent any substantive work product is developed by the IG, leadership of the IG, through the Technology Liaison, will ensure that such materials are posted to the IG's portion of the ABA HLS website for the benefit of the members of the IG as well as all members of the ABA Health Law Section.

V. Live Programs and Teleconferences

- A. In connection with the Conference on Emerging Issues in Healthcare Law 2008 ("2008 EMI conference"), IG leadership has:
 - 1. formulated cutting edge programming in conjunction with other IGs for 2008 EMI conference; and,
 - 2. planned in advance of the 2008 EMI conference an agenda for an IG business lunch meeting to be held during the conference.
- B. The IG intends to hold an IG Membership Conference Calls at least every other month with 30 to 60 minute presentation on a timely topic (*e.g.*, 2007 topics included Pension Protection Act, Subrogation Developments, Deferred Compensation and Section 409A, and Maryland Health Care Reform and "Pay or Play" Laws). Leadership needs to calendar these dates and send out timely reminders to members.
- C. Develop at least one paid teleconference for the benefit of the entire Health Law Section that is coordinated in advance with the JCEB CLE Subcommittee and does not conflict with the JCEB's own CLE teleconferences that are co-sponsored by the Section.
- D. Develop at least one joint program/membership call with another Health Law Section IG. Possibilities for collaboration might include prompt pay issues with Managed Care IG or using deferred compensation as an incentive for physicians to take on-call assignments with Health Care Facility Operations.
- E. Other Programs
 - 1. See Section VIII regarding JCEB activities.

VII. Legislative/Policy Issues:

- A. IG leadership will identify IG members interested both in monitoring enforcement, and preparing written comment on, legislative and rule making

activities within areas of the law, regulation and policy governing employee benefit plans.

- B. Breast Cancer Awareness/Advocacy Program
- C. Health Care Reform Policy Initiative: Andy Demetriou's new initiative within the Health Law Section.

VIII. Activities with the JCEB

- A. The IG participates in the activities of the JCEB, which was created to coordinate CLE and other activities of the various Sections of the ABA that involve employee benefit issues. As previously noted, those sections participating in the JCEB are Business Law, Health Law, Labor and Employment Law, Real Property, Probate and Trust Law, Taxation and Tort Trial and Insurance Practice. The JCEB enables the sections the opportunity to coordinate these activities. The Council has appointed three voting members to the JCEB (which meets in person several times a year and also has monthly phone conferences). For 2007-08, the Health Law Section representatives are: Phyllis Borzi, Paul DeMuro and Greg Needles. Roberta Watson serves as a non-voting representative to the JCEB CLE Subcommittee on behalf of the Health Law Section. Phyllis Borzi serves as the Chair of the JCEB CLE Subcommittee and Paul DeMuro is the JCEB's Finance Subcommittee Chair. The overall Chairmanship of the JCEB rotates among the constituent sections. For 2007-08, Phyllis Borzi serves as the Chair-Elect of the JCEB and will assume the chair of the JCEB for 2008-09 in August 2008.
- B. In addition to its general coordination function described above, the work of the JCEB consists of (1) offering jointly sponsored CLE programs on a wide variety of employee benefits law issues, including one or more CLE sessions at the ABA Annual Meeting, live CLE National Institutes, teleconferences and an annual satellite or teleweb program; (2) sponsoring sessions in May of each year with the government agencies that regulate the employee benefit field to discuss questions and proposed answers submitted in advance by private sector practitioners through each of the JCEB's constituent sections; and (3) an annual multi-day Government Invitational Conference, at which officials of the various government agencies regulating the employee benefits field, staff from relevant Senate and House Committees, law professors, and representatives from each of the JCEB's constituent sections, participate in structured, but informal, policy discussions around a multi-faceted theme (e.g., "The Future Role of Employers in Providing Pensions and Health Benefits for Their Employees and Retirees?").

The Health Law Section co-sponsored the following JCEB programs during the 2006-2007 ABA year:

2006-2007 LIVE PROGRAMS

Ethics and Employer Securities Testing Some of ERISA's Edges
August 11, 2007 – San Francisco, CA

Retirement Planning for Lawyers
August 12, 2007 – San Francisco, CA

Health and Welfare Benefit Plans
November 2-3, 2006 – Washington, DC

ERISA Litigation
November 9-10, 2006 – Chicago, IL

Compensation for Executives & Directors
November 13-14, 2006 – New York, NY

Employee Benefits in Mergers and Acquisitions
April 19-20, 2007 – New York, NY

ERISA Basics
May 2-4, 2007 – Chicago, IL

2006-2007 TELECONFERENCES

What Pension Reform Does for Pensions and Their Sponsors: Defined Benefit Plan Issues in the Pension Protection Act of 2006
September 14, 2006

Pension Protection Act of 2006 Part II: Defined Contribution Issues
September 21, 2006

The Ethical Benefits Lawyer: Avoiding Ethical Pitfalls
September 28, 2006

Employee Benefits in Bankruptcy & Workouts: An Update
October 5, 2006

ERISA Basics Series: Health & Disability Plans: Everything You Always Wanted to Know but Were Too Busy to Ask
October 17, 2006

Pension Protection Act of 2006 Part V: The Government Speaks
December 5, 2006

What To Do By Year End: Practical Applications of the PPA and Other Laws
December 7, 2006

Holiday Gifts for Health Plan Sponsors: Final HIPAA Non-Discrimination Regulations, Wellness Plans and New HSA Opportunities
January 9, 2007

ERISA Basics Series #2: Working With Employee “Cash or Deferred” Arrangements -- What You Need to Know About Section 401(k)

January 30, 2007

Employer Stock Issues: New Requirements under the PPA and More

February 13, 2007

Holiday Gifts for Retirement Plans: Year-End and Other Recent Guidance under PPA

February 22, 2007

Follow the Money: DOL Initiatives and New Litigation on Service Provider Revenue Sharing

March 29, 2007

Section 409A: The Long-Awaited Final Regulations

April 25, 2007

Backdated and Misdated Stock Options: What a Difference a Date Makes

May 22, 2007

Do You Have to Pay a Royalty on Your ERISA and Tax Advice?

June 14, 2007

Broken Plan Basics: Using the EPCRS, DFVC and VFPC Toolboxes

June 26, 2007

ERISA Fiduciary Basics: What You Need to Know

August 16, 2007

The Health Law Section has or will co-sponsor the following JCEB programs during 2007-08 (this is a list of programs scheduled to date):

2007-2008 LIVE PROGRAMS

Health and Welfare Benefit Plans

October 15-16, 2007 – Arlington, VA

ERISA Litigation

November 1-2, 2007 – Chicago, IL

Compensation for Executives & Directors

November 12-13, 2007 – New York, NY

Employee Benefits In Mergers and Acquisitions

April 17-18, 2008 – New York, NY

ERISA Basics
Spring 08 – Chicago, IL

2007-2008 TELECONFERENCES

International Employee Benefits: Review & Update
September 18, 2007

New Cafeteria and Dependent Care Plan Regulations: Treasury Speaks & Organizes
September 20, 2007

New Rules for Tax-Exempt and Government Plans: 403(b) and Beyond
October 11, 2007

New 409A Developments: What to Do Before Year End
October 17, 2007

Pension Benefit Restrictions under PPA: What Do Employers Need to Know and When Must They Know It
October 23, 2007

ERISA Litigation Basics: What You Need to Know
November 15, 2007

401(k) Plan Alert: Here Come the New Rules for Automatic Enrollment and Default Investment Options
November 29, 2007

EMPLOYEE BENEFITS UPDATE – PART I – Defined Benefit Plans
December 6, 2007

EMPLOYEE BENEFITS UPDATE – PART II – Health and Welfare Plans
December 11 2007

WHERE DO I FIND...? (How To Do ERISA Research)
December 18, 2007

IX. Other Actions:

- A. Increasing membership of this IG as well as the ABA Health Law Section is a stated goal of IG leadership. Through the use of information gathered in the random telephone survey described above, improved and enhanced, regular and consistent communication with IG members, and presenting better and more frequent opportunities for active involvement by IG members with issues, projects, and activities of specific interest to IG members, IG leadership will energize and increase IG membership.

- B. Concretely, each IG leader will recruit two new members to the Health Law Section and the Benefits IG.

Respectfully submitted,

Phyllis C. Borzi

On behalf of the Employee Benefits and Executive Compensation IG Leadership

cc: C. Joyce Hall, IG Leader
Daniel A. Cody, Council Liaison