

NONQUALIFIED DEFERRED COMPENSATION PLANS

EMPLOYEE BENEFITS

Nonqualified deferred compensation plans provide a valuable incentive for attracting and retaining key employees. They also offer tax benefits to the employer.

Contributions to nonqualified plans are not taxable to the employee until paid or made available to the employee – usually upon retirement. Nonqualified plans are not subject to the tax limitations on amounts employees are able to defer for retirement. Unfunded nonqualified plans are not subject to most of the vast array of reporting and disclosure, participation and vesting, and funding and fiduciary requirements imposed by ERISA.

The attorneys at Hinkle Law Firm LLC have extensive experience in preparing and administering nonqualified deferred compensation plans. We carefully monitor the evolving case law and IRS rulings to determine the parameters of nonqualified plans. This allows us to tailor a nonqualified plan to meet the needs of every company – whether large or small – and to ensure that the tax benefits of such a plan are achieved.

With the enactment of Code § 409A, it has become more important than ever to properly establish and administer a nonqualified plan. The consequences of failing to comply with Code § 409A are severe. Hinkle Law Firm LLC can help you navigate through the complex provisions of this law.

TYPES OF NONQUALIFIED PLANS

- **Top-Hat Plans:**
Allow a select group of key management employees an opportunity to defer compensation.
- **Excess Benefit Plans:**
Restore benefits to employees whose contributions to a qualified plan were limited by IRS and ERISA limitations.
- **Incentive Stock Option Plans:**
Rights granted by an employer to an employee to purchase shares of the employer's stock at a fixed price during a specified period of time.

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At Hinkle Law Firm, our experience gives you the power to do good business with your eyes open. With Hinkle, there's no reason to look anywhere but forward.

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Types of Nonqualified Plans (continued)

- **Nonstatutory Stock Option Plan:**
Similar to an incentive stock option plan, but participants need not be employees and the plan need not meet IRS requirements.
- **Stock Appreciation Right:**
Employees are given rights to payment of the difference between the stock value on the date the rights were granted and the stock value on the date the rights are exercised.
- **Section 457 Plans:**
Allows employees and independent contractors of state and local governments and certain other tax-exempt organizations to defer compensation.

FUNDING MECHANISMS

A nonqualified deferred compensation plan is essentially an employer's promise to pay an employee's compensation in the future.

In order to retain the tax benefits and remain free from most reporting, disclosure, and other ERISA requirements, a nonqualified deferred compensation plan must remain unfunded. Participants, however, want assurance that their benefits will be paid when due. The employer may use two basic types of trusts in fulfilling its promise to pay benefits under the nonqualified plan:

- **Rabbi Trust:**
A trust for the benefit of participants, which is subject to the claims of the employer's general creditors in the event of bankruptcy. Using a rabbi trust allows the plan to remain "unfunded."
- **Secular Trust:**
A trust for the benefit of participants, which is protected from the claims of the employer's bankruptcy creditors. A secular trust causes the plan to be "funded" for tax and ERISA purposes.

A Checklist of Documents Involved in Nonqualified Deferred Compensation Plans

As part of our plan drafting package, we provide all the documents necessary to properly implement your plan and explain it to eligible employees, including the following:

- Plan documents
- Summary plan descriptions
- Rabbi trust documents
- Secular trust documents
- Administrative forms
- Compensation deferral election forms
- Bonus deferral election forms
- Designation of beneficiary forms
- Election forms for time and manner of distribution
- Instructions on how to use the administrative forms
- Top-Hat plan notices