Part of our Chambers USA-ranked Labor & Employment department, Honigman’s Employee Benefits practice group helps clients of various sizes in the design, operation, and legal aspects of their employee benefit and executive compensation arrangements. Our clients include private and public companies, nonprofits, and private equity funds. We provide each client with timely, usable advice and commonsense solutions relating to the design, operation, and up-to-date legal compliance of their benefit plans and executive compensation arrangements.

Our services include:

Retirement Plans

- Design and drafting of 401(k), profit sharing, pension (traditional and hybrid/cash balance types), and 403(b) retirement plans
- Compliance assistance relating to Internal Revenue Code and Employee Retirement Income Security Act (ERISA) requirements, including the correction of plan operational and document errors
- Participant communications, including summary plan descriptions, fee, and other disclosures
- Plan mergers, spin-offs, and terminations
- Plan committee and fiduciary duty and process advice
- Advice as to plan investments
- Planning and advice concerning all aspects of multiemployer pension plan issues, including withdrawal liability and plan audit matters
- Representation before the Internal Revenue Service, Department of Labor, and Pension Benefit Guaranty Corporation regarding plan audit, correction, termination, and other matters

Health and Welfare Plans

- Design and drafting of group health and other welfare benefit type plans
- Compliance assistance relating to Internal Revenue Code, ERISA, HIPAA, FMLA, GINA, ACA, and other legal requirements
- Participant communications, including summary plan descriptions and wrap-type documents
- Health information privacy and security standards, policies, and procedures
- Special welfare plan funding arrangements, such as Voluntary Employee Beneficiary Associations (VEBA)
- Review and negotiation of third-party administrator and other service provider agreements
- Matters relating to the provision, modification, and funding of retiree health and welfare benefits
Funding employee benefit obligations through captive insurers
- Design and administration of self-funded welfare benefits, including stop-loss coverage issues
- Employee leasing and MEWAs

ERISA Litigation
- Defend plans and fiduciaries in lawsuits involving benefit claims and/or alleged fiduciary breaches
- Represent both debtor and creditor clients with respect to benefit plan issues in bankruptcy
- Pursue ERISA preemption for self-funded plans and their sponsors
- Seek or defend subrogation claims on behalf of plan clients

Executive Compensation and Related Areas
- Design and drafting nonqualified deferred compensation arrangements
- Design and drafting of bonus, retention bonus, change in control, and similar arrangements
- The use of “rabbi” and “secular” trust arrangements to fund deferred compensation arrangements
- Design and drafting of stock option, phantom stock, restricted stock, and similar incentive compensation programs
- Advice as to the securities (disclosure and other requirements), tax, and other compliance aspects to such arrangements

Corporate Transaction Advice
- Negotiation and drafting of buyer- and seller-side provisions relating to benefit plan and executive compensation arrangements in asset purchase, stock purchase, and credit agreement transactions
- Advice as to the transition of employee benefit plans and executive compensation arrangements
- Advice regarding Code section 280G analysis and planning and other tax, securities, and corporate law issues

Private Equity Fund Representation
- Structuring of private equity funds to comply with the ERISA plan asset regulation, including fund structuring to meet the venture capital operating company or real estate operating company requirements

Representative Matters
- Represented a large, publicly traded multinational corporation before the Pension Benefit Guaranty Corporation (PBGC), first by negotiating a multimillion-dollar reduction in additional pension funding requirements occasioned by a plan shutdown and next by being among the first to act in obtaining a complete elimination of such requirements after the issuance of new enforcement guidance
- Assisted a large private company in the termination of its pension plan on an expedited review basis with the Internal Revenue Service (IRS) and the PBGC and obtained approval for the offering to current retirees of a novel, lower-cost, lump-sum payout of their benefits
• Assisted a large, publicly traded company with the merger of numerous complex pension plans into a single plan and the subsequent IRS approval of the merged plan, resulting in cost-savings and operational efficiencies for the client

• Advised a large, privately held financial entity in the design and operation of its executive compensation programs for compliance both with the Code section 409A deferred compensation rules and the special TARP executive compensation rules

• Represented a private equity fund in a $100+ million buyout of large, publicly traded publishing and entertainment company regarding the ERISA venture capital operating company requirements for both the fund and several private fund investors

• Advised a large, publicly traded company in the negotiation and design of a unique deferred compensation arrangement with its key executive allowing for the tax-advantaged additional deferral of significant compensation that would otherwise have become payable and taxable to the executive

• Advised major university healthcare plan in negotiations involving the sale of the university’s Health Maintenance Organization to a private insurer

• Successfully defended complex pension case in which claimants sought benefits from both and hourly and salaried pension plan for the same years of service

• Advised underwriter’s counsel in raising $1.4 billion to relieve underfunding of the City of Detroit’s pension plans

• Advised independent bond counsel in raising $800 million for Oakland County to pre-fund its retiree medical benefit obligations

• Represented major public company in successfully negotiating with the IRS to have millions of dollars of additional pension fund contributions be subject to tax loss carryforward treatment

• Defended public company from benefit claims of former executive who had been convicted of embezzling from the company

• Represented major public company in 4062(e) negotiations with the PBGC

• Represented client in designing a plan and negotiating it with the union, the PBGC, and a multiemployer pension plan (in which it was the last remaining employer) to have the client’s plans assume the liabilities of the multiemployer plan in a way that would save benefit costs going forward and avoid withdrawal liability

Representative clients

• AEP Industries, Inc.
• Ally Financial Inc.
• Edw. C. Levy Co.
• Fisher & Company, Incorporated
• Penske Automotive Group, Inc.
Employee Benefits (Cont)

- Tecumseh Products Company
- TriMas Corporation
- Valeo, Inc.
- Wallside, Inc.