

# BEST PRACTICES IN Compensation & Benefits

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## Reducing Pay, Hours, Employees? Think Before You Act

Lisa Van Fleet, a partner with the law firm Bryan Cave LLP, enjoys working with employers to help them solve problems related to their deferred compensation and benefit plans.

Typically, the problems are varied, sometimes stemming from changes in the law, and sometimes from changes employers decide to make. Either way, Van Fleet or her colleagues find satisfaction in helping employers solve a variety of problems.

Times have changed for all of us. Since the last quarter of 2008 and continuing until we spoke with Van Fleet in the second quarter of 2009, the requests she's receiving for help have developed a decided pattern. What's the single theme of many of the calls? Cutting costs associated with compensation and benefits.

"Every day, Van Fleet explains, "we get calls asking things like, *How can we eliminate our match? What if we change our benefits program mid-year? How do we manage a reduction-in-force? How do we put together severance pay packages?*

"Those things have been the daily meat of our work for the last 6 months—that, and trying to jump through the new hoops that the Obama administration is creating for employee benefits," she adds.

"The funny thing is," Van Fleet says, "up until midnight on December 31, 2008, we were working with people to bring their deferred compensation plans into compliance with IRC Section 409A, the new executive compensation rules.

"Then, almost at the stroke of midnight, we were trying to help them take

compensation away, or at least convert it, from those same people. Ironically, 409A, which was designed to prevent executive abuses, actually impedes our ability to take compensation back."

### Cutting Executive Compensation

Van Fleet sees two broad areas of concern for the companies she consults. "One is mid-year program changes in executive compensation. We have employers who want to make mid-year changes in their executive compensation packages," Van Fleet says.

"It may be that they want to eliminate bonuses or equity compensation arrangements. It may be that they want to convert cash payments to equity payments, because they simply don't have the cash.

"Or it may be that they would rather tie the executive compensation to the performance of the company, instead of paying cash outright."

In the event your company wants to make these kinds of mid-year changes, Van Fleet says you need to measure those changes against the requirements of 409A.

"For example, maybe you have executives who are making \$500,000 a year in cash, plus they have some deferred compensation arrangements. Let's say they made an election to defer some portion of the cash compensation, and now you decide to convert \$300,000 of their cash compensation to equity compensation. What has that done to the deferral election? Is that an impermissible change?

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