

Practice Areas

- Corporate, Securities & Finance
- Employee Benefits & Executive Compensation
- Tax

Education

- College of William & Mary, B.S., 1987
- Brooklyn Law School, J.D., 1993

Honors

- Brooklyn Law School, JD, 1993, Moot Court Honor Society, Federal Tax Team
- College of William and Mary, BBA, 1987, Omicron Delta Kappa Honor Society

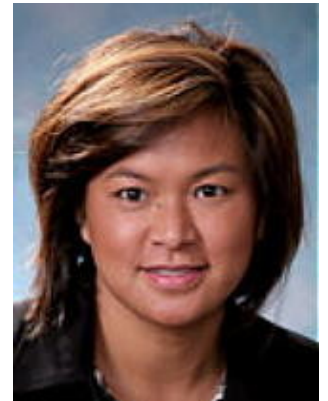
Bar Admissions

- District of Columbia
- New York

Jewell Lim Esposito

Shareholder
Philadelphia

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Jewell Lim Esposito has 15 years of practice in Employee Benefits and Tax law. She emphasizes work on Fiduciary Compliance, Tax Qualification of Retirement Plans, Executive Compensation, and Payroll Taxes. She represents public, tax-exempt and government contractor clients on employee benefit matters involving qualified retirement plans, executive compensation and payroll taxes. Her practice involves frequent interaction with the Internal Revenue Service (IRS), the Department of Labor (DOL) and the Treasury Department.

In the area of qualified plans (Title II of the Employee Retirement Income Security Act (ERISA)), Ms. Esposito designs and evaluates 401(k) plans, profit-sharing plans, and employee stock ownership plans and other retirement plans and then monitors them for ongoing regulatory compliance with applicable regulations. She also counsels plan fiduciaries on their ERISA Title I responsibilities and has obtained prohibited transaction exemptions involving pension plans and real property. Additionally, Ms. Esposito advises clients on the structure of pension plan investments, venture capital operating companies and real estate operating companies to conform to the plan asset regulation. In the Mergers and Acquisition context, she negotiates the rights of employers and their employees who are part of acquiring, terminating or spun-off pension, health and welfare plans.

In the compensation area, Ms. Esposito advises management and boards of directors on the tax and corporate aspects of incentive arrangements, including equity-based incentive plans, supplemental executive retirement plans, performance-based programs and non-qualified deferred compensation arrangements. She negotiates offers in compromise and installment agreements for both company payroll tax liabilities and officer trust fund recovery penalties.

Over the course of her career working with Employee Benefits and ERISA matters, Ms. Esposito has examined hundreds of 401(k), pension and employee benefit plans. She represents the governing boards and executive management of public and private corporations, nonprofit organizations, government contractors, and 401(k)

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and other retirement plans audited by the IRS and DOL. She negotiates and structures settlements with these federal agencies with respect to fiduciary and tax issues and matters with respect to delinquent payroll and employment taxes.

Ms. Esposito is a frequent lecturer on ERISA and compensation issues. She has authored a number of employee benefits, fiduciary, executive compensation and payroll tax, publications and is regularly invited to speak on such topics nationally and regionally.

Significant Transactions

- Reduced a possible \$13 million tax exposure down to a \$500,000 plan correction for a management company that had inadvertently omitted 70 percent of its workers from its 401(k) plan.
- Designed a creative solution (subsequently approved by the IRS) involving assessment of a sanction amount 50% lower than demanded by the tax rules for a company whose fiduciaries and HR personnel had poorly run its 401(k) plan and for whom outside retirement plan service providers had created regulatory tax problems.
- Negotiated with the IRS and DOL to lower sanctions for an equity fund that purchased a target company and eventually merged the target into the fund's other two companies, through identifying four years worth of fiduciary breaches and tax disqualification issues as tied to the three merged retirement plans.
- As part of a corporate deal in which an international client sold its stock and assets to a large, national buyer, structured the executive compensation of the leadership that the buyer wished to retain, post-acquisition.
- Negotiated a compensation package for a highly-recruited, but non-founder, executive that included a \$300,000 base salary and a nine percent share of the technology company on a fully-diluted basis, in exchange for one day of work per week.

Case Studies

- A company with over 300 salespersons/employees retained us to perform fiduciary review plan committee actions (to conform to DOL/IRS fiduciary and tax rules), HR activities (to conform to IRS tax-qualification rules), and 401(k) plan document review. We worked directly for the company's President and Chief Executive Officer, as well as the HR Department. Our work required auditing of fiduciary actions and 401(k) plan operation. We identified fiduciary and plan document violations and, working with our contacts at the IRS, structured a correction that limited the employer contribution to lower than what retirement plan guidelines would have required. The IRS praised us for devising a creative and equitable solution mutually beneficial to the 401(k) plan participants and the government as well. Later, we identified fiduciary breaches associated with plan reporting obligations. We negotiated away a potential \$40,000 in fiduciary penalties that the DOL could have levied.
- A fiduciary to a large ESOP (employee stock ownership plan) impermissibly loaned himself several million dollars, in explicit violation of ERISA fiduciary rules. The DOL audited the plan and the fiduciary. We spared the plan from being disqualified (that is, the plan could continue in operation and neither the employer nor employees would be harmed). Further, we were able to insulate the fiduciary who had borrowed the money from any penalties.
- A company sponsoring a 9000-participant 401(k) plan with assets of \$162 million retained us to review the plan document provisions and HR plan administration. We determined that the plan's bundled service provider had not notified the plan fiduciaries and HR personnel that the plan had failed certain required tests for three years of operation. The amount that the company would have had to contribute to the plan would have been \$1 million. We negotiated a solution with the government agencies to allow a different result that required no contribution whatsoever.

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News & Publications

- "Fiduciary Misrepresentation Claims," *ERISA Fiduciary Law* (BNA Books 1998).
- "Back to the Functional Definition of Fiduciary," *Probate and Property* (October 1996).

Seminars & Presentations

- "Don't be Surprised by the IRS: How to Avoid 403b Plan Problems Now: What's on the IRS Target List? . . . What's the Difference Between a 401(k) and 403(b) Plan?" Workshop before financial advisers to and HR professionals of tax-exempt organizations (2007).
- "Who's Stealing From Your Retirement Plan?" Radio address to Virginia, Maryland, and Washington, DC listening area (2007).
- "Payroll Outsourcing: Compliance and Risk Reduction," Lorman Education Services (2007).
- "Executive Briefing on Employee Benefits: Your Nonqualified Deferred Compensation Plan; The New 409A Regime; Limiting Your Fiduciary Responsibility with ERISA 404(c); Avoid These Common Retirement Plan Mistakes." Workshop before chief executives and in-house counsel (2006).
- "The Complete Payroll Process in Virginia." Lorman Education Services (2005).
- "Compliance, Compliance, Compliance: Why You Shouldn't Rely on Your 401(k) Third Party Administrator." Seminar before HR administrators who run 401(k) plans (2005).

News

- IRS Adopts Controversial Position on Deductibility of Certain Executive Bonuses
 - IRS Regulations Provide for Unprecedented Change
 - IRS Extends Section 409A Transition Relief
 - IRS Issued Notice 2007-100 Provides Limited Relief
 - IRS Requires Action Before Year-End On § 409A Deferred Compensation Arrangements
 - Final § 403(b) Retirement Plan Regulations Issued
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