Mark D. Wincek

Retired Partner

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Services

Business Transactions

Corporate Governance

Employee Benefits

ERISA Litigation

Executive Compensation

Fiduciary Counseling

Government & Regulatory

RIFS & Severance Plans

Tax

Mark D. Wincek concentrates his practice on qualified plans, fiduciary matters and executive compensation, and it encompasses counseling, transactions and controversies.

Mark is the author of the chapter on “SERPs and Excess Plans” in the BNA Books *Section 409A Handbook*, and his list of professional publications includes dozens of articles on compensation and benefits issues. In addition, he is a former Adjunct Professor of Law at Georgetown University Law Center, a Charter Fellow of the American College of Employee Benefits Counsel, a member of the ECFC Flex Advisory Council, and a member of the Tax Section of the American Bar Association, where he served as Chairman of the Statutory Welfare Benefits Subcommittee (1986-1990).

From 1976 to 1981, Mark was on the staff of the U.S. House Ways and Means Committee, serving as Senior Subcommittee Counsel to the Ways and Means Oversight Subcommittee in 1980 and 1981. While on the Hill, he participated in the initial drafting and enactment of Code section 125, the Code provisions on dependent care assistance, as well as provisions that still govern health and welfare plan nondiscrimination.

Mark has been listed since 2005 in *Chambers USA: America’s Leading Business Lawyers* for Employee Benefits & Executive Compensation Law, as a “Leading Individual (Employee Benefits)” and as a member of a highly ranked Washington benefits practice. He also has been listed in *The Best Lawyers in America* for Employee Benefits Law since 2005, and he is ranked as a “leading expert” in the *Legal 500* (Employee Benefits and Executive Compensation). In 2023, *Business Today* listed Mark as one of the “Top 10 Influential Employee Benefits & Executive Compensation Lawyers in DC” and recognized him as a seasoned lawyer who “offers a wide-ranging practice encompassing transactional, compliance, and controversy matters. Known for providing practical legal insights, Wincek is highly praised by his clients for his valuable assistance in employee benefits and executive compensation issues." Mark was recognized as a 2018 DC/Metro "Legal Leader" by *The Washington National Law Journal*. He has been repeatedly listed as a Corporate Counsel "Top Lawyer" and a Washington "Super Lawyer," and in 2015 and the three years immediately preceding was named to *Super Lawyer*'s list of the top 100 Washington attorneys (without regard to specialty). Based on an independent survey of *Fortune* 500 companies, Mark was named to BTI's Client Service All-Star Team. He was recognized by Legal Media Group in its *2012 and 2014 Guide to the World's Leading Labor and Employment Lawyers*.

Experience Highlights

Defined Benefit Pension Plans
Mark has more than 30 years of experience assisting large companies with their defined benefit pension plans, dealing with a broad array of complex issues and a wide variety of plans. For instance, he was a founding member of the Cash Balance Practitioners Group, a group that helped achieve more workable rules for cash balance plans (including the lump-sum safe harbor rules of IRS Notice 96-8). In addition, he has had exceptional results in IRS and DOL corrections matters, and in assisting large clients selected by the IRS for its intensive Employee Plans Team Audits.

Benefits and Compensation in Transactions
Kilpatrick's Benefits and Compensation Team is a destination practice that is selected to handle benefits and compensation matters in major transactions, even when the firm is not deal counsel. Significant transactions of this sort include assisting ING Direct in its acquisition by Capital One, assisting Frontier Communications with its size tripling acquisition of territories from Verizon, and assisting PepsiCo with its acquisition of anchor bottlers Pepsi Bottling Group and Pepsi America.

Fiduciary Governance
Mark has worked with dozens of major companies to refine their ERISA fiduciary governance to significantly reduce risk to the company and the fiduciaries. Using a range of strategies, structures and methods, he has found it is possible to maximize risk reduction within each company's unique culture.

Representation of Fiduciaries
In a transaction of historic size and significance, he has led the Kilpatrick EB team that has served as independent counsel to a fiduciary committee that is charged with retaining an independent fiduciary, negotiating the terms of engagement and supervising the independent fiduciary's work. Mark also has served as counsel to a special fiduciary committee set up to manage the investment of ERISA plan assets in company stock. His role included assisting the fiduciary with establishing its governance, retention of an independent fiduciary and ongoing procedural prudence. He has advised fiduciaries in connection with a company's contribution of employer real property to satisfy its funding obligations under its defined benefit pension plan.

ERISA Litigation
Mark has served as special benefits counsel in major class-action ERISA litigation, including cases alleging cash balance age discrimination, improper retiree health cutbacks, and fiduciary breach in the offering of employer stock. In addition, he has served as an expert witness for compensation and benefits issues in both judicial and arbitration proceedings.

Representation of Clients Before Agencies
Mark began his legal career on the staff of the House Ways and Means Committee (1976-1981). This background in policy formation has translated well into representation of clients on important matters before agencies such as the Treasury Department, IRS and Department of Labor, and before the Congress itself. For example, he helped clients obtain relief related to important issues on defined benefit plan funding and nondiscrimination testing. In addition, Mark participated in the development of the original regulations for Section 162(m)'s million dollar cap on non-performance compensation, and led the effort (which culminated in the "90-law-firm letter") that successfully sought key transition relief when the IRS adopted an adverse position on the impact of retirement and involuntary termination under 162(m). He also played a lead role in convincing the IRS to provide the critical one-year delay in the Section 409A compliance deadline.

Expatriate Retirement Benefits
The combination of Sections 409A and 457A have put obstacles and dangerous traps in the path to rational retirement and deferred compensation benefits for U.S. persons working overseas. Mark has assisted a number of major companies with successfully navigating these challenges.

Representative Clients

PepsiCo, Starwood Hotels, YUM Brands, AXA Equitable Life Insurance, Frontier Communications, Oracle, Charles Schwab, ConAgra Foods, American Express, ING Direct, Weyerhaeuser, Office Depot, Equifax

Education

Boston College B.A. (1972) *cum laude*

Boston College J.D. (1976) *cum laude*

Admissions

District of Columbia (1980)

Massachusetts (1977)

Professional & Community Activities

BTI Client Service All-Star Team

American Bar Association, Tax Section, Member and Chairman of the Statutory Welfare Benefits Subcommittee (1986 and 1990)

American College of Employee Benefits Counsel, Charter Fellow

Benefits Law Journal, Editorial Advisory Board (1988-present)

ECFC Flex Advisory Council, Member

Georgetown University Law Center, Former Adjunct Professor of Law, Tax Aspects of Welfare Benefits Plans

Insights

News Releases

Kilpatrick Attorneys Earn 102 Rankings in 2026 Chambers USA and Global Guides

June 5, 2026

News Releases

Kilpatrick Attorneys Earn a Record 100 Recognitions in 2025 Chambers USA

June 6, 2025

Perspectives

5 Key Takeaways | Plan Investments and Fiduciary Risk Mitigation in the Trump Era

May 29, 2025

Webinars

Plan Investments and Fiduciary Risk Mitigation in the Trump Era

May 20, 2025

Alert

The Supreme Court Delivers Troubling Decision for ERISA Excess Fee Cases

April 21, 2025