



## Employee Benefits

Foster Swift's employee benefits practice offers a full range of tax, labor law and litigation services relating to employee benefit plans. We advise clients who are subject to the Employee Retirement Income Security Act (ERISA), as well as state and local governments and qualifying church organizations that are exempt from ERISA.

Our attorneys assist with the design and drafting of benefit plans and related employee disclosure materials. We also help employers ensure that their programs comply with changes in relevant law. We negotiate closing agreements and private letter rulings with the Internal Revenue Service (IRS) and work with employers regarding IRS and U.S. Department of Labor Audits. Our practice also includes advising clients regarding important corporate transactions that involve Employee Stock Ownership Plans (ESOPs), and prohibited transaction and other special legal problems.

Our team provides advice to employers regarding the corporate governance and fiduciary duty aspects of implementing and administering an employee benefit plan. We also advise clients regarding the growing area of international employee benefit planning. This work includes the taxation of employee benefit plans pursuant to tax treaties.

Our work covers all kinds of qualified retirement plans, including (1) 401(k), ESOP, 403(b) and other defined contribution plans, and (2) defined benefit plans (including cash balance plans). Foster Swift also has an extensive practice relating to nonqualified top hat plans, excess benefit plans, Internal Revenue Code Section 409A compliance, funded nonqualified deferred compensation and rabbi trust issues, and the securities law (SEC and blue sky) implications of nonqualified deferred compensation arrangements.

We have extensive experience with health plan compliance and documentation (including Affordable Care Act issues); funded welfare benefits; the creation of Voluntary Employees Beneficiary Association (VEBA) programs; cafeteria flex plan design and implementation; welfare benefit plan discrimination testing; COBRA compliance; Health Reimbursement Arrangement (HRA); Health Savings Account (HSA); dependent care assistance; transportation fringe; and other welfare benefit programs. We have also advised clients regarding the

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### ATTORNEYS

#### Shareholder

Thomas K. Dillon

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### RELATED PRACTICES

Employee Stock Ownership Plans (ESOPs)

Employer Services

ERISA

Federal Taxation



establishment of Revenue Credit Account (RCA) arrangements (ERISA expense accounts) and the related U.S. Department of Labor (DOL) guidance.

Foster Swift clients have been as varied as the challenges they've faced over the years. When it comes time to meet your own unique challenges, be comforted knowing that members of our Employee Benefits Practice Group are on your side, drawing upon our breadth of experience and skill to assist you.

Foster Swift has been named a Tier 1 firm in **Employee Benefits (ERISA) Law** in Lansing by *U.S. News – Best Lawyers®* "Best Law Firms" in 2014, 2016, 2017, 2018, 2019, 2020 and 2021.

## **PUBLICATIONS & ALERTS**

2023 Legal and Regulatory Developments for Agribusinesses, *Foster Swift Agricultural Law News*, August 30, 2023

What You Need to Know About SECURE 2.0, *Foster Swift Business & Tax Law News*, February 23, 2023

Employee Benefits Considerations After Dobbs v. Jackson Women's Health Organization: Foster Swift Highlights Options Available to Employers, *Foster Swift Employee Benefits Law E-blast*, July 7, 2022

Recent IRS Guidance and Clarification for the COBRA Subsidy Imposed by ARPA, *Foster Swift Business & Tax Law News*, June 3, 2021

Governor Whitmer Signs Extension of Unemployment Benefits into Law and Other COVID-19-Related Legislation, *Foster Swift Labor & Employment Law News E-blast*, October 23, 2020

The Benefits of Adopting a Pre-Approved Plan, *Foster Swift Business & Tax Law News E-blast*, August 11, 2020

New Safe Harbor Announced for Electronic Disclosures Required by ERISA, *Foster Swift Legal Update E-blast*, June 4, 2020

Impact of Executive Orders on Reduction and Termination of Benefits, *Foster Swift Workers' Compensation Update*, April 2, 2020

Employers Remember to Take These Steps by April 1, 2020, *Foster Swift Legal Update E-blast*, March 31, 2020

New DOL Guidance Excludes Workers from Federal Emergency Paid Sick Leave, *Foster Swift Legal Update E-blast*, March 29, 2020

Update to the Families First Coronavirus Response Act, *Foster Swift Legal Update E-blast*, March 20, 2020

Families First Corona Virus Response Act –Division E–Emergency Paid Sick Leave Act, March 17, 2020

IRS Announces 2020 Cost-of-Living Adjustments For Retirement Plans and for Health and Welfare Benefit Plans, *Foster Swift Business & Tax Law News*, November 22, 2019

New Policy Makes it Easier for Municipalities to Terminate Participation in MERS Defined Benefit Plan, *Foster Swift Municipal Law News E-blast*, February 27, 2019

Proposed IRS Regulations Clarify New Rules Relating to Hardship Distributions, *Foster Swift Business & Tax Law News*, November 20, 2018

642(c) Pooled Income Funds: Unique Advantages to new Charitable Compensation Plans-Part One, *Foster Swift Business & Tax Law News*, October 9, 2018



New Hardship Distribution Rules Take Effect in 2019, *Foster Swift Employment Labor & Benefits News*, October 5, 2018

The Difficult Intersection of Workers' Compensation, FMLA and ADA when an Employee gets Sick or Injured, *Foster Swift Employment Labor & Benefits News*, October 1, 2018

Intentional Tort Exception to Michigan Workers' Compensation Act – Court of Appeals Reaffirms High Standard, *Foster Swift Employment Labor & Benefits Law News*, May 31, 2018

As Public Pension Plan Funding Continues to Decline, Employers Explore Other Options, *Foster Swift Employment Labor & Benefits News E-blast*, May 30, 2018

Are Interns Injured on the Job Entitled to Michigan Workers' Compensation Benefits?, *Foster Swift Employment Labor & Benefits Law News*, May 29, 2018

U.S. Supreme Court Affirms that Collective Bargaining Agreements Must be Interpreted According to "Ordinary Principles of Contract Law", *Foster Swift Business & Corporate Law News*, March 12, 2018

Can Michigan Employers Terminate Employees Who Lawfully Use Medical Marijuana?, *Foster Swift Employment Labor & Benefits News*, January 25, 2018

Understanding the Ins and Outs of the "Favored-Work" Doctrine Under Michigan Workers' Compensation Law, *Foster Swift Employment Labor & Benefits News*, January 25, 2018

EEOC Issues Wellness Plan Proposed Regulations as it Steps Up Scrutiny of Employer-Sponsored Plans, *Foster Swift Employment, Labor & Benefits E-News*, June 8, 2015

COBRA for Military Service, *Employment, Labor & Benefits News*, May 19, 2015

Military Family Leave Under the FMLA, *Employment, Labor & Benefits News*, May 19, 2015

Should Same-Sex Marriage Be an Issue for the Ballot Box or the Courtroom? Sixth Circuit Decision Tees Up Issue for Supreme Court Review, *Foster Swift Employment, Labor & Benefits E-News*, December 4, 2014

College Football Players as University Employees: What are the Implications?, *Foster Swift Business & Corporate Law Report*, April 15, 2014

Beyond DOMA; More Changes Coming For Employers?, *Foster Swift Employment, Labor & Benefits E-News*, February 20, 2014

Notice of Insurance Marketplace – Due Date Approaching, *Health Care Reform Update*, September 10, 2013

Are Workers' Compensation Benefits Still an Employee's Exclusive Remedy?, *Foster Swift Workers' Compensation Update*, October 2012

Qualified Plans: Approaching Compliance Deadline for Cycle A Plans, *Foster Swift Employment, Labor & Benefits Quarterly*, Winter 2011

IRS Announces Pension Plan Limitations for 2012, *Foster Swift Employment, Labor & Benefits E-News*, October 24, 2011

Michigan's Tax Overhaul, *Foster Swift Employment, Labor & Benefits E-News*, August 3, 2011

Happening Now – Proposed 401(k) Plan Legislation, *Foster Swift Employment, Labor & Benefits Quarterly*, Summer 2011



Universal Availability - Is Your 403(b) Plan Compliant?, *Foster Swift Employment, Labor & Benefits Quarterly*, Summer 2011

Qualified Plans: Approaching Compliance Deadlines, *Foster Swift Employment, Labor & Benefits Quarterly*, Winter 2010

There's Still Time to Avoid Tax Penalties on Non-Compliant Deferred Compensation Arrangements by Correcting During 2010, *Foster Swift Employment, Labor & Benefits E-News (also published in the Foster Swift Fall 2010 Employment, Labor & Benefits Quarterly and the Foster Swift October 2010 Health Care Law Report)*, October 4, 2010

Transfer During Pregnancy Raises Bias Claims, Sixth Circuit Rules, *Foster Swift Employment, Labor & Benefits Quarterly*, Fall 2010

New 401(k)/403(b) Plan Fee Disclosure Rules, *Foster Swift Employment, Labor & Benefits E-News*, September 9, 2010

Further Clarification as to Grandfathered Health Plans Under the Patient Protection and Affordable Care Act, *Foster Swift Health Care Law E-News*, July 1, 2010

COBRA Subsidy Extended Again!, *Foster Swift Employment, Labor & Benefits E-News*, March 22, 2010

Avoid Tax Penalties by Correcting Employment, Severance and Deferred Compensation Arrangements in 2010, *Foster Swift Employment, Labor & Benefits Quarterly; Foster Swift Business & Corporate Law Update*, Spring 2010

DOL Finalizes the 7-Business-Day Safe Harbor for Depositing Participant Contributions and Loan Repayments, *Foster Swift Employment, Labor & Benefits Quarterly*, Spring 2010

HITECH: New Security and Privacy Requirements, *Foster Swift Employment, Labor & Benefits Quarterly*, Spring 2010

Important Developments for ESOP Fiduciaries, *Foster Swift Employment, Labor & Benefits Quarterly*, Spring 2010

Mental Health Parity and Addiction Equity Act, *Foster Swift Employment, Labor & Benefits Quarterly*, Spring 2010

Michigan Employers Must Ban Smoking in Indoor Work Places, *Foster Swift Employment, Labor & Benefits Quarterly*, Spring 2010

Protecting Company Interests When Employees Use Social Media, *Foster Swift Employment, Labor & Benefits Quarterly*, Spring 2010

HITECH: February 17, 2010 Deadline Approaching, *Foster Swift Employment, Labor & Benefits E-News*, February 12, 2010

Continuation Coverage Rights Under Michelle's Law, *Foster Swift Employment, Labor & Benefits Quarterly*, December 2009

Court Holds that Welfare Plan QDROs are Not Preempted by ERISA, *Foster Swift Employment, Labor & Benefits Quarterly*, December 2009

Here We Go Again...Congress has Expanded the FMLA Yet Another Time, *Foster Swift Employment, Labor & Benefits Quarterly*, December 2009



IRS Announces Pension Plan Limitations, *Foster Swift Employment, Labor & Benefits Quarterly*, December 2009

Nonspouse Direct Rollovers Mandatory for 2010 Plan Year, *Foster Swift Employment, Labor & Benefits Quarterly*, December 2009

November 30, 2009 Deadline for Suspension of Age 70½ RMD Under Qualified Retirement Plans, *Foster Swift Employment, Labor & Benefits E-News*, November 20, 2009

FMLA Leave Rights Expanded, *Foster Swift Employment, Labor & Benefits E-News*, November 11, 2009

IRS Publishes Qualified Plan Distribution Notices, *Foster Swift Employment, Labor & Benefits E-News*, October 14, 2009

DOL Provides Form 5500 Relief for Section 403(b) Plans, *Foster Swift Employment, Labor & Benefits Quarterly*, October 2009

EGTRRA Restatements: Approaching Compliance Deadlines, *Foster Swift Employment, Labor & Benefits Quarterly*, October 2009

IRS Provides Guidance for Contributing Unused Vacation Time to a Qualified Plan, *Foster Swift Employment, Labor & Benefits Quarterly*, October 2009

Pension Fund Liability: Your Corporate Structure May Not Protect You, *Foster Swift Employment, Labor & Benefits Quarterly*, October 2009

Seasonal Employer Designation May Reduce Unemployment Costs, *Foster Swift Employment, Labor & Benefits Quarterly*, October 2009

Are You Sure Your ERISA Plan is a "Safe Vehicle" which is Protected from Judgment Creditors?, *Foster Swift Health Care Law Report*, August 2009

"S" Corporations + ESOP: A Powerful Tax Advantaged Exit Strategy, *Foster Swift Employment, Labor & Benefits Quarterly*, July 2009

401(k) Plan Loans: No Longer Required to Comply with Regulation Z, *Foster Swift Employment, Labor & Benefits Quarterly*, July 2009

Direct Rollovers From Qualified Plans by Nonspouse Beneficiaries, *Foster Swift Employment, Labor & Benefits Quarterly*, July 2009

IRS Allows Mid-Year Reduction of 401(k) Plan 3% Safe Harbor Non-elective Contributions, *Foster Swift Employment, Labor & Benefits Quarterly*, July 2009

Is Mandatory Paid Sick Leave on the Horizon?, *Foster Swift Employment, Labor & Benefits Quarterly (Also published in the Foster Swift Transpost)*, July 2009

Who is Eligible for COBRA Continuation Health Coverage?, *Foster Swift Employment, Labor & Benefits Quarterly*, July 2009

Immediate Action Required: April 18, 2009 Deadline for COBRA Premium Assistance Notice, *Foster Swift Employment, Labor & Benefits E-News*, April 7, 2009

SCHIP/Health Insurance for Children, *Foster Swift Employment, Labor & Benefits E-News*, March 27, 2009

401(k) Plan Investment Guidelines, *Foster Swift Employment, Labor & Benefits Quarterly*, March 2009



Economic Stimulus Act/COBRA Premium Assistance Immediate Employer Action Required, *Foster Swift Employment, Labor & Benefits Quarterly*, March 2009

IRS Determination Letter Programs Open, *Foster Swift Employment, Labor & Benefits Quarterly*, March 2009

Required Minimum Distributions Waived for 2009, *Foster Swift Employment, Labor & Benefits Quarterly*, March 2009

Approaching Compliance Deadline EGTRRA Restatements Cycle C Plans, *Foster Swift Employment, Labor & Benefits Quarterly*, December 2008

Does Your Executive Plan Cover Only Top-Hat Employees?, *Foster Swift Employment, Labor & Benefits Quarterly*, September 2008

New 403 (b) Audit Requirements, *Foster Swift Employment, Labor & Benefits Quarterly*, September 2008

Public Employers Cannot Provide Benefits to Employees' Same-Sex Partners, *Foster Swift Employment, Labor & Benefits Quarterly*, September 2008

The Heroes Earnings Assistance and Relief Tax Act (The "Heart Act"), *Foster Swift Employment, Labor & Benefits Quarterly*, September 2008

Unemployment Compensation and Severance: Double-Dipping?, *Foster Swift Employment, Labor & Benefits Quarterly*, September 2008

Action Required Now on Employment, Severance and Deferred Compensation Arrangements, *Foster Swift Health Care Law Report*, June 2008

Automatic Contribution Arrangement and QDIA Notice Requirements, *Foster Swift Employment, Labor & Benefits News*, June 2008

Plan Fiduciary May Be Liable to Individual Participant, *Foster Swift Employment, Labor & Benefits Quarterly*, June 2008

Required Changes to Pension Plan Normal Retirement Age, *Foster Swift Employment, Labor & Benefits Quarterly*, June 2008

403(b) Plans: Written Plan Document Required by December 31, 2008, *Foster Swift Employment, Labor & Benefits Quarterly*, April 2008

FMLA Extension to Military Families, *Foster Swift Employment, Labor & Benefits Quarterly*, April 2008

New Annual Electronic Filing Requirement for Small Tax-Exempt Organizations, *Foster Swift Employment, Labor & Benefits Quarterly*, April 2008

New Pension Plan Distribution Rules, *Foster Swift Employment, Labor & Benefits Quarterly*, April 2008

## **NEWS**

Dernovshek Named to ICBA's "Top 5 under 35" Attorneys, *Ingham County Bar Association*, March 15, 2024

Preparing Women Business Leaders for 2024 Legal Challenges, *Meltwater Newswire*, February 20, 2024

Grand Rapids Attorneys Listed as 2023 Top Lawyers, *Grand Rapids Magazine*, November 8, 2023

Foster Swift Attorneys Named 2024 Best Lawyers in America, *Best Lawyers in America*, August 17, 2023

Foster Swift Best Lawyers® 2024 "Ones to Watch", *Best Lawyers in America*, August 17, 2023



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Foster Swift Listed in "Best Law Firms" 2023, *Best Lawyers "Best Law Firms"*, November 3, 2022

National Employee Benefits Day Gains Traction as Employers Compete for Employees, *Global Newswire*, April 5, 2022

New Virtual Program Addresses Legal Strategies for Women Business Leaders, *Michigan Business Network*, March 28, 2022

Foster Swift Elects Four Shareholders, January 10, 2022

Foster Swift Attorneys Named to 2022 Best Lawyers in America®, August 19, 2021

Foster Swift Best Lawyers® 2022 "Ones to Watch", August 19, 2021

Learn Employee Benefits Legal Trends and Policies in 2021, *Foster Swift Employee Benefits E-blast*, April 19, 2021

Foster Swift Elects Six Shareholders in 2021, January 13, 2021

Resource Published to Help Organizations Link to Trending Legal Issues, *Foster Swift Business & Tax Law News*, November 17, 2020

Foster Swift Listed in "Best Law Firms" 2021, *Best Lawyers*, November 5, 2020

Legal Requirements For Employer Benefit Plans, *Michigan Business Network*, September 29, 2020

Johnson Presents on ESOPS as a Succession Strategy, September 22, 2020

Workers' Comp Defense Blog Provides Michigan Case and Legislative Updates, April 13, 2020

Foster Swift Welcomes Three Associates, November 14, 2019

Foster Swift Listed in Best Lawyers® "Best Law Firms" 2020, November 1, 2019

Foster Swift Announces Women in Leadership, *Michigan Business Network*, June 5, 2019

Johnson Appointed as Business Practice Group Co-Leader, April 12, 2019

Foster Swift Rated Tier 1 in 27 Practice Areas in Best Lawyers® "Best Law Firms", November 1, 2018

Johnson Selected to "Women in the Law" Class of 2018, *Grand Rapids Business Journal*, August 2, 2018

Attorney Howard Named to Novi Planning Commission, *Detroit Legal News*, January 19, 2018

Foster Swift Attorney Re-Elected as Council Member with the SBM's Taxation Section, *Grand Rapids Bar Association*, October 12, 2017

Foster Swift Southfield Office Has Second Growth Spurt, September 18, 2017

30 Foster Swift Attorneys Selected to 2017 Michigan Super Lawyers and Rising Stars Lists, September 8, 2017

21 Foster Swift Attorneys named to 2015 Michigan Super Lawyers and Michigan Rising Stars, September 8, 2015

44 Foster Swift Attorneys Named to 2016 Best Lawyers in America® Roster, August 21, 2015

Entrepreneur Institute of Mid-Michigan names Attorney Joel C. Farrar "Volunteer of the Year", June 11, 2015

Attorney Mindi Johnson to Lead Foster Swift Employee Benefits Practice, January 20, 2015

dbusiness Names Four Foster Swift Attorneys Top Lawyers 2014, December 2013

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Foster Swift welcomes Attorney John Mashni, June 18, 2013

Seven Foster Swift Attorneys named "Lawyer of the Year", April 9, 2013

## EVENTS

Be Intentional About Your Repurchase Obligation, *ESOP Association - Great Lakes Regional Conference*, October 17, 2023

Fall 2023 Labor & Employment Law Update, *Foster Swift Going Forward Webinars*, October 12, 2023

Navigating the New Normal for ESOPs, *ESOP Association- Michigan Chapter*, April 11, 2023

ADA and FMLA Compliance and Regulation Issues, *Fall 2022 Labor & Employment Law Update Webinar*, October 12, 2022

Learn Executive Compensation Options & Negotiation, *Foster Swift Legal Strategies for Women Leaders*, June 7, 2022

Moving Forward: Succession Planning for Your Business, *Michigan Movers Association*, February 16, 2022

Be Intentional about your Repurchase Obligation, *ESOP Association Great Lakes Regional Conference*, September 28, 2021

Best Practices for Corporate and ESOP Governance, *ESOP Association Great Lakes Regional Conference*, September 27, 2021

ESOPs: A Trending Business Succession Strategy, *MICPA Learning Showcase*, June 15, 2021

Learn Employee Benefits Legal Trends and Policies in 2021, *Foster Swift*, April 27, 2021

The Future of Benefits- The SECURE Act, *American Bar Association: Mid-Year Meeting of Taxation Section*, February 1, 2020

ESOP Basics - Who, What, Where, When, How & Why?, *5TH Annual Great Lakes Regional ESOP Conference*, October 17, 2019

Ask the Experts ~ A Q&A for Non-Management Employee Owners, *2019 Spring ESOP Conference: Michigan Chapter of the ESOP Association*, April 17, 2019

Executive Deferred Compensation Arrangements in ESOP Companies, *2019 Spring ESOP Conference: Michigan Chapter of the ESOP Association*, April 17, 2019

Developments in ERISA Litigation, *Oakland County Bar Association: Employee Benefits Section*, January 14, 2019

Hiring, Investigating and Discipline/Discharge in the Law, *Foster Swift: Developing Labor Law Update*, May 9, 2018

Hiring, Investigating and Discipline/Discharge in the Law, *Foster Swift: Developing Labor Law Update*, February 7, 2018

Can an employee be fired while away on FMLA?, *Stop Before You Crash: Workers' Compensation and Employment Law*, March 22, 2017

Employee Benefits Basics from 401(k) to PPACA", *Michigan Nursery & Landscape Association Great Lakes Trade Expo*, January 26, 2015





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An Introduction to ESOPs, *WEBINAR: The National Center for Employee Ownership*, December 2, 2014

A Look Into A DOL Audit, *Michigan Chapter of the ESOP Association*, September 25, 2014

Second-Stage ESOP Transactions, *National Center for Employee Ownership (NCEO)*, March 25, 2014

Health Care Reform – An Overview from an Employer's Perspective, *Michigan Association of Ambulance Services*, December 9, 2013

ESOP: The Cliffs Notes' Version, *Michigan Chapter of the ESOP Association*, March 13, 2013

WEBINAR | New Developments in Health Care Reform, June 12, 2012

Health Care Reform Information Session for Employers, *Benefit Review Services*, August 12, 2010

FMLA and ADA Update, *Capital Area Manufacturing Council*, 2009

Invoking your Statutory Rights to Control the Use of Intermittent and Reduced Schedule Leave, *Council on Education Management - FMLA Update*, 1999

Knowing your Employer Rights when Employees are Ready to Return to Work, *Council on Education in Management - FMLA Update*, 1999

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