

Regulatory Guidance and Legislation

There are times when the regulatory positions of the Department of Labor, Department of the Treasury, Internal Revenue Service (IRS) and the Pension Benefit Guaranty Corporation (PBGC) regarding the provisions of the Internal Revenue Code and Employee Retirement Income Security Act (ERISA) lead to harsh results for employers, employees and plan service providers. In some instances where the regulatory agencies are unwilling or unable to change their regulatory guidance based on existing law, Groom has worked with clients to persuade legislators to enact legislation that resulted in changed regulatory guidance. For example, Groom has been involved in the following legislative efforts:

- Over a span of more than five years, a team of Groom attorneys played a key role in efforts by business groups and technology companies to prevent the imposition of employment taxes on statutory stock options. Working with our clients, we helped to organize a coalition of companies and Washington trade associations to lobby Congress, the White House, the Department of the Treasury, and IRS on this issue. First, we helped convince the IRS to provide a moratorium on the imposition of the employment taxes. Next, the coalition succeeded in getting a legislative proposal included in legislation that would have changed the law to eliminate the imposition of employment tax. Over a period of three years, we worked with members of the coalition to find a legislative vehicle to enact the legislative solution. This finally occurred in 2004 with the enactment of the American Jobs Creation Act of 2004.
- When updating the regulations regarding the limitations on qualified plan benefits under Internal Revenue Code section 415, the IRS changed its long-standing position on determining the amount of a participant's compensation for purpose of these limits. Working with a trade association client, Groom attempted to convince the IRS to go back to its original position when these regulations were finalized, but the IRS kept its new interpretation in the newly finalized regulations. We assisted the trade association in lobbying Congress to clarify the law so that the IRS' long-standing position was included as part of the Pension Protection Act of 2006.