

[Attorney Letterhead]

[Date]

[Client Name]

[Client Address]

[City, State, Zip Code]

**Re: Legal Opinion Regarding ERISA Status of [Plan Name]**

Dear [Name],

You have requested our legal opinion as to whether the proposed [Plan Name] (the "Plan") constitutes an "employee welfare benefit plan" governed by the Employee Retirement Income Security Act of 1974 ("ERISA") or if it qualifies for the "severance pay plan" exemption/safe harbor under Department of Labor ("DOL") regulations.

**Description of the Plan**

[Insert brief description of the plan, including eligibility, payment triggers, and duration of benefits.]

**Legal Analysis**

Under 29 C.F.R. § 2510.3-2(b), a severance pay plan shall not be deemed an "employee pension benefit plan" under ERISA if the following three criteria are met:

- **Payments not contingent on retirement:** Payments are not made contingent, directly or indirectly, upon the employee's retiring.
- **Total payment limit:** The total amount of payments does not exceed the equivalent of twice the employee's annual compensation during the year immediately preceding the termination of service.
- **Duration of payments:** All payments to any participant are completed within 24 months after the termination of the employee's service.

**Opinion**

Based upon our review of the Plan documents and the criteria set forth above, it is our opinion that:

1. The Plan is structured such that payments are triggered by [Involuntary Termination/Specific Event] and are not contingent upon retirement.
2. The maximum benefit payable under the Plan is capped at [Amount/Formula], which does not exceed the regulatory limit of two times annual compensation.
3. The Plan mandates that all disbursements be completed within [Number] months, satisfying the 24-month duration requirement.

Therefore, the Plan qualifies for the regulatory safe harbor and is not considered a pension plan under ERISA. Furthermore, as the Plan does not require an "ongoing administrative scheme" as

defined in *Fort Halifax Packing Co. v. Coyne*, it is our opinion that the Plan does not constitute an ERISA welfare benefit plan and is instead a payroll practice/contractual obligation.

**Conclusion**

This opinion is based on the law as it exists today. Should the administration of the Plan deviate from the written terms, this opinion may be rendered void.

Sincerely,

[Attorney Name]  
[Law Firm Name]