WHEN TO HOLD ’EM, WHEN TO FOLD ’EM

VOLUNTARY EXIT INCENTIVE WINDOWS

Stephanie A. Smithey – Ogletree Deakins
Nonnie L. Shivers – Ogletree Deakins
When to Hold’em, When to Fold’em: Voluntary Exit Incentive Windows

Presenters
Stephanie A. Smithey (Indianapolis)
Nonnie L. Shivers (Phoenix)

Agenda

• Voluntary vs. Involuntary
• Retirement Incentives
• ERISA Plan
• ADEA and WARN
• Release
• Drafting Tips & Best Practices
• Communications
Plan Design

• What are your business goals?
• Will a voluntary program achieve those?

Voluntary vs. Involuntary Plans

<table>
<thead>
<tr>
<th>Voluntary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Can consider age</td>
</tr>
<tr>
<td>Not required to eliminate positions or reduce headcount</td>
</tr>
<tr>
<td>Base incentive on eligibility criteria (i.e., age, years of service, grade, position)</td>
</tr>
<tr>
<td>Limited control over size and no control over selection (i.e., might still need a RIF if goal is headcount reduction, could result in termination of employees who stay)</td>
</tr>
</tbody>
</table>
## Voluntary vs. Involuntary Plans

### Involuntary

<table>
<thead>
<tr>
<th>Cannot consider age</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goal is reduction of headcount or elimination of positions/functions</td>
</tr>
<tr>
<td>Selection based on non-discriminatory objective factors and, if needed, subjective factors</td>
</tr>
<tr>
<td>Employer control over size of group and selection of employees (but disparate impact)</td>
</tr>
</tbody>
</table>

### Voluntary

| Typically used to address changing skills needed to perform work or lack of opportunity for advancement |
| Reduces likelihood of potential discrimination claims |
| Positive for morale as employees have control over decision-making |
Voluntary vs. Involuntary Plans

<table>
<thead>
<tr>
<th>Involuntary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Use to reduce headcount and/or payroll</td>
</tr>
<tr>
<td>Potential exposure tied to amount of severance offered</td>
</tr>
<tr>
<td>Increases concern over lack of job security among remaining employees and morale hit</td>
</tr>
</tbody>
</table>

Key Elements of a Voluntary Plan

- Eligibility criteria
- Separation benefits
- Program window and election procedures
- Termination dates and transition duties
- Waiver and Release
- Communication
Key Elements of an Involuntary Plan

- Decisional unit(s)
- Position(s) requiring reduction/elimination
- Selection criteria
- Lawful application of selection criteria
- Privileged team/HR/legal review
- Waiver and release
- Communication

Incorporating Retirement Incentives

- Inside the Plan
  - Voluntary early retirement incentives
  - Benefit/service enhancements
  - Partial plan termination
- Outside the Plan
  - Severance may be a retirement benefit
ERISA Plan?

- Administrative scheme
- Reasonably determine eligibility, type of benefits, amount of benefits, source of funding, and claim process
- Welfare or pension benefit?
  - Not more than 2x salary
  - Paid in 2 years or less
  - Not contingent on retirement

ERISA Coverage

- Requires a plan document/SPD
- Reporting and disclosure requirements
- Administrative compliance efforts/costs
- Possibility of attorneys’ fees
ERISA Coverage – Good, Bad, or Meh?

- ERISA coverage generates costs, but has advantages:
  - State law preemption
  - Control over amendments
  - Leverage
  - Administrative discipline
  - Exhaustion
  - Venue
  - Standard of review
  - Limited discovery
  - Limited remedies
  - No jury

Legal Considerations: ERISA/Tax

- Does/should ERISA apply?
  - Either way: what are the implications?
- Tax implications:
  - Section 409A
  - Employment taxes
  - Impact on retirement and welfare plans
Tax Issues

• Code Section 409A – Severance
  – Severance is deferred compensation subject to Section 409A unless an exception applies
  – Short-Term Deferral Exception
  – Separation Pay Plan Exception

• Code Section 409A – Other Benefits
  – Continued health care
  – Other reimbursements

Tax Issues (cont.)

• Other Section 409A Risks
  – Payments Contingent on a Release
  – Substitutions
  – Garden Leave

• Employment Taxes
  – Quality Stores case
  – Sub-Pay Plans
Health Benefit Considerations

- Retiree health
- COBRA
- Medicare
- ACA

Legal Considerations: ADEA

- Voluntary plans are exempt if bona fide plan
- Discriminatory application of criteria
- Adverse impact analysis
- OWBPA/release requirements
- Other legal considerations
Legal Considerations: WARN

- Triggering event (i.e., plant closing or mass layoff)
- Mini-WARNs
- Notice requirements

Securing a (Valid) Release

- Unique jurisdictional requirements
- Reporting/agency carve-outs
- NDA/confidentiality provisions
- DTSA & merger clauses
- Tax deductibility
- Garnishments/levies
- Non-waivable claims
Drafting Tips & Best Practices

• Timeline
• Announcement
• Plan
• Q&A
• Election Form
• Waiver & Release

Timeline – Big Picture

• Timely return Election Form within window period
• Election Form must be accepted by company
• Must remain employed during window period
• Perform transition duties satisfactorily
• Sign waiver and release (and not revoke)
• Execute other agreements (i.e., confidentiality)
## Detailed Timeline

<table>
<thead>
<tr>
<th>Action</th>
<th>Timing</th>
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<tbody>
<tr>
<td>VERP - WTW Analysis/NDT</td>
<td>9/12/2017</td>
</tr>
<tr>
<td>VESP - Calculation worksheet</td>
<td>9/12/2017</td>
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<tr>
<td>VESP - Tranche Eligible Participants Termination Date</td>
<td>9/12/2017</td>
</tr>
<tr>
<td>VESP - Tranche Eligible Participants Calculation &amp; Information</td>
<td>9/12/2017</td>
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<tr>
<td>VESP - Exhibit B data</td>
<td>9/13/2017</td>
</tr>
<tr>
<td>VESP - Prepare Exhibit B to Release (Benefits Payment)</td>
<td>9/13/2017</td>
</tr>
<tr>
<td>VESP - Calculate Payment</td>
<td>9/13/2017</td>
</tr>
<tr>
<td>VESP - Communication - Draft Headcount/VESP Announcement to All employees</td>
<td>9/15/2017</td>
</tr>
<tr>
<td>VESP - Complete Final Review Docs</td>
<td>9/15/2017</td>
</tr>
<tr>
<td>VESP - Assemble Participants</td>
<td>9/15/2017</td>
</tr>
<tr>
<td>VESP - Communication VESP Announcement to All employees</td>
<td>9/15/2017</td>
</tr>
<tr>
<td>VESP - Notification of Acceptance in writing</td>
<td>9/15/2017</td>
</tr>
<tr>
<td>VESP - Notification of Acceptance in writing (includes copies of executed copy of Release and another copy of Plan Document)</td>
<td>9/15/2017</td>
</tr>
<tr>
<td>VESP - Target Separation Date 1</td>
<td>9/17/2017</td>
</tr>
<tr>
<td>VESP - Communication to Participants</td>
<td>9/18/2017</td>
</tr>
<tr>
<td>VESP - Revocation Period Ends</td>
<td>11/24/2017</td>
</tr>
<tr>
<td>RIF - Disparate Impact Analysis - Data</td>
<td>10/3/2017</td>
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<tr>
<td>VESP - Target Separation Date 2</td>
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<td>VESP - Packet Due</td>
<td>11/17/2017</td>
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<tr>
<td>VESP - Coordination Period Ends</td>
<td>11/18/2017</td>
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<tr>
<td>RIF - Packet Due</td>
<td>12/4/2017</td>
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<tr>
<td>RIF - Revocation Period Ends</td>
<td>12/12/2017</td>
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<tr>
<td>RIF - Coordination Period Ends</td>
<td>12/13/2017</td>
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<td>RIF - Packet Due</td>
<td>12/13/2017</td>
</tr>
<tr>
<td>RIF - Coordination Period Ends</td>
<td>12/13/2017</td>
</tr>
</tbody>
</table>

## Announcement

**VOLUNTARY EARLY SEPARATION PLAN ANNOUNCEMENT**

ABC Company (“Company”) is announcing the establishment of a Voluntary Early Separation Plan (“VESP”). If you are receiving this letter, you are being offered the opportunity to participate in the VESP. This is a summary and is intended only to provide general information about the VESP. It is not an official statement of VESP benefits or requirements.

You may volunteer to participate in the VESP if you are (i) a corporate salaried employee, (ii) your age is equal to or greater than 58 as of December 22, 2017, and (iii) you have at least five (5) years of ABC company service as of December 22, 2017. Senior Staff and employees within the Equipment Department who hold an Engineering degree are not eligible to participate in this program. If you elect to participate, you must agree to voluntarily terminate your employment effective on the termination date the Company gives you, which will be no later than December 22, 2017, and you must sign and not revoke the General Waiver and Release Agreement and satisfy all appropriate VESP requirements. In return, you will receive the following: (1) a $50,000 cash payment, (2) one year’s salary at your current base rate of pay, (3) a payment equal to the grossed-up amount of the current COBRA cost of five years’ coverage, based on your benefit elections in effect as of September 20, 2017, under ABC’s health and welfare plan, and (4) an amount, shown on Attachment A to your Waiver and Release Agreement, in lieu of which you would have been eligible to receive under any ABC incentive plan(s) applicable to you based on certain assumptions as defined by the Company. These payments will be made in a single lump sum amount, less appropriate withholdings and deductions. In addition, you will receive compensation through your date of separation, and any accrued and unused vacation per Company policy.
Announcement

- Attaches Plan, Election Form, Sample Waiver and Release, Q&A
- Outlines process for election and companies right to reject acceptance
- Outlines timeline and deadlines
- Identifies point of contact

Plan Document

ABC COMPANY
VOLUNTARY EARLY SEPARATION PLAN
(Amended 2, 2017)

This ABC COMPANY Voluntary Early Separation Plan (the “Plan”) was adopted effective September 20, 2017, and amended October 2, 2017, to allow payments to Company employees who terminate voluntarily in connection with a Voluntary Early Separation Program and to confirm and clarify the application of ERISA to the Plan. The Plan will be administered for the exclusive purpose of providing Separation Benefits in accordance with the provisions of the Plan. The Plan is designed to benefit Employees who have voluntarily elected to terminate employment with the Company during a Window Period, and who satisfy the other conditions described in the Plan. The Plan is intended to work in conjunction with other plans maintained by ABC Company.
Plan Document

- Eligibility and exclusions
- Reemployment
- Payment on death or disability
- Repayment and overpayment
- Plan funding
- Claims procedure/dispute resolution

Q&A

- Who is eligible?
- What are the benefits?
- If I elect to participate, do I automatically get the benefits?
- How do I elect to participate?
- When can I execute the release?
- When will I learn my last day of work?
- Who should I talk to if I have questions?
Q&A

6. What happens if I elect to participate in the VESP, but then decide I do not want to sign the Agreement or decide to revoke it?

If you decide you do not want to sign the Agreement or decide to revoke it after you sign it, you will not be entitled to any of the benefits under the VESP. However, you will not be permitted to rescind your voluntary decision to resign your employment.

11. Does ABC currently have plans to implement an involuntary separation after the VESP?

ABC does intend to implement a reduction in force among all corporate salaried employees following the VESP. Employees who are eligible for the VESP but do not elect to participate may be among those considered for involuntary separation.

12. What benefits does ABC expect to offer to employees selected for involuntary separation?

The benefits offered to employees selected for involuntary separation will be less than those offered under the VESP. Specifically, the benefits offered will be commensurate with ABC’s severance policy.

Election Form

By signing below, I confirm that I am electing to voluntarily terminate my employment with ABC Company (“Company”) in return for benefits under the Company’s Voluntary Early Separation Plan (“VESPP”). I understand that under the VESP the Company will consider each individual election request and that no individual is entitled to have his or her election granted.

I confirm that I am electing to terminate my employment voluntarily and without coercion of any kind. I understand that if my election is accepted, my employment with the Company will be terminated as of a date determined by the Company, but no later than December 22, 2017.

If my election is accepted, I will be eligible for the applicable benefits described in the VESP as long as: (i) I work through my Company-determined termination date, (ii) I sign and return (and do not revoke) a Waiver and Release as required by the VESP, and (iii) I satisfy all applicable VESP requirements.

I have read this document and have sufficient information regarding the VESP. I acknowledge that I have voluntarily elected to terminate my employment, and I understand that if my election is accepted, my Company employment will be terminated as a result. I also understand that this election is non-revocable, meaning that once I sign below, I cannot change my mind and revoke my election to voluntarily terminate my employment.
Accept or Reject Election

Your voluntary election to terminate your employment with ABC Company (“Company”) and participate in the Company’s Voluntary Early Separation Plan (“VESP”) is hereby accepted by the Company. Your last date of employment will be ______________.

Attached is a copy of the General Waiver and Release for your review and signature. You have until December 22, 2017, to review and decide whether to sign the Agreement. However, please do not sign the General Waiver and Release Agreement until on or after your last date of employment.

Please remember that the terms of the VESP are governed by the Plan. I have attached another copy of the Plan, which was also provided to you on September 20, 2017.

Your voluntary election to terminate your employment with ABC Company (“Company”) and participate in the Company’s Voluntary Early Separation Plan (“VESP”) is hereby declined.

Waiver and Release

This disclosure is being provided to you pursuant to the requirements of the Older Workers Benefit Protection Act of 1990.

Decisional Unit Affected: All ABC Company (“ABC”) corporate salaried staff, including Senior Staff and employees within the Equipment Department who hold an Engineering degree.

Eligibility Factors:

- Employees, as defined in the Plan, in the above Decisional Unit must be a minimum of 55 years of age as of December 22, 2017 and have 5 consecutive years of service as of December 22, 2017.

Eligibility for the Plan shall be determined by ABC in its sole discretion, in accordance with the criteria described in the Plan. The benefits under the Plan are not available to anyone who is not eligible for the Plan, those who are eligible, but who do not execute and return the Election to Accept Form by September 20, 2017, those who elect to participate but who do not timely execute the General Waiver and Release Agreement, or who execute and then revoke the General Waiver and Release Agreement.

Please consult the Plan for further details.

Time Limits:

The Plan commenced on September 20, 2017. Employees who have voluntarily elected to participate in the Plan by executing an Election to Accept Form, were provided this General Waiver and Release Agreement by ABC on October 1, 2017, and must execute and return the Agreement by December 22, 2017 (but no sooner than Employee’s separation date). After execution of the General Waiver and Release Agreement, employees have seven (7) calendar days to revoke it.
Waiver and Release

ABC COMPANY
2017 VOLUNTARY EARLY SEPARATION PROGRAM

Decisional Unit Demographic Information

<table>
<thead>
<tr>
<th>Title</th>
<th>Age as of 12/22/2017</th>
<th>Eligible</th>
<th>Not Eligible</th>
</tr>
</thead>
<tbody>
<tr>
<td>AAR Receivables Analyst</td>
<td>34</td>
<td></td>
<td>X</td>
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<tr>
<td>Accountant AAR Administration</td>
<td>47</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Accountant AAR Administration</td>
<td>30</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Accountant Accounts Payable</td>
<td>61</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Accountant Accounts Payable</td>
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<td>X</td>
<td>X</td>
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<tr>
<td>Accountant Accounts Payable</td>
<td>23</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Accountant Staff</td>
<td>40</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Accountant Staff</td>
<td>39</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Administrative Assistant</td>
<td>66</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Application Developer I</td>
<td>28</td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

Post-VESP Communication

I am writing to let you know that <INSERT NAME> has elected to participate in the Voluntary Early Separation Program. As such, <INSERT NAME>’s last date of employment is <INSERT DATE>, which was a date selected by Human Resources and your department head. Between now and your direct report’s last date of employment, you should:

- Communicate with your direct report about his/her upcoming departure. I recognize that we previously advised not to discuss the VESP with him/her, but that was to preserve the integrity of the Program. Now that voluntary elections have been made, you may discuss the transition recognizing that some are excited about this opportunity while others are tentative about this next phase of his/her life;

- Ensure that any open projects are properly transitioned to you or another member on your team; and

- Determine how the work will be best accomplished going forward with reduced headcount.

Between now and <INSERT NAME>’s last date of employment, you are welcome to bid farewell as you deem appropriate for the tenure of the departing employee whether, for example, by cake reception, lunch or a card from co-workers.

Finally, on <INSERT NAME>’s last date of employment, s/he will come to Human Resources at a pre-scheduled time to return any Company property including his/her laptop, cellphone, and key card and to sign any required documentation. From there, s/he will leave the building.
Involuntary Reduction

- Evaluate need for further reductions to meet headcount goals
- Identify positions/employees to be eliminated
- Conduct adverse impact analysis
- Offer severance in accordance with severance plan

Adverse Impact

<table>
<thead>
<tr>
<th>Population</th>
<th>Class</th>
<th>Count</th>
<th>To RIF</th>
<th>Goal</th>
<th>Actual RIFed</th>
<th>Actual St.Dev</th>
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<tr>
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<td>Less than 40.0</td>
<td>85</td>
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<td>11</td>
<td>2.00</td>
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<td>-1.9280</td>
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</table>
Waiver and Release

EXHIBIT

Titles and Ages of Individuals
Impacted by Reduction in Force

The decisional unit considered for this job reduction program is all corporate salaried employees excluding Senior Staff.

Employees eligible for this program are those employees selected for involuntary termination pursuant to this reduction in force. Separation decisions were the result of a reduction in force and consideration of the following factors: position elimination.

This program begins with the date of announcement and distribution of release forms to all affected and eligible employees. It ends no later than the 45th day after the last affected employee is able to sign the release form on a timely basis.

The following is a list of the Company’s employees by job title and age who were selected and not selected to participate in this program for the entire decisional unit.

<table>
<thead>
<tr>
<th>Title</th>
<th>Age</th>
<th>Selected</th>
<th>Not Selected</th>
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<tr>
<td>Accountant AAR Administration</td>
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</tr>
</tbody>
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Post-VEESP and RIF Communication

Following my memo of September 20, I am writing to let you know that the Voluntary Early Separation Program has concluded. Employees who accepted the program will be leaving ABC between October 6 and December 22. In addition, we executed a reduction in force and have communicated with those individuals who were personally impacted by the specific position eliminations.

Please be advised that there were certain critical positions impacted by the Voluntary Early Separation Program that we will seek to replace in the coming months. I recognize that this transition is unsettling, but I appreciate your patience as we work through it. I thank you for your continued hard work and commitment.
Key Take-Aways

• Consider pros and cons of voluntary vs. involuntary plan against company goals and legal considerations
  – Consider advantages of ERISA coverage for ERP
  – ERPs present a variety of tax issues that can be anticipated and managed
• Establish eligibility criteria around company goals

Key Take-Aways

• Determine benefits needed to incentivize eligible employees to elect to participate
• Design plan documents, Q&A, and communication documents not only for compliance purposes but to incentivize eligible employees to elect to participate
Key Take-Aways

- Create timeline with associated tasks and responsible persons
- Structure window period, election process, acceptance or rejection deadlines, and separation dates with needs of business in mind
- If following VESP/VERP with RIF, define selection criteria and RIF process in advance, but do not apply until voluntary process is completed

Key Take-Aways

- Stick to the plan!
- Involve a strong HR person who knows the benefits, benefit plan documents, 409A, etc.
- Communication is critical
- Planning and execution are critical
When to Hold’em, When to Fold’em: Voluntary Exit Incentive Windows

Presenters
Stephanie A. Smithey (Indianapolis)
Nonnie L. Shivers (Phoenix)
Stephanie A. Smithey

Shareholder  ||  Indianapolis

As Chair of our Employee Benefits and Executive Compensation practice group, Ms. Smithey devotes her practice to all aspects of employee benefits law. She represents clients with respect to qualified retirement plans and health and welfare plans, assisting them with a variety of plan design, compliance, and administration issues for all types of pension, health and welfare benefit plans.

Ms. Smithey advises her clients as to ERISA, MPPAA, HIPAA, COBRA, PPACA, the Internal Revenue Code, as well as other federal and state laws applicable to employee benefit plans and plan sponsors. She assists clients with IRS and DOL audits, as well as internal compliance audits and plan corrections. She regularly counsels clients as to the scope of their fiduciary duties and how they may seek to limit fiduciary exposure. Ms. Smithey frequently assists health plans in complying with the health care reform laws as well as the HIPAA privacy security rules and provides in-house training for employers and other plan personnel.

In addition to counseling clients as to how to comply with the many laws that apply to their employee benefit plans, Ms. Smithey advises them how to handle benefit plan-related disputes in an effort to avoid litigation. In this context, she has counseled employers, insurers, third party administrators, trustees, and other plan fiduciaries.

Ms. Smithey has served on the Board of Directors for the Indiana Benefits Council, and held positions of Chair, Vice Chair, Past Chair. For 2013 – 2018, Ms. Smithey was selected by Best Lawyers for ERISA/Employee Benefits in Indiana.

Ms. Smithey worked with the Indiana Chamber of Commerce to publish the 4th Edition of the Employee Benefits Guide. In addition, she co-authored the Indiana Employer’s Guide to Workplace Wellness for the Wellness Council of Indiana. In 2017, Ms. Smithey was honored with the Indiana Chamber’s Samuel C. Schlosser Indiana Chamber Volunteer of the Year award.

Ms. Smithey is honored to serve on the Board of Directors of Girl Scouts of Central Indiana.

Education
- J.D., Loyola University School of Law, 1991
- B.A., cum laude, University of Notre Dame, 1988

Admittance to Practice
- Indiana
- U.S. District Court, Northern and Southern Districts of Indiana
- U.S. Court of Appeals, Seventh Circuit
Nonnie L. Shivers
Shareholder || Phoenix

Nonnie partners with employers and managers in three primary ways: litigation avoidance through proactive and maximally compliant state counseling and training; complex workplace investigations including at the C-Suite level; and litigating legally complex and factually challenging cases to defend employers actions.

Nonnie advises and counsels employers in all aspects of employment law, including an emphasis on complex but proactive compliance projects, such as 50-state compliant wage deductions and lawful parental leave programs. Nonnie regularly partners with clients to plan and implement reductions in force, severance plans and agreements, and pre-litigation disciplinary matters. Nonnie regularly conducts high-level internal investigations for clients and assists in identifying and resolving potential areas of liability and exposure in a proactive but practical way. Nonnie’s unique practice also includes providing employment advice for employers doing business within the Navajo Nation’s territorial jurisdiction and other tribal lands, including cultural and employment law training on unique tribal code requirements.

Nonnie has successfully defended employers against allegations of discrimination, sexual harassment and wrongful termination in state and federal court, as well as administrative forums. Nonnie has handled hundreds of charges with the U.S. Equal Employment Opportunity Commission and the Arizona Civil Rights Division, as well as claims and appeals filed with the Industrial Commission of Arizona. Nonnie has also litigated whistleblower claims against air carriers under AIR 21 and handled investigations and enforcement actions with numerous other federal agencies, including the U.S. Department of Labor and other employers under SOX.

Nonnie regularly speaks and trains on current and emerging employment law topics, including recent presentations to industry and trade groups on civility in the #MeToo era, gay, lesbian, bisexual and transgender workplace issues, avoidance of retaliation claims, and political expression in the workplace. Nonnie’s advanced degree in education and years of experience as an instructor and student affairs professional at Arizona State University help make her training sessions and presentations simultaneously educational and entertaining. Nonnie has also published several scholarly articles focused on employment law, including a book chapter on the impact of reasonable workplace accommodations for employees with disabilities on employers, employees’ expectations of privacy for off-duty conduct, and most recently an article on ADA caselaw related to benefits and other evolving protections for transgender employees.

Nonnie has received numerous accolades from clients and legal professionals for her dedicated client focus and problem-solving abilities. Southwest Super Lawyers named Nonnie a Rising Star in 2012-
and a Super Lawyer from 2015 through today. Nonnie also obtained the recognition of the legal community by receiving an AV Preeminent Rating by Martindale-Hubbell beginning in 2014 through today. Chambers USA first ranked Nonnie as a Leading Individual in 2015 and Best Lawyers added Nonnie to its list of recognized practitioners in 2016. Prior to joining the firm, Ms. Shivers served as a law clerk to the Honorable Patricia K. Norris on the Arizona Court of Appeals (Division One).

Education
- J.D., University of Arizona, 2004
- M.Ed., Arizona State University, 1998
- B.A., Kansas State University, 1996

Admittance to Practice
- Arizona
- U.S. District Court, District of Arizona
- U.S. Court of Appeals, Ninth Circuit