



Andrea Bailey Powers

Shareholder

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Andrea Bailey Powers has more than 25 years' experience as a dedicated ERISA/employee benefits attorney.

Working from the Birmingham office, Ms. Powers represents employers in all aspects of executive compensation and employee plans matters, including the design and administration of qualified retirement plans, health and welfare benefit plans, and non-qualified executive compensation and equity plans. She also serves as an Adjunct Professor of Employee Benefits Law at the University of Alabama's Hugh F. Culverhouse Jr. School of Law.

Ms. Powers focuses heavily on issues related to controlled and affiliated service groups of employers. She helps create solutions for benefits issues that arise in complicated organizational structures, such as nondiscrimination testing, QSLOB filings, and MEWA analysis. She has significant experience representing third party administrators (TPAs) and employers with respect to administrative service agreements and ERISA compliance. Her practice includes employers in a variety of industries, with a focus on health care, manufacturing, and REITs.

Because nearly every business is impacted by health care reform, Ms. Powers spends significant time helping employers address compliance issues and business realignment in the wake of the Affordable Care Act. Ms. Powers is a frequent speaker and commentator on health care reform issues where she applies a practical business-like approach to compliance. She believes that it is essential to understand the client's business in order to provide useful guidance. To better grasp the issues facing her clients Ms. Powers provides no-fee in-person consultations and keeps up to date by monitoring trade and industry news and legislation.

Her practice includes advising employers and others on ERISA fiduciary compliance issues. She represents clients in IRS and U.S. Department of Labor audits and investigations, as well as pursuing corrections under EPCRS and VFCP.

She oversees the design and implementation of equity and synthetic (phantom) equity programs to compensate executives in both established and startup companies. She routinely works with buyers and sellers to coordinate benefits issues in mergers and acquisitions, including retirement plan mergers, change of control payments and mid-year health plan issues. Ms. Powers also provides counsel with respect to executive compensation issues, including IRC §§ 409A, 162(m) and 280G (Golden Parachute) analysis.



Professional Honors & Activities

- Listed in *The Best Lawyers in America*® for Employee Benefits (ERISA) Law (2020 – 2024)
- Listed as among *B-Metro Magazine's* Top Women Attorneys (2020, 2022)
- Adjunct Professor – University of Alabama School of Law (2016 – Present)
- Member – Georgia and Alabama State Bar Associations
- Former National Program Chair – WEB, Worldwide Employee Benefits Network
- Past President, Atlanta Chapter, WEB, Worldwide Employee Benefits Network
- Former Board Member – National Women in Pensions, Inc.
- Past President and Member, Board of Directors – Oasis Counseling Center for Women and Children
- Adjunct Professor – Georgia State University (1999 – 2004)



Publications

- "Surprise! Gag Clause Attestation Due by 12/31/2023" (December 2023)
- "ACA Affordability Test Will Be More Difficult to Pass in 2024," republished October 3, 2023, in *Westlaw Today* (September 2023)
- "IRS Issues Catch-Up Contribution Transition Relief" (September 2023)
- "End of COVID-19 National Emergency: Impact on Employee Benefit Plans" (April 2023)
- "SECURE 2.0 Act of 2022," republished in *BenefitsPRO* (January 2023)
- "Group Health Plans and Abortion: Implications of Supreme Court Decision," republished in *BenefitsPRO* (June 2022)
- "Transparency in Coverage Rules" (June 2022)
- "COBRA Subsidy: Don't Forget – 2nd Notice Deadline is Looming" (August 2021)
- Co-author – "UPDATE: Administrative Guidance Issued Regarding Implementation of COBRA Subsidies," republished in *Westlaw* (April 2021)
- Co-author – "Six Months of Paid COBRA Premiums for "Assistance Eligible Individuals"" (March 2021)
- Co-author – "Executive Order "Deferring" Taxes: Notice 2020-65 Postures Guidance," republished October 8, 2020, in *Corporate Compliance Insights* (September 2020)
- Co-author – "Executive Order "Deferring" Taxes: What Are The Employer's Options?" (August 2020)
- "New Model COBRA Notices and Increased COBRA Litigation: What Employers Should Do Now" (June 2020)
- Co-author – "DOL Gives States More Control Over Self-Insured Health Plans" (November 2014)
- Co-author – "Employee Benefits in Mergers and Acquisitions: Buyer Beware," *The ASPPA Journal* (Winter 2011)
- Co-author – "Ready To Be Sued For Expected Benefits?," Baker Donelson Alert (June 8, 2011); republished in Chattanooga Manufacturers Association Newsletter (June 2011)



Speaking Engagements

- "Avoiding Nonqualified Plan Traps: Key Considerations for ERISA Counsel and Employers," Strafford CLE webinar (April 2021)
- "COVID-19 @ Work: Straight Talk Series - Session IV: Employee Benefits," Employment Law Alliance webinar (May 21, 2020)
- "The Intersection of Employee Leave and Benefits: Rights of Employees and Obligations of Employers," Lunch and Learn (August 2019)
- "Health Care Reform Under President Trump," Sixth Annual Hospitality & Tourism Law Symposium (July 2017)
- "Navigating the Challenges of Same-Sex Marriages, Domestic Partnerships and Civil Unions," Alabama State SHRM Conference (May 2013)
- "The Affordable Care Act and Employer-Sponsored Health Plans," Alabama Utility Contractors Association (January 2013)
- "Ethical Considerations," National Business Institute (December 2012)
- "ESOP In Ownership Succession Planning," National Business Institute (December 2012)



Webinars

- Helping Businesses Navigate the DOL's 2024 Independent Contractor Rule (February 2024)
- The Fiduciary's Year-End Check-Up (November 2023)
- Employee Benefits Update (August 2023)
- Employee Benefits Update (March 2022)
- Alabama Employers' COVID-19 Questions Answered (September 2021)
- Vaccine Incentives: Your Questions Answered (September 2021)

- COBRA Subsidies: What Employers Need to Do Immediately (April 2021)
- COVID-19 Legislation, Regulation, and Remote Workers – The Rapidly Evolving State Tax and Human Resource Requirements for a Business (March 2021)
- COVID-19 @ Work: Straight Talk Series | Session IV: Employee Benefits (May 2020)



Education

- University of Virginia School of Law, J.D., 1993
 - Managing Editor, *Virginia Tax Review*
 - Volunteer Tax Preparation
 - Legal Aid Society
- University of Alabama, B.S., 1990, *cum laude*
 - Beta Alpha Psi
 - Mortar Board, Anderson Society, The XXXI



Admissions

- Alabama, 2008
- Georgia, 1993
- U.S. District Court for the Middle District of Georgia, 1995