



# COVID-19 Legal Issues

*Presented by: Scott Atwood, Esq., Katherine "Kati" Cook, Esq.,  
and David Ledermann, Esq.*





## Scott E. Atwood

### Stockholder

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Scott is Chair of the firm's Labor and Employment Law group. From complex labor and employment counseling and litigation to general business matters, he has been representing the interests of entrepreneurs, public entities, and businesses of all sizes throughout the United States, including Florida and Georgia, for nearly 25 years.

More specifically, Scott has extensive experience in all aspects of employment law, including Title VII, ADA, ADEA, and Section 1983 discrimination, harassment, and retaliation matters, FMLA leaves issues, and FLSA and state law wage situations. He also assists his clients in whistleblower claims and non-compete, non-solicitation, trade secret, and contract disputes. With regard to general corporate matters, he prepares employment agreements, operating and shareholder agreements, restrictive covenant (non-compete, non-solicitation, confidentiality) agreements, and business contracts.

Scott also brings his expertise as a Florida Supreme Court Certified Circuit Civil Mediator to facilitate a resolution as an alternative to lengthy and expensive litigation. As a member of the Executive Council of the Florida Bar's Labor and Employment Section, Scott is extremely active in helping formulate and implement legal policy on both the state and local level. He is admitted to practice in all state and federal courts in Florida and Georgia, including U.S. District Courts for the Southern and Middle Districts of Florida.

Scott has been recognized as a Florida Super Lawyer in labor and employment law. Previously, he was recognized by Atlanta Super Lawyers as a Rising Star in labor and employment law. While attending law school, Scott was elected Editor-in-Chief of the *Florida Journal of International Law* and was awarded the President's Award for outstanding service to the University. He now serves on the College of Law's Alumni Council.

When not working, Scott enjoys spending time with his family, traveling, and watching New England sports.

## Professional and Civic Affiliations

Scott devotes countless hours to the community. Currently, he is President of the Lee County Bar Association Foundation, is Vice-Chair (Chair-elect) of the Sidney & Berne Davis Arts Center Board of Directors, and is a member of the UF Law Alumni Council. He is also a member of the Greater Fort Myers Chamber of Commerce Leadership Class (2017).

Scott previously served on the Florida Bar's Board of Governors, including its Executive Council and Disciplinary Committee; was President of the Florida Bar's Young Lawyers Division and its Out-of-State Division; was Vice-Chair of the Florida Bar's Continuing Legal Education Committee; was President of the Lee County Bar Association; and, was Chair of the Small Firm Section of the Atlanta Bar Association. He is a former member of the 20th Judicial Circuit Professionalism Committee, Supreme Court Commission on Professionalism, and the Florida Bar's inaugural Diversity Committee. Scott also served on the Allocations Committee for Lee County United Way, on the Executive Committee of the Dartmouth Club of Georgia, and was a Barrister in the Calusa Inns of Court.

## Education

- Dartmouth College, B.A., *with honors*
- University of Florida College of Law, J.D.
- College of William & Mary, M.A.
- Admitted to The Florida Bar
- Admitted to The Georgia Bar

## Practice Areas

- Employment
- Mediation & Arbitration





## Katherine E. Cook

### Associate

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Katherine “Kati” Cook is an associate in the firm’s [Business Litigation](#) department based out of the Fort Myers office. She handles a variety of litigation matters, including FLSA, Title VII, ADA, contract and landlord/tenant disputes, and bankruptcy and creditors’ rights. Kati also provides litigation assistance to the Condominium and Homeowner’s Association Group. She is admitted to practice in all Florida state courts.

While in law school, Kati served as publications editor of *Ave Maria Law Review* and was a legal intern for United States Middle District of Florida. She graduated top of her class from Ave Maria School of Law, was honored as a Lee County Association for Women Lawyer’s scholarship recipient, and was published in Volume 17 of the *Ave Maria Law Review*. Kati served as a summer associate with Henderson Franklin during the summer of 2018.

Kati was born and raised in Pine Island, Florida, graduating from Evangelical Christian School in Fort Myers. When not working, she enjoys spending time with her family, going out on the boat, and traveling.

### PROFESSIONAL AND CIVIC AFFILIATIONS

Over the years, Kati has volunteered for the YMCA and Salvation Army. She currently serves on the board of Lee County Bar Association’s Young Lawyers Division and is a member of the Lee County Association for Women Lawyers.

### Education

- Florida Gulf Coast University, B.S.
- Ave Maria School of Law, J.D.
- Admitted to The Florida Bar

## Practice Areas

- Business Litigation
- Condominium and Homeowners' Associations



## David J. Ledermann

### Of Counsel

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David Ledermann works with publicly traded companies, closely held businesses and non-profit employers in complex employee benefits matters under ERISA (the Employee Retirement Income Security Act) and the Internal Revenue Code. His representations involve tax-qualified retirement plans and nonqualified deferred compensation arrangements, as well as group health plans and other employer-provided welfare benefit plans. David is often sought out by other attorneys, from both within and outside the firm, to provide guidance and assistance in this dynamic and highly regulated field. When necessary, and as appropriate, he represents clients before government agencies, including the Internal Revenue Service, the United States Department of Labor and the Pension Benefit Guaranty Corporation.

### Benefit Plans

David's work with qualified retirement plans and their sponsors ranges from the design and implementation stages to plan termination, and includes amending plans to achieve employer objectives in response to changing circumstances. He is also involved with correcting operational compliance failures when they occur and negotiating the status of plans in mergers, acquisitions and other transactions. Plan types include defined contribution, such as 401(k) profit sharing plans, and defined benefit, as well as Section 403(b) and Section 457 plans of tax-exempt and governmental organizations.

The 2010 Patient Protection and Affordable Care Act ("ACA") continues to evolve due to ongoing legislative, regulatory and judicial developments, presenting continuing challenges for employers. David assists clients in navigating the pitfalls and opportunities organizations may encounter under the ACA,

and advises employers in connection with both insured and self-funded group health plan coverage. In addition, David advises employers concerning the adoption of, and regulatory compliance for, other welfare benefit programs, including cafeteria plans, flexible spending accounts, dependent care assistance plans, health reimbursement arrangements, health savings accounts, short- and long-term disability plans, severance pay, life insurance, educational assistance and supplemental unemployment benefits.

## Executive Compensation Programs

David also helps organizations with the recruitment and retention of managerial and executive talent through various forms of nonqualified deferred compensation arrangements. He has substantial experience with the design, drafting, implementation and operation of these executive compensation programs, including performance-based and equity-funded variations of them. Through wide-ranging applications of deferred compensation principles, as regulated pursuant to Internal Revenue Code Section 409A, David has been able to help clients establish meaningfully and mutually beneficial arrangements, notwithstanding the often onerous restrictions imposed by this statute.

## Education

- Oakland University (B.S., magna cum laude)
- University of Michigan Law School (J.D.)
- University of Miami School of Law (LL.M. in Taxation)
- Michigan State University (M.S., Physics)
- Admitted to The Florida, Pennsylvania, and Michigan Bars

## Practice Areas

- Business & Tax Planning
- Business Planning Group
- Employee Benefits and Employment Contracts



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ATTORNEYS AT LAW

**COVID-19  
Legal Issues**

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**Agenda**

- New Leave Laws and Regulations
- FMLA, ADA and Employee Leave Issues
- Retaliation/Whistleblower Claims
- COVID and Employee Benefits
- Question and Answer



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**Families First Coronavirus Response Act**

- Covered: public employers and most businesses up to 500 employees
- Creates two temporary laws:
  - Emergency Paid Sick Leave Act
  - Emergency Family and Medical Leave Act



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Emergency Paid Sick Leave Act



- All employees covered
- Paid leave for up to 80 hours
  - Cap on max amount paid
- Authorizes private lawsuits under FLSA

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Emergency Paid Sick Leave Act:  
Reasons for Leave



- Subject to government quarantine
- Advised by health care provider to self-quarantine
- Experiencing symptoms of COVID-19 and seeking medical diagnosis
- Caring for individual subject to quarantine/isolation
- Caring for son or daughter whose school or childcare is closed due to the coronavirus;
- “Substantially similar condition”

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Emergency Paid Sick Leave Act



- Can't require to use PTO first
- Can't require to find replacement/coverage worker
- Can't retaliate against for taking leave, filing complaint, or testifying

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Emergency Family & Medical Leave Act

- Covered: public employers and most businesses up to 500 employees
- Reason: care for child whose school or daycare closed



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Emergency Family & Medical Leave Act

- Up to 12 weeks of leave
- 2/3 regular rate of pay after 10 days
  - Cap on maximum pay
- Must be the sole caregiver available
- Intermittent leave okay



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Emergency Family & Medical Leave Act



- No private lawsuits if less than 50 employees (only DOL can enforce)
- Regular FMLA lawsuits for employers above 50
- Individual and corporate liability

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Americans with Disabilities Act

- EEOC Guidance
  - Temperature checks
  - Work from home accommodations
  - Application to at-risk household members



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Family and Medical Leave Act of 1993



- Regular FMLA compliance applies even if not covered by ADA or FFCRA
- Often applied in tandem with ADA

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Return to Work Procedures

- Safety protocols
- Testing of employees
- Accommodations for medical and religious reasons



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Retaliation/Whistleblower Claims



- Liability arising from employee concerns about COVID-19 issues in the workplace

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OSHA

- Application of CDC guidelines to OSHA compliance
- General safety provision
- OSHA retaliation provisions
- No private lawsuits



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Florida Whistleblower Act

- Applies to both public and private employers – permits private lawsuits
- Must show actual violation of law, regulation or ordinance
- Includes federal
- Does not include CDC Guidelines
- Potential liability



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Retirement Plan Distributions

- Coronavirus-related distributions exempt from 10% early distribution penalty
- Applies to distributions on or after 01/01/2020 and before 12/31/2020
- Distribution must be made to a qualified individual



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Retirement Plan Distributions

- Amount from all plans cannot exceed \$100,000
- Ratably included in income over 3-year period
- 3-year re-contribution opportunity avoids income taxation



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Retirement Plan Loans

- Loans allowed up to \$100,000 or 100% of vested balance
- Applies to loans made 03/27/2020 – 09/22/2020
- Repayment due dates extended one year, with term of loan extended
- Applies to repayments due 03/27/2020 – 12/31/2020
- Only available to qualified individuals



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Required Minimum Distributions (RMD) Relief



- RMD waived for 2020
- Applies to all participants and beneficiaries otherwise required to take RMDs
- Distributions, if made, may be eligible for rollover

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COBRA Extensions



- Notice date after COBRA qualifying event
- Participant election period
- Premium due dates

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