



Henderson|Franklin
ATTORNEYS AT LAW

100 Days In: Update on Biden Employment Policies Handouts





*presented by Attorneys Scott Atwood, Katherine Cook,
David Ledermann and guest speaker Attorney Giselle Carson*





Scott E. Atwood

Stockholder - Fort Myers Office

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Overview

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 more than 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 Chair-elect 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, Georgia, and the District of Columbia, including U.S. District Courts for the Southern and Middle Districts of Florida.

Scott has repeatedly been recognized as a **Florida Super Lawyer** in labor and employment law. In 2020, Naples Illustrated named Scott a "Top Lawyer". 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.

Scott also contributes to the **Southwest Florida Business and IP Blog**. His posts include:

- ▶ [When do employers need to pay overtime?](#)
- ▶ [Supreme Court Holds that Civil Rights Law Covers LGBT Employees](#)
- ▶ [DOL's Initial Families First Guidance Throws Some Curveballs; Effective Date Now April 1](#)
- ▶ [Florida Jury Finds in Favor of Employer in Paralegal's Overtime Trial](#)

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

Practice Areas

- ▶ Employment
- ▶ Mediation & Arbitration

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, Georgia and District of Columbia Bars

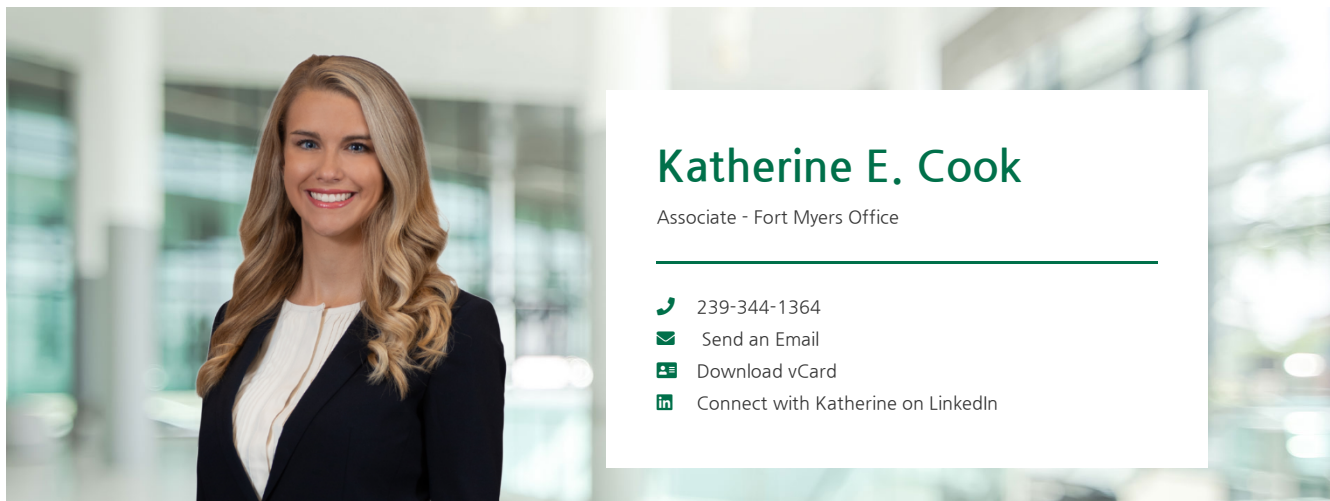
News & Insights

- ▶ [Atwood to Share Legal Update on COVID-Related Employment Laws](#)
- ▶ [Naples Illustrated Magazine Recognizes 28 Henderson Franklin Attorneys as "Top Lawyers"](#)
- ▶ [28th Annual HR Law & Solutions Seminar Goes Virtual](#)

Professional and Civic Affiliations





Scott devotes countless hours to the community. Currently, he is on the Executive Council (and past President) of the [Lee County Bar Association Foundation](#), is Chair 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.



Katherine E. Cook

Associate - Fort Myers Office

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Overview

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 **employment law** matters (FLSA, Title VII, ADA), contract and landlord/tenant disputes, trust and probate litigation, 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 first in 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.

Articles

- ▶ [New Florida Summary Judgment Standard Could Lessen Legal Expenses and Judicial Backlog](#)

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.

Practice Areas

- ▶ Business Litigation
- ▶ Condominium and Homeowners' Associations
- ▶ Estate & Trust Litigation
- ▶ Employment

Education

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




News & Insights

- ▶ [28th Annual HR Law & Solutions Seminar Goes Virtual](#)
- ▶ [Registration for Henderson Franklin's 28th Annual HR Law & Solutions Seminar is Open](#)
- ▶ [Henderson Franklin Welcomes Katherine Cook](#)



David J. Ledermann

Of Counsel - Fort Myers Office

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Overview

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.

Practice Areas

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

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

News & Insights

- ▶ Henderson Franklin Welcomes Employee Benefits Attorney David Ledermann
- ▶ 28th Annual HR Law & Solutions Seminar Goes Virtual

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Giselle Carson is a recognized business immigration and compliance attorney. She partners with employers to help them hire and retain global talent and develop effective immigration strategies to remain competitive and compliant in a global economy.

As a two-time immigrant, Ms. Carson has experienced the challenges and joy of immigration. She was born in Cuba, escaped to Canada and later immigrated to the U.S. She now uses her personal and professional experience to help employers and foreign nationals save time, effort and stress by helping them navigate the complexities of immigration law with client-attentive efficiencies and strategic partnership.

Her practice is focused on business immigration. Her work includes helping businesses and individuals obtain work visas, permanent residence status ("green card") and naturalization. She also guides organizations on immigration compliance including Form I-9 and government audits.

She is a published author and renowned speaker on immigration matters. In 2017, she published her book Beyond the H-1B: A Guide to Work Visa Options for Employers, Foreign Nationals, and Graduating Students. Described as "very well written book, easy to read, easy to understand! This book helps clarify the complex categories of work visas beyond the H-1B. A must read if you are involved in hiring foreign nationals."

Admitted to Practice

- Admitted in 2001, Florida

Education

- McGill University, 1985-1989, BS Physical Therapy
- Florida Coastal School of Law, 1998-2001, J.D.



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Presented by:
Giselle Carson, Esq.
David Ledermann, Esq.
Scott Atwood, Esq.
Katherine Cook, Esq.
2021 May 6

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- Business Immigration
- COBRA subsidy
- Agency update
- Families First Coronavirus Response Act

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Immigration Update

- H1B caps
- Travel bans
- Consulate processing
- I-9 flexibility



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Who is an AEI under ARPA?

- Assistance Eligible Individual (AEI)
- An employee or dependent losing group health plan coverage
- Coverage lost by employee's reduction in hours or involuntary termination
- Ineligible for other group health plan coverage or Medicare
- Elects COBRA within 60 days after notice from plan administrator
- Covered by COBRA or mini-COBRA during subsidy period
- American Rescue Plan Act (ARPA) subsidy period: 4/1/2021 – 9/30/2021

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Operation of ARPA Subsidy

- Federal subsidy for 100% of premium plus up to 2% COBRA fee
- Paid by employer under COBRA and by carrier under mini-COBRA
- Employer recoups payment through payroll tax credit



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Employer Notice Requirements

- AEI experiencing qualifying event during ARPA subsidy period
 - Notify AEI within usual COBRA notice period (44 days max.)
- AEI based on qualifying event prior to beginning of subsidy period
 - Determine AEI status for pre-April 1, 2021 qualifying events
 - Go back at least 18 months before beginning of subsidy period
 - AEIs on COBRA, declined COBRA or dropped COBRA

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Employer Notice Requirements



- AEI based on qualifying event prior to beginning of subsidy period (*cont'd*)
 - AEI can elect COBRA for subsidy period only, if chosen
 - Enroll AEIs electing coverage within 60 days after notice

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Employer Notice Requirements

- Notify AEIs 15 – 45 days in advance of expiring COBRA subsidy
 - Due to end of subsidy period on September 30, 2021
 - Due to earlier expiration of AEI's maximum coverage period
 - But not if due to AEI becoming eligible for other coverage



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Employer Notice Requirements

- Recommend using Department of Labor model notices
- Penalties of up to \$100/day per AEI for failure to provide notice
- Potential civil liability to AEI who goes uninsured due to notice failure



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OSHA Update

- New administrator
- New guidance
- New enforcement
- New rules coming soon



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EEOC and DOL Update

- New EEOC Chair & General Counsel
- Hiring for enforcement positions
- New Secretary of Labor
- Wage and hour enforcement enhanced
- Withdrawal of DOL Rules



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FFCRA Update

- American Rescue Plan Act of 2021 (“ARPA”) extended, in part, Families First Coronavirus Response Act
 - Emergency Paid Sick Leave Act (“EPSLA”)
 - Emergency Family and Medical Leave Act (“EFMLA”)



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FFCRA Update

- Created mandatory leave time, most of it paid, and protections for taking such time off
- Paid leave was funded through employer tax credits
- FFCRA expired on December 31, 2020
- ***Employers are no longer required to provide such leave***

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FFCRA Update

- ARPA extends the FFCRA tax credits through September 30, 2021 for employers that voluntarily provide employees with leave
- Scope of the permitted reasons for leave that are eligible for tax credits have been expanded

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FFCRA Update

- Under the EPSLA, individuals could get up to 80 hours of paid leave if they were:
 - 1) subject to government quarantine;
 - 2) advised by health care provider to self-quarantine;
 - 3) experiencing symptoms of COVID-19 and seeking medical diagnosis;
 - 4) caring for an individual subject to quarantine/isolation; or
 - 5) caring for a child whose school or childcare is closed due to the coronavirus.



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FFCRA Update

- Under EFMLA, up to 12 weeks leave, but limited to leave to care for a child whose school or childcare was closed due to the coronavirus and was limited to 2/3 pay and capped at \$10,000
- Under ARPA, EFMLA expands tax credits for up to 12 weeks for all five of the reasons leave was permitted under the EPSLA (not just childcare)



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FFCRA Update

- Can now get tax credits to allow employees to get the COVID vaccine, to recover from adverse effects of the vaccine, or to stay out of work while awaiting COVID test results
- As of April 1, 2021, all time is reset and the cap EFMLA increased to \$12,000



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