

Andrew J. Fawbush

Partner | Jacksonville

Andrew J. Fawbush is a Partner in, and the Co-Chair of, the Executive Compensation and Employee Benefits Practice of Smith, Gambrell & Russell, LLP.

He has more than 40 years of legal experience in the employee benefits, executive compensation and ERISA practice areas. He is the Chair of SGR's Executive Compensation and Employee Benefits practice. He focuses on the treatment of executive compensation and employee benefits matters in M&A transactions, designing and implementing equity-based, employment, separation, deferred compensation, change in control and similar compensation arrangements, with respect to their executive officers and directors, advising boards of directors, compensation committees and employee benefit committees and fiduciaries on fiduciary duties and governance matters, designing, terminating and providing compliance guidance on employee pension and welfare plans.

Mr. Fawbush has served as executive compensation, benefits and ERISA counsel to:

- Several Fortune 500 companies, their boards of directors and compensation committees;
- A state university and its affiliated organization;
- Various tax-exempt entities, including hospitals, churches, athletic associations and charities;
- Investment fund managers to advise as to structure to avoid "Plan asset" status;
- Insurers in developing products for employee benefit plans, and
- Plan Trustees, Committees and other fiduciaries, plan service providers and multiemployer pension plans;
- He also has experience with respect to executive compensation and employee benefit plan issues in connection with:
 - Mergers and acquisitions (M&A), including integration of post-closing benefit plans;
 - In-depth compliance reviews of corporate qualified and non-qualified plans;



Contact Information

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Areas of Practice

Executive Compensation and
Employee Benefits
Mergers and Acquisitions
Financing and Commercial
Transactions
Corporate Law
Corporate Governance
Tax Law
Investment Management and
Investment Advisory
Global Transport

Bar Admissions

Florida
New York
District of Columbia

- Extensive design and compliance experience with executive compensation arrangements, including equity-based compensation, with respect to Internal Revenue Code sections 409A, 162(m) and 280G;
- Derisking of pension liabilities and pension plan terminations;
- Representation and counsel with regard to plan audits conducted by the Internal Revenue Service, Department of Labor and Pension Benefit Guaranty Association; and
- Day-to-day benefit challenges.

Mr. Fawbush is nationally recognized in the field of ERISA and employee benefits. He was recognized for Chambers USA, Leading Business Lawyers - Employee Benefits (2019). He was also selected for inclusion in both the *Florida Super Lawyers* and *New York Super Lawyers* lists in Employee Benefits/ERISA, as one of *The Best Lawyers in America*® in the area of Employee Benefits, one of the Top Lawyers in Benefits Northeast Florida by Jacksonville Magazine and one of the “Top Employee Benefits Lawyers” by the International Bar Association. Mr. Fawbush has written and lectured on many aspects of executive compensation, ERISA and employee benefits. He has been recognized for exceptional pro bono service by the Supreme Court of Florida.

Mr. Fawbush has been involved in many activities during his career. He was President, Employee Benefit Council of Northeast Florida in 1992, was a faculty member in the University of North Florida Certified Employee Benefits Specialist Program.

He is a member of the American Bar Association, Tax Section, Employee Benefits Committee; a member of The Florida Bar, Tax Section, Employee Benefits Committee; a member of the Law Center Association Board of Trustees at the University of Florida College of Law where he was the initial recipient of the inaugural S. Austin Peele Distinguished Trustee Award, Board of Directors of the University of Florida Alumni Association (President 1994-1995), Board of Directors of the University of Florida Athletic Association (President 2011-current), and has served on the Advisory Board of the *Journal of Retirement Planning*.

Mr. Fawbush received his B.S./B.A., with high honors, at the University of Florida in 1972 and his J.D. at the University of Florida Levin College of Law in 1974, where he served on the *Law Review* from 1973 to 1974. Mr. Fawbush has been recognized by the Supreme Court of Florida and Jacksonville Legal Aid for his pro bono work. He has served on the boards of the Riverside YMCA, Jacksonville Urban League and

Southside United Methodist Church.

Publications and Presentations

- New Tax Bill Passed Both Houses of Congress, Dec 20, 2017.
- Tax Reform Update: Deferred Compensation Likely to Survive, Individual Mandate May Not, November 17, 2017.
- Deferred Compensation May Live to See Another Day, November 10, 2017.
- Is Deferred Compensation Dead under the Proposed Tax Bill? November 7, 2017.
- Long-Awaited DOL Fiduciary Final Rule Released Today, April 6, 2017.
- IRS Publishes New Guidelines on 401(k) Hardship Distributions, February 28, 2017.
- Retirement Plans: Fiduciary Issues, September 14, 2016.
- Speaking UP on Employment Law Issues - ERISA Fiduciary Issues for Retirement Plan Sponsor & Plan Administrator, May 5, 2016.
- A Fiduciary's Duty to Monitor Retirement Plan Investment Alternatives Is Continuous and Not Restricted by ERISA's Statute of Limitations, May 18, 2015.
- Hitting a Home Run: Developments in Employee Benefits, May 7, 2015.
- DOL Expands the Definition of Fiduciary, April 15, 2015.
- New Requirements for Delinquent Retirement Plan Form 5500 Filers, July 31, 2014.
- Supreme Court Rejects Presumption of Prudence for ESOP Fiduciaries, June 27, 2014.
- Staying Connected with Employment Issues – Managing your Settings: Employment Agreements and the Tax Impact, May 8, 2014.
- Long-Awaited Guidance Issues on the Application of the Supreme Court's DOMA Decision on Retirement Plans, April 7, 2014.
- U.S. Supreme Court Declares DOMA Unconstitutional, June 26, 2013.
- DOL Issues Advance Notice of Proposed Rulemaking on Lifetime Income Illustrations, May 10, 2013.
- Pension & Compensation Misconceptions, May 9, 2013.
- Fiduciary Responsibility, February 1, 2013.
- DOL Modified Position Regarding Brokerage Windows, July 31, 2012.
- DOL Fiduciary Alert: 401(k) Plan Brokerage Windows, June 19, 2012.
- Presenter, "Tax Issues Related to Employee Equity Incentives,

including Internal Revenue Code Sections 83, 280G & 409A,” The Criser Transactional Law Seminar, June 1, 2012.

- DOL Withdraws Its Proposed Definition of ERISA Fiduciary – September 20, 2011.
- U.S. Supreme Court Addresses ERISA Remedies for Inaccurate and Misleading Plan Communications, June 15, 2011.
- DOL Proposed Extension of Applicability Dates for Retirement Plan Fee Disclosure Rules, June 3, 2011.
- Fee Disclosure, May 4, 2011.
- DOL Releases Proposed Rule to Expand Definition of an ERISA Fiduciary, October 26, 2010.
- 409A – Navigating in the New Work of Deferred Compensation, September 21, 2010.
- Deferred Compensation Under 409A: Do You Know It When You See It?, January 14, 2010.
- IRS Issues a Corrections Program for Certain Code Section 409A Document Failures, January 7, 2010.
- Co-author, “Am I My Brother/Sister Corporation’s Keeper: The Right to Contribution for Pension Plan Underfunding,” *Journal of Retirement Planning*, July-August 2009.
- Contributing author, “Important Developments,” *The Tax Lawyer*, 1992–2003.
- Co-author, *A Guide to the Regulation of Wrap Free Programs*, June 2002.
- Contributing author, “Executive Compensation Utility Restructuring,” *Utility Mergers and Acquisition Exnet*, 2001.
- Co-author, “The \$500 Million Oversight,” *The Daily Deal*, November 1999.
- Co-author, “Solid Gold Exit Strategies,” *The Daily Deal*, September 1999.
- Co-author, “Employers Relieved over Section 89 Repeal,” *Jacksonville Business Journal*, January 1990.
- “Deductible Employee Benefit Expenses,” *Employee Benefits in Florida*, 1986.