



Emily E. Friedman

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Areas of Practice

ERISA Litigation | Executive Compensation and Employee Benefits | Labor and Employment Litigation/Trial Practice

Emily E. Friedman is a Partner in the Executive Compensation and Employee Benefits Practice of Smith, Gambrell & Russell, LLP.

With over 18 years of experience, Ms. Friedman specializes in ERISA Litigation and Litigation Avoidance, ERISA Compliance, and Employment Counseling and Litigation. She represents plans, plan sponsors (the employer or business), and plan fiduciaries. She has litigated cases ranging from single benefit claims to complex class action lawsuits. Her practice is wide-ranging, including working with qualified retirement plans, retiree medical plans, health and welfare plans, non-qualified plans, executive arrangements and contracts, and compensation and bonus plans.

Ms. Friedman has significant experience litigating ERISA matters and providing advice to employers, ERISA benefit plans, and ERISA fiduciaries to ensure compliance with ERISA regulations. Ms. Friedman's ERISA practice includes defending ERISA plans, plan sponsors, and plan fiduciaries in ERISA actions. These include class actions involving benefit claims, breach of fiduciary duty claims, prohibited transaction claims, claims alleging ERISA disclosure violations, claims brought by out-of-network and other healthcare providers, claims alleging discrimination and interference with ERISA rights, and coordination of benefits and subrogation issues.

Ms. Friedman also pursues litigation on behalf of ERISA plans and fiduciaries seeking to recoup benefit overpayments or benefits wrongfully paid on account of fraud or theft of plan assets. She counsels ERISA plan fiduciaries to ensure compliance with ERISA disclosure obligations and the proper adjudication of benefit claims, including severance, health and welfare, and pension benefit claims.

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Ms. Friedman also assists her clients in formulating and revising benefit plans and plan designs to mitigate litigation risks and position her clients for the best possible business results. She has conducted numerous training sessions for plan fiduciaries and assists them in discharging their ongoing obligations under ERISA. Ms. Friedman counsels benefit plans and plan fiduciaries subject to DOL audits and investigations, and helps negotiate settlements.

In addition to her ERISA practice, Ms. Friedman has extensive experience in labor & employment law. In her labor and employment practice, she provides advice and counsel to employers on all workplace matters, including best practices in connection with leave administration and designing and implementing leave programs and policies to ensure compliance with the complex federal and state leave law landscape. Ms. Friedman also regularly counsels employers on compliance with employment laws such as Title VII, ADEA, ADA and the WARN Act, and best practices for dealing with internal and administrative investigations, employee separation and discipline, restrictive covenants, and discrimination issues.

Ms. Friedman helps clients in formulating and revising employment policies, employee handbooks and workplace codes of conduct, preparing employee communications and templates to be used in connection with leave administration, and drafting and negotiating separation agreements, employment agreements, and offer letters.

She also has experience litigating federal and state employment law actions. For example, she defends employers in federal court in actions involving FMLA, ADA and discrimination claims, and in administrative proceedings involving issues such as discrimination, sexual harassment, wage violations and practices, and compliance with state labor laws. She also regularly litigates employment disputes in state court, including claims involving trade secrets, defamation, wrongful termination, restrictive covenants, breach of contract, and malicious prosecution.

Ms. Friedman received her J.D. degree, *cum laude*, from American University, Washington College of Law. During law school she was a note and comment editor for the Administrative Law Review.

Admissions

Georgia

New York

United States District Court, Northern District of Georgia

United States District Court, Middle District of Georgia

United States District Court, Eastern District of Arkansas

United States District Court, Western District of Arkansas

United States District Court, Northern District of Ohio

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United States District Court, Southern District of Texas

United States District Court, Southern District of New York

Georgia Supreme Court

New York Supreme Court

Representative Experience

- Defending a regional healthcare system in a putative class action brought pursuant to ERISA. Plaintiffs allege ERISA fiduciary breaches and prohibited transactions arising out of the plan's alleged underperforming and expensive investment options, as well as payment of alleged excessive fees to plan service providers. Successfully obtained the dismissal of two out of the four claims pleaded at the motion to dismiss stage.
- Represented the employer/sponsor of an ERISA defined benefit pension plan. The plaintiff sought enhanced retirement benefits as a result of alleged misrepresentations and other contractual promises made by a former employer. Successfully obtained the dismissal of the entire lawsuit on summary judgment.
- Responsible for all benefits-related litigation in the United States for the past 10 years for a national publicly traded company with 280,000 U.S. employees providing healthcare at 2,000 sites in the U.S.
- Handles all aspects of ERISA litigation for privately-held international IT and manufacturing firm with approximately 25,000 employees in North America. This includes litigation involving all of the company's employee benefit plans and their respective plan fiduciaries, and disputes concerning the company's retirement plans, severance plans, and health and welfare plans.
- Obtained the successful dismissal of an ERISA lawsuit filed against a client, following multiple iterations of a complaint, alleging claims for ERISA breach of fiduciary duty, claims for benefits due under the plan, and equitable estoppel in connection with a series of labor-related contracts. Obtained the dismissal of a putative class action brought by retirees against the company's pension plan. The complaint alleged, among other things, misrepresentations made by plan fiduciaries to retirees regarding enhanced retirement benefits.
- Defended a client in a litigation involving Medicare Secondary Payer Act claims and ERISA fiduciary breach claims for consequential harm claimed to be the result of lack of treatment as well as claims for recoupment of incurred expenses. Successfully obtained the transfer of the case to the proper venue and subsequently obtained a complete dismissal of all claims asserted against the client.
- Successfully defended against and negotiated settlements of ERISA actions involving disputed behavioral health claims on behalf of many clients.
- Successfully negotiated a favorable settlement for the client and avoided costly and protracted litigation in connection with a multiple plaintiff dispute involving survivor benefits under an ERISA-governed pension benefit plan.

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- Successfully defended a client in a retirement benefits dispute arising out of a collective bargaining agreement entered into in connection with a corporate transaction. The case involved ERISA claims as well as claims under the Labor Management Relations Act (LMRA). Successfully obtained the dismissal of plaintiffs' ERISA claims on a motion to dismiss filed early in the case. Following discovery, negotiated plaintiffs' voluntary dismissal of the remaining LMRA claim, without any agreement to pay the disputed benefits or provide any other forms of relief.
- Represented leading global manufacturer client in action by plaintiff alleging entitlement to disputed retirement benefits. Successfully removed lawsuit to federal court and, following removal, filed a motion to dismiss the entire action on various grounds, including preemption under ERISA and failure to exhaust required administrative remedies. Secured plaintiff's voluntary dismissal of the entire case. As a result, saved the client the costs associated with discovery (including expert discovery on damages) and additional dispositive motion practice.
- Successfully defended a client against claims by a former employee who left to work for a competitor. The former employee asserted an ERISA claim for benefits allegedly due under a deferred compensation plan and also asserted various state law claims. The Court granted motion to dismiss and dismissed all claims against the client.
- Filed a successful interpleader action on behalf of a client and its 401(k) plan to avoid completing claims over disputed survivor benefits payable under the plan. The defendants counterclaimed against the client for ERISA fiduciary breaches. Obtained the complete dismissal of all counterclaims asserted against the client at the motion to dismiss stage. Later in the litigation, defeated the counterclaimants' motion for attorney's fees.
- Obtained the complete dismissal of an ERISA lawsuit filed against a client arising out of disputed medical benefits that the plaintiff-hospital alleged were due and owing in connection with services provided to a dependent under the client's health plan. The plaintiff filed multiple amended complaints and the Court granted motions to dismiss each time, ultimately resulting in the complete dismissal of all claims against the employer client on ERISA preemption grounds and for lack of standing.

Memberships

American Bar Association Labor & Employment Section

State Bar of Georgia, Employee Benefits Section (Board Member)