

## Ashley Gillihan

Partner

+1 404 881 7390

ashley.gillihan@alston.com

Atlanta | One Atlantic Center, 1201 West Peachtree Street, Suite 4900 | Atlanta, GA 30309-3424



***Ashley has 20 plus years of experience counseling employers, insurance carriers and service providers on a wide range of compliance and litigation issues affecting health and welfare employee benefit plans. His vast experience with diverse clients and varying issues has led to a seasoned legal practice that allows him to address complex issues in an effective and efficient manner.***

Ashley Gillihan is a partner in the Atlanta office and a member of the firm’s Employee Benefits & Executive Compensation and ERISA Litigation Groups. Ashley focuses his practice exclusively on health and welfare employee benefit compliance and litigation issues for employers, health plan administrators, and other health and welfare benefit plan service providers. He also has extensive experience assisting financial institutions and insurance companies who serve as Health Savings Account trustees or custodians.

Ashley is active in publishing and speaking on various health and welfare benefit plan related topics and serves as a faculty member and/or technical advisor for several health and welfare benefit plan focused organizations. He is recognized by *The Best Lawyers in America*® in Employee Benefits (ERISA) Law.

Ashley is a member of the Employer’s Council on Flexible Compensation (ECFC) Technical Advisory Council and the board of editors for the *Benefits and Compensation Law Alert*, published by M. Lee Smith Publishers. He was named to the Benefits Committee for the Self-Insurance Institute of America, Inc. and served from 2007–2008. He is also a faculty member for the Institute for Applied Management and Law (IAML), and is the former author of the *Flexible Benefits Answer Book* published by Aspen Publishers. He is a member of the Alabama Bar Association, Tennessee Bar Association, and the Georgia Bar Association.

### ***Representative Experience***

- Assisting clients with questions related to mandated provisions in pending legislation and how it relates to health benefit plans during the coronavirus outbreak.
- Counsel to several large, national employer/plan sponsors with multiple union and non-union health and welfare plans.
- Counsel to several third-party administrators who perform a wide range of services from flexible spending account administrator to administration of comprehensive health plans.
- Counsel to several financial institutions and other financial related entities which serve as Health Savings Account custodians or trustees.

### ***Publications & Presentations***

#### ***Publications***

- “The Road to Hell Is Paved with Good Intentions: COBRA Compliance in the Wake of COVID-19 Downsizing,” *Benefits Law Journal*, Vol. 33, No. 2, Summer 2020.
- “ACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A: 2019 Health Benefits Year In Review,” *The Self-Insurer*, December 2019.

- “ACA, HIPAA, and Federal Health Benefit Mandates: Practical Q&A: IRS Expands Scope of Preventive Care for HSA Purposes for Individuals with Chronic Conditions,” *The Self-Insurer*, November 2019.
- “ACA, HIPAA, and Federal Health Benefit Mandates: Practical Q&A: A New Era of HRAs Begins in 2020,” *The Self-Insurer*, October 2019.
- “ACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A: DOL Cracks Down On Health Plan Tax Avoidance Schemes With Criminal Sanctions; Employers And Employees May Be Left Holding The Bag,” *The Self-Insurer*, August 2019.
- “ACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A: HHS Guidance: A Reminder And Some Relief,” *The Self-Insurer*, July 2019.
- “ACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A: DC Court Sends AHP Rule Back To DOL,” *The Self-Insurer*, May 2019.
- “ACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A: ‘Voluntary’ Benefits Face Different Compliance Burdens Than Traditional Group Health Plan Coverage,” *The Self-Insurer*, April 2019.
- “ACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A: A Texas Court Says the ACA Is Unconstitutional! What Does It Mean? Perhaps Back to the Future, But Nothing For Now,” *The Self-Insurer*, March 2019.
- “ACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A: Agencies Pump New Life Into CDHC With HRA Guidance,” *The Self-Insurer*, February 2019.
- “ACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A: Legislative Update: Recap of 2018 Employee Benefit Provisions,” *The Self-Insurer*, January 2019.
- “ACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A: Benefit Compliance Issues That Arise In Connection With Employer Sponsored Clinic Arrangements: Part Two,” *The Self-Insurer*, December 2018.
- “ACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A: Benefit Compliance Issues That Arise In Connection With Employer Sponsored Clinic Arrangements: Part One,” *The Self-Insurer*, November 2018.
- “ACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A: Passage of House Bills Warrants A Fresh Look At Health Savings Accounts – Part Two,” *The Self-Insurer*, October 2018.
- “ACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A: Passage of House Bills Warrants a Fresh Look At Health Savings Accounts – Part One,” *The Self-Insurer*, September 2018.
- “ACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A: DOL Issues Final Regulations for Association Health Plans: Real Opportunity for Small Employers or Much Ado About Nothing,” *The Self-Insurer*, August 2018.
- “ACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A: DOL Issues Comprehensive Compliance Guidance for Mental Health Parity and Addiction Equity Act (MHPAEA),” *The Self-Insurer*, June 2018.
- “ACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A: IRS QSEHRA Guidance Leaves Many ‘Gotchas’ for the Unwary Small Employer,” *The Self-Insurer*, May 2018.
- “ACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A: AHP Opportunities for Small Employers and Business Owners,” *The Self-Insurer*, March 2018.
- “ACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A: Wellness Program Incentives and Recent Litigation,” *The Self Insurer*, February 2018.

- “ACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A: Auld Lang Syne; Farewell 2017 – Greetings 2018 – The Health & Welfare Benefits Law Year in Review,” *The Self Insurer*, January 2018.
- “ACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A: Come Together: Executive Order Raises Potential Opportunities for Association Health Plans,” *The Self Insurer*, December 2017.
- “ACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A: Dealing With Disaster: Issues and Relief for Health Benefit Plans,” *The Self-Insurer*, November 2017.
- “ACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A: Lawsuits are Focused on Wellness Program Compliance. Are You?,” *The Self-Insurer*, October 2017.
- “ACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A: Avoiding Common Practices That Violate The Mental Health Parity And Addiction Equity Act,” *The Self-Insurer*, September 2017.
- “ACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A: IRS Clears the Air as to Tax Treatment of Benefits Under Traditional Health Fixed Indemnity Coverage,” *The Self-Insurer*, July 2017.
- “ACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A: AHCA (v2): What’s In Store for Employer Plan Sponsors Under House-Passed Bill,” *The Self-Insurer*, June 2017.
- “ACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A: Whack-A-Mole – IRS Takes Aim At Latest Wellness Program Scheme, But Overly Broad Language Can Be Taken Too Far As Applied To Traditional Coverage,” *The Self-Insurer*, March 2017.
- “ACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A, QSEHRAs: End-of-Year Legislation Provides a New Health Care Option for Small Employers,” *The Self Insurer*, February 2017.
- “ACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A, 2016 Health and Welfare Compliance Highlights: A Walk Down Memory Lane,” *The Self Insurer*, January 2017.
- “ACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A, Navigating the Winding Highway of Wellness Program Compliance – A GPS for the EEOC’s Wellness Program Rules,” *The Self Insurer*, December 2016.
- “Employee Benefits and Executive Compensation Advisory: Navigating the Winding Highway of Wellness Program Compliance,” *U.S. News-Best Lawyers Best Law Firms 2017*, 7th ed.
- “ACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A,” *The Self Insurer*, September 2016.
- “So You Heard About HIPAA Phase 2 Audits. What Should You Do Now?,” *The Self Insurer*, May 2016.
- “IRS Notice 2015-87 Provides Much Needed Guidance for Account-Based Plans and ACA Employer Shared Responsibility Requirement (IRC 4980H) Part II,” *The Self Insurer*, April 2016.
- “IRS Notice 2015-87 Provides Much-Needed Guidance Regarding Account-Based Plans and ACA Employer Shared Responsibility Requirement (IRC 4980H),” *ECFC Flex Reporter*, March 2016.
- “Staying on the Compliance Track: The 2015 Health Benefits Year in Review,” *The Self Insurer*, February 2016.
- “EEOC’s Proposed Rules for Wellness Programs Under the Genetic Information Nondiscrimination Act (GINA),” *The Self Insurer*, January 2016.
- “Deadline Approaches to Execute a Cafeteria Plan Amendment for IRS Notice 2014-55,” *Bloomberg BNA Tax and Accounting Center*, December 21, 2015.
- “Staying on the Compliance Track: The 2015 Health Benefits Year in Review,” *ECFC Flex Reporter*, December 2015.

- “HIPAA Double Take: What Health Plan Sponsors Need to Know (Again),” *The Self Insurer*, November 2015.
- “The (Poorly Named) ‘Cadillac Tax’ Part Two: IRS Provides Further Guidance in Notice 2015-52,” *The Self-Insurer*, October 2015.
- “The Cadillac Tax Part One: The Potential Impact of the Tax on Account-Based Plans (FSAs, HRAs and HSAs),” *The Self Insurer*, September 2015.
- “A Supremely Busy Week: The Supreme Court Issues Two Rulings That Impact Health Plans,” *The Self Insurer*, August 2015.
- “Healthy Caution Advisable in Designing Wellness Plans, Given New Scrutiny of Medical Exams and Inquiries Under ADA, HIPAA, and ACA,” *Bloomberg BNA: Daily Labor Report*, July 24, 2015.
- “IRS Notice 2015-17: Window Has Closed on Pre-Tax Funding for Individual Major Medical Policies for Employees,” *The Self Insurer*, July 2015.
- “IRS Notice 2015-17: Pardon for Employer Payment Plans? Or Just a Stay of Execution?” *ECFC Flex Reporter*, June 2015.
- “IRS Notice 2015-17: Pardon for Employer Payment Plans or Just a Stay of Execution?” *Bloomberg BNA Tax and Accounting Center*, April 2015.
- “IRS Notice 2015-17: Pardon for Employer Payment Plans or Just a Stay of Execution?” *Bloomberg BNA Pension & Benefits Daily*, March 17, 2015.
- “Agencies Issue New Proposed Rules for the Summary of Benefits and Coverage,” *The Self Insurer*, March 2015.
- “IRS Notice 2015-17: Pardon for Employer Payment Plans? Or Just a Stay of Execution?” *ECFC Flex Reporter*, March 2015.
- “Health Care Reform Litigation Update: SCOTUS Takes Another Look at the ACA; The House of Representatives Takes Aim at the President,” *The Self Insurer*, February 2015.
- “2014 Health Plan Sponsor Year End Checklist,” *The Self Insurer*, December 1, 2014.
- “Health and Welfare Plan Sponsor Affordable Care Act and 2014 Year End Checklist,” *ECFC Flex Reporter*, December 2014.
- “IRS Notice 2014-55 Allows New Health Coverage Election Changes,” *The Self Insurer*, November 3, 2014.
- “To Subsidize or Not to Subsidize - That Is the Question - How *Halbig* and *King* Affect Employer Requirements Under the Affordable Care Act,” *The Self Insurer*, September 2014.
- “ACA Administrative Simplification Provisions for Health Plans: Time to Apply for an HPID and Prepare for Certification of Compliance”, *The Self Insurer*, July 2014.
- “New EEOC Proposed Rules Require a Gut Check for Wellness Programs,” *The Self Insurer*, June 2015.
- “The Affordable Care Act and Account-Based Plans: Impact of the ACA on HRAs, FSAs, and HSAs,” *The Self Insurer*, April 2014.
- “Agency Guidance Strikes a Major Blow for Individual Policy Premium Reimbursement and Stand-Alone Health Reimbursement Arrangements,” *The Self Insurer*, February 2014.
- “Impact of Supreme Court Same Sex Marriage Ruling on Health Benefits: Part II,” *The Self Insurer*, January 2014.

- “Friday the 13th: Agencies Take a Chainsaw Approach to HRAs and Employer-Funded Individual Medical (IM) Coverage,” *ECFC Flex Reporter*, September 2013.
- “Private Exchanges and the Impact on Health Coverage,” *The Self Insurer*, August 2013.
- “IRS Issues Game-Changing Regulations Interpreting Health Care Reform’s Pay or Play Requirement,” *Benefits Law Journal*, Summer 2013.
- “CER Fees – Funding the Patient-Centered Outcomes Research Trust,” *The Self Insurer*, May 2013.
- “New HIPAA Omnibus Rule: Issues for Employer Plan Sponsors and Group Health Plans,” *The Self Insurer*, April 2013.
- “IRS Issues Game-Changing Regulations Interpreting Health Care Reform’s Pay or Play Requirement,” *ECFC Flex Reporter*, March 2013.
- “IRS Issues Game-Changing Regulations Interpreting Health Care Reform’s Pay or Play Requirement, Part Two,” *The Self Insurer*, March 2013.

### **Presentations**

- “Health Care Reform and Other Welfare Benefit Plan Issues,” Certificate in Employee Benefits Law Seminar, Orlando, FL, July 15-19, 2019.

### **Education**

- Samford University (J.D., 1996)
- Western Kentucky University (B.A., 1993)

### **Admitted to Practice**

- Georgia
- Tennessee
- Alabama

### **Related Services**

Litigation | Employee Benefits & Executive Compensation | Payment Systems | Exempt Organizations | Tax