



# Lowell J. Walters

OF COUNSEL

TAMPA

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## Overview

Lowell Walters helps employers minimize risks while offering meaningful retirement, medical, or other fringe and employee benefits to employees. He focuses on issues that arise whenever an employer offers employees something of value, and draws upon his rich background with complex organizations and plan designs to offer novel solutions to intricate situations.

Clients appreciate Lowell's practical solutions. He addresses the questions asked while anticipating questions that were not asked, and follow-up questions likely to arise. Lowell tailors the solutions and is flexible in terms of his role, whether clients want to actively participate in the process or prefer to delegate as much as possible. They find his frequent communications and timeliness reassuring and gain confidence through his ability to communicate complex concepts clearly.

Lowell married his college sweetheart and has two wonderful children. He strives to balance his devotion to his family with his devotion to his clients.

### ***What issues are you facing?***

I received a notice from the DOL or IRS

When Lowell represents employers during a DOL or IRS investigation or audit, he knows what points to argue and when to focus on minimizing penalties. And he appreciates that clients' other obligations, including the need to operate their business or perform other functions within the organization, do not end when the DOL or IRS letter arrives.

*Tell Lowell about your situation and learn how he can help.*

I have a retirement plan question or problem

Lowell minimizes risks and liabilities by addressing Internal Revenue Code and ERISA issues facing employee benefit plans, including reviewing documents and provider contracts to point out "problem areas," addressing concerns raised by the employer or another adviser, assisting with the fiduciary obligations of hiring service providers (through RFPs or otherwise, and addressing "one-off" questions.

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## I have a medical insurance plan question or problem

Whether questions involve a self-insured or fully insured plan, a question about the Affordable Care Act, cafeteria plans, COBRA, HIPAA, or one of the myriad other laws affecting medical plans, Lowell can assist. He minimizes risks and liabilities by addressing Internal Revenue Code and ERISA issues facing employee benefit plans, including reviewing documents and provider contracts to point out “problem areas,” addressing concerns raised by the employer or another adviser, and addressing “one-off” questions.

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## My organization’s benefits structure is complex and I need to seek advice on occasion

Employee benefit plans are inherently complex, but sometimes an organization’s size or structure exacerbates the problem. Lowell works with private companies, nonprofits, and governmental entities, and the differences in the application of ERISA and the Internal Revenue Code to plans sponsored by those distinct groups give him insight into potential solutions and complications that other advisers do not have.

Lowell credits his work with hospitals, colleges, and universities for honing his creativity. Their diverse compensation structures and employee classifications exacerbated by inconsistent application of ERISA and Internal Revenue Code rules demand creative solutions.

*Tell Lowell about your situation and learn how he can help.*

## I need help with executive-level benefits

The primary goal of employee benefit programs is to reward employees whom the organization can’t afford to lose. Lowell works with companies and executives to devise bonus, stock bonus, and benefit programs geared toward executive-level employees. Whether representing the executive or the organization, he understands the importance of preserving the integrity of that vital relationship. Executives drive the organization and the organization’s success is the ultimate goal.

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## I have an employment tax problem

Employers consult Lowell on a range of employment tax issues when they are unsure of their employment tax obligations, discover that their employment taxation has been handled incorrectly, or want to restructure benefits to minimize employment tax obligations. The employee benefits area highlights the complexity of employment taxation rules. Amounts contributed to 401(k) and 403(b) plans are sometimes, but not always, subject to employment taxes. Nonqualified and 457 plans are generally subject to employment taxes, but the timing of employment taxation can differ. Lowell’s ability to navigate this difficult area allows him to address employment tax issues properly, even if they do not relate to an employee benefit plan.

*Tell Lowell about your situation and learn how he can help.*

I need help and none of the above apply

While the most common employee benefits are retirement and group health benefits, the multitude of benefit options and issues that can arise are too numerous to list, from adoption assistance to working condition fringe benefits. Lowell helps employers structure novel benefits or, if necessary, recommends another attorney or adviser who can.

*Tell Lowell about your situation and learn how he can help.*

I do not know if I need legal help or some other kind of help

Sometimes plan sponsors or administrators need legal advice and sometimes they need non-legal professionals to help implement or operate part of their plan. Since employee benefit plans are inherently complex, there are a lot of professionals who may be involved, from actuaries, third-party administrators, and investment advisers to COBRA administrators and insurance consultants.

Lowell understands that hiring the right advisers is a critical decision for a plan sponsor. He draws on his experience to help his clients select the adviser who brings value to participants while mitigating plan sponsor risk. This can involve assisting with the formal selection processes or recommending professionals with a proven record of accomplishment.

Sometimes the correct approach is for the organization's team of professionals to work together. Lowell enjoys collaborating with other service providers to produce an efficient solution that avoids administrative nightmares.

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## Experience

### Representative Examples

- Defended an employer from an IRS assessment of about \$140,000 for allegedly failing to fulfill its Affordable Care Act obligations. Using some of the strategies outlined here, the IRS agreed to reduce the penalties to \$0.
- Protected an employer from entering into an unfairly one-sided services agreement by identifying services the retirement plan service provider agreed to perform verbally, but failed to document in the contract process. Rewrote proposed contract provisions that would have allowed the service provider to avoid compensating the employer and the plan if it performed its services incorrectly.
- Convinced a surgical group that wanted to correct its plan because it was misworded that it would be in its best financial and other interests to simply amend the plan going forward, thus avoiding the cost of preparing a correction.

- Assisted a hospital spinoff in negotiating a purchase price offset to address the cost of vesting employees who were being terminated.
- Strengthened the case of a class action client sued for improper COBRA notices by reviewing the notice and preparing legal arguments on the issue of how it complied and why any deficiencies were immaterial. The complaint was dismissed days after we filed our motion to dismiss.
- Reduced potential liabilities during a legal review of a client health plan document from a major insurance company by identifying discrepancies under mental health parity requirements, advised on how to correct those discrepancies, and eliminated risks of having to provide additional mental health benefits.
- Provided advice to multiple clients on transgender issues, including whether coverage of transgender surgeries is mandatory when a patient suffers from gender dysmorphia; whether someone waives the ability to get treatments normally reserved for a particular sex when they indicate they are a different gender on their insurance forms; and what the obligations of a claims administrator are when handling transgender claims for companies that might be subject to inconsistent requirements.

### **Retirement Plan Experience**

- 401(a) plans (money purchase pension plans, profit-sharing plans, traditional and cash balance defined benefit plans)
- 401(k) plans (including safe harbor, cross-tested, and automatic enrollment plans)
- 403(b) plans (ERISA and non-ERISA)
- 457(b) plans (governmental and tax-exempt)
- 457(f) plans
- 409A nonqualified plans
- 175/185 insurance premium tax share plans
- Florida Retirement System opt-out plans
- Deferred Retirement Option Programs

### **Welfare Plan Experience**

- 125 Cafeteria plans
- ERISA-only plans
- Wrap documents
- Non-ERISA individual or voluntary plans
- Medical reimbursement plans (HRAs, FSAs, HSAs)
- Self-insured medical plans
- Commercially insured medical plans
- Stop-loss insurance
- Various other welfare plan arrangements (including wellness programs, dependent care assistance programs, adoption assistance programs, vacation pay conversion programs, and education assistance programs)
- Governmental retiree health care

### **Selected Skills**

- Affordable Care Act (ACA) compliance and planning
- Plan drafting and amending
- Retirement plan mergers, acquisitions, and terminations (nongovernmental and governmental, including Florida Retirement System transfers)

- Benefit planning (tailoring welfare benefits to the individual employer)
- Executive compensation
- Benefit reductions
- Plan terminations
- Nondiscrimination
- General retirement and welfare plan compliance
- Welfare plan 5500 planning
- Welfare plan audits
- Structuring non-ERISA individual or voluntary welfare benefits
- Compliance with requirements such as COBRA, HIPAA, FMLA, USERRA, ADA, ADEA, and PHSA
- Retiree health care issues
- Related employment tax issues

## All Insights

05.11.2022	401(k) Climate Change and Crypto Considerations: DOL Nurtures the Former but Clips Crypto at the Roots
01.11.2022	DOL to Plan Sponsors: "It's Mostly All About the Benjamins!"
01.11.2022	Private Equity in 401(k) Plans: A Holiday Sequel
05.18.2021	COBRA Deadlines and Proofs of Mailing in Carter v. Southwest Airlines Co. Board of Trustees
05.07.2021	Midyear Premium Increases and Cafeteria Plan Rules
02.25.2021	Department of Labor Imposes Additional Requirement on Employer-Provided Health Services
12.15.2020	DOL to Plan Sponsors: "It's All About the Benjamins!"
10.09.2020	Alternative Retirement Plan Investments: A Retirement Plan Committee Checklist
09.17.2020	Three Timely Benefits Items Everyone Should Know
09.03.2020	DOL Warms Up to Private Equity in 401(k) Plans
08.26.2020	Rewarding Employees You Cannot Afford to Lose (Part 5)
08.19.2020	Rewarding Employees You Cannot Afford to Lose (Part 4)
08.12.2020	Rewarding Employees You Cannot Afford to Lose (Part 3)

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07.15.2020	Rewarding Employees You Cannot Afford to Lose (Part 2)
07.10.2020	Rewarding Employees You Cannot Afford to Lose (Part 1)
06.23.2020	Cutting Costs With Employee Benefit Plans (Part 5 of 5) – Implementation
06.11.2020	Cutting Costs With Employee Benefit Plans (Part 4 of 5) – Retirement Plan Costs
06.05.2020	Cutting Costs With Employee Benefit Plans (Part 3 of 5) – Medical Benefit Costs
05.28.2020	Cutting Costs With Employee Benefit Plans (Part 2 of 5) – Identifying Potential Targets
05.19.2020	COVID-19-Related Guidance Allows Employees to Revise 2020 Health Insurance Elections
05.14.2020	Cutting Costs With Employee Benefit Plans (Part 1 of 5) – Using Benefit Plans to Save Money
05.07.2020	COBRA: Avoid Getting Snakebit! (Notice Update, Deadline Update, Litigation Update)
05.07.2020	Coronavirus Employment Tax Credits and Health Insurance
04.27.2020	Coronavirus-Related Retirement Plan Distributions, MPPPs, and Governmental 401(a) Plans
04.13.2020	Intel’s Intel Doesn’t Prove Actual Knowledge: Court Rejects Short ERISA Statute of Limitations
04.06.2020	Coronavirus-Related Retirement Plan Distributions and Loans: Helping Retirement Plan Committees Decide
04.03.2020	Planning to Claim the COVID-19-Related Tax Credits
03.24.2020	Retirement and Health Plan Cost Reductions During a Financial Downturn or Recession
02.04.2020	Using Nonqualified Plans to Reduce 401(k)/403(b) Costs
01.24.2020	Four Noteworthy Highlights on the Taxation of Fringe Benefits
11.14.2019	Prudent Process Defeats DOL
10.29.2019	US Treasury and IRS Targets for Audit
09.09.2019	Plan Amendment Deadline Approaching for Plans That Implemented Hardship Changes in 2018 and 2019

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05.20.2019	A Primer on Employment Taxes
05.08.2019	New Florida Law: Assessing Benefit Plan Costs for New Cancer Benefits Owed to Florida's Bravest
05.07.2019	Retiree Medical Not Restricted by Medicare Secondary Payer Rules
04.26.2019	Don't Cry Over Spilled Milk! A "Plain English" Guide to Retirement Plan Correction Options
12.06.2018	Recent Change to Hardship Distributions Can Increase Employer Liabilities
09.24.2018	Carlton Fields Helps Small Business Client Avoid Steep ACA Penalties
08.16.2018	Good News for Federal Contractors With Affordable Care Act Concerns
06.26.2018	Retirement Plans Can Solve the Million-Dollar Problem for Entities at Risk of Excise Taxes on Compensation
02.19.2018	Tax Incentive for Paid Family Medical Leave May Alleviate FMLA Benefit Complications
02.01.2018	Practical Insights on DOL Guidance Affecting Retirement, Medical and Disability Plans
01.17.2018	A Game Plan for Employers Facing Possible ACA Penalties
01.17.2018	A Game Plan for Employers Facing Possible ACA Penalties
12.21.2017	Parking Is Now A Taxable Expense
12.20.2017	Parking Is Now A Taxable Expense
12.05.2017	The DOL's Fiduciary Rule: An Update and Practical Advice
11.20.2017	Tax Reform and Accumulated Leave (aka "Special Pay") Plans
10.24.2017	Executive Orders May Be Asking Too Much of Regulators
10.06.2017	An Update: Retirement Plans, Leave Donation Programs, and Loans for Relief During States of Emergencies
08.15.2017	The DOL's Fiduciary Rule
08.22.2016	Employee Benefits: A Potpourri of Current Benefit Issues

04.11.2016	“Gating” Through Wellness Programs Under Proposed EEOC Regulation
01.06.2016	IRS Extends Due Dates for ACA Information Reporting Filings
11.05.2015	Florida Governmental DB Plans to Adopt New DC Plans for Insurance Premium Tax Dollars
07.21.2015	Deadline for 175/185 Plans Approaches
12.05.2014	Cafeteria Plan Amendments and the Employer Mandate
07.08.2014	ACA Waiting Period
11.04.2013	Health FSAs Allowed to Carryover Unused Balance
07.12.2013	What The Play or Pay Delay Means for Today
05.17.2013	All Employers Must Provide Exchange Notices to Employees by October 1; Guidance and Model Language Released by DOL
05.16.2013	Employers With Mandatory Health Coverage
11.15.2012	Health Care Reform for FSA and HRA Sponsors - Part II
10.24.2012	Health Care Reform for FSA and HRA Sponsors - Part I
09.27.2012	Medical Loss Ratio Rebate
01.05.2012	IRS Issues Guidance on Employer-Provided Cell Phones and Clothing

## All News

08.23.2019	Supreme Court Will Decide If Overfunded Pension Plans May Be Sued
10.15.2018	Lowell Walters Authors Article on Employer Matched Contributions Based on Student Loan Repayments
05.30.2017	ERISA Lawyer Lowell J. Walters Joins Carlton Fields

## Professional & Community Involvement

- National Association of Public Pension Attorneys (2011–2012)
- New Tax Professionals Association of Tampa Bay (2005–2008)



- Co-Chair (2006)
- College and University Professional Association for Human Resources, Florida Chapter (2019–present)
- Florida Municipal Attorneys Association (2011–present)
- Florida Public Pension Trustees Association (2004–2015)
- Florida West Coast Benefits Council
  - President (2007–2008)
- West Central Florida Healthcare Human Resources Association (2019–present)
- Society for Human Resource Management (2019–2021)
- The Florida Bar
  - Tax Section
  - Labor and Employment Law Section (2006–2015)
  - City, County, and Local Government Law Section (2006–2015)
- Hillsborough County Bar Association
  - Labor and Employment Section
  - Tax Section
- Hillsborough Education Foundation
  - School Endowment Committee (2009–2012)
- Hillsborough County Consumer Protection Board (2004–2007)
  - Chairman (2007)
- Greater Tampa Chamber of Commerce (2002–2004)
- Leadership Tampa Bay (2005)
- Tampa Bay Pension Council
- Tampa Connection Alumni Association (2003–2004)
- Tampa Connection (2002–2003)

## Speaking Engagements

- "The Dirty Dozen: 12 Complicated, Odd, or Interesting Employee Benefit Scenarios," West Central Florida Healthcare Human Resources Association (January 17, 2020)
- "Compensating Employees You Can't Afford to Lose: Deferred Compensation and Other Benefits for Key Employees," FICPA Suncoast Chapter Meeting (November 13–14, 2019)
- "In a Nutshell: Retirement Plan Fiduciary Compliance," Advizrs Retirement Plan Success - Creating Healthy Plan Options Lunch & Learn (November 5, 2019)
- "How to Select an Investment Advisor When You Don't Know a Thing About Investing," Florida Public Human Resources Association (August 2018)
- "Health Benefits Legal Update," Tampa Bay Risk Management Society (May 2018)
- "Retirement Plan Basics: An In-Depth Look at Early Distribution Penalties," Florida Public Human Resources Association (September 2017)
- "Retirement Plan Fiduciary Issues and Concerns," HR Florida (August 2017)

- "Retirement Plan Basics: An In-Depth Look at Early Distribution Penalties," Florida Public Human Resources Association (July 2017)
- "Early Distribution Penalties Under 72(t) for DB's, DC's & 457's," Florida Public Pension Trustees Association (September 2016)
- "How to Defend Your ACA Decisions to the IRS," M.E. Wilson Seminar (May 2016)
- "Defending Your ACA Decisions to the IRS," Wallace Welch & Willingham Webinar (April 2016)
- "Retirement Plan Participant Notices," Wallace Welch & Willingham Webinar (February 2016)
- "Hangers-On: Why Ineligible Individuals Continue to Be Covered," HR Florida (September 2015)
- "Employee Benefits Tax Tips & Oddities," Florida Public Human Resources Association (August 2015)
- "Why Size Matters!," 2014 HR Florida Annual Conference & Exposition, Society for Human Resource Management (October 7, 2014)
- "Retirement Plans: Reducing Organizational Risk, Lowering Fees & Improving Returns," HR Florida (October 2014)
- "Why Is This Guy Still on My Health Plan," Lorman Educational Services (March 27, 2014)
- "New IRS Interpretation of DROP Plans," Florida Public Pension Trustees Association (October 2013)
- "Understanding the Employer Mandate," Florida Association of Wholesale Distributors Health Care Reform Summit (October 2013)
- "FSAs, HRAs & HSAs: An Explanation & Comparison," HR Florida (August 2013)
- "Defined Benefits to Defined Contributions: Terminations, Freezes, Conversions & Reductions," Florida Public Human Resources Association (July 2013)
- "Do's and Don'ts of Wellness Incentives," Wellness Works Seminars, Wallace, Welch & Willingham (May 2013)
- "New Rules for HIPAA and Business Associates – What BAs Need to Do Under the Law and What Changes for Covered Entities," International Society of Certified Employee Benefit Specialists, Tampa Bay Chapter (April 2013)
- "Federal Tax Issues With DB Plans," Florida Public Pension Trustees Association (October 2012).
- "Reduce the Agony of Compliance and Increase the Thrills With a Well-Designed Retirement Plan (aka Cutting-Edge Issues for Governmental Retirement Plans)," Florida Public Human Resources Association (August 2012)
- "Using Benefits to Attract, Retain, and Increase Employee Productivity," HR Florida (August 2012)
- "The Effect of Actuarial Assumptions aka How the Pension Actuary Is Bankrupting Your City," Florida Government Finance Officers Association (May 2012)

## Credentials

### EDUCATION

- University of Miami School of Law (LL.M., Taxation, 2000)
- Brooklyn Law School (J.D., 1996)
- Rutgers University (B.A., 1993)

### COURT ADMISSIONS

- Florida State Courts

### BAR ADMISSIONS

- Florida

# Background

- GrayRobinson, P.A., Tampa, FL (2001–2017)

# Areas of Focus

## PRACTICES

- Business Transactions
- Employee Benefits, Compensation & ERISA
- Government Law & Consulting
- Labor & Employment

## INDUSTRIES

- Health Care
- Securities & Investment Companies