



James D. Harbert

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James Harbert leads the firm's employee plans practice and represents clients in the full spectrum of legal matters involving employee pension, profit sharing, group health, and other employee benefit plans, including advice and counseling and the defense of employee plan fiduciaries and sponsors in litigation and governmental investigations before the Department of Labor and the Internal Revenue Service.

Jim began his legal career as a trial attorney with U.S. Department of the Treasury. Since leaving public service, he has continued representing clients in contested tax matters. Notably, his engagements have included cases in which he uncovered governmental misconduct and overreach. In one case, his discovery of governmental abuse by an Illinois grand jury led to the suppression of key parts of the state's evidence and the removal of the state's lead lawyer. In another case, he successfully blocked in a federal district court the Internal Revenue Service's attempt to use secret grand jury testimony in litigation in the U.S. Tax Court against his client. In a third, he won a rare attorneys' fee award against the federal government for its overreach in pursuing an unjustified lawsuit.

Honors & Awards

- Selected for inclusion in *The Best Lawyers in America*® for Employee Benefits (ERISA) Law, 2023 – 2024
- Recognized on the Super Lawyers list by *Illinois Super Lawyers* magazine, 2005 – 2024
- Recognized as a "Leading Lawyer" in the area of Employee Benefits Law
- Big Shoulders Fund Director's Award, presented by the late Joseph Cardinal Bernardin, for *pro bono* legal work in support of inner-city Chicago Catholic schools

Representative Matters

Employee Plans Cases

- Defense of a pension actuary before the U.S. District Court for the Northern District of Illinois brought by the trustee of a defined benefit pension plan alleging that the actuary participated in a prohibited transaction with a company insider and seeking money damages and disgorgement of fees

Practices

Employee Benefits
Employee Stock Ownership Plans (ESOPs)
Labor & Employment
Life, Health, Disability & ERISA Litigation
Tax

Education

J.D., University of Virginia
School of Law
A.B., College of William and
Mary

Admissions

Illinois
Federal Trial Bar
U.S. Court of Appeals for the
Seventh Circuit
U.S. Court of Federal Claims
U.S. Tax Court
U.S. District Court for the
Central and Northern Districts
of Illinois



under ERISA. On the facts alleged, the district court dismissed all claims against the actuary.

- Defense of a Fortune 500 services company before the U.S. District Court for the Eastern District of New York, alleging a wrongful denial of life insurance benefits. On a motion to dismiss, the federal court dismissed all claims against the firm's client with prejudice before the commencement of discovery.
- Defense of a pension actuary before the U.S. District Court for the Northern District of Illinois in a suit alleging that the actuary was a fiduciary under ERISA who breached statutory duties to a defined benefit pension plan. The federal court rejected the allegation that the actuary was a fiduciary under ERISA as implausible and dismissed all of the claims against the actuary.
- Defense of a Fortune 100 retail company in a case before the U.S. District Court for the Northern District of Illinois, alleging a wrongful denial of medical benefits and COBRA continuation coverage. Following the completion of discovery, the court entered summary judgment in favor of the firm's client.

Tax Cases

- Represented an individual investor before the United States Court of Federal Claims challenging the government's position regarding the timing of the deductibility of a Ponzi scheme loss and the validity of the applicable Treasury regulations governing theft losses. Following discovery, the case was successfully mediated by a federal judge.
- Represented a closely-held corporate taxpayer before the Illinois Department of Revenue Administrative Hearings Division following a grand jury investigation. On a motion following the discovery of the state's abuse of grand jury information, the administrative law judge removed the state's lead lawyer from the case and suppressed critical parts of the state's evidence.
- Represented a corporate officer before the Illinois Department of Revenue Administrative Hearings Division in a case alleging a failure to ensure that corporate sales and use taxes be paid and personal liability for the taxes, penalties, and interest. After a trial, the administrative law judge found in favor of the officer.
- Defense of a corporate officer in the U.S. District Court for the Northern District of Illinois against a claim of personal liability for federal employment taxes. After the government fully conceded the merits of its claim, the federal court ordered an award of attorneys' fees against the government and in favor of the corporate officer.

Presentations

- Co-Presenter, "Update on Employee Benefit Plans," Hinshaw's 26th Annual Labor & Employment Seminar, Hoffman Estates, Illinois, October 27, 2022
- "Practitioner's Guide to Government Compliance Issues," American Bar Association, National Institute on ERISA Basics, Chicago, 2015, 2014, and 2013

Publications

- Author, "Severance Pay Plans and Arrangements," Chapter 1, *Employment Termination: Procedures, Grounds, and Challenges, 2022 Edition*, Illinois Institute of Continuing Legal Education, August 2022
- Co-Author, "Employee Plan Issues Arising in Individual Employment Terminations," Chapter 6, *Employment Termination Handbook*, Illinois Institute of Continuing Legal Education, 2013
- Co-Author, "Special Employee Plan Issues Arising in Mass Employment Terminations," Chapter 7, *Employment Termination Handbook*, Illinois Institute of Continuing Legal Education, 2013

Personal

Jim is an avid open-water swimmer and endurance athlete, having completed 19 Olympic distance triathlons.



Community/Civic Activities

- National Immigrant Justice Center Pro Bono Program, Volunteer Attorney