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Supreme Court Considering Review of Seattle's 'Play-or-Pay' Health Care Statute

The U.S. Supreme Court has indicated that it is considering a review of a Ninth Circuit Court of Appeals ruling that Seattle's so-called "play-or-pay" health care law, which requires large hotels in the city to provide health insurance coverage to employees or pay additional compensation, is not preempted by ERISA.

Enacted in 2019, Seattle's play-or-pay law (SMC 14.28) requires a covered employer to: (1) pay $420 per month toward a covered employee's health plan premium under the employer-sponsored health plan; or (2) pay $420 per month directly to the covered employee as additional compensation. SMC 14.28 also requires a covered employer to maintain records to demonstrate compliance with the law. SMC 14.28 took effect on July 1, 2020.

The ERISA Industry Committee (ERIC), a trade association comprised of large employer-sponsored health plans, sued in federal district court to block SMC

14.28 from taking effect, arguing that it was preempted by ERISA. Specifically, ERIC maintained that the record-keeping requirements of the law constituted "an ongoing administrative scheme" that "on its face, satisfied the definition of an ERISA welfare plan established or maintained by the employer for the purpose of providing health benefits." In other words, ERIC contended that SMC 14.28 impermissibly required the creation of an ERISA plan.

According to the court, an ERISA plan is "any plan, fund, or program . . . established or maintained by an employer . . . to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants . . . through the purchase of insurance or otherwise . . . medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death, or unemployment."

While arguing its case, ERIC pointed to ERISA Section 514(a), which says that "[ERISA] shall supersede any and all state [or local] laws insofar as they . . . 'relate to' any employee benefit plan." The purpose of this broad preemption clause is to ensure that plans are subject to a uniform body of benefit law, minimizing the administrative and financial burden of complying with conflicting requirements of various states.

Here, however, the federal district court found that SMC 14.28 does not require the creation or amendment of an ERISA plan because employers can comply with the law by making direct cash payments to employees. "There is little to differentiate the $420 monthly payments under the direct payment option from employees' regular wages, and the payments can be coordinated with employees' regular pay periods." Further, the court observed, "employee benefits paid out of the general assets of an employer do not constitute an ERISA plan." In enacting ERISA, the court said, Congress did not intend to regulate payments made directly to employees. Accordingly, SMC 14.28 is not preempted by ERISA.

On appeal, the Ninth Circuit relied heavily on its 2008 decision in *Golden Gate Restaurant Association v. City and County of San Francisco*, in which it held that a similar law is not preempted by ERISA. The appeals court, affirming the lower court's decision, noted that ERIC failed to distinguish SMC 14.28 on any meaningful point from *Golden Gate*.

Full text of press release (ERISA Industry Committee, June 1, 2022)

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