



The
ERISA
Industry
Committee



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ERIC and the National Business Group on Health Urge Obama Administration to Ensure Preservation of ERISA National Uniformity and Federal Preemption

Washington, D.C. – ERIC and the National Business Group on Health (NBGH) today jointly submitted a letter to U. S. Solicitor General Elena Kagan urging that she recommend Supreme Court review of a lower court decision that San Francisco’s ordinance creating a health mandate did not violate ERISA preemption. The Supreme Court recently asked the Solicitor General to provide her views on a petition that seeks review of a decision by the Ninth Circuit Court of Appeals, which held that ERISA does not preempt San Francisco’s employer-spending mandate for employee health care.

In a separate letter, ERIC and NBGH also urged Health and Human Services Secretary Kathleen Sebelius and White House Office of Health Reform Director Nancy-Ann DeParle to weigh in on behalf of the Obama Administration to ensure that neither judicial decision nor any health care reform legislation undermine national uniformity and federal preemption provided by the Employee Retirement Income Security Act (ERISA).

The Sebelius-DeParle letter specifically requests that the Administration – through the Solicitor General – support Supreme Court review of the “erroneous lower court decision” in *Golden Gate Restaurant Association v. City and County of San Francisco*.

ERIC President Mark Ugoretz said that, “employers depend on the national uniformity provisions of ERISA to administer their plans. Workers depend on preemption to ensure that they retain the same benefits regardless of where they live, work, or transferred. National uniformity results in lower costs and greater innovation than in any other health sector including federal and state programs. It is imperative that the Supreme Court uphold and Congress and the Administration reaffirm the ERISA preemption clause to prevent states and municipalities from forcing employers to navigate through a balkanized environment of inconsistent state laws.”

Helen Darling, President of the National Business Group on Health stated, “ERISA preemption is what makes it possible for 160 million people to enjoy the good health coverage they currently receive through employers. Without ERISA, they would pay more for less coverage.”

ERIC and NBGH argue that a “patchwork quilt of local regulation affecting benefit plans would be harmful to both employers and workers – especially to employees of businesses with worksites in multiple cities, counties or states.” If the San Francisco ordinance were upheld, employers would be faced with thousands of other diverse local laws, all of them requiring expensive and confusing administration and workers could never be assured that their benefits would remain the same regardless of where they lived.

The letter explains that, for multi-jurisdictional employers, ERISA preemption is essential. A central purpose of ERISA is to provide a uniform regulatory regime for employee benefit plans. Federal preemption allows employers to design uniform benefit plans for such multi-jurisdictional workforces and administer those plans

on a uniform basis, without the burden of identifying and conforming to local regulations affecting those activities. The higher administrative costs imposed on multi-jurisdictional plans will inevitably reduce the health care benefits that such plans provide and/or increase the costs borne by employees.

“Without federal preemption, employer-provided health care benefits would be gravely threatened,” ERIC and NBGH contend.

ERIC and NBGH also argue that uniform federal *enforcement* is as important as uniform federal *standards*. The *Golden Gate* case is a clear example of how diverse local enforcement and compliance regimes are as much a barrier to employer health plans as substantive mandates. “Federal preemption should be preserved in all employee-benefit contexts – legislative as well as judicial – and as to matters of enforcement as well as substance. Employers’ ability to provide health benefits could be undermined as much by a balkanized landscape of enforcement as by varied substantive mandates,” the letter concludes.

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The ERISA Industry Committee (ERIC) is a non-profit association committed to representing the advancement of the employee retirement, health, and compensation plans of America's largest employers. ERIC's members provide benchmark retirement, health care coverage, compensation, and other economic security benefits directly to tens of millions of active and retired workers and their families. ERIC has a strong interest in proposals affecting its members' ability to deliver those benefits, their cost and their effectiveness, as well as the role of those benefits in the American economy.

The National Business Group on Health is the nation's only non-profit, membership organization of large employers devoted exclusively to finding innovative and forward-thinking solutions to their most important health care and related benefits issues. The Business Group identifies and shares best practices in health benefits, disability, health and productivity, related paid time off and work/life balance issues. Business Group members provide health coverage for more than 50 million U.S. workers, retirees and their families. For more information, visit www.businessgrouphealth.org.