



Driven By and For Large Employers

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**Federal Preemption Lawsuit Against
Part 3 of the Seattle Hotel Employees Health and Safety Initiative
What You Need to Know**

Q1: What is Part 3 of the Seattle Hotel Employee Health and Safety Initiative?

A: The Seattle Hotel Employees Health and Safety Initiative originated as a ballot measure that was adopted by the City's voters and later added to the City's Municipal Code. Part 3 of the Initiative applies to large hotel employers, which are defined as employers who own or operate hotels with 100 or more guest rooms.

Part 3 requires large hotel employers in Seattle to provide health care coverage to certain hourly hotel employees for each month they work at least 80 hours. The health coverage must be at a specified level – the equivalent of a gold-level policy on the Washington Health Benefit Exchange. Otherwise, Part 3 requires large hotel employers to make payments, adjusted for inflation, of additional compensation directly to the employees each month. For 2018, the minimum amount is \$275 per month per employee, with actual amounts to be determined monthly based on each employee's compensation and household demographics. Under the City's final Rules, merely offering health coverage is not enough; the employees must be actually enrolled. Also, under the final Rules, employers contributing to certain union health and welfare plans (so-called Taft-Hartley plans or multiemployer plans) are exempted from these requirements as to hourly employees for whom such contributions are made.

The Initiative also requires large hotel employers to maintain detailed records for current and former employees for three years, including their regular hourly rate of pay and, for each month of full-time employment, the amount paid as additional compensation. Because eligible employees must be nonsupervisory, nonmanagerial, and nonconfidential employees, large hotel employers subject to Part 3 must also necessarily make that determination and maintain records in that regard.

Violations of Part 3 are punishable by penalties of a minimum of \$100 per day per employee, and up to \$1,000 per day per employee, with each workday constituting a separate violation.

Q2: When does Part 3 go into effect?

A. The City issued final Rules on May 31, 2018, requiring compliance with Part 3 under the Rules beginning July 1, 2018. Further guidance necessary for employers to

come into compliance with Part 3 was issued in June and July 2018.¹ Additional compensation payments for each month (if the employer fails to provide the health coverage described above) must be made not later than the 15th day of the following month, with the first payment deadline of August 15, 2018 for the month of July 2018.

Q3: Who is The ERISA Industry Committee (ERIC) which sued the City of Seattle over Part 3?

ERIC is a nonprofit trade association with its principal place of business in Washington, DC. It represents the interests of large employers with 10,000 or more employees that sponsor health, retirement, and compensation benefit plans governed by the Employee Retirement Income Security Act, a federal law commonly known as ERISA.

ERIC is the only national association that advocates exclusively for large employer plan sponsors on health, retirement, and compensation public policies on the federal, state, and local levels. ERIC's mission includes lobbying and litigation advocacy for nationally-uniform laws regarding employee benefits as contemplated by ERISA, so that ERIC's member companies do not have to comply with a patchwork of different and conflicting state regulatory requirements in addition to federal law.

To fulfill its purpose, ERIC previously has brought suit against governmental authorities to challenge state laws and regulations on the grounds that the laws are preempted – *i.e.*, superseded – by ERISA. ERIC's member companies operate in every industry sector, including hospitality, and voluntarily provide health coverage to millions of workers and families across the country. As such, ERIC advocates to preserve ERISA's national uniformity, which protects employers and employees from state and local regulation of health and retirement plans. Among ERIC's members are one or more employers owning or operating hotels in the City.

ERIC's advocacy for its large employer member companies includes litigation to preserve the national uniformity underlying ERISA preemption. As policymakers at the state and local level consider measures that threaten ERISA preemption, ERIC weighs in to educate policymakers on the breadth of ERISA preemption. In the event states and localities choose to move forward and enact policies that impact ERISA, ERIC does not hesitate to bring a lawsuit.

ERIC works with federal policymakers on measures that would strengthen ERISA preemption as it is the linchpin for employers offering health and retirement benefits to workers, retirees, and families across the country.

¹ Chapter 14.25 and the final rules and guidance are available at <https://www.seattle.gov/laborstandards/ordinances/hotel-employees-health-and-safety-initiative>.

Q4: Does Part 3 apply to ERIC members?

A: Part 3 applies to ERIC members who employ employees at and operate hotels with 100 or more guest rooms in Seattle.

Q5: Does ERIC support state or local programs to increase access to health care?

A: Yes, ERIC supports state or local programs to increase access to health care. ERIC supports such programs that: are consistent with ERISA; do not infringe on an employer's right to determine whether to provide a health plan; do not dictate the type of benefits the employer must offer if the employer decides to offer a health plan; and, do not result in an additional recordkeeping burden imposed by state or local laws on employers providing a health plan.

Q6: What is ERISA?

A: ERISA is a federal law that provides a nationally uniform set of rules and regulations for employee benefit plans, including health benefit plans, offered by private employers. ERISA contains within it a federal "preemption" provision invalidating any state or local law that "relates to" employee benefit plans, including health benefit plans. This is a very broad standard, as the U.S. Supreme Court has repeatedly emphasized.

Q7: Why is ERIC suing Seattle over Part 3?

A: ERIC provides powerful advocacy for its large employer member companies to preserve the national uniformity of ERISA preemption. Its advocacy includes initiating litigation where states and localities enact laws that have an improper impact on ERISA. Part 3 does just that and impermissibly "relates to" employee benefit plans, violating a core purpose of Congress in enacting ERISA, which was to provide nationally uniform rules. By specifying that large hotel employers must provide health benefits at mandated levels through an ERISA plan, or else pay "additional compensation" every month to each employee, Part 3 "relates to" ERISA plans.

In addition, Part 3 imposes specific recordkeeping and reporting requirements beyond those required by ERISA, leading to preemption because of the burden a multi-state company would face in navigating and complying with the administrative obligations established in state and local laws rather than a single, uniform body of federal rules.

Q8: What relief is ERIC seeking in the lawsuit?

A: ERIC is seeking an injunction permanently enjoining operation of Part 3 and a declaration that Part 3 is preempted by ERISA. ERIC's lawsuit defers seeking preliminary injunctive relief at this time and will seek, instead, to negotiate with the City a temporary nonenforcement agreement pending a final determination in the litigation, so as to save the Court from having to consider an emergency motion. ERIC reserves its right to seek a preliminary injunction should such negotiations be unsuccessful.

Q9: What other litigation has ERIC brought regarding ERISA preemption?

A: ERIC previously sued the Oregon Retirement Savings Board (ORSB) on ERISA preemption grounds over the employer reporting requirement imposed by Oregon's state-run mandatory retirement plan, OregonSaves. In the Oregon complaint, ERIC argued that ERISA preempts the OregonSaves reporting requirements imposed on employers that already provide an ERISA retirement plan to their Oregon employees. ERIC and the ORSB settled in March of this year, with an exemption for ERIC member companies.

ERIC has also filed numerous amicus briefs, often with other leading business trade groups, to support the ability of large employers to design, administer, comply with, and pay for health, retirement, and compensation benefits that are tailored to their unique workforce.

Q10: Do the Affordable Care Act (ACA) and its requirements affect the lawsuit?

A: No, because the ACA sets nationally-uniform standards for ERISA plans that are different from the ones Seattle seeks to enforce with Part 3. The ACA amended ERISA to require group health plans to offer certain benefits when an employer adopts a health plan for its employees and also levies penalties in some instances in which an employer does not offer a health plan. The ACA does not mandate the level of coverage that Part 3 does; nor does the ACA require coverage for employees working the limited level of hours defined in Part 3. In addition, the ACA fully preserves ERISA's traditional preemption, so that employers who offer health plans to their employees need only comply with the uniform federal standards and not worry about the need to craft different plans for each locality deviating from the ACA requirements Congress added to ERISA.