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CLIENT**BULLETIN**

ERISA Does Not Preempt Illinois Prevailing Wage Act

Does ERISA preempt a state law that requires certain employers to provide "fringe benefits" to their employees? The Appellate Court of Illinois, Third District, recently answered, "no," in response to that question.

The ERISA preemption issue in *People ex rel. The Department of Labor v. Lion Construction, LLC,* 2019 IL App (3d) 180080 (Ill. App. Ct. 2019), stemmed from a dispute over what benefits qualify as "fringe benefits" under Illinois' Prevailing Wage Act. Lion Construction paid its employees a "base wage." *Id*. at ⁋ 3. Included in the calculation of that base wage were amounts Lion Construction paid to a fund affiliated with the employees' union (Union Fund). *Id.* The Union Fund used those amounts to pay for union initiation fees, dues, and training. *Id.* Lion Construction argued the amounts paid to the Union Fund were "fringe benefits," but the Department disagreed. *Id.* According to Lion Construction, the Department's refusal to treat the amounts paid to the Union Fund as "fringe benefits" represented an attempt to use the Prevailing Wage Act to "strong arm" the company into providing "traditional pension and welfare benefits" for its employees. *Id.* ⁋ 7. Because ERISA governs the administration of employer-sponsored employee pension and welfare benefit programs, Lion Construction argued the Department's action to enforce the Prevailing Wage Act "related to" and, therefore was preempted by, ERISA. The trial court agreed and granted Lion Construction's motion to dismiss. *Id.*

The Appellate Court reversed. It observed that ERISA preempts "all state laws insofar as they may now or hereafter relate to any employee benefit plan" that is covered by ERISA. *Id.* at 10 (*citing Scholtens v. Schneider,* 173 Ill. 2d 375, 379 (1996)); 29 U.S.C. § 1144(a) (2012). The court further observed that ERISA's "relate to" language is largely "unhelpful" because, as the United States Supreme Court explained, "[i]f 'relate to' were taken to extend to the furthest stretch of its indeterminacy, then for all practical purposes preemption would never run its course, for really, universally, relations stop nowhere." *Id.* at ⁋ 10 (quoting *N.Y. State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655 (1995)). Preemption is a question of congressional intent and the starting point for such an analysis is the assumption that Congress did not intend to "supplant state law." *Id.* ⁋ 9. Congress enacted ERISA to protect the interests of participants in employee benefit plans, and it does so by establishing reporting requirements and other safeguards concerning the administration of such plans. *Id.* at ⁋s 12-13. Congress elected to preempt state law to ensure the administration of employee benefit plans was uniform, and an exclusively federal concern, thus sparing plans from what might otherwise be a patchwork scheme of state regulation. *Id.* at ⁋ 13. A state law is preempted by ERISA, therefore, if it "has a connection with" or "reference to" an employee benefit plan. *Id.* at ⁋ 11.

The *Lion Construction* court explained that the Prevailing Wage Act requires certain employers to pay their employees "no less than the general prevailing wage." *Id.* at ⁋ 14. The "prevailing wage," according to the Act, includes the hourly wages paid to employees, plus the "annualized fringe benefits" that generally accompany work performed in the relevant locality. *Id.*

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The court found that the Prevailing Wage Act has no connection with and makes no reference to the Union Fund, or to any other employee benefit plan. *Id.* at ⁋ 15. The Act, therefore, does not "relate to" an employee benefit plan for purposes of ERISA's preemption provision and is not preempted by ERISA. *Id.*

For more information, please contact:

Joseph R. Jeffery | *jjeffery@cmn-law.com*
Tabitha E. Hill | *thill@cmn-law.com*

If you have any questions about this Client Bulletin, please feel free to contact any of the attorneys listed or the CMN attorney with whom you regularly work.

Chittenden, Murday & Novotny LLC
303 W. Madison St. Suite 1400
Chicago, Illinois 60606
312.281.3600

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