U.S. Department of Labor

Employee Benefits Security Administration
Washington, D.C. 20210

December 4, 2018

Julie A. Spiezio
Senior Vice President & General Counsel
American Council of Life Insurers
101 Constitution Avenue, NW
Suite 700
Washington, DC 20001-2133

Dear Ms. Spiezio:

This responds to your request for an information letter on the application of section 514(a) of the Employee Retirement Income Security Act of 1974 (ERISA) to state civil laws that require employers to obtain written consent before withholding amounts from employees' wages for contribution to an ERISA-covered plan. In particular, you ask if ERISA section 514(a) would preempt such a state law if the law prohibits employers from adopting and implementing automatic enrollment arrangements under which the employer automatically enrolls eligible employees in a disability benefit plan, and contributes part of the employee's wages as contributions to the plan, unless the employee affirmatively elects not to participate.

Section 514(a) of ERISA, subject to certain exceptions, states that Title I of ERISA preempts state laws insofar as they "relate to" any ERISA-covered employee benefit plan. The U.S. Supreme Court has said that a state law has a prohibited relation to an ERISA plan if it makes reference to, or has a connection with, employee benefit plans. *See, e.g., Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983); *California Div. of Labor Standards Enforcement v. Dillingham Constr., N.A., Inc.*, 519 U.S. 316 (1997); *Egelhoff v. Egelhoff*, 532 U.S. 141 (2001). The Supreme Court has said that a state law "makes reference to" an ERISA benefit plan if the law acts "immediately and exclusively" upon ERISA plans, or if the existence of an ERISA plan is essential to the law's operation. *Dillingham*, 519 U.S. at 324-25. The Court has identified at least three instances in which a state law can be said to have a prohibited "connection with" employee benefit plans -- when it (1) mandates employee benefit structures or their administration; (2) binds employers or plan administrators to particular choices or precludes uniform administrative practice, thereby functioning as a regulation of an ERISA plan itself; and (3) provides an alternative enforcement mechanism to ERISA. *See New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 514 U.S. 645, 658-660 (1995).*

The Department of Labor (Department) in Advisory Opinion 2008-02A concluded that section 514(a) of ERISA preempted a Kentucky law that required employers to obtain written consent before withholding amounts from an employee's wages for contribution to an ERISA-covered group health or other welfare benefit plan because the law had a prohibited connection with ERISA plans. The Department concluded that the law prohibited automatic enrollment arrangements in such plans and directly interfered with plan requirements relating to eligibility for participation and benefits and the funding mechanism for the plan. The Department similarly concluded in Advisory Opinion 94-27A that a written consent requirement in a New York wage withholding law was preempted to the extent it prohibited employers from allowing their employees to implement or change salary reduction contributions to ERISA-covered

plans via telephone or voice response system. The Department concluded that the law related to employee benefit plans because it was specifically designed to affect employee benefit plans and sought to restrict the choices of such plans with regard to the administration of their funding policies. *See also* Advisory Opinions 96-01A and 93-05A (concluding that a Puerto Rico law was preempted by ERISA section 514(a) to the extent it is interpreted to limit, prohibit, or regulate the funding of employee benefit plans covered by Title I of ERISA, including payroll deductions to such employee benefit plans).

Consistent with the foregoing, it continues to be the Department's view that a state law like those involved in above advisory opinions would be preempted by section 514(a) of ERISA to the extent the law is interpreted to limit, prohibit, or regulate an employer's adoption of automatic enrollment arrangements in connection with a disability benefit plan or other welfare benefit plan covered under Title I of ERISA, or making related deductions from wages for contribution to such a plan.[1]

We hope this information is of assistance to you.

Sincerely,

Louis J. Campagna
Chief, Division of Fiduciary Interpretations
Office of Regulations and Interpretations

[1] Section 514 of ERISA includes provisions that save certain types of state laws from the general preemption provision in ERISA section 514(a). For example, section 514(b)(4) saves from preemption under section 514(a) generally applicable criminal laws of a State. You did not ask about, and this letter does not address, the application of any of the savings provisions in ERISA section 514, including section 514(b)(4). Accordingly, this letter addresses only state civil laws that fall outside the scope of section 514(b)'s savings clauses. Further, you did not ask and this letter does not address the types of notice and disclosure provisions that a plan fiduciary would need to adopt and implement for an automatic enrollment program to be operated consistent with the fiduciary's prudence and loyalty obligations under section 404 of ERISA.