U.S. Department of Labor Pension and Welfare Benefits Administration
Washington DC 20210

November 25, 1992

Mr. Lloyd W. Aubry, Jr.
Director of the Department
of Industrial Relations
455 Golden Gate Avenue
San Francisco, CA 94102

Mr. John Garamendi
Insurance Commissioner
45 Fremond Street
San Francisco, CA 94105

92-26A
ERISA SECTION
514(a), 4(b)(3)

Dear Mr. Aubry and Commissioner Garamendi:

This is in reference to a request by Larry C. White of the Legal Division, California Department of Insurance, for guidance on section 514 of the Employee Retirement Income Security Act of 1974 ("ERISA") and its application to certain provisions of California law that require employers to provide workers' compensation benefits to employees. The information we have received represents that the State of California, acting through its Department of Industrial Relations, has sought to compel certain business entities, including a corporation doing business under the name Stafcor and customers of Stafcor, to comply with its workers' compensation laws. We are further advised that Stafcor and its parent corporation have filed an action in the U.S. District Court for the Northern District of California, seeking to enjoin the State of California from holding Stafcor and its customers in violation of California's workers' compensation law. The request for guidance specifically concerns the application of section 514 of ERISA to the issues raised by the Stafcor lawsuit. Because of the importance of those issues to the State of California, we have determined to respond directly to the Director of the Department of Industrial Relations and the Commissioner of Insurance.

Based on a review of the complaint, it appears that Stafcor is a company engaged in the business of supplying workers to other companies in various industries in California. Stafcor regards such persons as its own employees. On the other hand, the State of California maintains that such persons are employees of Stafcor's customers.[1] Medical and certain other benefits are provided to such persons through an employee welfare benefit plan (the "Plan") sponsored by Stafcor's parent corporation. The Plan provides benefits for both work-related and non-work related injuries and diseases. Stafcor maintains that the Plan is covered by Title I of ERISA.[2]

According to the information provided, section 2675 of the California Labor Code requires California employers engaged in garment manufacturing, such as certain Stafcor customers, to maintain a current certificate of registration issued by the California Department of Industrial Relations. In order to obtain such a certificate, employers must comply with section 3700 of the California Labor Code, which requires employers to provide coverage for state-mandated workers' compensation benefits either by purchasing workers' compensation insurance from a licensed insurance company or by obtaining a certificate of self-insurance from the California Department of Industrial Relations. Stafcor refuses to meet either requirement, maintaining that application of these state law requirements with respect to workers supplied by Stafcor is preempted under ERISA section 514(a) because the workers are provided workers' compensation coverage through the Plan. Stafcor and certain customers claim that they may not be required by California authorities to comply with the California workers' compensation law, ostensibly because the Plan, while providing for workers' compensation-type benefits, is established for purposes other than compliance with the state law, such as for the purpose of providing other benefits, and therefore is covered by ERISA.[3] State laws relating to the Plan would thus be preempted by section 514(a) of ERISA.

In pertinent part, section 514(a) provides that ERISA preempts the application of state laws "insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b)."[4] Section 4(a) provides, inter alia, that Title I of ERISA applies to all employee benefit plans within the definition of that term provided by section 3(3). Section 4(b) describes certain types of plans that otherwise would be covered by Title I, but that are specifically exempt from coverage. Among the types of employee benefit plans exempted by section 4(b) are those "maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws." ERISA § 4(b)(3). The information provided indicates, and we assume for purposes of this response, that the California law at issue is a "workmen's compensation law" within the meaning of section 4(b)(3). Based on that assumption, ERISA would not preempt the application of that law to employee benefit plans that are established "solely for the purpose of complying" with the California law.

In Shaw v. Delta Airlines, Inc., 463 U.S. 85 (1983), the Supreme Court considered the effect of the exemption established by section 4(b)(3) on the scope of preemption under section 514 with respect to a state disability laws.[5] Although the Court held that the state disability law was preempted to the extent that it related to a "multibenefit" plan that provided disability benefits among others, rather than to a plan that "solely" satisfied state disability requirements, see id. at 107-08, the Court further held that a state is not therefore rendered powerless to enforce its state disability laws against employers providing such plans. Id. at 108. The Court described the role preserved for state laws enumerated in section 4(b)(3) as follows:

Congress surely did not intend, at the same time it preserved the role of state disability laws, to make enforcement of those laws impossible. A State may require an employer to maintain a disability plan complying with state law as a separate administrative unit. Such a plan would be exempt under § 4(b)(3). The fact that state law permits employers to meet their state-law obligations by including disability insurance benefits in a multibenefit ERISA plan ... does not make the state law wholly unforceable as to employers who choose that option.

In other words, while the State may not require an employer to alter its ERISA plan, it may force the employer to choose between providing disability benefits in a separately administered plan and including the state-mandated benefits in its ERISA plan. If the State is not satisfied that the ERISA plan comports with the requirements of its disability insurance law, it may compel the employer to maintain a separate plan that does comply. Id., at 108.

Although Shaw involved a state disability insurance law, the Court's reasoning applies equally to the other types of state laws enumerated in section 4(b)(3) of ERISA.

Based on the reasoning in Shaw, it is clear that a state may require employers to provide workers' compensation benefits through a separate plan maintained solely for that purpose. A state could also permit employers to satisfy state workers' compensation requirements through a plan that is covered by ERISA. In addition, if a state permits an employer to provide required benefits through an ERISA-covered plan, the state may determine, in a given case, whether its requirements have been met, and may, as a remedy for any failure, require that the employer comply with state law, while permitting the employer to choose whether to do so within or outside the ERISA-covered plan.

Accordingly, where, as in this case, an employer provides workers' compensation benefits through a plan that may be covered by ERISA, a state administrative action denying a certificate of compliance with state-mandated workers' compensation requirements would not, in the view of the Department, relate to the ERISA-covered employee benefit plan for purposes of section 514(a) and would not, therefore, be preempted by ERISA.

This letter constitutes an advisory opinion under ERISA Procedure 76-1.

Sincerely,

ROBERT J. DOYLE
Director of Regulations
and Interpretations

cc: Larry C. White
Staff Counsel, Legal Division
Department of Insurance

John M. Rea
Chief Counsel
Department of Industrial Relations

'We offer no opinion on the question of whether the customers of Stafcor are the employers of Plan participants.

[2] For purposes of this letter, the Department assumes, but does not make a determination, that this representation made by Stafcor in the litigation is correct.

[3] This result would, additionally, depend on the Plan's meeting certain ERISA coverage criteria not relevant to this opinion.

[4] In addition, section 514(b) contains various exceptions to the general preemption provision in section 514(a). These include exceptions for state laws regulating insurance; however, employee benefit plans may not be deemed to be engaged in the business of insurance for purposes of that exception. This section also contains limited exceptions for state laws regulating plans that are multiple employer welfare arrangements ("MEWAs") under ERISA section 3(40). Under section 514(b)(6), plans that are MEWAs and fully insured are subject to state law specifying reserves and contributions. Plans that are MEWAs but which are not fully insured are subject to state insurance laws to the extent not inconsistent with ERISA. MEWAs that are not plans are fully subject to state law regulation. This letter expresses no opinion as to whether the arrangement at issue here is in fact a MEWA.

[5] Section 4(b)(3) of ERISA also excludes from Title I any plans maintained solely for the purpose of complying with state disability insurance laws.