

U.S. Department of Labor

Pension and Welfare Benefits Administration
Washington, D.C. 20210



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96-03A
ERISA SEC. 514

Stuart M. Lewis, Esq.
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Dear Mr. Lewis:

This is in response to your request concerning the application of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you inquired whether Minnesota Statutes section 61A.092 is preempted by section 514(a) of ERISA or whether section 61A.092 is saved from preemption under section 514(b) of ERISA as a law regulating insurance.

Section 61A.092 prescribes certain content requirements for group life insurance contracts covering employees, including a provision that an insurer must offer continued life insurance coverage at group rates to an employee of a contractholder if the employee is terminated or laid off or if the employee's hours are reduced and a provision granting such employee an option to convert to an individual policy upon the cessation of the continuation coverage at group rates. It also imposes notice and payment collection requirements on employers who sponsor life insurance plans that are insured through group insurance, and it imposes liability on employers for failure to give the required notice or transmit the required payments.

Specifically, section 61A.092 contains the following requirements: Subdivision 1 of section 61A.092 requires most group life insurance policies issued or renewed after August 1, 1987 covering Minnesota residents¹ to provide that employees who are terminated (except for gross misconduct), or whose hours are reduced, have the right to continue group life insurance coverage for themselves and their qualified dependents, as long as the policy remains in force for other employees. Subdivision 2 provides that the employer or former employer of such employees must collect the premiums for continuation coverage and transmit them to the insurer. Subdivision 3 requires that the employer give an employee who terminates employment or whose hours are reduced notice of the right to elect continuation coverage at group rates. Pursuant to subdivision 4, an employer who fails to give notice or to transmit premiums to the insurer is liable for the life insurance benefits the employee would have received if the employee's coverage had not terminated. Subdivision 5 of section 61A.092 requires a group life insurance policy to grant an option to an employee, surviving spouse or dependent to convert to an individual policy providing the same or substantially similar benefits upon the expiration of the required continuation coverage at group rates.

Section 514(a) of ERISA, which broadly preempts all state laws insofar as they relate to employee benefit plans covered by Title I of ERISA subject only to certain exceptions expressly provided in section 514(b) of ERISA, was enacted to ensure that ERISA's substantive standards would uniformly apply to all plans to protect plan participants and beneficiaries, to promote the development of employee benefit plans, and to assure uniform regulation of such plans. Congress intended through section 514(a):

¹ Specified policies issued outside Minnesota are not subject to the requirements of section 61A.092.

to ensure that plans and plan sponsors would be subject to a uniform body of benefits law; the goal was to minimize the administrative and financial burden of complying with conflicting directives among States or between States and the Federal Government . . . , [and to prevent] the potential for conflict in substantive law . . . requiring the tailoring of plans and employer conduct to the peculiarities of the law of each jurisdiction.

New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Insurance Co., 115 S.Ct. 1671, 1677 (1995), quoting Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 142 (1990).

A law "relates to" an employee benefit plan generally if it has "a connection with or a reference to such a plan." Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 96-97 (1983). State laws that make reference to a plan are laws that are specifically directed at ERISA-covered plans, and state laws that have a connection with a plan include, for example, state laws that mandate benefit structures or administration (as in Shaw, FMC Corp. v. Holliday, 498 U.S. 52 (1990), and Alessi v. Raybestos-Manhattan, Inc., 451 U.S. 504 (1981)) and state laws that establish alternate enforcement mechanisms in addition to those provided by ERISA, as in Ingersoll-Rand Co. v. McClendon, 498 U.S. 133 (1990).

Section 61A.092 requires employers to notify employees, to collect and transmit premium payments, and to provide specific benefits. In addition, it imposes penalties on employers who fail to perform these duties, including liability for the benefits that would have been available. This law mandates a specific benefit structure and imposes substantial administrative duties, directly affecting the structure of an employer's plan. Therefore, we consider that it interferes with Congress' goal in enacting section 514 of ensuring uniform regulation of ERISA-covered plans. We conclude that section 61A.092 "relates to" plans covered by ERISA within the meaning of section 514(a) and is therefore preempted by section 514(a) unless saved from preemption by one of the exceptions of section 514(b).²

At issue in this case, specifically, is whether section 61A.092, which relates to employee benefit plans, is saved from preemption as a law regulating insurance. In our view, because subdivisions 2, 3 and 4 of section 61A.092 impose directly on employers the obligation to give notice and collect premiums and the liability for failure to fulfill such obligations, these subdivisions are not directed at insurers or any entity connected with the insurance industry, and thus do not constitute the regulation of insurance. Subdivisions 1 and 5 of section 61A.092, in contrast, prescribe the content of group life insurance contracts by mandating that insurers include in their group insurance contracts provisions for continued life insurance coverage for former participants at group rates and individual conversion rights; subdivision 6 specifies the types of insurance contracts subject to the requirements of section 61A.092. By prescribing the content of specific group life insurance contracts, subdivisions 1, 5, and 6 of section 61A.092 directly regulate insurers, not employers or plans, and therefore, in the view of the Department of Labor (the Department), constitute state laws regulating insurance, which are saved from ERISA preemption in accordance with ERISA section 514(b)(2)(A).³

² Section 514(b)(2)(A) exempts from ERISA preemption those state laws that regulate insurance, banking, or securities. Section 514(b)(4) provides an exception from preemption for generally applicable state criminal laws. In addition, section 4(b) of ERISA exempts from ERISA coverage certain specified employee benefit plans, including plans maintained solely for the purpose of complying with applicable state workers' compensation, unemployment compensation, or disability insurance laws.

³ See Metropolitan Life Insurance Co. v. Massachusetts, 471 U.S. 724 (1985); Henkin v. Northrop Corp., 921 F.2d 864 (9th Cir. 1990). See also Advisory Opinion 82-06A.

In conclusion, it is the Department's view that subdivisions 2, 3, and 4 of Minnesota Statutes section 61A.092 are preempted by ERISA as state laws relating to ERISA-covered employee benefit plans and are not preserved by any exception to preemption. However, subdivisions 1, 5 and 6 of section 61A.092 constitute the regulation of insurance and are preserved from preemption by ERISA.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Section 10 of the Procedure explains the effect of advisory opinions.

Sincerely,

Susan G. Lahne
Chief, Division of Coverage
Office of Regulations and Interpretations