



# Preemption: No Room for State Regulations

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[The Employee Retirement Income Security Act of 1974](#) or ERISA governs the minimum standards for voluntary health and retirement benefit plans in the private sector. ERISA plans are regulated by the Employee Benefits Security Administration in the U.S. Department of Labor.

ERISA covers health and retirement benefit plans “established and maintained by an employer or employee organization,”<sup>1</sup> except for plans offered by a government or a church. ERISA does not regulate government sponsored health plans or plans bought through the marketplace.

Congress enacted ERISA because they recognized employers with employees in multiple states would be less inclined to provide health and retirement benefits to employees if they had to comply with different regulations for these plans in each state. ERISA provides uniformity for employers. This is an important cornerstone for ERISA plans and calls for the utmost protection of the preemption within ERISA. Nationally, a self-regulated ERISA plan covers 65% of all employees.<sup>2</sup>

Since ERISA plans are federally regulated, ERISA preempts any state or local laws applicable to these plans. ERISA states that it “supersedes any and all state laws insofar as they may now or hereafter relate to any employee benefit plan...”<sup>3</sup> This explicit statement triggers the *full federal preemption for ERISA*. It then goes further with a

**Preemption occurs when a state law is inconsistent with a federal regulation concerning a federal program where the federal regulations leave no room for state regulations; the federal regulation will win.**

‘Deemer clause’ making limited exceptions, *ERISA plans cannot be regulated as insurance, banking, or security*. This means any state law that deems or treats ERISA plans as insurance still are preempted by the federal ERISA laws.<sup>4</sup> States are still able to regulate insurance, but ERISA explicitly removes companies providing *self-funded plans* from regulation by a state’s insurance laws.

## Benefits of ERISA Preemption for Employees and Employers<sup>5</sup>

<b>Costs</b>	For employers with employees in multiple states, having one set regulatory framework lowers the costs of compliance and coverage.
<b>Consistency</b>	Employees across multiple states have the same benefits, creating an equal advantage for all states in attracting more employees from that company.
<b>Tailored to Needs</b>	Employers can tailor the offered plan to the workforce they employ rather than being beholden to state legislative initiatives.

<sup>1</sup> [29 U.S.C.1002\(1\) \(2021\)](#)

<sup>2</sup> Kaiser Family Foundation, [Employer Health Benefits 2022 Annual Survey](#)

<sup>3</sup> *29 U.S. Code § 1144*

<sup>4</sup> *Id.*

<sup>5</sup> EBRI, [ERISA at 50: No Midlife Crisis for ERISA Preemption](#)

## ERISA and State Regulations

States continue to create regulations for various health plan entities that may or may not relate to ERISA plans, but because of preemption are challenged in court and get struck down. A popular issue for regulation is pharmacy benefit managers (PBMs). These laws often are challenged by being too broad in scope by creating regulations for ERISA plan companies.

One such law and subsequent challenge is Arkansas' Act 900, which mandated reimbursement rates for PBMs, and broadly defined employee health benefit plans to include ERISA plans. The Court<sup>6</sup> noted that no preemption exists between Act 900 and ERISA because the state law can relate to a cover plan when there is reference to or a connection with the plan. But since Act 900 is a cost regulation and does not exclusively control ERISA plans, the preemption does not apply.

The Court pointed to two instances where preemption would occur:

1. Where the state law provides a structure requirement including benefit design, and
2. Where the state law has indirect economic effects "that force ERISA plans to adopt a scheme of substantive coverage" for a particular state.<sup>7</sup>

In sum, the Court notes the central question to determining whether ERISA preempts a state law is whether a state law "governs a central matter of plan administration or interferes with nationally uniform plan administration."<sup>8</sup>

General Summary of Preemptive Actions by State Policy	
State Cost Regulation	Not Preempted <sup>9</sup>
Mandating Coverage or Benefit	Preempted <sup>10</sup>
Traditional Insurance Provider	Not Covered by ERISA, regulated as insurance providers
Network Restrictions	Preempted <sup>11</sup>
Plan Administration	Preempted <sup>12</sup>

While these are just a few examples of cases where state regulations are struck down because of federal preemption when trying to regulate ERISA. The conclusion is clear: States are *highly limited* on what regulations will overcome federal preemption.



<sup>6</sup> *Rutledge v. Pharm. Care Mgmt. Ass'n.*, 592 US \_\_\_ (2020)

<sup>7</sup> *Id.*

<sup>8</sup> *Rutledge* quoting *Gobeille v. Liberty Mutual Insurance Co.*, 577 U.S. 312 (2016), 136 S. Ct. 936; 194 L. Ed. 2d 20 (2016)

<sup>9</sup> *Rutledge v. Pharm. Care Mgmt. Ass'n.*, 592 US \_\_\_ (2020)

<sup>10</sup> *Pharm. Care Mgmt. Ass'n. v. Mulready, et. al*, No. 22-6074 (10th Cir. Aug. 15, 2023)

<sup>11</sup> *Gobeille v. Liberty Mutual Insurance Co.*, 577 U.S. 312 (2016), 136 S. Ct. 936; 194 L. Ed. 2d 20 (2016)

<sup>12</sup> *Rutledge v. Pharm. Care Mgmt. Ass'n.*, 592 US \_\_\_ (2020)