NINTH CIRCUIT UPHOLDS CALIFORNIA MANDATORY AUTO-IRA LAW

Hodgson Russ Employee Benefits Newsletter
June 28, 2021

Attorneys

Peter Bradley
Michael Flanagan
Richard Kaiser
Ryan Murphy
Amy Walters

Practices & Industries

Employee Benefits

State-facilitated retirement savings programs notched a big victory in the Ninth Circuit recently. Until May 6th, no circuit court had applied ERISA's preemption rules to one of the growing number of state-facilitated retirement savings programs. Many states – such as California and Illinois – have these types of programs in place which are designed to increase retirement savings for people employed by employers who do not offer retirement savings plans. There was some debate as to whether these programs were preempted by ERISA's broad language, but the Ninth Circuit found that preemption is not an issue.

This lawsuit arose out of California's implementation of the CalSavers program in 2017. CalSavers is a state-run IRA savings program for employees of certain employers. In general, non-governmental employers with five or more employees must participate in CalSavers unless the employer offers a qualified retirement plan. Nonetheless, an employer's participation in the program is fairly limited. Employers have three general obligations: 1) register for the program, 2) provide the program with certain information about their employees, and 3) set up a payroll deposit arrangement through which employee contributions can be remitted.

The plaintiffs in the case alleged that ERISA preempted the CalSavers program. ERISA "preempts 'any and all State laws insofar as they may now or hereafter relate to any employee benefit plan' that ERISA covers." Read literally, ERISA's language could preempt just about any state law that even mentions employee benefits plans. To avoid such widespread preemption, courts have created two categories of state laws that are preempted: 1) state laws which have a "reference to" ERISA plans, and 2) state laws that have an "impermissible connection with ERISA, meaning a state law that governs… a central matter of plan administration or interferes with nationally uniform plan administration."

The Ninth Circuit found that CalSavers does not fit into either category. First, the court stated that CalSavers is not even an "employee benefit plan" nor does it force any employer to create one. Using statutory definitions found in ERISA, the court noted that an "employee pension benefit plan" – the type of plan relevant to this case – must be established or maintained by an employer. Under CalSavers, however, the employer does not establish or maintain the plan. An employer's three obligations are mentioned above and they do not rise to the level of establishment or

maintenance.

The court continued by noting CalSavers does not act on ERISA plans at all, since employers who offer qualified retirement plans are exempt from the program. Nor does the program interfere with the purposes of ERISA because an employer's retirement plan is still subject to just one law: ERISA. It is the state-facilitated program that is subject to CalSavers and that is not an employer's plan.

It is unclear if this ruling will prompt more states to enact these types of programs. It is also possible that this ruling could spur more cities to get in on the action. New York City joined Seattle recently as the only cities to have these types of programs in the works.

Howard Jarvis Taxpayers Ass'n v. California Secure Choice Ret. Sav. Program, 997 F.3d 848 (9th Cir. 2021)