

Compensation and Benefits Insights



MARCH 2019

DOL Confirms ERISA Preemption of State Laws Affecting Automatic Enrollment Features in ERISA Plans

Author, *Donna Edwards*, Atlanta, +1 404 572 2701,
dedwards@kslaw.com

The U.S. Department of Labor (the "DOL") issued an [Information Letter](#) on December 8, 2018 (the "Letter") confirming that state laws requiring written consent before amounts are withheld from employees' wages to contribute to an employee benefit plan covered by the Employee Retirement Income Security Act of 1974 ("ERISA") are preempted under ERISA § 514(a), which generally preempts state laws that "relate to" ERISA plans. The Letter confirmed that it continues to be the DOL's view that such a state law would be preempted by 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 welfare benefit plan (such as a disability benefit plan) covered under Title I of ERISA, or making related deductions from wages for contribution to such a plan.

BACKGROUND

ERISA Section 514(a), subject to certain exceptions, provides 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.

LETTER

The Letter responds to a question received from the American Council of Life Insurers about whether ERISA Section 514(a) would preempt a state law prohibiting 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

Our Practice

We advise public, private, taxable and tax-exempt clients on a wide variety of issues related to the design, preparation, communication, administration, operation, merger, split-up, amendment and termination of all forms of employee benefit plans and executive compensation programs and related funding vehicles. The firm has defended clients in significant high-profile ERISA litigation matters, including 401(k) plan "stock drop" cases and other breach-of-fiduciary-duty class actions.

Contact

Kenneth A. Raskin
Chair of the Employee
Benefits & Executive
Compensation Practice
New York
+1 212 556 2162
kraskin@kslaw.com

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employee's wages as contributions to the plan, unless the employee affirmatively elects not to participate.

The DOL noted in the Letter that in [DOL Advisory Opinion 2008-02A](#), the DOL concluded that section 514(a) of ERISA preempted a state 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 DOL in that opinion 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 DOL also cited [DOL Advisory Opinion 94-27A](#), in which the DOL concluded that a written consent requirement in a state 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. In that opinion, the DOL 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.

The Letter confirmed that it continues to be the DOL's view that a state law like those involved in those earlier 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.

ISSUES NOT ADDRESSED IN THE LETTER

The DOL clarified in the Letter that it 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 ERISA § 404 or the application of ERISA § 514(b) (which saves certain state laws from ERISA preemption). In addition, the Letter does not address non-ERISA plans.

EFFECT OF LETTER

The Letter was issued by the DOL in the form of an information letter, which the DOL issues to call attention to well established principles or interpretations. Thus, although the Letter does not have precedential value, the Letter provides helpful confirmation that the DOL's position with respect to the ERISA preemption of state wage withholding laws remains unchanged to the extent such laws relate to ERISA-covered employee benefit plans.

King & Spalding LLP would be happy to assist you with any questions you have about ERISA preemption or automatic enrollment programs under ERISA plans.

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April and May 2019 Filing and Notice Deadlines for Qualified Retirement and Health and Welfare Plans

Author, *Tabitha Crosier*, New York, +1 212 556 2215, tcrosier@kslaw.com

Employers and plan sponsors must comply with numerous filing and notice deadlines for their retirement and health and welfare plans. Failure to comply with these deadlines can result in costly penalties. To avoid such penalties, employers should remain informed with respect to the filing and notice deadlines associated with their plans.

The filing and notice deadline table below provides key filing and notice deadlines common to calendar year plans for April through May. If the due date falls on a Saturday, Sunday, or legal holiday, the due date is usually delayed until the next business day. Please note that the deadlines will generally be different if your plan year is not the calendar year. Please also note that the table is not a complete list of all applicable filing and notice deadlines (including any available exceptions and/or extensions), just the most common ones. King & Spalding is happy to assist you with any questions you may have regarding compliance with the filing and notice requirements for your employee benefit plans.

Deadline	Item	Action	Affected Plans
April 1	Age 70 ½ Distribution Requirements	Deadline for plan administrator to distribute prior year's required minimum distribution for any terminated employee who reached age 70 ½ or older during the prior year.	Qualified Retirement Plans
April 15	Excess Deferrals	Deadline for plan to distribute prior year's deferrals in excess of Internal Revenue Code (IRC) §402(g) annual dollar limit and related earnings.	401(k) Plans

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Deadline	Item	Action	Affected Plans
<p>April 16</p> <p>(105 days after the end of the plan year)</p>	<p>PBGC 4010 Filing</p>	<p>Deadline for contributing sponsors (and each controlled group member) to file PBGC Form 4010 if:</p> <p>1) Any single-employer plan in the contributing sponsor's controlled group had a prior year AFTAP of less than 80%;</p> <p>2) Any single-employer plan in the contributing sponsor's controlled group fails to make a required installment or other required payments to a plan, and as a result, a lien is imposed pursuant to ERISA section 303(k)(1) or IRC section 430(k)(1); or</p> <p>3) The IRS has granted funding waivers of more than \$1 million to any single-employer plan in the contributing sponsor's controlled group and any portion of such waiver is still outstanding.</p>	<p>Defined Benefit Plans</p>
<p>April 30</p> <p>(no later than 120 days after the end of the plan year)</p>	<p>Annual Funding Notice</p>	<p>Deadline for the plan administrator to provide a plan funding notice to the PBGC, to each plan participant and beneficiary and to each employer that has an obligation to contribute under the plan.</p>	<p>Defined Benefit Plans</p>
<p>May 15</p> <p>(within 45 days after the close of the first quarter of plan</p>	<p>Benefit Statements for Participant-Directed Plans</p>	<p>Deadline for plan administrator to send benefit statement for the first quarter of the plan year to participants in participant-directed defined contribution plans.</p>	<p>Defined Contribution Plans that allow participants to direct investments</p>

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Deadline	Item	Action	Affected Plans
year)	Quarterly Fee Disclosure	Deadline for plan administrator to disclose fees and administrative expenses deducted from participant accounts during the first quarter of the plan year. Note that the quarterly fee disclosure may be included in the quarterly benefit statement or as a stand-alone document.	
May 15 (the 15th day of the 5th month after the end of the plan year)	IRS Forms 990 and 990-EZ	Deadline for tax-exempt trusts associated with qualified retirement plans and voluntary employee beneficiary associations (VEBAs) to file Forms 990 or 990-EZ with the IRS for prior year. A 3-month extension may be obtained by filing a Form 8868, which must be filed by this date.	Qualified Retirement Plans Voluntary Employee Beneficiary Associations