

ERISA and Federalism:

Limits on State and Local Health Reform

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Introduction

- ERISA challenges to state and local health reforms
- The challenge to the San Francisco ordinance now before the US Supreme Court
- ERISA preemption doctrine as a "health policy" statute
- The policy tools local and state officials can use depends upon the particular "institutional context"

The Institutional Context

- The politics of "pay or play" laws
- Walmart® as the "bad actor" in this narrative
- The Maryland Fair Share Law
- The Suffolk County Ordinance

The Institutional Context

- San Francisco obligation to pay for indigent care
- The Health Access Plan (HAP) based on the "Medical Home Model" for the uninsured and underinsured
- Financing of HAP through enrollee fees and general tax revenues
- An additional employer payroll tax based on health benefit expenditures

The Institutional Context

- Employee "benefits"
- Employer obligation to notify employee
- Employer reporting requirements
- Employers with ERISA plans

ERISA as an “Institutional Experiment”

- Is there a conflict between the “circuits?”
- What is the purpose of ERISA as “health policy”?
- Are local or state employer/employee “market” conditions relevant to ERISA preemption?
- Why aren’t Walmart® or the large retailers involved in the San Francisco litigation?

Policy Choices of Public Actors

- Employers have been key players in shaping our financing and organization of health care
- America stands out as an anomaly in its method of governing the health system
- ERISA preemption is simply one of many attempts to build a governance process for the health system
- The San Francisco ordinance may not be a model for other communities

Policy Choices of Public Actors

- The US Supreme Court as an "institutional actor"
- Whatever the shape of federal reform, local communities will face unique health policy issues
- The changing face of the politics of health policy
- Where is Walmart® in the current debate?