

OREGON UNIVERSAL HEALTH PLAN GOVERNANCE BOARD

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ERISA Review

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Discussion

1. How does the framework align with ERISA?
2. How can private insurance offerings be limited consistent with ERISA?
3. How might different revenue systems for public and private employers impact the ERISA analysis?

1. How does the framework align with ERISA?

- **Supreme Court Help** *Rutledge v. PCMA* (2020)
NY BCBS v. Travelers (1995)
- **Overall Framework** **Funding** + non-duplication + provider participation
- **Payroll Tax**
 - ✓ Pay-or-play cases: *Golden Gate* and *City of Seattle*
 - ✓ Mandatory, keyed to wages
 - ✓ Non-exorbitant rate
 - ✓ Out of state employers?

Note: SALT issue?

2. How can private insurance offerings be limited consistent with ERISA?

- **Coverage Duplication**

- ✓ Complementary, Supplementary

- ✓ Substitutive

- ✓ Employer self-funded option

- **Provider Participation**

- **Reimbursement**

- **Subrogation, recoup**

3. How might different revenue systems for public and private employers impact the ERISA analysis?

State laws may impermissibly “relate to” ERISA plans by

making “**reference to**” ERISA plans,

acting “**immediately and exclusively** upon ERISA plans.”

or by making “the existence of ERISA plans . . . **essential to the law’s operation.**”

References:

Rutledge v. PCMA (Dec. 2020)

Golden Gate Restaurant Ass'n v. City and County of San Francisco (2008)

ERISA Indus. Comm. v. City of Seattle (2021)

Fuse Brown & McCuskey, *Federalism, ERISA, & State Single-Payer Health Care*, 186 U. PA. L. REV. 389 (2020)

Fuse Brown & McCuskey, *Could States Do Single Payer?*, HEALTH AFFAIRS BLOG (Jul. 22, 2019)

Fuse Brown & McCuskey, *The Implications of Rutledge v. PCMA For State Health Care Cost Regulation*, HEALTH AFFAIRS BLOG (Dec. 17, 2020)

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