

ERIC Challenges Oregon Reporting Requirements for Retirement Plans

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On October 12, 2017, McDermott Will & Emery filed a lawsuit filed on behalf of The ERISA Industry Committee (ERIC) challenging new reporting requirements under Oregon law as applicable to retirement plans subject to ERISA.

OregonSaves is the state of Oregon's state-run retirement program that automatically enrolls employees of employers into individual retirement arrangements (IRAs). Unless an employee opts out of OregonSaves, a portion of each paycheck is added to an IRA account in the employee's name. Oregon is the first state to establish an auto-enrollment IRA program.

An employer that offers a qualified plan is not required to participate in OregonSaves, but only if it has a valid and current certificate of exemption. Obtaining this exemption depends upon reporting to the state of Oregon regarding an employer's qualified plan. For employers with 100 or more employees in Oregon, this filing is due by November 15, 2017. The ERIC lawsuit alleges that ERISA's express preemption provision preempts this reporting requirement.

This is the latest action by a state to impose reporting requirements on ERISA covered plans. Previously the state of Vermont (and other states) sought to require ERISA medical benefit plans to report their claims experience for purposes of compiling a so-called All Payor Claims Database (APCD). In the 2016 case of *Gobeille*

v. Liberty Mutual Insurance Company, the US Supreme Court held that ERISA preempted Vermont's APCD reporting requirement.

ERIC supports state auto-enrollment programs intended to increase access to retirement savings plans if such programs do not infringe on employers that already provide ERISA-governed retirement plans. Tracking and complying with additional reporting burdens imposed by state-run retirement plans on a state by state basis would be unduly burdensome for employers.

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