

## Publications

# Federal Courts Appear to Disagree on Whether ERISA Preempts State and Local Health Reform Laws

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## SERVICES

In the past year, federal courts have addressed challenges to three different state and local “fair share” (or “pay-or-play”) laws. The laws, passed in San Francisco, Suffolk County (New York), and Maryland, require employers to contribute certain minimum amounts toward the health care coverage of their employees. The district courts in all three cases held that the Employee Retirement Income Security Act of 1974 (“ERISA”) preempted each law. But, a split appears to be emerging among some federal appellate courts.

On January 17, 2007, the United States Court of Appeals for the Fourth Circuit upheld a district court decision holding that ERISA preempted the Maryland Fair Share Health Care Fund Act. *Retail Indus. Leaders Ass’n v. Fielder*, 475 F.3d 180 (4th Cir. 2007) (*Fielder II*). Almost six months later, on July 14, 2007, the United States District Court for the Eastern District of New York shot down a similar “fair share” health reform law, the Suffolk County Fair Share for Health Care Act. *Retail Indus. Leaders Ass’n v. Suffolk County et al.*, 497 F.Supp.2d 403 (E.D.N.Y. 2007) (*Suffolk County*). In *Suffolk County*, the Court relied heavily on the Fourth Circuit’s analysis in *Fielder II*. Then, on December 26, 2007, the United States District Court for the Northern District of California held that ERISA preempted the San Francisco Health Care Security Ordinance. *Golden Gate Rest. Ass’n v. City and County of San Francisco*, No. C 06-06997 JSW, 2007 WL 4570521 (N.D. Cal. Dec. 26, 2007) (*Golden Gate I*). But, the City and County of San Francisco appealed the district court’s decision, and filed a motion for an emergency stay of the decision pending appeal. On January 9, 2008, the United States Court of Appeals for the Ninth Circuit granted that motion, and in doing so strongly suggested that the case was likely to be reversed on appeal. *Golden Gate Rest. Ass’n v. City and County of San Francisco*, No. 07-17370 (9th Cir. Jan. 9, 2008) (*Golden Gate II*). With this latest ruling, the San Francisco Health Care Security Ordinance, which had an effective date of January 1, 2008 for employers with 50 or more employees, is now in effect. On February 8, 2008, the Golden Gate Restaurant Association filed an application with the Supreme Court of the United States, asking it to vacate the Ninth Circuit’s order granting the stay. On February 21, 2008, Supreme Court Justice Anthony M. Kennedy, in his capacity as the Circuit Justice for the Ninth Circuit, denied Golden Gate Restaurant Association’s application.

The attached memorandum discusses the “fair share” laws at issue in these cases, summarizes the various court rulings on those laws, provides a status of each case, and discusses the possible implications of these decisions.