



**Montana Legislative Services Division**  
**Legal Services Office**

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Date: July 28, 2016  
From: Jameson Walker, Legislative Staff Attorney  
Re: Potential Statute Concerning Private Employee Pensions

Question Presented

Would a Montana statute protecting private employee pensions conflict with federal laws?

Answer

The Employee Retirement Income Security Act of 1974 (ERISA) generally requires qualifying private employee benefit plans to provide participants with plan information, features, funding, vesting, benefit accrual, claims, and appeals. Additionally, ERISA generally guarantees payment of certain benefits through the Pension Benefit Guaranty Corporation (PBGC) as well as providing other protections for participants of benefit plans.

The U.S. Supreme Court has noted that ERISA "seeks to make the benefits promised by an employer more secure by mandating certain oversight systems and other standard procedures. Those systems and procedures are intended to be uniform." *Gobeille v. Liberty Mut. Ins. Co.*, 136 S. Ct. 936, 943-944 (2016) [internal citations omitted]. Thus, in order to ensure uniform regulation, ERISA broadly preempts state laws concerning employee benefit plans stating that it "shall supersede any and all State laws insofar as they may now or hereafter relate to any [ERISA] employee benefit plan." ERISA § 514(a), 29 U.S.C. § 1144 (2012). Indeed, this preemption clause has been deemed one of the broadest ever enacted. See: Albert Feuer, When do State Laws Determine ERISA Plan Benefit Rights, 47 Marshall L. Rev. 145, 153 (2013).

Thus, state laws affecting fundamental ERISA responsibilities are potentially preempted. This generally includes state laws pertaining to plan funding, reporting, disclosure, vesting, and fiduciary duties of private employee benefit plans. See: *N.Y. St. Conf. of Blue Cross & Blue Shield Plans v. Travelers*, 514 U.S. 645, 651 (1995). In other words, state laws that mandate benefits, bind employers or administrators, or provide alternative enforcement mechanisms are potentially preempted under ERISA.

ERISA and federal courts, however, have carved out various general areas in which state laws may affect ERISA covered benefit rights. These include, but are not limited to, criminal law; tax law; debtor-creditor law; domestic relations law; insurance laws; and laws applying to property transfers on death. Additionally, federal courts have been reluctant to preempt state statutes that implicate ERISA qualifying plans but concern issues historically regulated by states such as the health and welfare of state citizens. See: *Travelers*, 514 U.S. 645. Naturally, each enumerated category contains its own guidance and caselaw applied by courts since ERISA's enactment.

In sum, any potential Montana statute should be wary of imposing duties on private pension plans regulated by ERISA.