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# State Law Prohibiting Automatic Withholding for Medical Plan Contributions is Preempted by ERISA

*In a recently published advisory opinion, the DOL said that ERISA preempts a Kentucky law requiring an employee's express written consent before withholding employee contributions to an employer medical plan.*

## Background

Section 514(a) of ERISA provides for the preemption of state laws that "relate to" an employee benefit plan. The Supreme Court has ruled that a state law relates to an ERISA benefit plan if it makes "reference to" or has a "connection with" employee benefit plans and has identified at least three types of state laws with prohibited connections – i.e., those that mandate employee benefit structures or their administration, those that bind employers or plan administrators to particular choices or preclude uniform administrative practice, and those that provide an alternative enforcement mechanism to ERISA.

In Advisory Opinion 2008-02A, the DOL addressed whether ERISA preempts a Kentucky law requiring an employer to obtain written consent before withholding employee contributions to a medical plan.

## Advisory Opinion 2008-02A

The plan described in the opinion provides for automatic enrollment in an employer's health plan if an employee fails to affirmatively elect medical coverage or fails to certify coverage from another source. The employee is notified of the default election and corresponding payroll deductions, but no written authorization for withholding the employee contributions from the employee's wages is required. Under Kentucky law, all deductions for insurance premiums and hospital and medical dues must be expressly authorized in writing by the employee, unless the employer is authorized to withhold wages by local, state or federal law.

The DOL found that the Kentucky law prohibited automatic enrollment by not allowing for wage withholding without express consent. Because the law regulates the employer's decision on how to provide medical coverage (including eligibility and benefits) and how to fund the plan, it is "connected with" an ERISA plan and, thus, it is preempted by ERISA.

***BUCK COMMENT.*** *In a footnote, the DOL stated that the addition of Section 514(e) to ERISA by the Pension Protection Act of 2006 to expand the scope of ERISA preemption for state laws that interfere with automatic contribution arrangements was meant to apply to individual account pension plans. It would not affect the outcome of this opinion.*

## Conclusion

Although technically an advisory opinion may be relied on only by the parties requesting the opinion, it gives employers valuable insight into the DOL's thinking on an issue. This opinion shows that the DOL believes that state laws prohibiting automatic enrollment designs in welfare plans are most likely preempted by ERISA.

Buck's consultants are available to discuss this advisory opinion and any other welfare plan design issues with you.