

## Federal Court Overturns Maryland's "Wal-Mart" Health Care Law

A federal court has overturned Maryland's *Fair Share Health Care Fund Act*. That law would have required Wal-Mart Stores, Inc. to spend more on employee health care. The court overturned the law and specifically noted that the retailer "faces threatened injury" from the law's spending requirement.

While other states have considered bills similar to Maryland's law, no other state has adopted one. In Maryland, where state auditors were looking for ways to rein in a \$4.6 billion annual Medicaid bill, the Wal-Mart law was seen as a way to encourage companies to keep workers off the public program.

### Background

Last January, Maryland lawmakers overrode Governor Bob Ehrlich's (R) veto of the *Fair Share Health Care Fund Act*. Maryland's state law would have required large employers to spend at least eight percent of payroll on health care or pay the difference in taxes.

Proponents of the law characterized the measure as an attempt to gain control of ever-increasing Medicaid costs. It had been widely reported that only four employers in Maryland (Wal-Mart, Johns Hopkins University, Northrop Grumman, and Giant Food Stores, Inc.) employed more than 10,000 workers — and that only Wal-Mart failed to meet the eight percent threshold. This is why the media dubbed the legislation the "Wal-Mart law". The law would have had a January 1, 2007 effective date. (For a general overview of Wal-Mart related issues, particularly the company's somewhat controversial benefit strategies, please see *Willis EB Alert #52*.)

Specifically, Maryland's *Fair Share Health Care Fund Act* would have required companies with more than 10,000 employees in Maryland to either: (1) spend at least eight percent of payroll on health care or (2) contribute the difference to the Maryland Medicaid Fund. Proceeds from these fines would have been used to fund the state's health program for the poor.

Of importance to employers outside of Maryland is the fact that legislators in dozens of other states have proposed similar bills in the past year. So far these so-called "pay or play" mandates have generally failed, but some legislative observers expressed fear that enactment of the Maryland law might shift legislative momentum against employers. (Several years ago in California, for instance, legislation signed by former Governor Gray Davis (D) which would have required California employers to provide health insurance to their employees was put on the ballot by its opponents and overturned by voters. Additional information about California Senate Bill 2 (SB 2) and its subsequent defeat can be found in *Willis EB Alert #3* and the March and December 2004 editions of *FOCUS on Benefits*.)

### The Arguments

Employee benefit laws are governed by federal law as set forth under ERISA. ERISA contains a broad provision that overrides those state laws that touch on the subject of employee benefits or that require employers to take certain benefit actions (though an exception applies to ERISA which allows states to control insurance carriers, thereby indirectly affecting employers that purchase insured policies). Wal-Mart, through a retailing association it participates in, argued that Maryland exceeded the scope of its authority by enacting legislation that impermissibly intrudes into an area of law reserved to the federal government.

According to the January 9, 2006 opinion of Joseph Curran (D), Maryland's Attorney General, the *Fair Share Act* would not be preempted by ERISA since the law did not specifically refer to or regulate employee welfare benefit plans. Curran's now rejected argument had been predicated on the idea that despite the law, the employer is still free to choose to spend no percent of its payroll on health-related expenses for its employees and just pay the resulting assessment. If viewed as a payroll tax rather than a mandate that employers provide benefits, some experts thought that the law might survive an ERISA preemption challenge.

### **Federal Court Decision**

The good news for employers is that the federal district court in Maryland ultimately held that Maryland's *Fair Share Act* violated the main objective of ERISA's preemption clause — uniform administration of employee benefit plans — by creating spending requirements that are not applicable in most other jurisdictions. (The decision specifically mentioned similar legislation already in place in several New York State municipalities.) The court further concluded that, unless such legislation is deemed to be preempted, employers potentially will face not only 50 different state

requirements, but also a "virtually limitless number of requirements that local subdivisions in each state may enact."

### **Conclusion**

Although employers can claim an early victory with regards to the Wal-Mart law controversy, the issue is expected to continue to play out further in the courts. The Maryland Attorney General published the following statement on the day after Wal-Mart prevailed in its federal court challenge:

"We respectfully disagree with the court's determination on several counts. As to the substantive ground, we think the court erred in finding that the law is preempted by ERISA. Instead, as we argued to the court, Supreme Court precedent makes it clear that this law does not impermissibly impact health benefit plans. Employers may choose to pay the tax or avoid paying the tax in several ways. We do agree that the court's conclusion is correct that the law does not violate equal protection.

We have 30 days to note an appeal and of course, expect to do so, consistent with our responsibility to zealously defend the laws of the State."

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