

**Insights**

## **STATE LEAVE LAWS & ERISA PREEMPTION**

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Employers operating across multiple states increasingly face overlapping state and federal leave obligations. While the Family and Medical Leave Act (FMLA) establishes a federal baseline, a growing number of states have enacted broader leave regimes. As employers work to comply with these state laws, they must also consider whether efforts to comply with state leave requirements could create ERISA pre-emption issues for ERISA-covered benefit plans.

### **THE CHALLENGE OF A MULTI-STATE LEAVE “PATCHWORK”**

Employers operating in multiple states often find themselves managing a patchwork of overlapping and sometimes inconsistent employee leave laws. Navigating both state and federal leave laws can be challenging for employers, especially as leave obligations continue to expand.

Many employers are familiar with the Family and Medical Leave Act (FMLA), a federal law that provides eligible employees with up to 12 weeks of job-protected leave. As of 2026, however, more than 20 states have gone further by enacting their own leave laws. These state regimes may provide longer leave periods, different qualifying reasons, and separate rules on continuing employee benefits during leave.

While expanded leave options can be a positive development for employees, the resulting compliance landscape is increasingly complex.

### **ERISA CONSIDERATIONS: BENEFIT PLANS AND FIDUCIARY DUTIES**

State leave laws are not the only consideration for employers navigating multi-state leave compliance. In implementing state-mandated leave requirements, employers also need to consider the Employee Retirement Income Security Act of 1974 (ERISA).

ERISA governs many private employee benefit plans, including group health plans and 401(k) plans. In addition to establishing rules for these plans, ERISA imposes fiduciary obligations to follow the terms of the plan itself.

### **WHY ERISA PRE-EMPTION MAY BE IMPLICATED**

Compliance with state leave laws may raise concerns under ERISA's pre-emption clause, which limits the ability of states to regulate matters that Congress has established exclusive authority, or where federal law implies Congress intended to supersede state law.

As a general rule, a state may not require an employer to amend an employee benefit plan, nor enact statutes governing administration of an employee benefit plan where the plan is covered by ERISA.

Courts have consistently recognized that Congress intended ERISA to regulate private-sector employee benefits in order to avoid conflicting state regulations. The US Supreme Court has emphasized that one of ERISA's principal goals is to enable employers to establish a uniform administrative scheme with standard procedures for processing claims and disbursing benefits.

That uniformity can be difficult to maintain when plans are subject to differing obligations across multiple state laws. As a result, efforts to comply with state leave laws may expose an employer to risk under ERISA, including potential breach of obligations.

## **RELATED CAPABILITIES**

- ERISA & Employee Benefits Litigation
- Employee Benefits & Executive Compensation

## MEET THE TEAM



### **Lisa A. Van Fleet**

Partner, St. Louis

[lisa.vanfleet@bclplaw.com](mailto:lisa.vanfleet@bclplaw.com)

[+1 314 259 2326](tel:+13142592326)



### **Christopher L. Young**

Associate, Chicago

[christopher.young@bclplaw.com](mailto:christopher.young@bclplaw.com)

[+1 312 602 5115](tel:+13126025115)

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