



The Daily Dish

50th Anniversary of ERISA

DOUGLAS HOLTZ-EAKIN | APRIL 16, 2024

This year (September 2, 2024, to be precise) marks the 50th anniversary of the Employee Retirement Income Security Act (ERISA) of 1974. ERISA (along with the income tax) regulates employee benefit plans, including requiring the disclosure of information concerning the plan to beneficiaries, establishing standards for plan sponsors, and providing remedies and access to federal courts for beneficiaries.

ERISA is central to employer-sponsored health insurance (ESI). ESI covers roughly 150 million individuals and ERISA's provisions govern the self-insured plans - plans where the employer itself covers the health care costs of plan members - which cover 100 million of those workers. For self-funded plans, ERISA provides a federal preemption of state laws, thus preventing states from requiring large and multistate employers to follow individual state regulations or benefit mandates. The result is a single, uniform regulatory framework for employers, rather than a patchwork of state laws. In this way, ERISA preemption keeps administration and overall insurance costs low.

The preemption, however, has been [damaged by several recent court cases](#). The issue is that ERISA language preempts state laws that "relate to" a self-funded plan and the judicial interpretation of the vague "relate to" language has allowed some states to impose regulation on third parties that administer plans on behalf of firms. As time passes, the preemption has become steadily weaker, the variety of regulatory environments greater, and the costs of plan administration higher.

Today, the House Committee on Education and the Workforce will hold a [hearing](#) on ERISA and its preemption of state law. ERISA has its opponents. State policymakers have long perceived ERISA as an inconvenient barrier to their policies. Recently 39 state attorneys general [submitted](#) a letter to Congress arguing that state efforts to regulate pharmacy benefit managers (PBMs) were hampered by ERISA. Those voices will be present at the hearing, but to Eakinomics, the value of having a single, federal regulatory framework for

large, multistate employers seems self-evident. As AAF's Laura Hobbs recently [argued](#):
"Congress should clarify the boundaries of ERISA preemption to protect employers and allow them the flexibility to offer the best benefits to their employees."

So, happy birthday, ERISA! And up next, happy birthday [Congressional Budget and Impoundment Control Act](#)!