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SECOND CIRCUIT REVIEW

Expert Analysis

New York's Wage Parity Law Upheld as Constitutional

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This month, we discuss *Concerned Home Care Providers v. Cuomo*,[1] in which the U.S. Court of Appeals for the Second Circuit, in an opinion by Judge Debra Ann Livingston and joined by Judges John M. Walker Jr. and Richard C. Wesley, upheld New York's Wage Parity Law (WPL).[2] Specifically, the court ruled that the WPL is not preempted by the National Labor Relations Act (NLRA) or the Employee Retirement Income Security Act of 1974 (ERISA); nor does the WPL violate the Fourteenth Amendment's Equal Protection Clause or Due Process Clause. In so ruling, the court affirmed the district court's dismissal of the complaint seeking a declaration that the WPL is invalid and a permanent injunction barring its enforcement.

Background

The New York Legislature enacted the WPL in 2011 as part of a Medicaid reform package. The need for reform arose due to so-called "wage inversion," where certain qualified home care aides were being paid less than certain other home care aides because they did not work for New York City contractors, and therefore did not receive the benefit of the city's Living Wage Law. To address this inequality, the WPL requires licensed home care services agencies in New York City and the surrounding counties of Westchester, Suffolk, and Nassau to pay all home care aides providing Medicaid-covered care "an applicable minimum rate of home care aide total compensation"—including wages, benefits (or a supplemental hourly wage in lieu of benefits), and paid time off—to receive Medicaid reimbursements for that care.[3]

> The decision in 'Concerned Home Care Providers' makes clear that states have a great deal of latitude in setting mandatory minimum wages.

For services performed in New York City between March 2012 and February 2014, the minimum rate was a percentage of the city's Living Wage Law, and after March 2014, the rate became the greater of either the rate set by the city's Living Wage Law or the average hourly amount of total compensation paid to home care aides according to whatever collective bargaining agreement covered the greatest number of aides in New York City on Jan. 1, 2011. As of that date, the Service Employees International Union (SEIU) Local 199 had the applicable collective bargaining agreement, and thus the WPL refers to SEIU 199's bargaining agreement when setting the total compensation rate. A similar schedule of increases was set for Westchester, Suffolk, and Nassau Counties.

Subdivision four of the WPL addresses employees' benefits (or a supplemental hourly wage in lieu of benefits) and paid time off. Specifically, subdivision four provides that any portion of the minimum rate of compensation to home care aides that is attributable to benefits and paid time off "shall be superseded by the terms of any employer bona fide collective bargaining agreement…which provides for home care aides' health benefits through payments to jointly administered labor-management funds," which are ERISA plans known as Taft–Hartley plans. Put another way, subdivision four allows employers participating in a Taft–Hartley plan to be deemed in compliance with the WPL even if the health benefits that they provide have a value that is

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lower than the minimum value required by the WPL ($1.35/hour).

Prior Proceedings

Five licensed home care services agencies and a nonprofit trade association of home care agencies (collectively, "plaintiffs") filed suit on Feb. 28, 2012, in the Northern District of New York, against Nirav R. Shah, Commissioner of the New York State Department of Health, and New York Governor Andrew Cuomo (together, "defendants"). Plaintiffs sought to enjoin Shah from enforcing the WPL on the grounds that it is preempted by the NLRA and ERISA, and because it is unconstitutional under the Fourteenth Amendment's Equal Protection Clause and Due Process Clause. Defendants' moved to dismiss the complaint on several grounds, including lack of standing and failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).

On Sept. 25, 2013, the district court (Judge Norman A. Mordue) granted defendants' motion in its entirety, except as to one claim.[4] After concluding that plaintiffs had standing, the district court dismissed Cuomo as an improper defendant, declined plaintiffs' invitation to abstain from ruling while parallel state-court litigation proceeded, held that the NLRA does not preempt the WPL, and concluded that the WPL does not deprive plaintiffs of equal protection or due process (and thus there is no cause of action under 42 U.S.C. §1983). However, the district court determined that ERISA preempts subdivision four of the WPL.

With respect to subdivision four, the district court relied on the rule that "a court should 'start with the assumption that the historic police powers of the states [are] not to be superseded by [a] Federal Act *unless that was the clear and manifest purpose of Congress*.'"[5] The court then looked to ERISA's language, which states that ERISA "shall supersede any and all state laws insofar as they may now or hereafter relate to any [covered] employee benefit plan."[6] Finally, the district court looked to Supreme Court precedent regarding when a law "relates to" an employee benefit plan and determined that subdivision four does so when it expressly refers to "jointly administered labor-management funds."

Accordingly, the district court concluded that ERISA preempts subdivision four. The court also determined, however, that subdivision four is severable from the remainder of the WPL and, therefore, all other provisions of the WPL remain valid and enforceable.

Plaintiffs appealed the district court's rulings that the NLRA and ERISA do not preempt the WPL, that subdivision four is severable from the rest of the WPL, and that the WPL does not violate the Fourteenth Amendment. Plaintiffs did not appeal the dismissal of Cuomo or ERISA's preemption of subdivision four.

The court rejected plaintiffs' argument that the WPL is different from other minimum-wage laws (and is therefore preempted) because it applies to only a certain profession in a certain geographic area. The court explained that states are not prohibited from "craft[ing] minimum labor standards for particular regions or areas of the labor market."

Second Circuit Decision

The Second Circuit reviewed de novo the district court's rulings that the WPL is not preempted by the NLRA and ERISA (except subdivision four) and does not violate the Fourteenth Amendment.

Preemption Challenges. The Second Circuit began its discussion by analyzing the NLRA's preemption framework. The court noted that the NLRA (unlike ERISA) does not have an express preemption clause; rather, preemption in the NLRA context is based on implicit limits on state and local regulation of labor agreements. The court then explained the doctrine of Machinists preemption, which forbids states from infringing upon the bargaining process between employers and employees, although states remain free to regulate substantive labor standards and to set a baseline for negotiating. Applying this framework, the Second Circuit concluded that "[t]he Wage Parity Law is a valid exercise of New York's authority to set minimum labor standards."[7]

The court reasoned that the WPL does not affect employees' ability to promote their interests collectively, nor does it distinguish between unionized and non-unionized aides. The court also looked to prior decisions that upheld similar laws. Relying on a Second Circuit decision from 2003, the court stated that, "[b]y setting a total compensation floor, the [WPL] may affect the package of benefits over which employers and employees can negotiate, but it does not limit the rights of self-organization or collective bargaining protected by the NLRA."[8]

Finally, the court rejected plaintiffs' argument that the WPL is different from other minimum-wage laws (and is therefore preempted) because it applies to only a certain profession in a certain geographic area. The court explained that states are not prohibited from "craft[ing] minimum labor standards for particular regions or areas of the labor market," and the WPL "simply sets a minimum rate of compensation for hundreds of thousands of home care aides who provide Medicaid-covered care in New York City and the surrounding counties."[9]

With respect to ERISA preemption, plaintiffs did not challenge the district

court's ruling regarding subdivision four, but instead contended that the district court erred in its severability analysis. Plaintiffs further argued that, even if subdivision four is severable, ERISA nonetheless preempts the WPL generally. The court explained that severability is a matter of state law. The 2011 Session Laws of New York State, which contains the WPL, also contains a severability provision, stating that "if any subdivision of the act 'shall be adjudged' invalid, the judgment 'shall not…invalidate the remainder thereof, but shall be confined in its operation to the…subdivision… directly involved.'"[10]

The Second Circuit determined that the district court properly complied with this statutory directive by not invalidating the entire WPL and that, even with subdivision four severed, the WPL still promotes the Legislature's goal of setting a minimum compensation rate for home care aides.

Regarding ERISA preemption of the WPL generally, plaintiffs argued that the WPL may require employers to reexamine and potentially modify their benefits packages to comply with the law, which could implicate ERISA. The court rejected this argument on the ground that any effects that the WPL has on ERISA are too "indirect" to warrant preemption because the WPL is "agnostic as to the mix of wages and benefits that employers provide, so long as the total amount equals or exceeds the applicable minimum rate."[11]

Finally, the court rejected plaintiffs' transitive argument that, because the WPL refers to SEIU 199's bargaining agreement, and because that agreement governs ERISA plans, the WPL therefore impermissibly refers to ERISA plans. The court characterized plaintiffs' purported link as an "attenuated allusion" because the WPL "would operate in precisely the same way even if SEIU 199's collective bargaining agreement did not cover ERISA plans at all."[12]

Constitutional Challenges. Plaintiffs also challenged the WPL under the Fourteenth Amendment's Equal Protection Clause and Due Process Clause. In their equal-protection challenge, plaintiffs urged the Second Circuit to examine the WPL under strict scrutiny because the minimum rate of total compensation is set by a legislative body outside of New York City and the surrounding counties, which deprives plaintiffs of the fundamental right to be represented in the legislative process. The court rejected this argument.

The court held that "Plaintiffs—five corporations and a not-for-profit trade association—are not entitled to vote and have no right to equal representation in the Legislature."[13] Rather than applying strict scrutiny, the court employed a rational-basis analysis and concluded that the WPL's minimum-rate requirement is "consistent with the Legislature's goal of providing 'high quality home care services to residents of New York state.'"[14]

In their due-process challenge, plaintiffs argued that the WPL is unconstitutional because it authorizes a private entity—SEIU 199—to set the minimum compensation rate, and plaintiffs have a property interest in their future revenues based on that rate but lack the ability to influence it. The Second Circuit rejected this argument for two reasons. First, the court noted that the WPL applies to payments of state Medicaid funds only, and a Medicaid provider has no property interest or right to be reimbursed at a specific rate, let alone to continue to participate in the Medicaid program. Second, the court held that, even assuming such a right existed, the WPL does not delegate any authority to SEIU 199 because SEIU 199 "has no discretion to make post-hoc alterations to [its collective bargaining agreement], and its future collective bargaining efforts have no bearing on the minimum rate of home care aide total compensation."[15] Rather, the WPL merely references the SEIU 199 collective bargaining agreement because that agreement covered the most home aides in New York City at a specific point in time.

Conclusion

As new state minimum-wage laws go into effect across the United States, the Second Circuit's ruling in *Concerned Home Care Providers* should become an increasingly important case for defending against future challenges to those laws. The decision makes clear that states have a great deal of latitude in setting mandatory minimum wages, even for professions where there is significant intertwinement with federal programs, such as in-home care and its connection to Medicaid.

Moreover, businesses and employers that challenge these laws may face significant obstacles to invalidating them on equal-protection grounds based on their nonvoting status. When a state wage law does wade into a subject matter that Congress expressly reserved for federal law, however, then the state law will be trimmed appropriately—though otherwise left intact, when possible—in accordance with the Constitution's Supremacy Clause.

1. No. 13-3790-cv (2d Cir. March 27, 2015).
2. N.Y. Pub. Health Law §3614-c.
3. Id. §3614-c(2).
4. *Concerned Home Care Providers v. Cuomo*, 979 F.Supp.2d 288 (N.D.N.Y. 2013).
5. Id. at 299 (first alteration in original) (emphasis added) (quoting *Medtronic v. Lohr*, 518 U.S. 470, 485 (1996)).
6. 29 U.S.C. §1144(a).
7. No. 13-3790-cv, slip op. at 14 (2d Cir. March 27, 2015). See *Lodge 76 Int'l Ass'n of Machinists & Aerospace Workers v. Wis. Emp't Relations Comm'n*, 427 U.S. 132, 149 (1976).
8. Id. at 16 (citation omitted) (internal quotation marks omitted).
9. Id. at 16, 18.
10. Id. at 21 (ellipses in original) (citation omitted).
11. Id. at 23, 25.
12. Id. at 27.
13. Id. at 29.
14. Id. at 28 (quoting N.Y. Pub. Health Law §3600).
15. Id. at 31.