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New York City's "Equal Benefits Law" Prohibiting City Agencies From Contracting With Entities That Do Not Provide Domestic Partner Benefits Is Preempted By State And Federal Law

In 2004, over Mayor Bloomberg's veto, the City Council enacted New York City's Equal Benefits Law ("EBL"), NYC Admin Code § 6-126. Under the EBL, city agencies may not enter into contracts worth at least \$100,000 annually with any entity that fails to provide domestic partner benefits equal to those provided to employees' spouses. The EBL defines domestic partners as people who are registered under NYC Administrative Code §3-240(a), or who register with a contractor itself under the EBL. Under the EBL, employee benefits includes everything from health insurance to gym membership discounts.

After the EBL was enacted, Mayor Bloomberg filed a declaratory judgment action against the City Council asserting the EBL was inconsistent with New York General Municipal Law §103 which requires local and state agencies to engage in competitive bidding. As such, the Mayor argued, the EBL is preempted. Mayor Bloomberg also asserted the EBL is preempted by the federal Employee Retirement Income Security Act of 1974, 29 USC § 1001, *et seq.* ("ERISA") because it sought to prescribe the terms of an ERISA benefit plan.

Although Mayor Bloomberg was unable to obtain a temporary restraining order in his declaratory judgment action, he stated he would not enforce the EBL. The City Council responded with an "article 78" proceeding to compel the Mayor to enforce the EBL, and argued the Court should grant its petition without considering the merits of the controversy. Instead, argued the City Council, the Court should require the Mayor to follow a duly enacted law unless and until a court nullifies it.

The Court of Appeals disagreed, stating: "article 78 relief ... may be granted only where a petitioner establishes a 'clear legal right' to the relief requested." The Court stated the Mayor has a duty to implement *valid* legislation passed by the City Council, but he also has a duty to comply with valid state or federal legislation. The Court explained an extreme case: "if a legislative body enacted a law requiring racial segregation of public schools, [courts] would not say that it is the duty of police to bar black children from white schools until a court orders them let in."

Examining the merits, the Court affirmed the Appellate Division's decision that the EBL indeed was preempted by the New York General Municipal Law §103 and ERISA. In so holding, the Court stated competitive bidding [Section 103] serves to prevent favoritism, improvidence, fraud and corruption in the awarding of public contracts. "[T]he competitive bidding statute reflects a judgment by the State Legislature that, to avoid among other things the risk of favoritism, municipalities must give business to the lowest responsible bidder, whether the bidder's benefit plans meet the municipality's idea of fairness or not." The Court stated there is no support for the view that "social policy goals may trump the competitive bidding statute." Although local governments have the power to legislate over such things as employee welfare and safety, such power is limited by state legislation. "Where the two conflict, ... the legislative restriction on the municipality's power prevails."

With respect to ERISA, the Court stated: “clearly, the coverage of ERISA overlaps substantially with the coverage of the EBL, though the EBL may apply to some benefits not governed by ERISA.” The Court rejected the City Council’s argument that the EBL did not regulate benefits plans, but instead reflects a decision by the City, as a market participant, to choose contracting entities based on the benefits provided to their employees. The “market participant” exception to federal preemption does not apply, explained the Court, because in enacting the EBL, the City was not acting as a manager or owner of property concerned with assuring cheap and efficient performance of contracts, rather the City was “setting policy.”

If you have a question relating to the EBL, please contact your Seyfarth Shaw attorney or any attorney on our website at www.seyfarth.com.



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