

# One Minute Memo<sup>®</sup>



## District Court Finds Discrimination Claim Under MCAD Investigation ERISA-Preempted

On June 25, 2007, a Massachusetts federal district court found that the federal employee benefit statute (Employee Retirement Income Security Act (ERISA), 29 U.S.C. §1001 *et seq.*) preempts a state-law charge of alleged reverse sexual orientation discrimination against Partners Healthcare System, Inc. (Partners), under investigation by the Massachusetts Commission against Discrimination (MCAD). *Partners Healthcare System, Inc. v. Walter Sullivan et al*, USDC C.A. No. 06-11436-JLT (D. MA, June 25, 2007).

The decision signals to Massachusetts employers, their benefits directors and plan administrators, and their counsel that employees or former employees who challenge benefit plan designs as discriminatory under state anti-discrimination laws may find themselves limited to remedies under ERISA, with their claims decided by a judge (rather than a jury) applying a very deferential standard of review to a plan administrator's interpretation of benefit plan terms.

Chapter 151B, § 4 of Massachusetts General Laws bars discrimination in terms and conditions of employment, including benefits. In 2005, a Partners employee filed a MCAD charge alleging that Partners had discriminated against him under Massachusetts law because it offered benefits under its various employee welfare benefit plans

to employees' unmarried same-sex domestic partners, but not to employees' unmarried heterosexual domestic partners. In late 2006, the MCAD amended the charge to include a charge of "associational sex discrimination" under Massachusetts law and Title VII of the federal Civil Rights Act of 1964.

Partners filed a federal district court action against the MCAD Commissioners and the complaining employee, requesting that the federal court enjoin the state proceeding because ERISA preempted the state-law claim.

Recognizing that the Massachusetts law does not act "immediately and exclusively upon ERISA plans" and does not reference ERISA, and that an ERISA plan is not "essential to the law's operation," the court found that ERISA "facially conclusively preempted" the MCAD claim on the ground that the Massachusetts statute has a "connection with" an ERISA plan. The court believed that the law would virtually dictate the choice of beneficiaries to Partners' ERISA plans and rejected the argument that the state statute would not dictate Plan terms or adversely affect the national administration of Partners' ERISA plans, because Partners could simply cease providing benefits to all domestic partners if the MCAD found its current plans discriminatory. The court also rejected the argument that

an express exemption in ERISA saves the Massachusetts law from preemption as a state law of general applicability that bars discrimination on the basis of sexual orientation.

Finally, the court rejected the argument that the state-law discrimination charge should survive ERISA preemption because it sought investigation of “associational discrimination” under state and federal discrimination laws. The court reasoned that the U.S. Supreme Court had previously refused to save state laws that afforded greater protection than Title VII from preemption under ERISA. The court also declined to analogize associational discrimination based on sexual orientation relationships to interracial relationship discrimination.

Massachusetts employers should review with experienced ERISA litigation counsel any existing or potential claims challenging a benefit plan design as discriminatory under state law in order to preserve the defense of ERISA preemption properly. Successfully posturing such cases for ERISA preemption can limit judicial review and available remedies.

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