

COMPLIANCE CLASSROOM NOTES

Federal vs. State Laws: Which Ones Apply and When?

Government 101 Review

• Branches of Government

- Legislative Branch : **Creates laws**
 - Rule makers, Congress (Senate + House)
- Executive Branch : **Carries out/enforces laws**
 - President, Cabinet, and most agencies
- Judicial Branch : **Interprets laws**
 - Courts, Law Enforcement

Who's in Charge Here?

• Federalism vs. Nationalism

- **Federalism** = Lawmaking favored to States → State's rights
- **Nationalism** = Lawmaking favored to Federal Government

• "Authority"

- Refers to deference →
 - i.e. Whose advice will you follow? Which law governs the issue?
 - SCOTUS
 - Agency
 - State v. Case Law

• Governing Law

- Which law governs a legal question?
 - **Federal Law**

- **State Law**

- **Contracts**

• Case Law

- "Judge" made law, aka "Common Law"
 - Contract Law
 - Tort Law

• Statutes

- Aka legislation created by Congress

• Administrative Law

- Agency-made law based off statutes

Characteristics of Federal & State Law

• Federal Law 101

- Legislation → statutes → regulations → federal register

• State Law 101

- Regulations → interpreted → permitted to "expand" upon

Employee Benefit Plans: How Federal & State Law Interact

• Concept of Preemption

- Complex!
- **Definition:** The invalidation of a U.S. State Law that conflicts with Federal Law
- Two types
 - Express preemption: Occurs when a Federal Law expressly states that it is intended to preempt State Law
 - State Law may choose to do “more” but may not do less than federally mandated
 - Field preemption: Occurs when the Federal government intends its laws to completely occupy a particular field
 - Federal Law will “fill in” if State Law is silent

• Major Laws Affecting Welfare Plans

- State insurance regulations, think “Fully Insured” plans
- ERISA
 - Preempts all State Laws, EXCEPT State Insurance Laws; however,
 - Self-Insured (SI) plans are “deemed” to be insurance; therefore,
 - SI plans are exempt from State insurance regulations

• Exceptions

- Federal will trump State (generally) unless:
 - State Insurance Law affects distribution or pooling of risk
 - (Very technical issues)

• Federal vs. State “Bumper Guards”

- Analyze the specifics of the inquiry → What are the facts?
- Consult counsel
- Where does the question arise?
 - Employee v. Employer?
- Falls under which regulation: Medical or ADA?
 - Consider whether State or Federal Law applies
 - Welfare Plans: Both may apply, but ERISA applies for all ERISA-qualified plans
- Generally
 - Employee Benefits and Plan Administration
 - Fully Insured plan = State Insurance Laws apply
 - Self-Insured plan = Generally exempted from State Law
 - If State Law provides a greater benefit than Federal Law, it’s ok as long as the State Law complies with the rest of the Federal Mandate. (Ex: FMLA)

• Federal vs. State Preemption Formula

- Generally
- If a State Law requires a “must” that Federal Law says “no” to; OR
 - If a State Law says “can’t” that a Federal Law says “must” be done