

Dear Congressman:

The ERISA Industry Committee, which represents the health and retirement plans of America's largest employers, strongly opposes the proposed amendment by Representative John Shadegg (R-AZ) that would impose State litigation on health plans now uniformly regulated under the Employee Retirement Income Security Act (ERISA).

Both employers and employees depend on the uniform administration of employee benefit plans. Compliance and enforcement are as integral to uniformity as the substantive rules that govern what benefits are offered.

- First, ERISA establishes fundamental rules governing the structure of health plans;
- Second, strong fiduciary standards and requirements are imposed on plan sponsors who manage and administer health plans;
- Third, ERISA imposes uniform reporting and disclosure requirements that inform participants of their benefits and rights;
- Fourth, ERISA requires that plans maintain claims procedures to resolve benefit claims by participants and beneficiaries; and
- Fifth, ERISA allows for participant and beneficiaries to enforce those rights in court.

Moreover, there is no regulatory vacuum: employer plans are governed by the Department of Labor, the Internal Revenue Service, the U. S. Department of Treasury and the Equal Employment Opportunity Commission as well as the federal courts.

Over 170 million workers currently benefit from the advantages of uniform administration of their plans. In the absence of that uniform administration, thousands of employers would find it impossible to maintain their plans in a patchwork climate of at least 50 different state rules born of rampant litigation. The fact is, if Congress were to allow state litigation of ERISA plans, employers could face thousands of lawsuits, under dozens of legal frameworks, resulting in a litigation nightmare.

There are few greater disincentives to employer-provided health plans than the encouragement of product liability-like litigation, particularly when these plans are not the core function of a plan sponsor's business.

Healthcare is a national not a state-by-state issue and must be dealt with in a nationally uniform system -- anything less results in healthcare chaos. Employer-provided healthcare coverage will not survive if it is subjected to a patchwork of enforcement, remedies, and compliance rules by 50 states and a kind of product liability litigation. For the vast majority of employers, health care coverage is not a product, it is a benefit offered to employees. Employers, many of whom are struggling to offer health coverage to their employees, cannot provide health care coverage if they are subject to a patchwork of rules and multiple lawsuits in state courts.

For multi-state employers, ERISA preemption is the essential protection that allows employers to offer nationally uniform benefit packages to their employees regardless of where they are geographically located.

Any change in the law relating to the uniformity of ERISA-governed plans would result in a retreat from offering healthcare coverage for millions of American workers and their families who rely on ERISA-governed plans for their health care needs. Such a proposal would drive up already escalating health care costs that ultimately will be passed on to employees. That new burden would amount to a 'litigation tax' on all of an employer's employees to pay for lawsuits initiated by a few.

The result would be added compliance and litigation costs, and extraordinary complexity and confusion for multi-state employers. Such a scenario would be disastrous for employer-provided health care and ultimately would dismantle the health care system as we know it. This is precisely what Congress knowingly intended to preclude when ERISA was enacted in 1974.

We have been a major proponent of sound health reforms. However, major employers cannot support health reform that undercuts the national uniformity on which they depend.

We strongly urge that the Shadegg amendment be rejected.

Very truly yours,

Mark J. Ugoretz
President and CEO
The ERISA Industry Committee