Sixth Circuit: ERISA Preempts Application of State Pharmacy Network Laws to Self-Insured Plans

EBIA Weekly (May 14, 2026)

McKee Foods Corp. v. BFP Inc., 2026 WL 936759 (6th Cir. 2026)

Available at ***https://www.opn.ca6.uscourts.gov/opinions.pdf/26a0110p-06.pdf***

An employer sponsoring a self-insured health plan with a prescription drug benefit challenged Tennessee laws regulating pharmacy benefit managers (PBMs). The laws included "any willing provider" (AWP) provisions, which required the plan's PBM to admit any willing pharmacy to its network, and "incentive" provisions, which restricted the plan's use of cost-sharing to encourage participants to use certain pharmacies. The trial court held that these laws were preempted by ERISA because they affect key aspects of plan administration and interfere with nationally uniform plan administration, and permanently enjoined the state insurance commissioner from enforcing the laws against the employer. The commissioner appealed.

The Sixth Circuit affirmed the trial court's decision, agreeing that the AWP provisions dictate how a plan must be structured, govern a central matter of plan administration (the scope of the pharmacy network), and interfere with nationally uniform plan administration by requiring plans to be tailored to Tennessee's specific laws. Similarly, the court found that the incentive provisions also have an impermissible connection to ERISA because they impede cost-sharing arrangements and effectively dictate plan choices. The court distinguished these laws from state laws that merely increase costs (which are generally not preempted), noting that they go further by controlling how a plan is designed and structured. The court did not need to decide whether the laws at issue regulate insurance and thus might be saved from preemption by ERISA's "savings clause" because in any event the "deemer" clause would prevent their application to this employer's plan since it is self-insured.

EBIA Comment: This decision reinforces the broad scope of ERISA preemption for self-insured health plans. While the Supreme Court's *Rutledge* decision narrowed preemption in some ways, this ruling illustrates that state laws directly regulating the design and structure of a self-insured plan's benefits, such as AWP laws, are still likely to be preempted. For more information, see EBIA's ERISA Compliance manual at Sections XXXIX.C ("State Laws That 'Relate to' ERISA Plans Are Generally Preempted"), XXXIX.H.2 ("'Any Willing Provider' Laws"), and XXXIX.H.8.c ("Pharmacy Benefit Managers (PBMs)"). See also EBIA's Self-Insured Health Plans manual at Section V.E ("ERISA Preemption and the Application of State Mandates").

Contributing Editors: EBIA Staff.