On February 14, 2006, the New York State Court of Appeals, affirming an earlier decision by the Appellate Division, refused to compel the Mayor of New York City to enforce the New York City Equal Benefits Law requiring certain City contractors to provide domestic partner benefits to employees. Specifically, the state high court ruled that the law passed by the New York City Council was invalid on the grounds that it was preempted by both state and federal law. New York City employers will not be required to comply with the Equal Benefits Law, as reported in Jackson Lewis Legal Updates, November 11, 2004.

With certain limited exceptions, the Equal Benefits Law would have required covered employers that enter into or renew contracts with the City of New York for work, labor, services, supplies, equipment, or materials valued at over $100,000 to provide employees with domestic partners the same benefits as they provide to employees with spouses. To qualify as a domestic partner relationship, couples must be registered or recognized as domestic partners under city law, or have registered with the employer as domestic partners if the employer maintains such a registry.

Mayor Bloomberg immediately filed suit to enjoin the law from going into effect, arguing that the law created an advantage for companies located outside the city and an undue burden on employers due to its compliance requirements. When the injunction was denied, Mayor Bloomberg appealed the trial court’s decision to the New York State Appellate Division. The parties agreed to suspend implementation of the law pending the outcome of the litigation.

On March 15, 2005, the appellate court found the Mayor’s arguments persuasive and held that the Equal Benefits Law was unenforceable. The appellate court found the city law was preempted by the federal Employee Retirement Income Security Act “[s]ince [the Equal Benefits Law] mandates employee benefit structures or their administration.” The City Council then appealed the matter to the New York State Court of Appeals and argued (consistent with its arguments to the Appellate Division) that ERISA preemption should not apply due to the “market participant” exception to ERISA preemption since the City was merely acting as a consumer in the marketplace and not as a regulator. The appellate court’s decision had not addressed the “market participant” exception despite the City Council’s arguments.

Affirming the Appellate Division decision on February 14, 2006, the New York State Court of Appeals refused to compel the Mayor’s enforcement of the Equal Benefits Law. In addition to detailing the basis for its finding of state preemption, the Court of Appeals decision analyzed in detail the conflict between the City law and the federal ERISA in terms of the “market participant” exception and general ERISA principles.

The Court of Appeals noted that the Equal Benefits Law attempted to prescribe the terms of benefit plans, which the U. S. Supreme Court has held to be prohibited under ERISA. (See Shaw v. Delta Air Lines, Inc., 463 U.S. 83, 96-97 (1983)). Turning to the “market participant” exception, the Court of Appeals examined two other U. S. Supreme Court decisions and found the Equal Benefits Law did not meet the requirements for the exception. Building & Constr. Trades Council v. Associated Bldrs. and Contes. of Massachusetts/Rhode Island, Inc., 507 U.S. 218 (1993) (“Boston Harbor”) and Wisconsin Department of Industry, Labor and Human Relations v. Gould Inc., 475 U.S. 282 (1986)

The Court of Appeals explained that, although, the Supreme Court in Boston Harbor“recognized a
The Court of Appeals, citing *Boston Harbor*, further stated that for the “market participant” exception to apply, the state must have “no interest in setting policy.” (*Id. at 229.*) The Court of Appeals then cited to the *Gould* decision which held a Wisconsin statute to be preempted by federal labor law because the State’s reason for its marketplace activity was to deter labor law violations (a clear policy reason), rather than to “protect the State’s proprietary interest in the efficient performance of contracts.” (*Id. at 228-229.*) The Court of Appeals then concluded that the Equal Benefits Law was similar to the ordinance in *Gould*, stating that the Council was “obviously setting policy,” as the Equal Benefits Law was “designed to induce contractors to treat domestic partners and spouses equally,” and, accordingly, found the exception inapplicable.

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