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March 2, 2023

The Honorable Senator Melony Griffith, Chair
Members of the Senate Finance Committee

RE: SUPPORT SB456

As Maryland State Legislative Director for the Transportation Division of the International Association of Sheet Metal, Air, Rail and Transportation Worker's (SMART), and on behalf of all railroad workers in the state of Maryland we urge your support for SB456 - *Healthy Working Families Act - Railroad Employees - Unpaid Leave.*

We are the largest rail labor union in North America. Our members in Maryland are employees of CSX, Norfolk Southern Railway, Amtrak, Bombardier (MARC Service) and the Canton Railroad and work as conductors, engineers, switchmen, trainmen, utility persons and yardmasters. Our members operate freight and passenger trains that travel throughout the State. SMART represents over 216,000 members throughout the country.

In 2017, the Maryland General Assembly passed the Maryland Healthy Working Families Act. Although it was vetoed by the Governor, the veto was overridden, and the Act became law in 2018.

The Act prescribed what the Maryland legislature deemed to be the minimum sick leave benefits that Maryland employers should be required to provide to their employees. The proponents claimed the Act was to promote health and employee well-being and believed the benefits would in turn improve worker retention rates and productivity. This policy statement was intended to cover all employees in the State.

The Act requires an employer to notify their employees of their entitlement to earned sick and safe leave.

The Act provides for both paid and unpaid earned sick and safe leave that can be taken for several reasons while prohibiting the employer from taking adverse action against an employee who exercises this right.

The railroads have not provided the notice as required in the law and have not provided their employees with the benefits prescribed by the law, relying on their position that they are exempt from the Maryland law based on provisions of the Railroad Unemployment Insurance Act (RUIA).

The RUIA is a federal law that provides the exclusive source of unemployment and sickness benefits in monetary payments to railroad employees. Congress passed the law to provide a minimum level of wage replacement for employees unable to work due to sickness. The law requires the payment of sickness benefits for periods of sickness.

RUIA also contains an express preemption provision disallowing railroad employees from having any right to "sickness benefits under a sickness law of any State." 45 U.S.C. § 363(b), which reads in part:

> "*By enactment of this chapter the Congress makes exclusive provision for the payment of unemployment benefits for unemployment occurring after June 30, 1939, and for the payment of sickness benefits for sickness periods after June 30, 1947, based upon employment (as defined in this chapter). No employee shall have or assert any right to unemployment benefits under an unemployment compensation law of any State with respect to unemployment occurring after June 30, 1939, or to sickness benefits under a sickness law of any State with respect to sickness periods occurring after June 30, 1947, based upon employment (as defined in this chapter).*
>
> *The Congress finds and declares that by virtue of the enactment of this chapter, the application of State unemployment compensation laws after June 30, 1939, or of State sickness laws after June 30, 1947, to such employment, except pursuant to section 362(g) of this title, would constitute an undue burden upon, and an undue interference with the effective regulation of, interstate commerce.*"

In November 2014, Massachusetts voters approved the Massachusetts Earned Sick Time Law (ESTL), which requires most employers to provide "earned paid sick time" to qualifying employees in Massachusetts. That law took effect on July 1, 2015.

In the wake of the ESTL's passage, several companies that operate rail transportation systems and related facilities in Massachusetts asked the Massachusetts attorney general to voluntarily agree not to enforce the ESTL against them. They based their request on the language of the Railroad Unemployment Insurance Act (RUIA), which both provides sick leave benefits for covered employees and contains a broad preemption provision.

When the attorney general declined this invitation, the companies filed suit, seeking both a declaratory judgment that the RUIA preempted the ESTL and an injunction against the attorney general from enforcing or applying the ESTL against them. Several labor unions subsequently intervened and opposed the employers' position.

The companies initially prevailed in federal court. On appeal, however, the U.S. Court of Appeals for the First Circuit issued a split decision. On the one hand, the First Circuit ruled that one section of ESTL was preempted. On the other hand, the appeals court sent the case back to the district court to decide whether other sections of the ESTL fell within the scope of the RUIA's preemption provision.

On remand, the district court entered summary judgment for the employers. The court concluded that the text of the RUIA reflects a congressional intent to ensure that the RUIA is the exclusive source of all sickness benefits for railroad employees and to preclude the employees from claiming rights to sickness benefits under any comparable state law, such as the ESTL. Therefore, the court held that the entire ESTL is preempted.

In 2014, the state of California enacted their "Healthy Workplaces, Healthy Families Act," which requires employers to provide employees with paid sick leave that they may use for specified purposes.

After the California Act went into effect, six railroad companies filed suit in the U.S. District Court for the Eastern District of California against the California Labor Commissioner. The railroads alleged that the California Act was invalid as applied to their employees because it was preempted by RUIA.

The District Court granted summary judgement to the railroads and invalidated the laws applicability to railroad employees covered by the RUIA.

In March of 2022 the District Court's decision was appealed to the U.S. Ninth Circuit Court of Appeals, wherein their decision was upheld in July of 2022.

The Maryland Attorney General's office, in their opinion letter dated February 15, 2023, indicates SB456 could be preempted based on these court decisions while recognizing there is no binding federal precedent in Maryland.

The attached research document provides support for the following statements offered to support our position that the proposed legislation is not preempted by federal law.

We believe that the critical distinction between Senate Bill 456 and the legislation considered by the two other federal courts is that SB 456 calls for unpaid leave, as opposed to paid sick leave. We believe that distinction to be critical because, as the relevant cases point out, the RUIA is intended to provide only a paid benefit and does not touch upon unpaid leave.

In *National Railroad Passenger Corporation v. Su*, 41 F.4th 1147, 1149 (9th Cir. 2022), the Ninth Circuit addressed the California Healthy Workplaces, Healthy Families Act, which requires "employers to provide employees with paid sick leave that they may use for specified purposes." In addressing whether the RUIA preempted this California Act, the Court began its analysis with a review of the RUIA's express preemption provision, which reads: "By enactment of this chapter the Congress makes exclusive provision… for the payment of sickness benefits… No employee shall have or assert any right to… sickness benefits under a sickness law of any state…"

The Court noted that in determining whether express preemption applies, it must first look at the plain wording of the clause. Next, the Court must look at the surrounding statutory framework and Congress's intent in enacting the statute. In its analysis, the Court focused exclusively on whether the California Act covered the same conditions as RUIA. The RUIA covers only an individual's personal illness or sickness. It does not extend as far as the California Act in covering numerous other situations. In applying its analysis, the Court concluded that the scope of the coverage was inconsequential to the express preemption issue. Accordingly, it concluded that the RUIA did preempt the California Act. However, the Court did not consider the key difference here; namely, that SB 456 encompasses only unpaid leave. In that regard, the *Su* case carries no persuasive influence.

Admittedly, a railroad attacking the constitutionality of SB 456 may argue that the term "benefits" is not limited to monetary payments but includes the nonfinancial benefit of time off. However, further analysis of *Su* dispels this notion. In *Su*, the Court noted that under the RUIA, the term "benefits" is defined as "money payments payable to employees… with respect to unemployment or sickness." Therefore, the use of the term "benefit" in the express preemption provision of the RUIA cannot be interpreted as the mere unpaid leave as provided in SB 456.

Because the California Act did not have a provision for unpaid leave, neither the parties nor the Court addressed whether unpaid leave would be preempted by the RUIA. However, it is clear that

the term "benefits" as used in the RUIA means monetary payments, not unpaid leave. Looking at the plain wording of the express preemption clause, it is evident that benefits and unpaid leave are not synonymous.

Turning next to the case of *CSX Transp., Inc. v. Healey*, the Court in that case addressed whether the Massachusetts Earned Sick Time Law ("ESTL") was preempted by the RUIA. The ESTL required certain employers to provide "earned paid sick time." Like in *Su*, the *Healey* Court addressed the issue of the purpose for which the sick leave was taken, i.e. personal sickness, as opposed to the other enumerated reasons in the state act, to conclude that express preemption applied. However, the distinction between paid sick time versus unpaid leave was not part of the Court's holding.

Unlike the California Act, the Massachusetts Act does address unpaid leave. The *Healey* court does mention unpaid sick time. However, the court never analyzed whether unpaid leave was preempted by the RUIA.

There is good reason for this fact - the plaintiff railroads in *Healey* did not even address the unpaid leave provision of the Massachusetts law. In their MEMORANDUM IN SUPPORT OF PLAINTIFFS RENEWED MOTION FOR SUMMARY JUDGMENT, the plaintiff railroads never argued that the provision of the Massachusetts Act calling for unpaid leave was preempted. Throughout its Memorandum, the plaintiff railroads repeatedly addressed "paid" leave. The fact that the plaintiff railroads did not even attempt to argue that unpaid leave was preempted is certainly indicative of its understanding that a state law that addresses unpaid leave for railroad workers is constitutional and not preempted.

We believe the distinction in SB 456, namely that it addresses only unpaid leave, is determinative and falls outside the express preemption provision of the RUIA. The RUIA is clearly intended to address monetary payments to railroad employees for their sickness and related conditions. It does not address under what circumstances a railroad is required to provide its employees with unpaid leave. Neither of the cases discussed herein are contrary to that proposition.

The effect of these decisions by the courts regarding the RUIA have made railroad workers the only employees in the state of Maryland not entitled to the minimum level of paid sick leave prescribed by the Maryland law, which is contrary to the intent of the law the General Assembly passed.

So, what is the solution? Passage of SB456. It will bring the railroad workers under coverage of the Act by simply requiring the railroad employers to provide the sick leave defined under the Maryland Healthy Working Families Act as "unpaid" sick leave, thereby eliminating the benefit of a monetary payment to employees.

We therefore urge the committee to give a favorable report to SB456!

Sincerely,

Lawrence E. Kasecamp, Director
Maryland State Legislative Board
SMART Transportation Division

Research Document in Support of SB456/2023 and its constitutionality.

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ALM GL ch. 149, § 148C

Current through Chapter 448, all legislation of the 2022 Legislative Session of the 192nd General Court

Annotated Laws of Massachusetts > PART I ADMINISTRATION OF THE GOVERNMENT (Chs. 1 - 182) > TITLE XXI LABOR AND INDUSTRIES (Chs. 149 - 154) > TITLE XXI LABOR AND INDUSTRIES (Chs. 149 — 154) > Chapter 149 Labor and Industries (§§ 1 — 203)

§ 148C. Payment of Wages — Earned Sick Time.

(a) As used in this section and section 148D, the following words, unless the context clearly requires otherwise, shall have the following meanings:—

"Child", a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person who has assumed the responsibilities of parenthood.

"Earned paid sick time", the time off from work that is provided by an employer to an employee as computed under subsection (d) that can be used for the purposes described in subsection (c) and is compensated at the same hourly rate as the employee earns from the employee's employment at the time the employee uses the paid sick time; provided, however, that this hourly rate shall not be less than the effective minimum wage under *section 1 of chapter 151*.

"Earned sick time", the time off from work that is provided by an employer to an employee, whether paid or unpaid, as computed under subsection (d) that can be used for the purposes described in subsection (c).

"Employee", any person who performs services for an employer for wage, remuneration, or other compensation, except that employees employed by cities and towns shall only be considered Employees for purposes of this law if this law is accepted by vote or by appropriation as provided in Article CXV of the Amendments to the Constitution of the Commonwealth.

"Employer", any individual, corporation, partnership or other private or public entity, including any agent thereof, who engages the services of an employee for wages, remuneration or other compensation, except the United States government shall not be considered an Employer and cities and towns shall only be considered Employers for the purposes of this law if this law is accepted by vote or by appropriation as provided in Article CXV of the Amendments to the Constitution of the Commonwealth.

"Health care provider", the meaning given this term by the Family and Medical Leave Act of *1993, 29* U.S.C. sections 2601 to 2654, inclusive, as it may be amended and regulations promulgated thereunder.

"Parent", a biological, adoptive, foster or step-parent of an employee or of an employee's spouse; or other person who assumed the responsibilities of parenthood when the employee or employee's spouse was a child.

"Spouse", the meaning given this term by the marriage laws of the commonwealth.

(b) All employees who work in the commonwealth who must be absent from work for the reasons set forth in subsection (c) shall be entitled to earn and use not less than the hours of earned sick time provided in subsection (d).

(c) Earned sick time shall be provided by an employer for an employee to:

(1) care for the employee's child, spouse, parent, or parent of a spouse, who is suffering from a physical or mental illness, injury, or medical condition that requires home care, professional medical diagnosis or care, or preventative medical care; or

(2) care for the employee's own physical or mental illness, injury, or medical condition that requires home care, professional medical diagnosis or care, or preventative medical care; or

(3) attend the employee's routine medical appointment or a routine medical appointment for the employee's child, spouse, parent, or parent of spouse; or

(4) address the psychological, physical or legal effects of domestic violence as defined in subsection (g½) of section 1 of chapter 151A, except that the definition of employee in subsection (a) will govern for purposes of this section.

(d)

(1) An employer shall provide a minimum of one hour of earned sick time for every thirty hours worked by an employee. Employees shall begin accruing earned sick time commencing with the date of hire of the employee or the date this law becomes effective, whichever is later, but employees shall not be entitled to use accrued earned sick time until the 90th calendar day following commencement of their employment. On and after this 90 day period, employees may use earned sick time as it accrues.

(2) Nothing in this chapter shall be construed to discourage or prohibit an employer from allowing the accrual of earned sick time at a faster rate, or the use of earned sick time at an earlier date, than this section requires.

(3) Employees who are exempt from overtime requirements under 29 U.S.C. section 213(a)(1) of the Federal Fair Labor Standards Act shall be assumed to work 40 hours in each work week for purposes of earned sick time accrual unless their normal work week is less than 40 hours, in which case earned sick time shall accrue based on that normal work week.

(4) All employees employed by an employer of eleven or more employees shall be entitled to earn and use up to 40 hours of earned paid sick time from that employer as provided in subsection (d) in a calendar year. In determining the number of employees who are employed by an employer for compensation, all employees performing work for compensation on a full-time, part-time or temporary basis shall be counted.

(5) Notwithstanding section 17 of chapter 15D, sections 70-75 of chapter 118E, or any other special or general law to the contrary, the PCA Quality Home Care Workforce Council shall be deemed the Employer of all Personal Care Attendants, as defined in section 70 of chapter 118E, for purposes of subsection (d)(4) of this section, the Department of Medical Assistance shall be deemed the Employer of said Personal Care Attendants for all other purposes under this section, and the Department of Early Education and Care shall be deemed the Employer of all Family Child Care Providers, as defined in section 17(a) of chapter 15D, for purposes of this section.

(6) All employees not entitled to earned paid sick time from an employer pursuant to subsection (d)(4) - (5) shall be entitled to earn and use up to 40 hours of earned unpaid sick time from that employer as provided in subsection (d) in a calendar year.

(7) Earned sick time shall be used in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time. Employees may carry over up to 40 hours of unused earned sick time to the next calendar year, but are not entitled to use more than 40 hours in one calendar year. Employers shall not be required to pay out unused earned sick time upon the separation of the employee from the employer.

(e) If an employee is absent from work for any reason listed in subsection (c) and, by mutual consent of the employer and the employee, the employee works an equivalent number of additional hours or shifts during the same or the next pay period as the hours or shifts not worked due to reasons listed in subsection (c), an employee shall not be required to use accrued earned sick time for the employee's absence during that time period and the employer shall not be required to pay for the time the employee was so absent. An employer shall not require such employee to work additional hours to make up for the hours during which the employee was so absent or require that the employee search for or find a replacement employee to cover the hours during which the employee is utilizing earned sick time.

(f) Subject to the provisions of subsection (n), an employer may require certification when an earned sick time period covers more than 24 consecutively scheduled work hours. Any reasonable documentation signed by a health care provider indicating the need for earned sick time taken shall be deemed acceptable certification for absences under subsection (c)(1), (2) and (3). Documentation deemed acceptable under subsection (g½) of section 1 of chapter 151A shall be deemed acceptable documentation for absences under subsection (c)(4). An employer may not require that the documentation explain the nature of the illness or the details of the domestic violence. The employer shall not delay the taking of earned sick time or delay pay for the period in which earned sick time was taken for employees entitled to pay under subsection (d), on the basis that the employer has not yet received the certification. Nothing in this section shall be construed to require an employee to provide as certification any information from a health care provider that would be in violation of section 1177 of the Social Security Act, 42 U.S.C. 1320d-6, or the regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d-2 note.

(g) When the use of earned sick time is foreseeable, the employee shall make a good faith effort to provide notice of this need to the employer in advance of the use of the earned sick time.

(h) It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under or in connection with this section, including, but not limited to, by using the taking of earned sick time under this section as a negative factor in any employment action such as evaluation, promotion, disciplinary action or termination, or otherwise subjecting an employee to discipline for the use of earned sick time under this section.

(i) It shall be unlawful for any employer to take any adverse action against an employee because the employee opposes practices which the employee believes to be in violation of this section, or because the employee supports the exercise of rights of another employee under this section. Exercising rights under this section shall include but not be limited to filing an action, or instituting or causing to be instituted any proceeding, under or related to this section; providing or intending to provide any information in connection with any inquiry or proceeding relating to any right provided under this section; or testifying or intending to testify in any inquiry or proceeding relating to any right provided under this section.

(j) Nothing in this section shall be construed to discourage employers from adopting or retaining earned sick time policies more generous than policies that comply with the requirements of this section and nothing in this section shall be construed to diminish or impair the obligation of an employer to comply with any contract, collective bargaining agreement, or any employment benefit program or plan in effect on the effective date of this section that provides to employees greater earned sick time rights than the rights established under this section.

(k) Employers required to provide earned paid sick time who provide their employees paid time off under a paid time off, vacation or other paid leave policy who make available an amount of paid time off sufficient to meet the accrual requirements of this section that may be used for the same purposes and under the same conditions as earned paid sick time under this section are not required by this section to provide additional earned paid sick time.

(l) The attorney general shall enforce this section, and may obtain injunctive or declaratory relief for this purpose. Violation of this section shall be subject to paragraphs (1), (2), (4), (6) and (7) of subsection (b) of section 27C and to section 150.

(m) The attorney general shall prescribe by regulation the employer's obligation to make, keep, and preserve records pertaining to this section consistent with the requirements of section 15 of chapter 151.

(n) The attorney general may adopt rules and regulations necessary to carry out the purpose and provisions of this section, including the manner in which an employee who does not have a health care provider shall provide certification, and the manner in which employer size shall be determined for purposes of subsection (d)(4).

(o) Notice of this section shall be prepared by the attorney general, in English and in other languages required under clause (iii) of subsection (d) of section 62A of chapter 151A. Employers shall post this notice

in a conspicuous location accessible to employees in every establishment where employees with rights under this section work, and shall provide a copy to their employees. This notice shall include the following information:

(1) information describing the rights to earned sick time under this section;

(2) information about the notices, documentation and any other requirements placed on employees in order to exercise their rights to earned sick time;

(3) information that describes the protections that an employee has in exercising rights under this section;

(4) the name, address, phone number, and website of the attorney general's office where questions about the rights and responsibilities under this section can be answered; and

(5) information about filing an action under this section.

History

HISTORY:

2014, 505, § 1.

Annotations

Notes

Codification

Acts 2014, 505, § 1, effective July 1, 2015, enacted this section. Sections 3 and 4 provide:

SECTION 3. If any provision of this act or application thereof to any person or circumstance is judged invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

SECTION 4. This act shall take effect on July 1, 2015.

Notes to Decisions

1.Adoption of statute

2.—Declaratory judgment

1. Adoption of statute

Town was entitled to summary judgment as to an employee's claims for hostile work environment and the unlawful denial of the ability to accrue and use earned sick time because the employee's hostile work environment claim was not based on any alleged discriminatory conduct or animus prohibited by statute, his claims that he was misclassified as an independent contractor and denied overtime wages were untimely where he was fully aware when he was first hired that his immediate predecessor was a town employee and the position was advertised as

one for an "employee," and he had admitted that the town never adopted or accepted the earned sick time statute. *Vancour v. Town of Tisbury, 2018 Mass. Super. LEXIS 272 (Mass. Super. Ct. Oct. 19, 2018)*.

2. —Declaratory judgment

Attorney General's lawsuit against corporations involved an "actual controversy" within the meaning of the declaratory judgment statute because she alleged they misclassified their drivers as independent contractors rather than employees, and as a result, many drivers had not received minimum wage, overtime, and earned sick time payments that were required under Massachusetts law; she alleged the corporations continued to violate the independent contractor statute and other wage and hour laws. *Healey v. Uber Techs., Inc., 2021 Mass. Super. LEXIS 28 (Mass. Super. Ct. Mar. 25, 2021)*.

Research References & Practice Aids

Hierarchy Notes:

ALM GL Pt. I, Title XXI, Ch. 149

Annotated Laws of Massachusetts
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Neutral
As of: February 24, 2023 1:59 AM Z

AMTRAK v. Su

United States Court of Appeals for the Ninth Circuit

March 17, 2022, Argued and Submitted, San Francisco, California; July 26, 2022, Filed

Nos. 21-15816, 21-15825

Reporter
41 F.4th 1147 *; 2022 U.S. App. LEXIS 20550 **

NATIONAL RAILROAD PASSENGER CORPORATION, Amtrak; BNSF RAILWAY COMPANY; UNION PACIFIC RAILROAD COMPANY; LOS ANGELES JUNCTION RAILWAY; TTX COMPANY; CENTRAL CALIFORNIA TRACTION COMPANY, Plaintiffs-Appellees, v. JULIE A. SU, in her official capacity as Labor Commissioner, State of California Division of Labor Standards Enforcement, Defendant-Appellant, BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN; BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES; BROTHERHOOD OF RAILROAD SIGNALMEN; INTERNATIONAL ASSOCIATION OF SHEET METAL, AIR, RAIL AND TRANSPORTATION WORKERS; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; NATIONAL CONFERENCE OF FIREMEN & OILERS DISTRICT OF LOCAL 32BJ, Intervenor-Defendants-Appellants-Intervenors.

Prior History: **[**1]** Appeal from the United States District Court for the Eastern District of California. D.C. No. 2:15-cv-00924-KJM-JDP. Kimberly J. Mueller, Chief District Judge, Presiding.

AMTRAK v. Su, 289 F. Supp. 3d 1130, 2017 U.S. Dist. LEXIS 167477, 2017 WL 4517823 (E.D. Cal., Oct. 10, 2017)

Disposition: AFFIRMED.

Core Terms

sickness, benefits, California Act, state law, sick leave, railroad employee, purposes, preempt, employees, railroad, unemployment, preemption clause, preemption provision, sick day, preemption, domestic violence, regulation, short-term, express preemption provision, sexual assault, family member, federal law, disability, interstate, booklet

Case Summary

Overview

HOLDINGS: [1]-As applied to railroad employees, the Healthy Workplaces, Healthy Families Act Act fell within the Railroad Unemployment Insurance Act's (RUIA) preemption clause, as the California Act was a "sickness law" that provided "sickness benefits"; [2]-Because RUIA stated that federal law conferred the "exclusive" "sickness benefits" for railroad employees, *45 U.S.C.S. § 363(b)*, the California Act infringed on RUIA's domain; [3]-There was no valid basis for interpreting "sickness benefits" to mean "short-term disability plans" and under RUIA, the California Act could not be applied to railroad employees consistent with the *Supremacy Clause*.

Outcome

Judgment affirmed.

LexisNexis® Headnotes

Business & Corporate Compliance > ... > Wage & Hour Laws > Scope & Definitions > Holiday, Sick & Vacation Pay

Constitutional Law > Supremacy Clause > Federal Preemption

Transportation Law > Interstate Commerce > Federal Preemption

Business & Corporate Compliance > ... > Disability & Unemployment Insurance > Unemployment Compensation > Scope & Definitions

HN1[] **Scope & Coverage, Holiday, Sick & Vacation Pay**

The Railroad Unemployment Insurance Act (RUIA) is a federal law that provides the exclusive source of unemployment and sickness benefits to railroad employees. RUIA also contains an express preemption provision disallowing railroad employees from having any right to sickness benefits under a sickness law of any State, *45 U.S.C.S. § 363(b)*.

Business & Corporate Compliance > ... > Disability & Unemployment Insurance > Unemployment Compensation > Scope & Definitions

Labor & Employment Law > Disability & Unemployment Insurance > Unemployment Compensation > Benefit Entitlements

HN2[] **Unemployment Compensation, Scope & Definitions**

In 1938, Congress passed the Railroad Unemployment Insurance Act R(UIA) to provide unemployment benefits for railroad employees, *45 U.S.C.S. §§ 351-369*. An employee who is eligible for RUIA benefits may receive approximately sixty percent of his daily pay, subject to certain limitations, while he remains unemployed, *45 U.S.C.S. § 352(a)(1)-(3)*.

Business & Corporate Compliance > ... > Wage & Hour Laws > Scope & Definitions > Holiday, Sick & Vacation Pay

HN3[] **Scope & Coverage, Holiday, Sick & Vacation Pay**

In 1946, Congress amended the Railroad Unemployment Insurance Act to also provide railroad employees with sickness benefits, *45 U.S.C.S. § 352(a)(1)(B)*. These benefits, which likewise amount to sixty percent of daily pay, are available for each day of sickness after the 4th consecutive day of sickness in a period of continuing sickness, *45 U.S.C.S. § 352(a)(1)(B)(i)*. RUIA defines day of sickness in relevant part as a calendar day on which because of any physical, mental, psychological, or nervous injury, illness, sickness, or disease the employee is not able to work, *45 U.S.C.S. § 351(k)(2)*. "Day of sickness" also includes with respect to a female employee, a calendar day on which, because of pregnancy, miscarriage, or the birth of a child, (i) she is unable to work or (ii) working would be injurious to her health. The phrase period of continuing sickness means either consecutive days of sickness, whether from 1 or more causes or successive days of sickness due to a single cause without interruption of more than 90 consecutive days, *45 U.S.C.S. § 352(a)(1)(B)(iii)*.

Antitrust & Trade Law > Regulated Industries > Transportation > Railroads

Business & Corporate Compliance > ... > Transportation Law > Rail Transportation > Rates & Tariffs

Transportation Law > Rail Transportation > Lands & Rights of Way

Business & Corporate Compliance > ... > Disability & Unemployment Insurance > Unemployment Compensation > Scope & Definitions

Business & Corporate Compliance > ... > Transportation Law > Rail Transportation > State & Local Regulation

HN4[] **Transportation, Railroads**

The benefits available under the Railroad Unemployment Insurance Act are funded by a special tax on railroad employers equal to 4 percent of the total rail wages, Railroad Unemployment Repayment Tax Act, *26 U.S.C.S. § 3321(b)(1)*. To ensure that the federal regulatory scheme would not impose an undue economic burden on railroad companies, Congress simultaneously exempted these employers from certain state laws, *45 U.S.C.S. § 363(b)*.

Business & Corporate Compliance > ... > Wage & Hour Laws > Scope & Definitions > Holiday, Sick & Vacation Pay

Labor & Employment Law > Disability & Unemployment Insurance > Unemployment Compensation > Benefit Entitlements

Constitutional Law > Supremacy Clause > Federal Preemption

Review > De Novo Review

Civil Procedure > ... > Summary Judgment > Appellate Review > Standards of Review

HN9[] **Standards of Review, De Novo Revie v**

The appellate court reviews the district court's grant of summary judgment de novo and may affirm on any ground supported by the record.

Constitutional Law > Supremacy Clause > Federal Preemption

Constitutional Law > Supremacy Clause > Supreme Law of the Land

HN10[] **Supremacy Clause, Federal Preemption**

The Supremacy Clause provides that the laws of the United States shall be the supreme Law of the Land any Thing in the Constitution or Laws of any State to the Contrary notwithstanding, U.S. Const. art. VI, cl. 2. As a result, it has long been settled that state laws that conflict with federal law are without effect.

Civil Procedure > ... > Federal & State Interrelationships > Federal Common Law > Preemption

Constitutional Law > Supremacy Clause > Federal Preemption

Governments > Legislation > Interpretation

HN11[] **Federal Common Law, Preemption**

When a federal statute includes an express preemption provision, the task of statutory construction must in the first instance focus on the plain wording of the clause. The appellate court considers also the surrounding statutory framework and Congress's stated purposes in enacting the statute to identify the domain expressly pre-empted by that language. Once the appellate court has done so, it asks whether the state law at issue falls within the scope of the preemption clause.

Business & Corporate Compliance > ... > Wage & Hour Laws > Scope & Definitions > Holiday, Sick & Vacation Pay

Constitutional Law > Supremacy Clause > Federal Preemption

Business & Corporate Compliance > ... > Disability & Unemployment Insurance > Unemployment Compensation > Scope & Definitions

HN12[] **Scope & Coverage, Holiday, Sick & Vacation Pay**

The Railroad Unemployment Insurance Act's (RUIA) express preemption provision is set forth in 45 U.S.C.S. § 363(b). It establishes that by enactment of this chapter the Congress makes exclusive provision for the payment of sickness benefits, and consequently, no employee shall have or assert any right to sickness benefits under a sickness law of any State, 45 U.S.C.S. § 363(b). In determining the scope of RUIA's express preemption provision, the appellate court looks first to the plain meaning of its text.

Business & Corporate Compliance > ... > Wage & Hour Laws > Scope & Definitions > Holiday, Sick & Vacation Pay

Constitutional Law > Supremacy Clause > Federal Preemption

HN13[] **Scope & Coverage, Holiday, Sick & Vacation Pay**

Through its definition of the phrase "day of sickness," the Railroad Unemployment Insurance Act (RUIA) treats the notion of "sickness" expansively, encompassing calendar days on which because of any physical, mental, psychological, or nervous injury, illness, sickness, or disease the employee is not able to work, 45 U.S.C.S. § 351(k)(2). For a female employee, a "day of sickness" also includes a calendar day on which, because of pregnancy, miscarriage, or the birth of a child, (i) she is unable to work or (ii) working would be injurious to her health. With this language, RUIA reflects a wide-ranging conception of "sickness." RUIA's preemption of sickness benefits under a sickness law of any State, § 363(b), therefore broadly refers to compensation or other assistance provided to employees in connection with physical or mental well-being.

Business & Corporate Compliance > ... > Disability & Unemployment Insurance > Unemployment Compensation > Scope & Definitions

Labor & Employment Law > ... > Unemployment Compensation > Eligibility > Payments

HN5[] Scope & Coverage, Holiday, Sick & Vacation Pay

The Railroad Unemployment Insurance Act preemption provision reads in part: By enactment of this chapter the Congress makes exclusive provision for the payment of unemployment benefits for unemployment occurring after June 30, 1939, and for the payment of sickness benefits for sickness periods after June 30, 1947, based upon employment (as defined in this chapter). No employee shall have or assert any right to unemployment benefits under an unemployment compensation law of any State with respect to unemployment occurring after June 30, 1939, or to sickness benefits under a sickness law of any State with respect to sickness periods occurring after June 30, 1947, based upon employment (as defined in this chapter).The Congress finds and declares that by virtue of the enactment of this chapter, the application of State unemployment compensation laws after June 30, 1939 or of State sickness laws after June 30, 1947, to such employment, except pursuant to *section 362(g)* of this title, would constitute an undue burden upon, and an undue interference with the effective regulation of, interstate commerce, *45 U.S.C.S. § 363(b)*.

Labor & Employment Law > ... > Remedies > Damages > Liquidated Damages

Labor & Employment Law > Leaves of Absence > Short Term Leaves

HN6[] Damages, Liquidated Damages

In 2014, the California legislature passed the Healthy Workplaces, Healthy Families Act, which the appellate court will refer to as the California Act or the Act, *Cal. Lab. Code §§ 245-249*. The California Act ensures that workers in California can address their own health needs and the health needs of their families by requiring employers to provide a minimum level of paid sick days including time for family care. With limited exceptions, the Act generally requires employers to provide a minimum of twenty-four hours paid sick leave or three paid sick days per year to every employee working in California, *Cal. Lab. Code § 246(a)(1)*, *(b)*. Employees also accrue additional days based on the length of their employment, *§ 246(b)*.

Labor & Employment Law > Leaves of Absence > Short Term Leaves

HN7[] Leaves of Absence, Short Term Leaves

Under the Healthy Workplaces, Healthy Families Act, employees may use their paid sick leave for the following purposes: (1) Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member. (2) For an employee who is a victim of domestic violence, sexual assault, or stalking, the purposes described in *subdivision (c) of Section 230* and *subdivision (a) of Section 230.1*, *Cal. Lab. Code § 246.5(a)*. Among the purposes referred to in subsection (2) are: (1) To seek medical attention for injuries caused by crime or abuse. (2) To obtain services from a domestic violence shelter, program, rape crisis center, or victim services organization or agency as a result of the crime or abuse. (3) To obtain psychological counseling or mental health services related to an experience of crime or abuse.(4) To participate in safety planning and take other actions to increase safety from future crime or abuse, including temporary or permanent relocation, *Cal. Lab. Code § 230.1(a)*.

Civil Procedure > Remedies > Injunctions > Temporary Restraining Orders

Labor & Employment Law > ... > Remedies > Damages > Liquidated Damages

HN8[] Injunctions, Temporary Restraining Orders

Through its cross-reference to *Cal. Lab. Code § 230(c)*, *Cal. Lab. Code § 246.5(a)(2)* further allows sick leave to be used to obtain or attempt to obtain any relief, such as a temporary restraining order, restraining order, or other injunctive relief, to help ensure the health, safety, or welfare of the victim or their child, *§ 230(c)*.

Civil Procedure > Appeals > Standards of

Antitrust & Trade Law > Regulated Industries > Transportation > Railroads

Business & Corporate Compliance > ... > Wage & Hour Laws > Scope & Definitions > Holiday, Sick & Vacation Pay

Pensions & Benefits Law > ... > Railroad Workers > Railroad Retirement Act of 1974 > Judicial Review

Pensions & Benefits Law > Governmental Employees > Railroad Workers > Railroad Retirement Act of 1935

Business & Corporate Compliance > ... > Disability & Unemployment Insurance > Unemployment Compensation > Scope & Definitions

HN14[] **Transportation, Railroads**

The preemption provision emphasizes that the Railroad Unemployment Insurance Act (RUIA) is to be the exclusive source for the payment of sickness benefits provided to railroad employees, 45 U.S.C.S. § 363(b). The clause also expressly communicates Congress's concern that applying State sickness laws to railroad employees would constitute an undue burden upon, and an undue interference with the effective regulation of, interstate commerce. Further reflecting RUIA's comprehensive nature, Congress directed that RUIA benefits be administered in a centralized manner though the United States Railroad Retirement Board. 45 U.S.C.S. § 362(l).

Business & Corporate Compliance > ... > Wage & Hour Laws > Scope & Definitions > Holiday, Sick & Vacation Pay

Labor & Employment Law > Leaves of Absence > Short Term Leaves

Constitutional Law > Supremacy Clause > Federal Preemption

Business & Corporate Compliance > ... > Disability & Unemployment Insurance > Unemployment Compensation > Scope & Definitions

HN15[] **Scope & Coverage, Holiday, Sick & Vacation Pay**

As applied to railroad employees, the Healthy Workplaces, Healthy Families Act falls within the Railroad Unemployment Insurance Act's (RUIA) preemption clause. Properly considered in light of RUIA's plain text and structure, the California Act is a sickness law that provides sickness benefits. This conclusion follows quite clearly from the text and operation of California's law. The Act itself describes the benefit it provides as paid sick days, paid sick leave, and paid sick time, Cal. Lab. Code § 246.

Business & Corporate Compliance > ... > Wage & Hour Laws > Scope & Definitions > Holiday, Sick & Vacation Pay

Labor & Employment Law > Leaves of Absence > Short Term Leaves

HN16[] **Scope & Coverage, Holiday, Sick & Vacation Pay**

That the Healthy Workplaces, Healthy Families Act is a sickness law providing sickness benefits is additionally demonstrated in the enumerated purposes for which an employee may use the paid sick leave available under the Act. These purposes are centered on "sickness," as the Railroad Unemployment Insurance Act (RUIA) broadly conceives it. Most critically, under the California Act employees may take sick leave for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member, Cal. Lab. Code § 246.5(a)(1). That the California Act allows employees to take sick leave for reasons related to a family member's health makes the benefit no less of a sickness benefit, and the law no less of a sickness law. Nothing in RUIA's preemption provision says that the sickness benefit must be based on the employee's own health.

Labor & Employment Law > ... > Remedies > Damages > Liquidated Damages

HN17[] **Damages, Liquidated Damages**

The permissible purposes of sick leave listed in the next section of the Healthy Workplaces, Healthy Families Act, Cal. Lab. Code § 246.5(a)(2), are those relating to

domestic violence, sexual assault, and stalking. Here too, many of the purposes that the statute incorporates by reference explicitly relate to physical and mental health.

Labor & Employment Law > Leaves of Absence > Short Term Leaves

HN18[] Leaves of Absence, Short Term Leaves

It is true that for employees who are the victims of domestic violence, sexual assault, and stalking, the Healthy Workplaces, Healthy Families Act also allows them to take paid sick days to obtain certain social services, to participate in safety planning and take other actions to increase safety, and to obtain or attempt to obtain any legal relief, Cal. Lab. Code §§ 230(c), 230.1(a)(2), (4). Although these are less inevitably described as sickness benefits in the abstract, these purposes do have some valence to employee health and personal well-being. The California Act treats these related social services as proper subjects of paid sick days, and the state law has an overriding emphasis on sickness, as the Railroad Unemployment Insurance Act capaciously defined that term. The paid sick time available under the California Act is not allocated to particular purposes. Rather, the Act provides only a single block of time for each employee, to be used for any of the enumerated purposes for which paid sick leave may be taken. In the context of the California Act, because the paid sick days can be used entirely for sickness-related absences, they are properly treated as sickness benefits.

Business & Corporate Compliance > ... > Disability & Unemployment Insurance > Unemployment Compensation > Scope & Definitions

HN19[] Unemployment Compensation, Scope & Definitions

Because the Railroad Unemployment Insurance Act (RUIA) states that federal law confers the exclusive sickness benefits for railroad employees, 45 U.S.C.S. § 363(b), the Healthy Workplaces, Healthy Families Act infringes on RUIA's domain.

Constitutional Law > Supremacy Clause > Federal Preemption

HN20[] Supremacy Clause, Federal Preemption

In interpreting an express preemption provision the appellate court looks to the substance and scope of Congress' displacement of state law, based on the language the preemption provision employs. Congress is free to design that displacement to be either broader or narrower than the protections that the federal law confers.

Business & Corporate Compliance > ... > Disability & Unemployment Insurance > Unemployment Compensation > Scope & Definitions

Constitutional Law > Supremacy Clause > Federal Preemption

Transportation Law > Interstate Commerce > Federal Preemption

HN21[] Unemployment Compensation, Scope & Definitions

There is no anchor in the text of the preemption clause for limiting Railroad Unemployment Insurance Act (RUIA) preemption to state benefits that are similar or comparable to, or of the type provided by, the RUIA. RUIA does not displace only those state sickness schemes relating to short-term disability insurance of the type that RUIA provides.

Constitutional Law > Supremacy Clause > Federal Preemption

HN22[] Supremacy Clause, Federal Preemption

The Railroad Unemployment Insurance Act (RUIA) clearly establishes that the word benefit does not have a uniform definition throughout the statute. 45 U.S.C.S. § 363(b)'s sickness benefit is properly regarded as a phrase clearly designating other payments under 45 U.S.C.S. § 351(l)(1), because the preemption provision concerns other relief provided under a sickness law of any State. The word "benefits" in RUIA's preemption provision may therefore carry a distinct meaning from how it is used elsewhere in RUIA.

Business & Corporate Compliance > ... > Disability & Unemployment Insurance > Unemployment

Compensation > Scope & Definitions

Labor & Employment Law > Disability & Unemployment Insurance > Unemployment Compensation > Benefit Entitlements

HN23[] Unemployment Compensation, Scope & Definitions

When it was first enacted, the Railroad Unemployment Insurance Act (RUIA) provided only unemployment benefits, and Congress did not update the title after the 1946 amendment added sickness benefits. Regardless, a statute's title and headings are but a short-hand reference to the general subject matter and cannot take the place of the detailed provisions of the text.

Business & Corporate Compliance > ... > Disability & Unemployment Insurance > Unemployment Compensation > Scope & Definitions

HN24[] Unemployment Compensation, Scope & Definitions

Under the Railroad Unemployment Insurance Act, the Healthy Workplaces, Healthy Families Act cannot be applied to railroad employees consistent with the *Supremacy Clause*.

Summary:

SUMMARY[**]

Railroad Unemployment Insurance Act / Preemption

Affirming the district court's summary judgment in favor of National Railroad Passenger Corporation and other railroad companies, the panel held that, as to railroad employees, the federal Railroad Unemployment Insurance Act preempts California's Healthy Workplaces, Healthy Families Act, which requires employers to provide employees with paid sick leave that they may use for specified purposes.

RUIA provides unemployment and sickness benefits to railroad employees, and it contains an express preemption provision disallowing railroad employees from having any right to "sickness benefits under a sickness law of any State." Looking to the plain meaning of the statutory text, the panel concluded that the preemption provision broadly refers to compensation or other assistance provided to employees in connection with physical or mental well-being. The panel concluded that RUIA's statutory framework and stated purposes confirm the breadth of its preemptive effect.

The panel held that, as applied to railroad employees, the California **[**2]** Act falls within RUIA's preemption clause because, properly considered in light of RUIA's plain text and structure, the California Act is a "sickness law" that provides "sickness benefits."

Agreeing with the First Circuit, the panel found unpersuasive an argument by the California Labor Commissioner and union-intervenors that RUIA does not preempt the California Act as to railroad employees because the benefits the Act offers are different in kind than RUIA's benefits. The panel also found unpersuasive (1) an argument that RUIA should be interpreted as preempting only the kinds of state laws that existed at the time RUIA was amended to provide for sickness benefits; and (2) various textual arguments in support of a narrower interpretation of the preemption provision.

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Donald J. Munro (argued), Anthony J. Dick, and H. Hunter Bruton, Jones Day, Washington, D.C.; Kelsey A. Israel-Trummel, Jones Day, San Francisco, California; for Plaintiff-Appellees.

Judges: Before: Morgan Christen and Daniel A. Bress, Circuit Judges, and Barbara M. G. Lynn,[*] District Judge. Opinion by Judge Bress.

[**] This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

[*] The Honorable Barbara M. G. Lynn, Chief United States District Judge for the Northern District of Texas, sitting by designation.

Opinion by: Daniel A. Bress

Opinion

[*1150] BRESS, Circuit Judge:

HN1[] The Railroad Unemployment Insurance Act (RUIA) is a federal law that provides the exclusive source of unemployment and sickness benefits to railroad employees. RUIA also contains an express preemption provision disallowing railroad employees from having any right to "sickness benefits under a sickness law of any State." 45 U.S.C. § 363(b). In 2014, California enacted the Healthy Workplaces, Healthy Families Act, which requires employers to provide employees with paid sick leave that they may use for specified purposes. The question in this case is whether RUIA preempts this California law as to railroad employees. We hold that it does.

I

A

Owing to its interstate nature, the railroad industry has long been subject **[**4]** to extensive and often exclusive federal regulation. HN2[] In 1938, Congress passed RUIA to provide unemployment benefits for railroad employees. *See* 45 U.S.C. §§ 351-369; R.R. Ret. Bd. v. Duquesne Warehouse Co., 326 U.S. 446, 448, 66 S. Ct. 238, 90 L. Ed. 192 (1946). An employee who is eligible for RUIA benefits may receive approximately sixty percent of his daily pay, subject to certain limitations, while he remains unemployed. 45 U.S.C. § 352(a)(1)-(3).

HN3[] In 1946, Congress amended RUIA to also provide railroad employees with "sickness benefits." *See id.* § 352(a)(1)(B); CSX Transp., Inc. v. Healey, 861 F.3d 276, 277 (1st Cir. 2017). These benefits, which likewise amount to sixty percent of daily pay, are available "for each day of sickness after the 4th consecutive day of sickness in a period of continuing sickness." 45 U.S.C. § 352(a)(1)(B)(i). RUIA defines "day of sickness" in relevant part as "a calendar day on which because of any physical, mental, psychological, or nervous injury, illness, sickness, or disease [the employee] is not able to work." *Id.* § 351(k)(2). "Day of sickness" also includes "with respect to a female employee, a calendar day on which, because of pregnancy, miscarriage, or the birth of a child, (i) she is unable to work or (ii) working would be injurious to her health." *Id.* The phrase "period of continuing sickness" means either "consecutive days of sickness, whether from 1 or more causes" or "successive days of sickness **[**5]** due to a single cause without interruption of more than 90 consecutive days." *Id.* § 352(a)(1)(B)(iii).

HN4[] The benefits available under RUIA are funded by a special tax on railroad employers "equal to 4 percent of the total rail wages." *See* Railroad Unemployment Repayment Tax Act, 26 U.S.C. § 3321(b)(1); Trans-Serve, Inc. v. United States, 521 F.3d 462, 464, 466 (5th Cir. 2008). To ensure that the federal regulatory scheme would not impose an undue economic burden on railroad companies, Congress simultaneously exempted these employers from certain state laws. *See* 45 U.S.C. § 363(b); CSX Transp., 861 F.3d at 282 (noting RUIA's "stated purpose of protecting interstate rail regulation from the burdens of state sickness law").

HN5[] RUIA's preemption provision, which is at the center of this case, reads in relevant part:

> By enactment of this chapter the Congress makes *exclusive provision* for the **[*1151]** payment of unemployment benefits for unemployment occurring after June 30, 1939, and for the payment of sickness benefits for sickness periods after June 30, 1947, based upon employment (as defined in this chapter). No employee shall have or assert any right to unemployment benefits under an unemployment compensation law of any State with respect to unemployment occurring after June 30, 1939, or *to sickness benefits under a sickness law of any State* with respect to **[**6]** sickness periods occurring after June 30, 1947, based upon employment (as defined in this chapter).
>
> The Congress finds and declares that by virtue of the enactment of this chapter, the application of State unemployment compensation laws after June 30, 1939 or of State sickness laws after June 30, 1947, to such employment, except pursuant to section 362(g) of this title, would constitute an undue burden upon, and an undue interference with the effective regulation of, interstate commerce.

45 U.S.C. § 363(b) (emphasis added).

B

HN6[] In 2014, the California legislature passed the Healthy Workplaces, Healthy Families Act, which we will

refer to as the "California Act" or the "Act." Cal. Lab. Code §§ 245-249. The California Act "[e]nsure[s] that workers in California can address their own health needs and the health needs of their families by requiring employers to provide a minimum level of paid sick days including time for family care." A.B. 1522, 2014 Leg., Reg. Sess. § 2(a) (Cal. 2014) (enacted legislative findings). With limited exceptions not relevant here, the Act generally requires employers to provide a minimum of twenty-four hours "paid sick leave" or three "paid sick days" per year to every employee working in California. Cal. Lab. Code § 246(a)(1), (b). Employees also **[**7]** accrue additional days based on the length of their employment. *Id.* § 246(b).

HN7[] Under the California Act, employees may use their paid sick leave for "the following purposes":

> (1) Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member.
>
> (2) For an employee who is a victim of domestic violence, sexual assault, or stalking, the purposes described in subdivision (c) of Section 230 and subdivision (a) of Section 230.1.

Id. § 246.5(a). Among the purposes referred to in subsection (2) are:

> (1) To seek medical attention for injuries caused by crime or abuse.
>
> (2) To obtain services from a domestic violence shelter, program, rape crisis center, or victim services organization or agency as a result of the crime or abuse.
>
> (3) To obtain psychological counseling or mental health services related to an experience of crime or abuse.
>
> (4) To participate in safety planning and take other actions to increase safety from future crime or abuse, including temporary or permanent relocation.

Id. § 230.1(a). HN8[] Through its cross-reference to section 230(c), section 246.5(a)(2) further allows sick leave to be used "to obtain or attempt to obtain any relief," such as "a temporary restraining order, restraining order, or other injunctive relief, to help ensure the health, safety, or **[**8]** welfare of the victim or their child." *Id.* § 230(c).

The California legislature enacted the Act to promote health and employee well-being, which the legislature believed would in turn improve worker retention rates and productivity. This legislative goal is articulated in findings passed in conjunction with Act. *See* A.B. 1522, 2014 Leg., Reg. Sess. (Cal. 2014). **[*1152]** The findings begin by emphasizing employees' need for sick days, noting that "[n]early every worker in the State of California will at some time during the year need some time off from work to take care of his or her own health or the health of family members." *Id.* at § 1(a). The findings go on to explain that "[p]roviding workers time off to attend to their own health care and the health care of family members will ensure a healthier and more productive workforce in California" by lessening recovery time, reducing the spread of illness, and increasing retention rates. *Id.* at § 1(d), (e), (h).

In this way, the California legislature found, the Act would "[e]nsure that workers in California can address their own health needs and the health needs of their families," "[d]ecrease public and private health care costs in California," and "[s]afeguard the welfare, **[**9]** health, safety, and prosperity of the people of and visitors to California." *Id.* at § 2(a), (b), (e). The California legislature also found that domestic violence similarly "impacts productivity, effectiveness, absenteeism, and employee turnover in the workplace," and thus also warranted sick leave coverage. *Id.* at § 1(m)-(o); *see also id.* § 2(d).

C

After the California Act went into effect, six railroad companies brought this suit against the California Labor Commissioner. The railroads alleged that the California Act was invalid as applied to their employees because it was preempted by RUIA and the Employee Retirement Income Security Act of 1974 (ERISA), and unconstitutional under the "dormant" Commerce Clause. The railroads sought declaratory and injunctive relief that would prohibit the Labor Commissioner from enforcing the Act against them. Several unions representing railroad employees intervened to defend the Act.

The district court granted summary judgment to the railroads. It concluded that RUIA partially preempts the California Act, and that the remainder of the Act is invalid under the dormant Commerce Clause. The Commissioner and union-intervenors appealed. HN9[] We review the district court's grant of summary judgment de novo and may **[**10]** affirm on any ground supported by the record. Miranda v. City of Casa Grande, 15 F.4th 1219, 1224 (9th Cir. 2021).

II

A

HN10[] The Supremacy Clause provides that the laws of the United States "shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2. As a result, "it has long been settled that state laws that conflict with federal law are 'without effect.'" Mut. Pharm. Co. v. Bartlett, 570 U.S. 472, 479-80, 133 S. Ct. 2466, 186 L. Ed. 2d 607 (2013) (quoting Maryland v. Louisiana, 451 U.S. 725, 746, 101 S. Ct. 2114, 68 L. Ed. 2d 576 (1981)).

HN11[] When, as here, a federal statute includes an express preemption provision, "the task of statutory construction must in the first instance focus on the plain wording of the clause." California Trucking Assn. v. Bonta, 996 F.3d 644, 654 (9th Cir. 2021) (quoting CSX Transp., Inc. v. Easterwood, 507 U.S. 658, 664, 113 S. Ct. 1732, 123 L. Ed. 2d 387 (1993)). We consider also "the surrounding statutory framework" and "Congress's stated purposes in enacting the statute" to "'identify the domain expressly pre-empted by that language.'" Chae v. SLM Corp., 593 F.3d 936, 942 (9th Cir. 2010) (quoting Medtronic, Inc. v. Lohr, 518 U.S. 470, 484, 116 S. Ct. 2240, 135 L. Ed. 2d 700 (1996)). Once we have **[*1153]** done so, we ask whether the state law at issue falls within the scope of the preemption clause. *See id.* [1]

RUIA's express preemption provision is set forth in 45 U.S.C. § 363(b). HN12[] In relevant part, it establishes that "[b]y enactment of this chapter the Congress makes exclusive provision for . . . the payment of sickness benefits," and consequently, "[n]o employee shall have or assert any right to . . . sickness benefits under a sickness law of any State." 45 U.S.C. § 363(b). In **[**11]** determining the scope of RUIA's express preemption provision, we look first to the plain meaning of its text. *See* Cal. Trucking, 996 F.3d at 654.

HN13[] Through its definition of the phrase "day of sickness," RUIA treats the notion of "sickness" expansively, encompassing calendar days "on which because of any physical, mental, psychological, or nervous injury, illness, sickness, or disease [the employee] is not able to work." 45 U.S.C. § 351(k)(2). For a female employee, a "day of sickness" also includes "a calendar day on which, because of pregnancy, miscarriage, or the birth of a child, (i) she is unable to work or (ii) working would be injurious to her health." *Id.* With this language, RUIA reflects a wide-ranging conception of "sickness." RUIA's preemption of "sickness benefits under a sickness law of any State," *id.* § 363(b), therefore broadly refers to compensation or other assistance provided to employees in connection with physical or mental well-being.

RUIA's "statutory framework" and "stated purposes" confirm the breadth of its preemptive effect. Chae, 593 F.3d at 942; ***see also*** PG&E Co. v. Cal. ex rel. Cal. Dept of Toxic Substances Control, 350 F.3d 932, 947-48 (9th Cir. 2003), *as amended* (Dec. 9, 2003) (relying on "the overall structure of the Code" to determine a statute's "express preemptive scope"). HN14[] The preemption provision emphasizes that RUIA is to be **[**12]** the "exclusive" source for the payment of sickness benefits provided to railroad employees. *See* 45 U.S.C. § 363(b). The clause also expressly communicates Congress's concern that applying "State sickness laws" to railroad employees would "constitute an undue burden upon, and an undue interference with the effective regulation of, interstate commerce." *Id.* Further reflecting RUIA's comprehensive nature, Congress directed that RUIA benefits be administered in a centralized manner though the United States Railroad Retirement Board. *See id.* § 362(l).

HN15[] Turning now to the California Act, we hold that as applied to railroad employees, the Act falls within RUIA's preemption clause. Properly considered in light of RUIA's plain text and structure, the California Act is a "sickness law" that provides "sickness benefits." This conclusion follows quite clearly from the text and operation of California's law. The Act itself describes the benefit it provides as "paid sick days," "paid sick leave," and "paid sick time." *See generally* Cal. Lab. Code § 246. Legislative findings passed in connection with the Act further emphasize the need to promote health and wellness by allowing employees to take time off "to attend to their own **[*1154]** health care and **[**13]** the health care of family members," which the legislature found would "ensure a healthier and more productive workforce." A.B. 1522, 2014 Leg., Reg. Sess. § 1(d)

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[1] Appellants urge us to apply a presumption against preemption. However, "because the statute contains an express pre-emption clause,' we do not invoke any presumption against pre-emption." Puerto Rico v. Franklin Cal. Tax-Free Tr., 579 U.S. 115, 125, 136 S. Ct. 1938, 195 L. Ed. 2d 298 (2016) (quoting Chamber of Commerce of the United States v. Whiting, 563 U.S. 582, 594, 131 S. Ct. 1968, 179 L. Ed. 2d 1031 (2011)); *see also* Int'l Bhd. of Teamsters, Loc. 2785 v. Fed. Motor Carrier Safety Admin., 986 F.3d 841, 853 (9th Cir. 2021) (declining to apply a presumption against preemption and explaining that "a state's traditional regulation in an area is not, standing alone, sufficient to defeat preemption in the face of an express preemption clause").

(Cal. 2014).

HN16[] That the California Act is a "sickness law" providing "sickness benefits" is additionally demonstrated in the enumerated purposes for which an employee may use the paid sick leave available under the Act. These purposes are centered on "sickness," as RUIA broadly conceives it. Most critically, under the California Act employees may take sick leave for the "[d]iagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member." Cal. Lab. Code § 246.5(a)(1). This aligns with RUIA's encompassing conception of "sickness," as we described it above. *See* 45 U.S.C. § 351(k)(2); *see also* CSX Transp., 861 F.3d at 280 (concluding in relevant part that RUIA preempted a Massachusetts law providing paid sick leave for employee health because "[c]ertainly a 'physical or mental illness, injury, or medical condition' is a sickness, and certainly 'paid sick time' is a benefit"). That the California Act allows employees to take "sick leave" for reasons related to a family member's health makes the benefit no less of a "sickness benefit," and **[**14]** the law no less of a "sickness law." Nothing in RUIA's preemption provision says that the "sickness benefit" must be based on the employee's own health.

HN17[] The permissible purposes of sick leave listed in the next section of the California Act, Cal. Lab. Code § 246.5(a)(2), are those relating to domestic violence, sexual assault, and stalking. Here too, many of the purposes that the statute incorporates by reference explicitly relate to physical and mental health. For instance, under section 230.1(a)(1), employees who are victims of domestic violence, sexual assault, and stalking may use the paid sick leave "to seek medical attention for injuries caused by crime or abuse," and section 230.1(a)(3) covers "psychological counseling or mental health services related to an experience of crime or abuse." *See id.* § 230.1(a)(1), (3). These purposes are again consonant with RUIA's broad conception of "sickness."

HN18[] It is true that for employees who are the victims of domestic violence, sexual assault, and stalking, the California Act also allows them to take paid sick days to obtain certain social services, "[t]o participate in safety planning and take other actions to increase safety," and "to obtain or attempt to obtain any [legal] relief." *Id.* §§ 230(c), 230.1(a)(2), (4). Although these are less inevitably **[**15]** described as "sickness benefits" in the abstract, these purposes do have some valence to employee health and personal well-being. *See* A.B. 1522, 2014 Leg., Reg. Sess. § 1(o) (Cal. 2014) (legislative findings stating that "[a]ffording survivors of domestic violence and sexual assault paid sick days is vital to their independence and recovery"). And here, the California Act treats these related social services as proper subjects of "paid sick days," and the state law has an overriding emphasis on "sickness," as RUIA capaciously defined that term. We also find it significant that the paid sick time available under the California Act is not allocated to particular purposes. Rather, the Act provides only a single block of time for each employee, to be used for any of the enumerated purposes for which paid sick leave may be taken. *See* CSX Transp., Inc. v. Healey, 327 F. Supp. 3d 260, 267 (D. Mass. 2018) (concluding that as to railroad employees, RUIA entirely preempts an analogous Massachusetts law because the state law conferred "earned sick time" and "does not distinguish or apportion the hours between the kinds of sickness benefits described"). In the context of the California Act, because the "paid sick days" can be used entirely for sickness-related **[**16]** **[*1155]** absences, they are properly treated as "sickness benefits."

HN19[] Because RUIA states that federal law confers the "exclusive" "sickness benefits" for railroad employees, 45 U.S.C. § 363(b), the California Act infringes on RUIA's domain.

B

Notwithstanding these points, the Labor Commissioner and union-intervenors ask us to take a narrower view of RUIA's preemption provision. We now explain why we find their arguments unpersuasive.

The appellants principally argue that RUIA does not preempt the California Act as to railroad employees because the benefits the Act offers are different in kind than RUIA's benefits. The Labor Commissioner claims that RUIA provides "leave akin to short-term disability insurance," whereas the California Act covers "absences of a single day (or even a few hours)." Likewise, the unions argue that the California Act "deals with paid time off for occasional and routine short-term employee medical conditions," which they argue is distinct from RUIA's protections for "economic loss due to inability to work for lengthy periods." Appellants contend that, based on these differences, a railroad employee may qualify for benefits under the California Act and not under RUIA.

We do not think these **[**17]** arguments can carry the day. The primary problem with the appellants' theory is

that preemption does not turn on whether the state law at issue operates congruently with the federal law containing the preemption clause. HN20[] Rather, in interpreting an express preemption provision we look to the "substance and scope of Congress' displacement of state law," based on the language the preemption provision employs. Altria Grp., Inc. v. Good, 555 U.S. 70, 76, 129 S. Ct. 538, 172 L. Ed. 2d 398 (2008). Congress is free to design that displacement to be either broader or narrower than the protections that the federal law confers. *See, e.g.*, Egelhoff v. Egelhoff ex rel. Breiner, 532 U.S. 141, 146-47, 121 S. Ct. 1322, 149 L. Ed. 2d 264 (2001) (explaining that ERISA's "expansive" preemption clause covers any state law that "has a connection with or reference to [an ERISA] plan" (quotations omitted)); Morales v. Trans World Airlines, Inc., 504 U.S. 374, 386, 112 S. Ct. 2031, 119 L. Ed. 2d 157 (1992) (rejecting the claim that "only state laws specifically addressed to the airline industry are pre-empted" under the Airline Deregulation Act).

Here, there is no basis to conclude that Congress in § 363(b) intended to preempt only those sickness laws structured like RUIA, or only those state benefit schemes providing what could be described as short-term disability insurance. The text of RUIA's preemption provision does not impose that limitation. And implying such a condition into RUIA would **[**18]** be inconsistent with Congress's stated aim of preventing multiple sickness benefit schemes for railroad companies, which Congress believed "would constitute an undue burden upon, and an undue interference with the effective regulation of, interstate commerce." 45 U.S.C. § 363(b). Under the appellants' interpretation, a state could seemingly require railroads to provide their employees with state sickness benefits anytime those benefits differ in structure or in kind from RUIA benefits. That would enable ready circumvention of RUIA's "exclusive" scheme. *Id.*; *see* Atay v. County of Maui, 842 F.3d 688, 702 (9th Cir. 2016) (rejecting an interpretation of an express preemption clause that "would allow state and local governments to subvert the preemption clause").

The First Circuit in CSX Transportation, Inc. v. Healey, 861 F.3d 276 (1st Cir. 2017), rejected substantially the same **[*1156]** argument in the context of a RUIA preemption challenge to a Massachusetts law analogous to the California Act. HN21[] As the First Circuit explained, "there is no anchor in the text of the preemption clause for limiting" RUIA preemption to "state benefits that are 'similar' or 'comparable to,' or 'of the type provided by, the RUIA.'" Id. at 284 (alterations omitted). Because RUIA's stated objective is to establish a uniform federal scheme, the court reasoned, "it would **[**19]** have been nonsensical to preempt only state replicas of the RUIA while allowing dozens of divergent schemes to proliferate." Id. at 282. We agree with the First Circuit that RUIA does not displace only those state sickness schemes relating to short-term disability insurance of the type that RUIA provides. [2]

Next, the Commissioner asserts that RUIA should be interpreted as preempting only the kinds of state laws that existed at the time RUIA was amended to provide for sickness benefits. According to the Commissioner, only California and Rhode Island provided sickness benefits to employees in 1946, and both did so through short-term disability insurance programs that allowed employees to access benefits for longer periods of time. This argument fails for substantially the same reasons we have already given. Nothing in RUIA's text, structure, or stated objectives suggests that Congress meant to displace only the specific kinds of sickness laws already in place in 1946. *See* CSX Transp., 861 F.3d at 285 (rejecting this same argument).

The appellants also offer various textual arguments in support of a narrower interpretation of § 363(b). The Commissioner notes that RUIA defines "benefits" as "money payments payable to an employee as provided **[**20]** in this chapter, with respect to his unemployment or sickness," and that elsewhere, RUIA provides railroad employees with "benefits" equal to sixty percent of daily compensation, administered by the Railroad Retirement Board, once an employee has been sick for four consecutive days. 45 U.S.C. §§ 351(l)(1), 352(a)(1)(A)(i), 352(a)(2). The Commissioner reasons that "sickness benefits" as used in RUIA's preemption clause must incorporate this same definition, and thus should preempt only state laws akin to RUIA itself.

This argument is unavailing. RUIA's definition of "benefits" reads in full: "The term 'benefits' (*except in phrases clearly designating other payments*) means the money payments payable to an employee as provided in this chapter with respect to his unemployment or sickness." 45 U.S.C. § 351(l)(1) (emphasis added).

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[2] On remand from the First Circuit, the district court held that as to railroad employees, RUIA preempts "the entirety of the [Massachusetts law's] 'earned sick time' scheme." CSX Transp., 327 F. Supp. 3d at 266. Our holding in this case therefore aligns with the combined results of the First Circuit and district court decisions in the Massachusetts CSX litigation.

HN22[] Through this language that we have italicized, RUIA clearly establishes that the word "benefit" does not have a uniform definition throughout the statute. *Cf. Yates v. United States, 574 U.S. 528, 537, 135 S. Ct. 1074, 191 L. Ed. 2d 64 (2015)* ("We have several times affirmed that identical language may convey varying content when used in different statutes, sometimes even in different provisions of the same statute."). Section 363(b)'s "sickness benefit" is properly regarded as a "phrase[] clearly designating other payments" **[**21]** under § 351(l)(1), because the preemption provision concerns other relief provided "under a sickness law of any State." 45 U.S.C. § 363(b). The word "benefits" in RUIA's preemption provision may therefore carry a distinct meaning from how it is used elsewhere in RUIA. **[*1157]** *See* CSX Transp., 861 F.3d at 281 (rejecting this same argument).

The text of the preemption clause further demonstrates that "benefit" for purposes of RUIA preemption may be interpreted more broadly than merely the "benefits" provided by RUIA. On several different occasions, § 363(b) expressly constrains the meaning of certain terms in the preemption clause to their statutory definitions. For example, § 363(b) specifically preempts only benefits "based upon employment (*as defined in this chapter*)." 45 U.S.C. § 363(b) (emphasis added). Yet no such limitation operates on the terms "benefit" or "sickness benefit." *See* CSX Transp., 861 F.3d at 281. So we must reject the Commissioner's attempt to constrain the meaning of "sickness benefit" in a manner that the statutory scheme does not support.

For their part, the union-intervenors advance other textual arguments that fare no better. The unions first contend that "the limited scope of RUIA preemption of state laws is evident from the title of the statute's preemption clause," which reads "Effect **[**22]** on State unemployment compensation laws." *See* 45 U.S.C. § 363(b). But this header is a historical artifact. HN23[] When it was first enacted, RUIA provided only unemployment benefits, and Congress did not update the title after the 1946 amendment added sickness benefits. Regardless, a statute's title and headings are "but a short-hand reference to the general subject matter" and cannot "take the place of the detailed provisions of the text." Lawson v. FMR LLC, 571 U.S. 429, 446, 134 S. Ct. 1158, 188 L. Ed. 2d 158 (2014) (quoting Bhd. of R.R. Trainmen v. Baltimore & O.R. Co., 331 U.S. 519, 528, 67 S. Ct. 1387, 91 L. Ed. 1646 (1947)).

The unions next cite what they describe as "authoritative sources" establishing that "sickness benefits" means something other than "sick leave" or "paid sick days." But the unions' reliance on these sources is misplaced. For example, the unions rely on a booklet published by the Railroad Retirement Board which states that "you cannot claim benefits for any day on which you worked or otherwise earned . . . sick pay (excluding supplemental sickness benefits)." According to the unions, this proves that "benefits" and "sick pay" are two different things, and that the preempted "sickness benefits" therefore cannot include the "paid sick leave" that the California Act confers. But this section of the booklet merely explains RUIA's requirements for eligibility, ***[**23]*** *see* 45 U.S.C. §§ 351(j), (k)(2), and nowhere purports to set forth an official interpretation of the statutory term "sickness benefits." Indeed, the booklet explicitly cautions that it "does not have the effect of law, regulation, or ruling." Thus, the booklet is not "authoritative." *See* CSX Transp., 861 F.3d at 284 (rejecting this same argument based on the booklet). For substantially the same reasons, the Robert's Dictionary of Industrial Relations and the Bureau of Labor Statistics' "Glossary of Compensation Terms," on which the unions also rely, do not persuade us to adopt a narrower interpretation of RUIA's preemption provision. These sources do not endeavor to define the term "sickness benefits" as used in RUIA's preemption provision.

Finally, the unions cite Haynes v. United States, 353 U.S. 81, 77 S. Ct. 649, 1 L. Ed. 2d 671, 1957-1 C.B. 499 (1957), claiming that there the Supreme Court "recognized that sickness benefits and sick leave are different concepts." But in Haynes, the Court was interpreting the Internal Revenue Code, and specifically the Code's exemption for "amounts received through accident or health insurance as compensation for personal injuries or sickness." Id. at 83 (quoting 26 U.S.C. § 22(b)(5) (1952)). Haynes thus does not bear on our interpretation of RUIA.

[*1158] In short, we see no valid basis for interpreting "sickness benefits" to mean "short-term **[**24]** disability plans," as appellants maintain. HN24[] We conclude that under RUIA, the California Act cannot be applied to railroad employees consistent with the Supremacy Clause. We therefore do not reach the railroads' arguments about the dormant Commerce Clause and ERISA preemption.

AFFIRMED.

Positive
As of: February 24, 2023 1:58 AM Z

CSX Transp., Inc. v. Healey

United States District Court for the District of Massachusetts

August 10, 2018, Decided; August 10, 2018, Filed

Civil Action No. 15-12865-NMG

Reporter

327 F. Supp. 3d 260 *; 2018 U.S. Dist. LEXIS 135128 **; 2018 WL 3823675

CSX TRANSPORTATION, INC., CSX INTERMODAL TERMINALS, INC., NATIONAL RAILROAD PASSENGER CORPORATION and SPRINGFIELD TERMINAL RAILWAY COMPANY, Plaintiffs, v. MAURA HEALEY, Defendant, and BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN, ET AL. Intervenors.

Prior History: CSX Transp., Inc. v. Healey, 861 F.3d 276, 2017 U.S. App. LEXIS 11251 (1st Cir. Mass., June 23, 2017)

Core Terms

sickness, benefits, preempted, sick time, summary judgment, preemption, preemption provision, unemployment, intervenors, state law, railroad, employees, preemption clause, cross-motions, sections, parties, renewed, qualified employee, domestic violence, material fact, Transportation, genuine

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Judges: Nathaniel M. Gorton, United States District Judge.

Opinion by: Nathaniel M. Gorton

Opinion

[*262] MEMORANDUM & ORDER

GORTON, J.

This case arises from allegations that the *Massachusetts Earned Sick Time Law ("ESTL")* at *M.G.L. c. 149 § 148C*, approved by Massachusetts voters in 2014, is preempted by three federal statutes.

Pending before the Court are three renewed cross-motions filed by the plaintiffs, the defendant and the intervenors for summary judgment on Count 1 which asserts [**3] that the ESTL is expressly preempted by the *Railroad Unemployment Insurance Act ("RUIA")*, *45 U.S.C. § 351, et seq.* For the reasons that follow, the motion for partial summary judgment by plaintiffs will be allowed and the motions for partial summary judgment by defendant and the intervening unions will be denied.

I. Background and Procedural History

Plaintiffs CSX Transportation, Inc., CSX Intermodal Terminals, Inc., National Railroad Passenger Corporation d/b/a Amtrak and Springfield Terminal Railway Company (collectively, "CSX" or "plaintiffs") are operators of rail transportation systems and intermodal terminals located in Massachusetts. The parties agree that all plaintiffs are "employers" within the meaning of the RUIA and all individuals employed by them in Massachusetts are "employees" and thus eligible for federal statutory "sickness benefits" under the RUIA.

Defendant Maura Healey ("Healey" or "defendant") is the Attorney General of the Commonwealth of Massachusetts and is named in her official capacity. As Attorney General, she is charged with the rulemaking for, and enforcement of, the purportedly preempted portions of the ESTL.

The intervening parties are the Transportation and Mechanical Divisions [**4] of the International Association of Sheet Metal, Air, Rail and Transportation Workers, the Brotherhood of Locomotive Engineers and Trainmen, the International Brotherhood of Electrical Workers, the National Conference of Firemen & Oilers District of Local 32BJ, SEIU, the Brotherhood of Railroad Signalmen and the Brotherhood of Maintenance of Way Employes Division/IBT (collectively, "the union intervenors"). They are the collective bargaining representatives for the employees who would be affected by the relief sought by plaintiffs.

The parties agree that in November, 2014, Massachusetts voters approved the Massachusetts Earned Sick Time Law at *M.G.L. c. 149, § 148C* which requires certain employers to provide "earned paid sick time" to qualifying employees in Massachusetts. That law became effective on July 1, 2015. Plaintiffs have not implemented or complied with the ESTL because they believe that it is preempted by federal law. Defendant has declined their request to "provide a permanent commitment not to enforce" the ESTL against them.

Plaintiffs initiated this action by filing a complaint against Healey and the Massachusetts Office of the Attorney General in June, 2015 and an amended complaint naming [**5] Healey as the sole defendant in November, 2015. Plaintiffs seek declaratory judgments that the ESTL is preempted by the RUIA (Count 1), the *Railway Labor Act ("RLA")* at *45 U.S.C. § 151, et seq.* (Count 2) and the *Employee Retirement Income Security Act ("ERISA")* at *29 U.S.C. § 1140, et seq.* (Count 3). Plaintiffs also seek to enjoin Healey from enforcing or applying the ESTL against them.

[*263] In February, 2016, this Court convened a scheduling conference during which the parties agreed to bifurcate the action and litigate the RUIA claim in Phase 1 and the RLA and ERISA claims in Phase 2.

Plaintiffs moved for summary judgment on the RUIA claim in March, 2016. The Court allowed the union intervenors to participate in the action and move for summary judgment on the RUIA claim in May, 2016. Defendant submitted a motion for summary judgment on the same claim shortly thereafter. The parties stipulated that there are no material facts in dispute. The Court convened a hearing on those motions in July, 2016. Later that month, this Court entered an order allowing plaintiffs' motion for summary judgment and denying the motions for summary judgment of defendant and the union intervenors.

Defendant and the union intervenors appealed to the First Circuit [**6] Court of Appeals ("the First Circuit") in September, 2016. After briefing and argument, the First Circuit affirmed, in part, vacated in part, and remanded the case for further consideration. The parties filed renewed cross-motions for summary judgment earlier this year and the Court convened a hearing on those renewed cross-motions in July, 2018.

II. Motions for summary judgment

A. Legal standard

The role of summary judgment is "to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial." *Mesnick v. Gen. Elec. Co., 950 F.2d 816, 822 (1st Cir. 1991)* (quoting *Garside v. Osco Drug, Inc., 895 F.2d 46, 50 (1st Cir. 1990)*). The burden is on the moving party to

show, through the pleadings, discovery and affidavits, "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

A fact is material if it "might affect the outcome of the suit under the governing law". Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). A genuine issue of material fact exists where the evidence with respect to the material fact in dispute "is such that a reasonable jury could return a verdict for the nonmoving party." Id.

If the moving party satisfies its burden, the burden shifts to the non-moving party to set forth specific facts showing that there is a genuine, triable issue. [**7] Celotex Corp. v. Catrett, 477 U.S. 317, 324, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). The Court must view the entire record in the light most favorable to the non-moving party and make all reasonable inferences in that party's favor. O'Connor v. Steeves, 994 F.2d 905, 907 (1st Cir. 1993). Summary judgment is appropriate if, after viewing the record in the non-moving party's favor, the Court determines that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law.

B. Application

1. Express preemption

The Supremacy Clause of the United States Constitution provides that

> the laws of the United States . . . shall be the supreme law of the land . . . any Thing in the Constitution or laws of any State to the contrary notwithstanding.

U.S. CONST. art. VI, cl. 2. State laws which conflict with federal law are preempted and "without effect". Altria Grp., Inc. v. Good, 555 U.S. 70, 76, 129 S. Ct. 538, 172 L. Ed. 2d 398 (2008).

[*264] Congressional purpose is the "ultimate touchstone" in every preemption case. Id. A court considering the preemptive effect of an express preemption clause in a federal statute must assess the substance and scope of Congress's displacement of state law, id., in order to identify the matters that it did and did not intend to preempt, Lorillard Tobacco Co. v. Reilly, 533 U.S. 525, 541, 121 S. Ct. 2404, 150 L. Ed. 2d 532 (2001). The inquiry commences with the statutory language "which necessarily contains the best evidence of Congress' pre-emptive intent". CSX Transp., Inc. v. Easterwood, 507 U.S. 658, 664, 113 S. Ct. 1732, 123 L. Ed. 2d 387 (1993). The court may also consider the purpose, history and **[**8]** surrounding statutory scheme of the express preemption clause. Mass. Delivery Ass'n v. Coakley, 769 F.3d 11, 17 (1st Cir. 2014).

If the preemption inquiry implicates the historic police powers of the state or a field traditionally occupied by the states, the court must apply the presumption against preemption which can be overcome by a finding of clear and unambiguous congressional intent to preempt state law. Altria, 555 U.S. at 77.

1. Railroad Unemployment Insurance Act

Congress enacted the first version of the Railroad Unemployment Insurance Act in 1938 to establish a system of unemployment insurance for covered employees. R.R. Ret. Bd. v. Duquesne Warehouse Co., 326 U.S. 446, 448, 66 S. Ct. 238, 90 L. Ed. 192 (1946). It amended the statute in 1946 to provide qualified employees with "unemployment benefits" and "sickness benefits" which would both be administered by the Railroad Retirement Board ("RRB"), § 352, and funded by contributions from employers, § 358.

The amended statute defines "benefits" as monetary payments to an employee with respect to his or her unemployment or sickness and sets the daily benefits rate at 60% of his or her daily rate of compensation at the last position held. § 351(l)(1)(benefits); § 352(a)(2)(daily benefit rate). A qualified employee is entitled to "sickness benefits" which are

> benefits . . . for each day of sickness after the 4th consecutive day of sickness **[**9]** in a period of continuing sickness[.]

§ 352(a)(1)(B)(i).

A "period of continuing sickness" is a period of 1) consecutive days of sickness or 2) successive days of sickness "due to a single cause without interruption of more than 90 consecutive days which are not days of sickness." § 352(a)(1)(B)(iii).

A "day of sickness" is a day on which the employee cannot work due to a physical, mental, psychological,

nervous or pregnancy-related injury, sickness or condition and does not accrue or receive "remuneration". § 351(k). The term "remuneration" 1) means "pay for services for hire", 2) includes earned income other than services for hire if the employee accrued it with respect to a particular day or days and 3) excludes money payments received pursuant to non-governmental plans for unemployment, maternity or sickness insurance. § 351(j). An employee does not experience a "day of sickness" if he or she receives or will receive unemployment, maternity or sickness benefits under any other unemployment, maternity or sickness compensation law. § 354(a-1)(ii).

Section 363(b) of the RUIA contains an express preemption provision. The first two sentences of § 363(b), titled "Effect on State unemployment compensation laws", state that:

> Congress makes exclusive provision for . . . the payment of sickness **[**10]** benefits for sickness periods after [1947], based upon **[*265]** employment (as defined in this chapter). No employee shall have or assert any right to . . . sickness benefits under a sickness law of any State with respect to sickness periods occurring after [1947], based upon employment (as defined in this chapter).

§ 363(b). The statute defines "employment" to mean "service performed as an employee". § 351(g).

The third sentence in § 363(b) specifies that:

> Congress finds and declares that by virtue of the enactment of this chapter, the application of . . . State sickness laws after [1947], to such employment, except pursuant to [§ 362(g)], would constitute an undue burden upon, and an undue interference with the effective regulation of, interstate commerce.

§ 363(b). Section 362(g) sets forth a system of "mutual reimbursement [of] . . . [b]enefits also subject to a State law" under which the RRB and states can reimburse each other for any unemployment or sickness benefits paid to qualifying employees under the RUIA or state unemployment or sickness compensation laws for "services for hire other than employment". § 362(g).

2. Massachusetts Earned Sick Time Law

The Massachusetts Earned Sick Time Law entitles qualified employees who work in the Commonwealth to **[**11]** accrue "earned sick time" at the rate of one hour for every 30 hours worked and to use that time 1) to care for themselves or their family members, 2) to attend their or their family members' routine medical appointments or 3) to address the psychological, physical or legal effects of domestic violence. M.G.L. c. 149, §§ 148C(b),(c),(d)(1). Qualified employees can earn and use up to 40 hours of either "earned paid sick time" or "earned unpaid sick time" every calendar year. §§ 148C(d)(4),(6). Covered employers must compensate qualified employees for "earned paid sick time" at their regular hourly rates of compensation. § 148C(a).

3. First Circuit decision

The First Circuit affirmed, in part, this Court's decision, holding that the RUIA preempts subsection (c)(2) of the ESTL as applied to interstate rail carriers that employ workers in Massachusetts. The case was remanded for this Court to determine, in the first instance, whether any or all other sections of the ESTL might be applied to such employers. The First Circuit raised three potential questions that this Court may need to consider in order to resolve that issue on remand: (1) are any of the remaining sections of the ESTL themselves preempted by the RUIA, (2) are any remaining sections that are not so **[**12]** preempted nevertheless preempted by either the RLA or ERISA as alleged in the complaint and (3) should any sections of the ESTL be preserved by severing the preempted sections as applied to interstate rail carriers?

4. Scope of RUIA preemption

Plaintiffs assert that the text of the preemption clause is clear that the RUIA preempts all aspects of the ESTL including subsections (c)(1), (c)(3) and (c)(4). They contend that the ESTL defines the entire paid-leave benefit as "sick time", pointing first to the title of the statute's subsection which is "Earned sick time". Plaintiffs also stress that the statute allows a covered employee to earn and use a total of 40 hours per year and that the block of 40 hours is not apportioned among the designated purposes in the statute but rather is a block of paid leave which is a "sickness benefit". Finally, plaintiffs contend that the RUIA was intended to create a uniform federal scheme and that allowing new variations of sick leave that a state **[*266]** may devise to escape

the preemptive scope of the RUIA would undermine that purpose.

Defendant and the union intervenors respond that subsections (c)(1), (c)(3) and (c)(4), which require paid time off for purposes other than an employee's own illness, do not conflict with [**13] the stated purposes the RUIA and are not preempted by that statute. They suggest that the other provisions of the ESTL, including addressing the effects of domestic violence and family care, are so far outside the RUIA's scope that preempting them would broaden the RUIA beyond what Congress intended.

Plaintiffs further submit that the legislative history and purpose of the statute confirm that Congress intended to preempt state laws such as the ESTL. They offer statements made by union representatives and an RRB Chairman during congressional hearings, as well as excerpts from the Senate Report on the 1946 amendments, to show the RUIA was intended to address the need for "uniform federal regulation of the national railroad system, especially with respect to employment benefits" because labor agreements in the transportation industry frequently cut across state lines. Plaintiffs claim that Congress and the railroads entered into an "implicit labor-management agreement", as reflected in the RUIA preemption clause, that the railroads would provide federal unemployment and sickness benefits but need not provide state-mandated benefits.

After careful consideration of the arguments presented, [**14] the Court concludes that the statutory text of the RUIA reflects a congressional intent to preempt the entirety of the ESTL's "earned sick time" scheme.

The first two sentences of the RUIA preemption provision in § 363(b) indicate that Congress, in enacting the RUIA, made "exclusive provision" for the payment of "sickness benefits for sickness periods" and prohibited employees from asserting rights to "sickness benefits under a sickness law of any State with respect to sickness periods". § 363(b). Given that preemption provision, the Court must determine whether the "earned sick time" is a "sickness benefit" in cases where the sick time is earned for situations other than personal sickness (i.e., for family sickness, medical appointments or domestic violence). Section 363(b) of the RUIA is clear: Congress intended RUIA to serve as the "exclusive" source of all sickness benefits for railroad employees and to preclude the employees from claiming rights to sickness benefits under any state sickness law.

The RUIA refers generally to "sickness benefits" and "sickness law", evincing the intent of Congress to apply the express preemption provision to all state sickness benefits and sickness laws, not just state sickness benefits which [**15] replicate the RUIA benefit scheme. The language of the preemption provision disclaims any intent to restrict the scope of preemption to state benefit schemes that mirrored the RUIA. See CSX Transp. v. Healey, 861 F.3d 276, 284 (1st Cir. 2017) (rejecting appellant's argument that RUIA preemption applies only to state benefits that are similar or comparable to the kind provided by the RUIA and making clear that "there is no anchor in the text of the preemption clause for limiting in this manner the type of state-mandated sickness benefits subject to preemption").

The plain reading of the ESTL confirms that the "earned sick time" provided for in subsection § 148C(c) comes within the RUIA's preemptive scope. In its definition section, the ESTL delineates the meaning of "earned sick time" as

> [*267] the time off from work that is provided by an employer to an employee, whether paid or unpaid, as computed under subsection (d) that can be used for the purposes described in subsection (c).

§ 148C. The statute provides for the provision of "up to 40 hours of earned paid sick time" in a calendar year, and does not distinguish or apportion the hours between the kinds of sickness benefits described in § 148C(c). The state legislature's determination that domestic violence and care for family members may fall within [**16] the scope of "earned sick time" is not inconsistent with the RUIA's preemption of any and all state sickness laws. In short, the breadth of the state law does not save it from RUIA preemption. Such a reading would allow a state to legislate creatively around the RUIA and thereby thwart the objective of Congress to create a uniform federal scheme of sickness benefits for railroad workers.

The defendant and union-intervenors' reliance on AMTRAK v. Su, 289 F. Supp. 3d 1139 (E.D. Cal. 2017) is unpersuasive. This Court disagrees with the conclusion of that court that the RUIA preemption provision "does not clearly define the type of sickness provisions RUIA preempts" which led that court to rely on the legislative history to conclude that RUIA

preemption did not apply to sickness benefits used for care of family members or seeking protection from domestic violence. *Id. at 1137-38*. Where the provisions of the statute are clear, legislative history cannot undermine the meaning of unambiguous statutory text. *In re Larson, 513 F.3d 325, 329 (1st Cir. 2008)*. The Court in the Su decision limited RUIA's preemption provision to what it described as a more "logical reading" of preempting "the general type of sickness laws Congress contemplated when adopting RUIA's preemption provision". *Su, 289 F. Supp. 3d at 1136*.

Reference to the purpose **[**17]** of the statute confirms the breadth of the express preemption provision. The RUIA was enacted to ensure "a uniform federal scheme" in the railroad industry and to protect interstate rail regulation from the burdens of state sickness law. See H.R. Rep. No. 75-2668 at 1 (1938); *Healey, 861 F.3d at 282*. The First Circuit expressly rejected a reading of the statute that would limit RUIA preemption to state benefits that are similar or comparable to the kind provided by the RUIA. *Healey, 861 F.3d at 284* ("[Appellants] argue . . . that RUIA preemption applies only to state benefits that are similar or comparable to, or of the type provided by the RUIA. Of course, in making this version of their argument, the appellants and their amicus are adrift." (internal alternations and quotation marks omitted)).

A broad construction of the preemption provision of the RUIA is necessary to give effect to the congressional intent to create uniformity. *Morales v. Trans World Airlines, Inc., 504 U.S. 374, 378, 112 S. Ct. 2031, 119 L. Ed. 2d 157 (1992)*. To construe the RUIA preemption provision

narrowly would render it unworkable because states would be free to substitute directly their own policies creating "precisely the effect the preemption clause seeks to avoid: a patchwork of state . . . laws, rules and regulations". *Tobin v. Federal Exp. Corp., 775 F.3d 448, 455 (1st Cir. 2014)* (citing *Rowe v. New Hampshire Motor Transport Ass'n, 552 U.S. 364, 372, 128 S. Ct. 989, 169 L. Ed. 2d 933 (2008)* (internal quotation **[**18]** marks omitted)). Just as the court held in Su, defendant and the union intervenors rely on a Senate Report to contend that the RUIA does not apply outside the context of benefits for employees' personal sickness. *Su, 289 F. Supp. 3d at 1137* (citing S. Rep. No. 79-1710 at 26 (1946) (clarifying **[*268]** that the goal of RUIA preemption was to protect employers from "duplicate liability")). Defendant and the union intervenors assert that Congress did not intend to preempt all state sickness benefits but only those that are similar to the RUIA benefits. The clear text of the preemption clause is to the contrary, however, because Congress chose to refer broadly to "sickness benefits", not limiting the scope to personal sickness benefits. The clear text of the preemption provision and the congressional purpose support a determination that the RUIA preempts the entire state earned sick time scheme which governs "earned sick time" and is not limited to time that can be used exclusively for an employee's personal sickness. Because the Court finds that the RUIA preempts the remaining sections of the ESTL, it declines to reach the dormant *commerce clause* and severability issues raised as "potential questions" by the First Circuit. Accordingly, **[**19]** plaintiffs' motion for summary judgment on its RUIA claim will be allowed and the cross-motions for summary judgment of defendant and the union intervenors will be denied.

ORDER

For the foregoing reasons, plaintiffs' renewed motion for summary judgment on Count 1 (Docket No. 90) is **ALLOWED**, defendant's renewed cross-motion for summary judgment on Count 1 (Docket No. 93) is **DENIED** and the union intervenors' renewed cross-motion for summary judgment on Count 1 (Docket No. 95) is **DENIED.**

So ordered.

/s/ Nathaniel M. Gorton

Nathaniel M. Gorton

United States District Judge

Dated August 10, 2018

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