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9th Circuit says meal and rest break laws not preempted

By Felix Shafir

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In 1994, Congress enacted the Federal Aviation Administration Authorization Act (FAAAA) to preempt state trucking regulation. The FAAAA prohibits states from enacting laws "related to a price, route, or service of any motor carrier ... with respect to the transportation of property." 49 U.S.C. Section 14501(c)(1). Courts have construed the "related to" clause broadly, finding that the FAAAA preempts an array of state laws that might at first glance seem to have little to do with motor carriers' prices, routes, or services, except indirectly. A hotly debated question now is whether that clause is broad enough to preempt California wage and hour laws in actions brought by employees against trucking industry employers.

A split of authority has developed in the trial courts over the extent of FAAAA preemption in this area. This division has now come to a head as appellate courts in several cases described below have begun to confront this debate.

Does the FAAAA preempt California's meal and rest break laws?

Most federal district courts have concluded that the FAAAA preempts California's meal and rest break requirements. But a few district courts have reached the opposite conclusion. California trial courts are also divided over this issue.

This split has now reached the 9th U.S. Circuit Court of Appeals in *Dilts v. Penske Logistics LLC*, 12-55705 (July 9, 2014). There, the 9th Circuit held "that California's meal

and rest break laws, as generally applied to motor carriers, are not preempted" because these laws "do not set prices, mandate or prohibit certain routes, or tell motor carriers what services they may or may not provide, either directly or indirectly."

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Dilts' majority opinion declines to decide whether, in future cases, trucking industry employers could bring an "as applied" FAAAA preemption challenge to such laws. In contrast, Judge Jack Zouhary's concurring opinion indicates that these employers can demonstrate that the FAAAA preempts meal and rest break laws as applied to them if the employers, on a case-by-case basis, present sufficient evidence establishing the necessary impact of the laws on their particular rates, routes, or services.

It remains to be seen whether *Dilts*' preemption standard survives future U.S. Supreme Court scrutiny given the high court's recent interest in FAAAA preemption. It will be particularly interesting to see whether *Northwest Inc. v. Ginsberg*, 134 S. Ct. 1422 (2014), prompts the court to weigh in on the propriety of *Dilts*' standard.

Northwest held that the Airline Deregulation Act (ADA) preempted a state law tort claim because, as a matter of law, it related to an air carrier's rates, routes or services. Unlike *Dilts*, which limited FAAAA preemption to those instance where state laws mandate, prohibit or otherwise regulate prices, routes or services, *Northwest* determined that the ADA preempts state law claims based on their mere "connection with, or reference to," prices, routes or services.

This disparity between the *Dilts* and *Northwest* preemption standards might draw the U.S. Supreme Court's attention. After all, the FAAAA's preemption provision copies the "related to" language of the ADA preemption clause at issue in *Northwest*, and courts regularly rely on ADA precedent to construe the FAAAA. See, e.g., *Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 370-73 (2008).

Moreover, the court may find the *Dilts* standard problematic for other reasons. For example, *Dilts* developed its preemption standard by relying heavily on the FAAAA's legislative history. But, as Justice Antonin Scalia has emphasized, this "mode of analysis" is not one that "all of the [court's] Justices consider valid." *Samantar v. Yousuf*, 560 U.S. 305, 327 (2010) (Scalia, J., concurring).

The state Court of Appeal may soon have its own opportunity to decide the FAAAA's impact on meal and rest break class actions. In *Chavez v. Angelica Corp.*, D063199, a trial court refused to certify a class of meal and rest break claims in part because the FAAAA preempts those claims. The plaintiffs appealed and the parties have briefed the question of FAAAA preemption. (The appeal is fully briefed and awaiting oral argument.) It is unclear, however, whether the appellate court will reach the preemption issue because the trial court also declined to certify a class on alternative grounds unrelated to preemption, and the

appellate court might sidestep the preemption question by affirming the denial of class certification on those other grounds.

Does the FAAAA preempt California's minimum wage law?

A federal district court recently concluded that the FAAAA preempts claims based on California's minimum wage law. *Burnham v. Ruan Transp.*, 2013 WL 4564496, at *5-6 (C.D. Cal. Aug. 16, 2013). The 9th Circuit declined to weigh in on this decision, denying the employee's petition for permission to pursue an interlocutory appeal. Employers are thus free to cite the *Burnham* ruling to support a preemption argument, although some may question whether *Burnham* can be reconciled with the 9th Circuit's subsequent decision in *Dilts*.

The state Supreme Court may soon confront a similar issue in *People ex rel. Harris v. Pac Anchor Transportation*, S194388. In *Harris*, the state brought an unfair competition law (UCL) claim against defendants, alleging that they violated several provisions of the Labor Code as well as the wage order for the transportation industry - including the provisions governing the payment of minimum wages. The trial court dismissed the action, concluding that the FAAAA preempted all UCL causes of action against motor carriers. The Court of Appeal reversed.

The state Supreme Court granted review, and heard oral argument May 28. However, it is unclear whether the court's imminent opinion will address FAAAA preemption based on the nature of the wage and hour laws underlying the UCL action, or will instead resolve the case based entirely on quirks of the UCL.

Time will tell how the 9th Circuit and California appellate courts will resolve these preemption issues - or whether the U.S. Supreme Court steps in to provide a definitive answer.

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