

# LABOR LAW

# PREEMPTION GUIDE

## Introduction

Preemption is a popular topic these days, as local labor laws continue to increase and change at a fast rate. However, as state preemption laws increase, so does the confusion surrounding it.

In this guide, we'll focus on preemption and its effects on labor laws, including:

- Definition of preemption
- Preemption types
- History of preemption
- Preemption trends
- States with preemption laws

## What is Preemption?

Preemption refers to a higher level of government having authority to limit or eliminate the power of a lower level of government to regulate a certain issue.

**For example, if a local law conflicts with a state preemption law, the state law takes precedence over the lower-level, local law.**

# PREEMPTION TYPES

There are two types of preemption: **Express and Implied.**

## Express Preemption

First, express preemption occurs when a law specifically states it's preempting a lower-level law or law-making authority.

There are two types of express preemption:

1. **Full Preemption**, where higher levels of government choose to supersede all local level powers over workplace laws

***Example:** As of March 30, 2017, Iowa passed and signed House File 295, which prohibits counties and cities from adopting any ordinance providing for terms or conditions of employment that exceeds or conflicts with state or federal laws.*

2. **Selective Preemption**, where higher levels of government choose to supersede a limited subset of local level workplace laws (like minimum wage, sick leave or benefits)

***Example:** In April 2017, the Minnesota Senate passed a bill that would have prohibited cities from creating and enforcing local minimum wage and paid sick leave rules. However, it was vetoed by Minnesota Governor Mark Dayton in May 2017.*

## Implied Preemption

This occurs when a federal or state law does not contain any preemptive language, but still has the power to invalidate the lower-level law.

The most well-known example of implied preemption in labor law is the National Labor Relations Act (NLRA). The NLRA is so extensive that it preempts state governments from enacting future regulations on almost every labor topic it covers.

# HISTORY & TRENDS

## History of Preemption

Preemption is a relatively new occurrence in labor laws, as it gained popularity in 2011 when the American Legislative Exchange Council (ALEC) released templates for preemption laws regarding paid sick leave. Since then, many states have followed these templates and passed their own preemption laws.

At first, states were using the ALEC template to preempt county and city minimum wage laws. However, now that local jurisdictions are more progressive regarding workplace laws, preemption laws have expanded to other areas, such as paid sick leave and employment conditions.

## Preemption Trends

Why are we seeing this trend in labor law preemption? There are a few arguments regarding this increase:

### **Argument 1:**

Too much variation between federal, state, county and city requirements creates too many regulations with which employers must comply.

### **Argument 2:**

Specifically, for minimum wage laws, the variance is a financial burden, which can force businesses to close and move to other cities with lower minimum wages or move to states with minimum wage preemption laws in place.

### **Argument 3:**

Many new county and city laws conflict with current state laws. To counteract this, states will adopt preemptive laws, which allow state laws to take precedence over the conflicting local laws.

# HOW PREEMPTION AFFECTS EMPLOYERS

## Can Local Jurisdictions Oppose Preemption Laws?

According to Dillon's Rule\*, the answer is no, as states are ultimately in control of local jurisdictions. In short, the rule explains that if a state enacts a law and decides counties or cities are creating laws they were not originally given the power to control, then the state can legally preempt their actions.

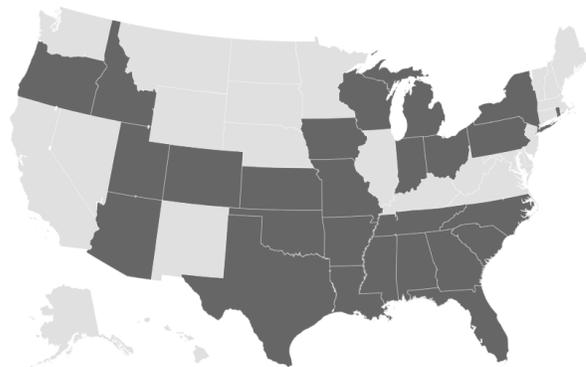
## How Does Preemption Affect Employers?

On one hand, preemption laws make things easier once the law is passed, as employers only need to track the state law versus all the individual local laws. On the other, before the law is passed, employers must track preemption laws to ensure they are aware of changes as soon as they go into effect.

It's necessary for employers to keep track of these laws as they may have a significant impact on wages and sick leave policies. Many employers find it hard to keep up with these changes, as they simply do not have the resources to do so.

## The following states have workplace preemption laws to date:

- Alabama
- Arizona
- Arkansas
- Colorado
- Florida
- Georgia
- Idaho
- Indiana
- Iowa
- Kansas
- Louisiana
- Michigan
- Mississippi
- Missouri
- New York
- North Carolina
- Ohio
- Oklahoma
- Oregon
- Pennsylvania
- Rhode Island
- South Carolina
- Tennessee
- Texas
- Utah
- Wisconsin



\*Source: <https://definitions.uslegal.com/d/dillons-rule/>

# CONCLUSION

## Key Takeaways:

Preemption laws have been on the rise over the past few years. As local level laws begin to increase, the number of preemption laws may rise as well. Because of this, it is important to remember these key takeaways as you develop your compliance strategy:

### Understanding Preemption:

Basically, preemption occurs when a higher level of government passes a law that eliminates or restricts the power of a lower-level government on a certain issue. There are two types, express and implied.

### History of Preemption:

Preemption is relatively new, however, now that local jurisdictions have become more progressive in workplace laws, state preemption laws have expanded to other areas, such as paid sick leave and employment conditions.

### Preemption Trends:

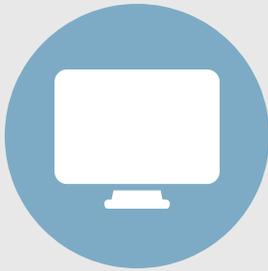
The biggest trend in preemption is that states are increasing preemption laws because they allow states to take precedence over local laws that conflict with state requirements. Also, too much variation between federal, state, county and city workplace requirements creates too many regulations with which employers must comply.

### How Does Preemption Affect Employers:

Preemption laws affect every business differently. For some, they make things easier once the law is passed, as employers only need to track the state law versus all the individual local laws. On the other hand, before the law is passed, employers must track state preemption laws to ensure they are on top of the changes as soon as they go into effect.

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