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Illinois Determines Prevailing Wage Benefits No Longer Preempted By ERISA

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In *People ex rel. Department of Labor v. Lion Construction, LLC*, the Illinois Appellate Court reversed Illinois' prior rule that the state's Prevailing Wage Act (PWA) is preempted by the federal Employment Retirement Income Security Act (ERISA) when a state action results from benefits-related issues. After an audit, the Illinois Department of Labor concluded that Lion Construction violated the state's prevailing wage law even though it had nominally paid its employees the required base wage. The state alleged that Lion nevertheless violated the PWA by failing to pay required fringe benefits and brought an action in state court to enforce the state law.

Lion made deductions from the employees' wages that it paid to a union fund, which is subject to ERISA. Noting that, since 1992, the rule in Illinois was that ERISA preempted the PWA in these circumstances, the trial court dismissed the state's complaint. The Appellate Court disagreed, finding that the U.S. Supreme Court modified the framework for determining ERISA preemption after that 1992 decision. The employer may still seek further review by the Illinois Supreme Court, and unless permission is granted to appeal it seems that this decision is likely to be cited in other states where state prevailing wages and other statutes potentially cross paths with ERISA.

ERISA preemption and prevailing wages are each complicated topics in and

of themselves, and the combination of the two is a particularly tricky area facing construction employers. Union contractors and contractors working on public projects of any kind are well advised to seek the assistance of counsel.