

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 12-10458-RWZ

MERIT CONSTRUCTION ALLIANCE, *et al.*

v.

CITY OF QUINCY

MEMORANDUM OF DECISION

## **II. Legal Standard**

Summary judgment will be granted if there is no genuine dispute as to any

Dillingham, 519 U.S. at 325. Separately, a state law has a connection with ERISA plans if it “mandate[s] employee benefit structures or their administration.” Id. at 328 (quoting N.Y. State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 514 U.S. 645, 658 (1995)).

The parties agree that Quincy’s apprenticeship requirement has no reference to an ERISA plan, because it applies to both ERISA and non-ERISA apprenticeship programs (that is, both separately-funded and non-separately-funded programs). See id. at 325 (finding no reference where “approved apprenticeship programs need not necessarily be ERISA plans”). Therefore, the only question is whether Quincy’s apprenticeship requirement has a “connection with” ERISA apprenticeship programs.

It does. Quincy’s regulation requires bidders to “maintain or participate in a bona fide apprentice training program . . . that is approved by the [Massachusetts] Division of Apprentice Training.” Docket # 26, Ex. B, at 1.<sup>1</sup> First, then, Quincy requires its bidders to have an apprenticeship program. But cf. Simas v. Quaker Fabric Corp. of Fall River, 6 F.3d 849, 852 (1st Cir. 1993) (“[A] state statute that obligates an employer to establish an employee benefit plan is itself preempted even though ERISA itself neither mandates nor forbids the creation of plans.”) Second, Quincy requires bidders’ apprenticeship programs to be approved by the Massachusetts Division of Apprentice Training. That necessitates compliance with a number of state regulations, including substantive training standards, program performance standards, and recordkeeping

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<sup>1</sup> This version of the regulation, proffered in the original complaint and as an exhibit to Quincy’s motion from summary judgment, dates to 2000. The record also reflects an updated version of the regulation from 2010 with slightly different wording. See Docket # 23, Ex. A. The differences are insignificant.



Contractors Ass'n of New Eng. v. City of Fall River, Civil Action No. 10-10994-RWZ, 2011 WL 4710875 at \*7 (D. Mass. Oct. 4, 2011) (“Fall River . . . not only requires bidders and contractors to operate such a program, but also requires approval by the state . . . . Such an apprenticeship program mandate is preempted by ERISA.”).

Quincy emphasizes that neither of the construction companies appearing as plaintiffs actually operates an ERISA apprenticeship program. The plaintiffs finance their apprenticeship programs from their general assets, not from separate funds. But the test for ERISA preemption is not whether the regulation has a connection with ERISA plans operated by these plaintiffs, but whether it has a connection with ERISA plans generally. Because the regulation sets mandatory standards that apply to ERISA programs as well as non-ERISA programs, it is preempted.

Quincy’s apprenticeship requirement is substantively identical to the one this court struck down sixteen months ago. See Fall River, 2011 WL 4710875 at \*7. Now as then, ERISA preempts mandatory apprenticeship program requirements.

**IV. Conclusion**

Plaintiffs’ motion for partial summary judgment (Docket # 23) is ALLOWED. Quincy’s motion for partial summary judgment (Docket # 21) is DENIED. The parties shall prepare an order for final judgment.

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February 1, 2013  
DATE

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/s/Rya W. Zobel  
RYA W. ZOBEL  
UNITED STATES DISTRICT JUDGE