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PREEMPTION

Preemption

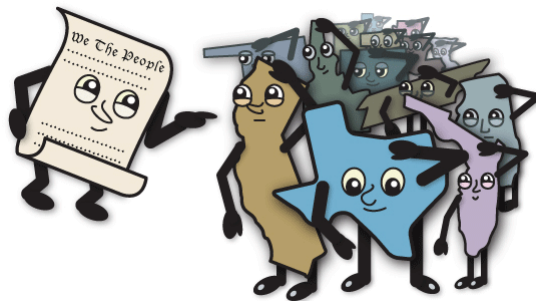
Where a higher level of government limits, or even eliminates, the power of a lower level of government to regulate certain issues.

When laws are preempted, they have no force or effect.

Federal Preemption of State and Local Laws:

The Supremacy Clause of the Constitution gives Congress the power to preempt state law.

Federal laws are the *supreme* laws of the land.



State Preemption of Local Regulation:

While local governments inherently have no authority, most state constitutions allocate the authority to regulate in the interest of the public health, safety and welfare to local governments.

The doctrine of Federal Preemption is applied the same at the state level, allowing state governments to preempt the authority of local governments.

Floor Preemption

Not *really* preemption

The higher level of government sets a minimum standard or “floor,” but allows for additional (more strict) laws at the lower level.

“Cities and towns may adopt measures more stringent than this Act.”

Example: Safe Drinking Water Act – EPA sets national standards for various contaminants, but states can go above and beyond the federal limits.

Ceiling Preemption

Prohibits lower levels of government from requiring *anything different* from what the higher level of government has required.

Preemption comes in many different forms, with many different terms:

- Occupy the field
- Sole authority
- Uniform
- Statewide
- Exclusive
- Supersede
- Inconsistent with
- No more stringent than
- Preempt
- Identical to

Express Preemption

The higher level of government **directly** states its intention to control in a certain area of law in the statute itself

Federal Food, Drug, and Cosmetic Act § 379r:

"...no State or political subdivision of a State may establish or continue in effect any requirement...that relates to the regulation of a drug that is different from or in addition to, or that is otherwise not identical with, a requirement under this chapter."

Alabama Uniform Minimum Wage and Right to Work Act (2016):

"Any ordinance, policy, rule, or other mandate of a county, municipality, or any other political subdivision of this state that is inconsistent with this section is void"

Implied Preemption

Implied preemption is raised when a legislature has been silent on the issue.

Two Types:

- 1) Conflict Preemption
- 2) Field Preemption



Conclusion

The ability to identify preemption allows policy professionals to avoid potential restrictions on a state or local government's ability to implement the most effective public health policies for their target population.