

## Civil Rights Act, Title VII

### Breaking Down Statutory Text

This chart details which preemption sections of various omnibus and sectoral statutes deal with federal preemption.

Codified Section	Type of Preemption	Are the circuit courts in general agreement on what this means?
<a href="#">42 U.S.C. § 2000e-7</a>	Compliance Savings	Yes – cases focus on applying facts, not on divulging theories.
<a href="#">42 U.S.C. § 2000e-7</a>	Express Preemption	Yes – cases focus on applying facts, not on divulging theories.
<a href="#">42 U.S.C. § 2000h-4</a>	Anti-Preemption Provision – Not Field Preemption	Yes – cases focus on applying facts, not on divulging theories.
<a href="#">42 U.S.C. § 2000h-4</a>	Express Preemption	Yes – cases focus on applying facts, not on divulging theories.
<a href="#">42 U.S.C. § 2000h-6</a>	Severability Clause	Not litigated

### Methodology

The statutory text overwhelmingly contains express preemption and various savings clauses. Express preemption is directly related to statutory text, and it is the only form of preemption with this quality. The remaining types of preemption – field, impossibility, and obstacle – are forms of *implied* preemption. As the name suggests, these preemption categories are implicit in every statute and consequently do not rely on statutory text. (However, sometimes a statute will explicitly address an implied preemption principle, such as 42 U.S.C. § 2000h-4.) Instead, implied preemption principles appear exclusively in case law. Case law that relies on a theory of implied preemption are appropriately notated.

Since courts have not addressed every issue, there may be areas that are marked as “Not litigated.”

Legend:

Express Preemption

Field Preemption

Impossibility Preemption

Obstacle Preemption

Floor Preemption

*Anti-Preemption Provision*

Compliance Savings Clause

**Remedies Savings Clause**

Sunset Provision

Ceiling Preemption

### Statutory Text

42 U.S.C. § 2000e-7  
Effect on State Laws

Nothing in this subchapter shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this subchapter.

42 U.S.C. § 2000h-4

Construction of provisions not to exclude operation of State laws and not to invalidate consistent State laws

*"Nothing contained in any title of this Act shall be construed as indicating an intent on the part of Congress to occupy the field in which any such title operates to the exclusion of State laws on the same subject matter, nor shall any provision of this Act be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this Act, or any provision thereof."*

42 U.S.C. § 2000h-6

Separability

*If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.*

### Summary

There have not been notable Supreme Court cases looking at the preemptive effect of Title VII. Even without binding authority, the various Court of Appeals have not greatly diverged in their understanding of the law's preemptive effect. Most case law looks to determine if conflicts or impossibility exist in each factual scenario. The courts have not diverged in their application of these preemption principles.

### Case Law

*Hays v. Potlatch Forests, Inc.*, 465 F.2d 1081 (8th Cir. 1972)

Facts: Potlatch is an employer who sued to have an Arkansas statute declared invalid.

Ark. Stat. Ann. §81-601 requires Potlatch to pay its female employees time and a half for any time worked beyond eight hours daily.

Rule: Congress "expressly disclaimed any preemptive intent" in Title VII; so the Arkansas will be valid unless it is conflict with Title VII.

Holding: **To ensure there is no conflict with Title VII, the Arkansas statute should be extended to give benefits to male employees.**

*Lucas v. Brown & Root, Inc.*, 736 F.2d 1202 (8th Cir. 1984)

Facts: Plaintiff alleges she was fired for not sleeping with her foreman – which constitutes a contract and a tort claim.

Rule: According to 42 U.S.C. § 2000e-7, title VII does not "relieve any person from any liability ... provided by any present or future law of any State."

Holding: Title VII does not preempt the state law contract claim of wrongful discharge.

*Homemakers, Inc., of Los Angeles v. Division of Industrial Welfare*, 509 F.2d 20 (9th Cir. 1974)

Facts: California Labor Code requires employers to give overtime pay to covered women employees.

Application: The Court refuses to follow Eight Circuit precedent, *Hays*. Instead, the Court found it “would be beyond its own power to interpret the challenges statutes in a way which would significantly expand the statutorily designated class of beneficiaries.”

Holding: **The California Labor Code conflicts with the CRA. It is preempted.**

*Malabed v. N. Slope Borough*, 335 F.3d 864 (9th Cir. 2003)

Facts: An ordinance in Alaska allowed employers to legally preference Native Americans in borough employment. The Alaska Supreme Court found the hiring preference in violation of its constitution’s equal protection provision. The borough relied on 42 U.S.C. § 2000e-2(i), creating an exception for Native American employment preferences.

Application: The Court finds § 2000e-2(i) only exempts the programs from preemption; it does not authorize preference programs.

Holding: **Title VII does not preempt the state constitution.**

*Jones Metal Products Co. v. Walker*, 29 Ohio St. 2d 173 (Ohio 1972)

Facts: The employer has practices that treat male and female employees differently, solely based on their sex. However, the employer asserts it is required by various R.C. statutes – whose statutory goal is the “‘protection’ of females from dangerous or hazardous occupations and exploitation.”

Holding: **The state laws are inconsistent with § 2000h-4.**

*Warshafsky v. Journal Co.*, 63 Wis. 2d 130 (Wis. 1974)

Facts: Wis. Stat. §103.23 prohibits minor girls from working as street traders. A newspaper company was employing minors as paper carriers. The newspaper company challenged the statute.

Holding: **The state law and Title VII are not in conflict because Title VII did not apply to minor females. Consequently, §103.23 is not preempted.**

*Utility Workers Union v. Southern California Edison Co.*, 320 F. Supp. 1262 (C.Ca. 1970)

Facts: Blossfeld, a woman, was employed by Defendant and based on a Collective Bargaining Agreement, her seniority should have been considered when applying for a promotion. Blossfeld was the only person to apply, but a male employee with less seniority, who didn’t apply, was promoted. Under California Labor Code §1251, “no female employee shall be requested or permitted to lift any object weighing 50 pounds or over.” Since the promotion included lifting over 50 pounds, she was not qualified.

Application: All parties agreed that Defendant’s conduct violates the broad and literal terms of the EOE. The weight-lifting restrictions are not exempted from the broad provisions. The California classification does not constitute a bona-fide occupational qualification; it is not exempted by §2000e-2(e),

Holding: **The California statute permits discrimination prohibited by Title VII; it is preempted.**

*Burns v. Rohr Corp.*, 346 F. Supp. 994 (S.D. Cal. 1972)

Facts: In 1947, the California Industrial Welfare Commission passed a regulation requiring ten-minute rest breaks every four hours to female employees. Rohr complied with the policy for women but did not give its male employees the same breaks.

Application: The state regulation does not qualify for a bona fide occupational qualification.

Holding: The state regulation conflicts with the objectives of Title VII, and it is preempted by the CRA.

*Cianciolo v. Members of City Council*, 376 F. Supp. 719 (E. Tenn. 1974)

Facts: Knoxville Ordinance No. 5645 prohibits bisexual massages within city limits.

Plaintiffs, owners of two massage parlors, sought to declare the ordinance invalid.

Application: If the sexual distinction is a bona fide occupational qualification, then it is legitimate. But the qualification should be interpreted narrowly: state law that conflicts with equal employment opportunities provision must withstand close judicial scrutiny.

Holding: Ordinance 5645 conflicts with §2000e-2 of CRA; it is preempted.

*Frazier v. Colonial Williamsburg Foundation*, 574 F. Supp. 318 (E.D. Va. 1983)

Facts: Plaintiff claims he was wrongfully discharged and alleges a contract violation. In response, Defendant filed a motion for summary judgment, arguing that the contract claim is preempted by Title VII.

Holding: Congress did not preempt the field; the contract claim is not preempted.

*Allred v. Bauhaus USA, Inc.*, 243 F. Supp. 2d 583 (N.D. Miss. 2002)

Facts: Plaintiff, an employee of Defendant, filed a lawsuit alleging state law claims regarding events at the facility.

Rule: When Congress preempts a field, any civil complaint with a claim in that area is necessarily federal. In the absence of complete preemption, the artful pleading doctrine is limited.

Holding: The plaintiff only relied on state law causes of action. Since Title VII did not preempt the field, the claims are not preempted.

*Asad v. Cont'l Airlines, Inc.*, 328 F. Supp. 2d 772 (N.D. Ohio 2004)

Facts: This is a state-law tort claim for fetal injuries caused by a negligent employer.

Plaintiff is the son of Darlene Asad, who was employed by Continental Airlines. Darlene worked near and directly on aircrafts, exposed to jet fumes. Once Darlene was pregnant, Defendant refused to give her different duties. As a result, her unborn child was exposed to carbon monoxide, causing birth defects to Plaintiff. Continental contends the claim is preempted by the Pregnancy Discrimination Act, 42 U.S.C. §2000e(k)

Holding: Title VII has a limited preemptive effect, and it was possible to comply with both federal and state law. Since it was not impossible, the state law tort claim is not preempted.