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The Federal Enclave Doctrine: A Potentially Powerful Defense to State Employment Laws

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The U.S. Constitution provides that the federal government has exclusive legislative rights over certain federal territories – such as military bases, courthouses, and other official properties – if a state consents to the purchase of the territory. These territories are known as "federal enclaves." In practical terms, the federal enclave doctrine provides a little known, but potentially powerful, defense for employers that perform work in federal enclaves because often only federal law will apply in those locations. The application of *federal* law to work performed in federal enclaves is significant because *state* employment laws may give rise to more plaintiff-friendly remedies and longer statutes of limitations than their federal counterparts. Significantly, the doctrine has been recognized to preclude state law wage and hour class actions. In addition, because the doctrine gives rise to federal law claims exclusively, it may form the basis to remove a lawsuit from state to federal court.

This article provides an overview of the federal enclave doctrine, including practical considerations for the employment law practitioner.

What Is a Federal Enclave?

A federal enclave is territory, transferred by a state through cession or consent to the United States, over which the federal government has acquired exclusive jurisdiction. Once the federal government exerts exclusive jurisdiction over a territory, it can choose whether state or federal law will govern. The source of the federal enclave doctrine is article I, section 8, clause 17 of the U.S. Constitution, which provides that:

> Congress shall have power . . . to exercise exclusive Legislation in all Cases whatsoever over such District[s] . . . as may, by Cession of particular States . . . become the Seat of the government of the United States, and to exercise like authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, Dock-Yards, and other needful Buildings.[1]

1 U.S. Const. art. I, § 8, cl. 17.

Federal enclaves thus include some federal courthouses,[2] military bases,[3] federal buildings,[4] and national forests and parks.[5] Importantly, not all federal *territories* are federal *enclaves*.

In order for a territory to be considered a federal enclave, the federal government must have purchased the territory "by the Consent of the Legislature of the State." If it did not, then the United States and, by implication, a private employer working on the federal property, does not obtain the benefits of the federal enclave doctrine. Instead, its possession is one of an "ordinary" proprietor, and state law will apply.[6]

In litigation, determining whether a federal territory is a federal enclave can be a time and fact-intensive undertaking. Given the sheer volume of federal territories in the United States and the dearth of case law addressing each territory, a party will often need to conduct this unconventional research from scratch. Such research might include digging through old deeds or sifting through old court records to determine whether the federal government in fact procured the property. Moreover, a party must also locate the state statute consenting to the purchase by the United States. The source of this information can vary, ranging from a deed of purchase to an opinion letter from the state's attorney general explaining that the property at issue was ceded to the federal government and consented to by the state's general assembly.[7]

How to Determine Which State Laws Are Preempted

After establishing that a federal territory is a federal enclave, the next question that must be answered is: which state laws are preempted? The general rule is that: (1) a state law that was enacted *before* the cession continues to apply unless Congress states otherwise;[8] and (2) state law that was enacted *after* the creation of the enclave does not apply to the enclave.[9] As described more fully below, there are three notable exceptions to this general rule.

First, state law is not preempted if the state had, at the time of cession, expressly reserved the right to legislate over the matters at issue.[10] Second, minor regulatory changes to state programs that existed at the time of cession are not preempted "provided the basic state law authorizing such control has been in effect" since the time of cession.[11] Finally, federal enclaves are not shielded from state law if Congress provides "clear and unambiguous" authorization for such state regulation over its federal enclave.[12]

Therefore, it is necessary in this step of the analysis to determine the date upon which the land in question became a federal enclave, as well as the date upon which the state law at issue was enacted. If the alleged claim is borne from the common law, rather than statutory law, the same analysis will still apply.[13] The date upon which the territory became a federal enclave may be determined through a deed of purchase or other court record, while traditional statutory research might provide the date on which the state law was enacted. If the state law was enacted *after* the territory became a federal enclave, the state law will not apply. By contrast, if the state law was already in existence, the general rule, as noted, is that the state law *will* apply.

2 *See, e.g., Rodriguez v. United States Marshall Serv.*, 2005 U.S. Dist. LEXIS 19516, at *36 (D.P.R. Sept. 8, 2005); *United States v. Markiewicz*, 978 F.2d 786, 797 (2d Cir. 1992).

3 *See e.g., Bouthner v. Cleveland Constr., Inc.*, 2011 U.S. Dist. LEXIS 79316, at **18-19 (D. Md. July 21, 2011) (National Naval Medical Center in Bethesda, Maryland); *Manning v. Gold Belt Falcon, LLC*, 681 F. Supp. 2d 574 (D.N.J. 2010) (Fort Dix, New Jersey); *Hutchison v. Andrulis Corp.*, 2004 U.S. Dist. LEXIS 5684, at **1-2 (N.D. Fla. Mar. 19, 2004) (Department of the United States Navy, Coastal Systems Station, in Panama City, Florida); *Kelly v. Lockheed Martin Servs. Group*, 25 F. Supp. 2d. 1 (D.P.R. 1998) (Roosevelt Roads Naval Station in Ceiba, Puerto Rico).

4 *United States v. Windsor*, 765 F.2d 16 (2nd Cir. 1985) (Knolls Atomic Power Laboratory in Windsor, Connecticut).

5 *Allison v. Boeing Laser Technical Servs.*, 689 F.3d 1234 (10th Cir. Aug. 10, 2012).

6 *Paul v. United States*, 371 U.S. 245, 264 (1963).

7 *Office of the Attorney General of the State of Maryland*, 61 Op. Atty. Gen. Md. 441 (1976) (addressing whether the National Naval Medical Center in Bethesda, Maryland, was a federal enclave).

8 *Koren v. Martin Marietta Servs.*, 997 F. Supp. 196, 202 (D.P.R. 1997) (**state law** existing at the time of **cession** still applies within the enclave until a federal law abrogates the **state law**).

9 *Cooper v. S. Cal. Edison Co.*, 2006 U.S. App. LEXIS 11897, at **3-4 (9th Cir. May 10, 2006) (federal enclave doctrine preempts state law claims that do not pre-date the acquisition of the enclave).

10 *Sundaram v. Brookhaven Nat'l Labs.*, 424 F. Supp. 2d 545 (E.D.N.Y. 2006).

11 Paul v. United States, 371 U.S. 245, 269 (1963).

12 *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174 (1988).

13 *See, e.g., Allison*, 689 F.3d at 1240 ("Judge-made common law is no different than legislature-made law in application and effect. When a state court adopts a new cause of action through its common-law powers, that cause of action functions no differently than if it had been created by the state legislature.")

The U.S. District Court for the Eastern District of New York's decision in *Sundaram v. Brookhaven National Laboratories*[14] provides a good example of this principle. There, the issue was whether New York's state anti-discrimination statute applied to the laboratory. As a threshold matter, there was no dispute that the land on which Brookhaven National Laboratories sat was a federal enclave because the United States purchased the property from the State of New York on July 17, 1933, in a transfer signed by the governor and authorized by the state legislature. Because neither the New York Human Rights Law nor the New York Civil Rights Law was enacted before July 17, 1933, the *Sundaram* court held that the state anti-discrimination laws did not apply to the Brookhaven National Laboratories. In addition, the court held that the plaintiff's two common law claims – breach of contract based upon an employee handbook and a tort for unlawful discharge – also did not apply because those claims were not recognized by New York courts until well after 1933.

What Are the Exceptions?

There are three exceptions to the general rule that a state's law enacted after the creation of a federal enclave is preempted by federal law. First, state law is not preempted if the state had, at the time of cession, explicitly reserved the right to legislate over the matters at issue. Second, state regulatory schemes that were in place prior to the date of cession, but which require ongoing changes by a regulatory body, will not be preempted. Finally, federal enclaves are not shielded from state law if Congress provides "clear and unambiguous" authorization for such state regulation over its federal enclaves.

With respect to the first exception, neither the United States nor a private employer can rely on the federal enclave doctrine if, at the time of cession or purchase, the state has expressly reserved the right to legislate the activity at issue within the territory. For example, some states have reserved the right to legislate civil and criminal service of process only,[15] while other states have reserved jurisdiction to the fullest extent possible under the Constitution.[16]

In *Sundaram*, discussed above, the plaintiff argued that the New York laws in question were not preempted because, at the time of cession, New York reserved the right to legislate in that territory. The deed memorializing the purchase by the United States government stated, in part:

> . . . that the State of New York shall retain a concurrent jurisdiction with the United States on and over the property and premises so conveyed, so far as that all civil and criminal process, which may issue under the laws or authority of the State of New York, may be executed thereon in the same way and manner as if such jurisdiction had not been ceded . . .[17]

The court, however, rejected the plaintiff's argument, noting that the "express terms of the scope of concurrent jurisdiction is extremely limited . . . to the state's right to serve civil and criminal process on the property."[18] Thus, the deed did not provide the state with jurisdiction to legislate other activities, such as anti-discrimination laws, within the federal enclave.

The second exception relates to state programs that were enacted prior to the date of cession of the property at issue, but which require ongoing regulatory changes after that date. In *Paul v. United States*, the U.S. Supreme Court addressed state regulatory schemes regarding milk price controls that were in place when the state ceded sovereignty over land used for federal military installations, but were subject to ongoing change by regulators. Relying on the federal enclave doctrine, the United States argued that California should be barred from trying to enforce its current milk price regulations, rather than the price regulations in effect when the United States acquired the land in question. Rejecting that argument, the Supreme Court held that changes in milk pricing regulations would still be applicable to the federal enclave, "provided the basic state law authorizing such control had been in effect since the times of these various acquisitions" of the land constituting the federal military installations.[19] The Supreme Court remanded the case to the lower court to examine the precise evolution of the current regulatory scheme.

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14 424 F. Supp. 2d 545 (E.D.N.Y. 2006)..

15 *See. e.g.*, Mont. Code Ann. § 2-1-202.

16 *See, e.g.*, Md. Code. Ann., State Gov't § 14-102 ("With respect to land that the United States or any of its units leases or otherwise holds in the State, the State reserves jurisdiction and authority over the land and over persons, property, and transactions on the land to the *fullest extent that is permitted by the United States Constitution* and that is not inconsistent with the governmental purpose for which the land is held.") (emphasis added).

17 *Brookhaven Nat'l Labs.*, 424 F. Supp. 2d at 570.

18 *Id.*

19 *Paul*, 371 U.S. at 269.

The third exception provides that even if the state law at issue was enacted after the creation of the federal enclave, Congress may authorize such state regulation if it provides "clear and unambiguous" assent to the state law.[20] What constitutes "clear and unambiguous" authorization, however, has been the subject of considerable debate in federal district courts.

Some federal statutes have been found to provide clear and unambiguous authorization for state regulation without much controversy based on their plain language. In *Goodyear Atomic Corp. v. Miller*, for example, the U.S. Supreme Court addressed whether Congress had authorized states to enforce their workers' compensation laws in federal enclaves. In particular, the statute at issue provided:

> Whatsoever constituted authority of each of the several States is charged with the enforcement of and requiring compliances with the State workmen's compensation laws of said States and with the enforcement of and requiring compliance with the orders, decisions, and awards of said constituted authority of said States shall have the power and authority to apply such laws to all lands and premises owned or held by the United States of America by deed or act of cession, by purchase or otherwise, which is within the exterior boundaries of any State and to all projects, buildings, constructions, improvements, and property belonging to the United States of America, which is within the exterior boundaries of any State, in the same way and to the same extent as if said premises were under the exclusive jurisdiction of the State within whose exterior boundaries such place may be.[21]

The Court held that this federal statute provides clear authorization for state regulation because it gives a state official charged with enforcing a state's workers' compensation laws "the power and authority to apply such laws to all lands and premises owned or held by the United States of America by deed or act of cession . . . ."[22]

The Clean Air Act (CAA)[23] is another example of a federal statute that expressly allows states to regulate its provision on federal properties. The CAA provides that federal facilities:

> [S]hall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of air pollution in the same manner, and to the same extent as any nongovernmental entity. The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits and any other requirement whatsoever) . . . (C) to the exercise of any Federal, State, or local administrative authority, and (D) to any process and sanction, whether enforced in Federal, State, or local courts, or in any other manner. This subsection shall apply notwithstanding any immunity of such agencies, officers, agents, or employees under any law or rule of law.[24]

Indeed, courts have used the language of the CAA as the prototypical example of how Congress can be "clear and unambiguous" when it authorizes state regulation on federal property. In *Bouthner v. Cleveland Construction*, for example, the district court compared the clear and unambiguous language of the CAA – *i.e.*, that state law would apply to those federal facilities – to the Davis-Bacon Act,[25] which does not contain similar language. There, the court noted, "Congress is entirely capable of providing explicit authorization when it intends to permit a state regulation to apply in a federal enclave. The CAA is one such example."[26]

One issue that has not been as well addressed by the federal district courts is whether Congress has authorized the application of state wage and hour law claims in federal enclaves. Courts that have considered this question are split on the issue. The primary issue with respect to state wage and hour laws is whether the Service Contract Act (SCA) contains clear and unambiguous congressional authorization for state wage and hour laws. More specifically, the issue is whether congressional intent can be inferred through the SCA's requirement that federal contractors pay prevailing wages, including minimum wages and "fringe benefits," which are defined to include benefits "not otherwise required by Federal, State or local law to be provided by the contractor or subcontractor."[27]

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20 *Goodyear Atomic Corp.*, 486 U.S. at 180.
21 40 U.S.C. § 290.
22 *Goodyear Atomic Corp.*, 486 U.S. at 182.
23 42 U.S.C. § 7401.
24 42 U.S.C. § 7418(a).
25 40 U.S.C. §§ 3141 *et seq.*
26 *Bouthner v. Cleveland Constr. Inc.*, 2011 U.S. Dist. LEXIS 79316, at **9-11 (D. Md. July 21, 2011).
27 41 U.S.C. § 351(a)(2).

In *Lebron Diaz v. General Security Services Corp.*,[28] individuals employed by the defendant at a federal courthouse brought a lawsuit for unpaid bonuses and sick leave under Puerto Rico law. The employer contended that the courthouse was a federal enclave which precluded any claims under local law. The plaintiff countered that the language in the SCA constituted clear congressional intent that local regulation of employment benefits within a federal enclave was permissible. The U.S. District Court for the District of Puerto Rico, observing that the "question is admittedly close," explained:

> While it is true that the [SCA] does not explicitly state that local laws will apply, no fair reading of the emphasized phrases makes possible any other construction of the language. A message does not have to be *in haec verba* to be "clear and unambiguous." The only reasonable interference to be drawn from the [SCA] is that local and state laws were to provide the foundation upon which the [SCA] was to be built, to insure that contract employees received certain minimum benefits. The application of local law providing separate and independent employment benefits, such as the law of Puerto Rico here, was unambiguously assumed.[29]

Other courts have been unable to find clear and unambiguous authorization through the SCA. In *Manning v. Gold Belt Falcon*,[30] for example, the U.S. District Court for the District of New Jersey held:

> Nothing in the Service Contract Act evinces congressional intent to apply state minimum wage laws to federal enclaves, nor is the application of state law to federal property even mentioned. Furthermore, Congress clearly enacted the Service Contract Act for a specific purpose: to ensure workers employed by federal employers were paid no less than workers employed by private or state employers in the same area. There is no explicit intent to abrogate the Federal Enclave Doctrine, but rather a desire to ensure protection for service contracts.[31]

The court noted further: "The distinction between the statute in *Goodyear* and the SCA is obvious: one clearly applies state law to federal land, while the other does not."[32]

Relatedly, in *Bouthner v. Cleveland Construction, Inc.*, the U.S. District Court for the District of Maryland, when analyzing similar language under the Davis-Bacon Act, held that Congress did "not explicitly authorize state wage and benefit laws to apply to contractors" because "Congress has shown it is capable of including language in statutes expressly stating that states have the power to apply the statute to land ceded to the United States" and therefore "the lack of an explicit authorization will often suggest that a statute is not clear and unambiguous."[33] The court, therefore, agreed "with the reasoning in *Manning*."[34]

Even assuming that Congress, through the SCA, ratified the application of certain state laws to federal enclaves, courts have held that claims for overtime do not constitute "fringe benefits" as the term is used in the SCA or the Davis-Bacon Act. For example, the *Bouthner* court held that "even if this Court accepted Plaintiffs' interpretation of the Davis-Bacon Act, state and local law would only apply to claims for fringe benefits. Plaintiffs' allegations that they were not paid minimum wage, were misclassified as independent contractors or exempt persons, and were not timely paid their wages, do not directly relate to 'fringe benefits.'"[35] The court continued: "Plaintiffs' allegations that they were not paid overtime also does not amount to a claim for fringe benefits, at least within the meaning of the Davis-Bacon Act."[36] Based on the analysis in *Bouthner*, the *Diaz* decision can be distinguished because those claims related to defendant's Christmas bonus and sick leave policy and involved "fringe benefits," as opposed to claims for overtime. As a result, employers can persuasively argue that a plaintiff's reliance on the Diaz decision to assert that the SCA provides clear and unambiguous authorization for state overtime laws in federal enclaves is misplaced.

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28 *See, e.g., Lebron Diaz v. General Security Servs., Corp.*, 93 F. Supp. 2d 129 (D.P.R. 2000).
29 *Id.* at 141-42.
30 *See, e.g., Manning v. Gold Belt Falcon*, 681 F. Supp. 2d 574, 577 (D.N.J. 2010).
31 *Id.*
32 *Id.*
33 *Bouthner*, 2011 U.S. Dist. LEXIS 79316, at **15-16.
34 *Id.*
35 *Id.* at *18.
36 *Id.*

The Federal Enclave Doctrine Is Not Available to Private Employers Performing Work in the District of Columbia

While the District of Columbia is itself a federal enclave, the federal enclave doctrine is not available as a shield for private employers performing work in the District.

In 1790, the District of Columbia was carved out of Maryland and Virginia.[37] In 1846, however, the portions Virginia ceded were returned. After nearly 200 years of exclusive federal government control, in one form or another, Congress enacted the District of Columbia Home Rule Act in 1973.[38] The Act allows District citizens to elect a mayor and council. The powers and duties of the council are similar to those held by governing boards in other localities, including the authority to enact laws. One significant difference, however, is that Congress reviews all legislation passed by the council before it can become law.

The Act also specifically prohibits the council from enacting certain laws, such as those that would:

- Lend public credit for private projects;
- Impose a tax on individuals who work in the District but live elsewhere;
- Make any changes to the Heights of Buildings Act of 1910;
- Pass any law changing the composition or jurisdiction of the local courts;
- Enact a local budget that is not balanced; or
- Gain any additional authority over the National Capital Planning Commission, Washington Aqueduct, or the District of Columbia National Guard.

Unless Congress overturns a District law, Congress has essentially assented to concurrent jurisdiction. Moreover, these District laws have been applied to private employers working in the District.[39]

Removal

In addition to the possible preclusion of certain state law claims, the federal enclave doctrine may also provide grounds to remove a lawsuit from state to federal court because the doctrine, if applicable, gives rise exclusively to federal law claims.[40] Though it may be difficult to fully develop the factual record necessary to remove an action from state to federal court within 30 days of service of process required for removal under 28 U.S.C. section 1446, a party should be able to remove cases involving the federal enclave doctrine to federal court if, in its notice of removal, the party can plead factual allegations sufficient to "to raise a right to relief above the speculative level."[41]

Under the federal removal statute,[42] a defendant need only file a notice of removal, signed pursuant to Rule 11 of the Federal Rules of Civil Procedure, containing "a short and plain statement of the grounds for removal."[43] The Fourth Circuit has held that a "district court should not hold a removing party's notice of removal to 'a higher pleading standard than the one imposed on a plaintiff in drafting an initial complaint."[44]

37 See Council of the District of Columbia, DC Home Rule.
38 D.C. Code §§ 1-201.01 *et seq.*
39 *Twenty Citizens of the District of Columbia v. Clinton*, 1998 U.S. Dist. LEXIS 22848, at **27-28 (D.D.C. June 30, 1998) ("The home rule government (comprised of the Council of the District of Columbia, the Mayor of the District of Columbia, and the various administrative departments) does not constitute a republican form of government, because every action of the home rule government is subject to absolute review and veto by the Congress of the United States itself or by Defendant District of Columbia Financial Responsibility and Management Assistance Authority acting as an administrative agent or instrumentality for the Congress of the United States of America and because the home rule government was created by an act of Congress and not by an autonomous act of the citizens of the District of Columbia and because the Congress of the United States holds the exclusive power to alter or abolish the home rule government at any time.").
40 *Morgan v. Rankin*, 2011 U.S. App. LEXIS 16678 (5th Cir. Aug. 10, 2011).
41 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554-56 (2007).
42 28 U.S.C. § 1446(a).
43 *Id.*
44 *Ellenburg v. Spartan Motors Chassis, Inc.*, 519 F.3d 192, 200 (4th Cir. 2008) (*citing Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554-56 (2007)).

In *Jones v. John Crane-Houdaille, Inc*, the U.S. District Court for the District of Maryland addressed whether a defendant properly removed a case to federal court based on the federal enclave doctrine.[45] The plaintiff in *Jones* worked on the Aberdeen Proving Ground, which, in substantial part, is a federal enclave. In his motion to remand, the plaintiff argued that the defendant's removal was defective because it did not provide full support for the contention that the portion of the Aberdeen Proving Ground where the plaintiff worked had in fact been ceded to or purchased by the federal government. The plaintiff argued further that even assuming, *arguendo*, that the territory had been procured by the United States, the defendant failed to sufficiently plead the degree of cession. The district court disagreed, stating:

> Measured against the plausibility standard of *Twombly*, the notice of removal is not defective for failing to allege Maryland's consent to exclusive federal legislative jurisdiction. A judge in this district has previously explained, in detail, why the federal government has exclusive legislative jurisdiction over portions, at least, of the Aberdeen Proving Ground.
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> . . .
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> Other judges in this court have also noted that parts of Aberdeen Proving Ground are federal enclaves. In addition [. . .], opinions in several other cases in the district have referred to the Aberdeen Proving Ground, on which Edgewood Arsenal sits, as a federal enclave.[46]

The court denied the motion to remand, without prejudice, pending further discovery regarding the specific location of the plaintiff's workplace, as well as the date and manner by which the land was procured by the federal government. The court concluded that if the defendant could not support its defense, the court could remand the case back to state court for lack of subject matter jurisdiction.

As a result, employers who are sued in state court for an alleged violation of a state wage and hour law in a putative class action (subject to that state's version of Federal Rule of Civil Procedure 23) over work performed at a federal enclave have greater flexibility in removing the lawsuit to federal court if the employer can meet the "plausibility" standard under *Twombly*. This flexibility is particularly welcome since it may be difficult for an employer to fully develop the complete factual record necessary to support the application of the federal enclave doctrine prior to the statutory removal deadline.

Conclusion

The federal enclave doctrine is a potentially potent weapon for defendants in employment and other litigation since, if applicable, the doctrine will preclude all state law claims enacted after the creation of the enclave, including class-wide state wage and hour claims. As a result, and because it can be difficult to quickly develop the factual record necessary to confidently rely on the doctrine, it is important that any employer working on any federal property, such as a military base, medical facility, courthouse, national park, or other federal building, determine sooner rather than later whether the federal enclave doctrine is available to them.

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45 *Jones v. John Crane-Houdaille, Inc.*, 2012 U.S. Dist. LEXIS 48931 (D. Md. Apr. 6, 2012).
46 *Id.*