

Morgan Lewis



Legal Compliance Issues in a Post-Dobbs World: Employer, Fiduciary, and Other Nonprofit Considerations in an Evolving Legal Landscape

E. Pierce Blue – Morgan Lewis
Christina N. Cahill - Polsinelli

UT Law/Philanthropy Southwest Nonprofit Organizations Institute

January 19, 2023

1

Agenda

- Post-Dobbs Legal Landscape
- Anti-Discrimination and Other Employment Issues
- Board Considerations
- Impact on Federal and Local Tax Exemption
- Indemnification



Morgan Lewis

2

2

1

DON'T PANIC!



Morgan Lewis

3

3

Overview of the *Dobbs* Decision

- ***Dobbs v. Jackson Women's Health Organization*** challenged 2018 Mississippi law that banned virtually all abortion after 15th week of pregnancy
- **HOLDING:** The Constitution does not expressly or implicitly protect the right to choose abortion and leaves it to the states to regulate
 - Laws regulating abortion are entitled to a "strong presumption of validity" and will be upheld unless there is no "rational basis on which the legislature could have thought [the law] would serve legitimate state interests"
 - *Roe v. Wade; Planned Parenthood of Southeastern Pennsylvania*, etc. overturned
- **PRACTICAL RESULT:** States allowed to ban abortion, trigger laws and pre-Roe statutes in effect, rapidly shifting legal landscape



Morgan Lewis

4

4

2

Scope of Restrictive State Laws (as of Jan 10, 2023)



*Source: New York Times



Morgan Lewis

5

Scope of Restrictive State Laws (as of Jan 10, 2023), con't

- Access Restrictions:
 - 25 states have laws that restrict access to abortion prior to viability
 - 16 states have criminal laws that prohibit nearly all abortion (4 currently subject to injunctions)
 - 3 states have criminal laws that prohibit abortion after the detection of a fetal heartbeat (6 weeks) (2 currently subject to injunctions)
 - 2 states prohibit abortion after 15 weeks
 - 4 states prohibit abortion after 20 weeks, one of which is currently subject to an injunction.
 - Several states have multiple prohibitions (e.g., a trigger law that prohibits all abortions and a higher threshold based on the gestational age of the fetus)
- Civil Laws: Oklahoma and Texas allow a range of private citizens to file suits to enforce violations and recover civil penalties



Morgan Lewis

6

6

3

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Legal Compliance Issues in a Post-Dobbs World: Employer, Fiduciary, and other Nonprofit Considerations in an Evolving Legal Landscape

Also available as part of the eCourse

[2023 Nonprofit Organizations eConference](#)

First appeared as part of the conference materials for the
40th Annual Nonprofit Organizations Institute session
"MASTER CLASS: Legal Compliance Issues in a Post-Dobbs World"