

Hot Topics in Employment Law

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EMPLOYER HEALTH PLANS AFTER *DOBBS*

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What is a Group Health Plan?

The Basics

- Generally, an employer-sponsored plan providing medical coverage to all or a portion of the employer's employees.
- Health plans are subject to various federal laws, including ERISA, HIPAA and COBRA.
- Coverage and benefits are typically tax-free.
- Two basic types of Health Plans:
 - Fully-insured plan – claims paid by underlying insurer
 - Self-funded or self-insured plan – claims paid by employer subject to any stop-loss policy

Health Plans Approach to Abortion Pre-Dobbs

With Respect to Elective Abortions and Related Reproductive Care

- *Roe v. Wade*, 410 U.S. 113 (1973): Recognized a constitutional right to abortion subject to certain restrictions.
- Treatment of abortion in health plans
 - Employer-sponsored group health plans have not been required by law to cover abortion services but may do so.
 - The Affordable Care Act does not define abortion as an "essential health benefit" so employers have had broad discretion whether to cover it.
- Limited travel benefits for usually unavailable in-state services.

Dobbs v. Jackson Women's Health Organization

The Case

- At issue was a Mississippi state law that generally banned abortions after 15 weeks of pregnancy.
- In a 6-3 split, the U.S. Supreme Court overturned *Roe v. Wade* and *Planned Parenthood v. Casey*, holding that there is no right to abortion in the U.S. Constitution.
- The opinion held that individual states have the right to regulate abortion and that abortion is no longer a fundamental right.

Where Do Employer Health Plans Stand Now?

Coverage Requirements for Abortions

- No federal requirement to cover elective abortions.
- Typically, it is not deemed an essential health benefit.
- Employer health plans have flexibility with respect to whether to cover abortions and to what extent.
 - Cannot cover abortion in state where it is illegal.
 - Many plans have adopted travel benefits to provide coverage for participants where state law bans the procedure.
 - Expanded coverage of abortion drugs.
 - Fully-insured health plans subject to state insurance regulation.

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