

# Hot Topics in Employment Law

Leanne Thoreson  
Baker Botts L.L.P.  
June 2, 2023

CONFIDENTIAL  
© Copyright Baker Botts 2023. All Rights Reserved.

This presentation is for informational purposes only and does not constitute legal advice or an attorney-client relationship.



1

## EMPLOYER HEALTH PLANS AFTER *DOBBS*

---



2

## 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.

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 \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Hot Topics

Also available as part of the eCourse

[2023 Labor and Employment Law eConference](#)

First appeared as part of the conference materials for the  
30<sup>th</sup> Annual Labor and Employment Law Conference session  
"Hot Topics"