

Unanswered questions after *Dobbs* Part IV: Employee Benefits

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In our fourth installment of “Unanswered questions after *Dobbs*,” Reed Smith’s Reproductive Health Working Group addresses the potential impact of the *Dobbs* opinion on employee benefit plans. As discussed in our prior installments, the opinion will have far-reaching effects on health entities. In anticipation, employers have been exploring changes to their employee benefit plans to address the sea-change in the law. Employers are rolling out these provisions already in response to concerns from the workforce and conflicts with existing state law, despite a number of open questions regarding the treatment and effect of such benefits. Reed Smith is helping clients on the front lines in the design and implementation of these programs. Below are some examples of questions that may arise as employers navigate this development.

Employer-sponsored coverage for abortion-related travel services

- How can employers cover travel costs for employees and their dependents as may be necessary to obtain abortion services?
- Are such travel benefits and ancillary services nontaxable or taxable benefits to the employee?
 - For example, can an employer provide coverage for transportation, lodging and/or meals and if so, in what context?
- To the extent benefits are considered taxable, how can the employer obtain requisite information to satisfy reporting and withholding obligations without raising privacy concerns?
- Would mid-year enhancements or changes to the health plan require or permit employees to make mid-year changes in their elections?
- Besides medical plans, are there any alternative methods for those employers looking to cover abortion-related travel (e.g., EAPs, HRAs, or standalone programs)?
- Should coverage for abortion-related travel only be offered to participants in the employer-sponsored health plan? What are the ramifications if it is also offered to those covered by other plans or not having health insurance?
- To what extent will states utilize the “law enforcement” or similar HIPAA exception to attempt to obtain information from health plans regarding abortions, especially if the services are performed in another state where abortion is legal?
- Will states seek to enforce “aid and abet” or similar laws against health plans paying for travel out of state?
- If travel is added as an enhanced benefit for reproductive care, should or must it be added for similar services due to Title VII, mental health parity, or other legal requirements?
- If employers want to design a customized benefits offering, how will health plan third party administrators (TPAs) document this and share the risk
- Will federal regulators jump in to issue any guidance in this area?

Stay tuned for our next installment of “Unanswered questions after *Dobbs*,” coming soon. Please reach out to a member of the [Reed Smith Reproductive Health Working Group](#) or the Reed Smith attorneys with whom you regularly work for more information or guidance on these or related issues. Reed Smith will continue to monitor developments and provide updates in response to the *Dobbs* opinion.

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