

Benefits Insights

Brought to you by the insurance professionals at
National Insurance Services

Employee Benefits

Considerations Post-Roe

The U.S. Supreme Court recently overturned *Roe v. Wade* in their decision of *Dobbs v. Jackson Women's Health Organization*, ending federal protections for abortion rights and permitting states to implement their own regulations. In the wake of the Supreme Court's decision, more than half of all states are expected to ban or restrict abortion access. This decision will have wide-ranging impacts—even in the workplace. As organizations will likely be affected by the court's decision, employers are encouraged to take time now to consider the ruling and its potential impact on their organization.

Understanding how the Supreme Court's decision may impact employers and their employees will help organizations determine an appropriate course of action regarding benefits offerings following the *Roe v. Wade* reversal. This article outlines the steps employers may take following the recent ruling.

Understand State Laws

To effectively navigate the effects of the Supreme Court's decision on their organizations, employers should know the laws around reproductive rights in the state where they operate and evaluate the effects of these laws, including any limitations on health coverage and benefits. Employers should be familiar with the laws and regulations not only in the state where they are located but also in any state where their employees physically work. Understanding this will likely determine employers' next steps, if any.

Not all employers will be impacted equally by the Supreme Court's ruling. Whether an organization's group health plan will be directly affected depends primarily on whether the plan is self-insured or fully insured. Self-insured group health plans are governed by federal law under the Employee

Retirement Income Security Act. As such, they are not regulated by state insurance law. Fully insured group health plans, however, are subject to state insurance law, and coverage of reproductive services will depend on state laws in which the organization operates. Once employers know their relevant states' positions, they can review their plan documents and policies to ensure they comply with current laws. Note that, because the legal response to the Supreme Court's ruling is developing quickly, organizations with self-insured health plans may want to discuss with third-party administrators the effects of the ruling on their plan.

Although an organization's self-insured plan is not subject to state insurance law, the organization may still be exposed to potential criminal liability for providing abortion-related benefits. As a result, organizations may want to consider discussing the recent ruling's impact with legal counsel regardless of how their group health plans are funded.



Review Health Plan Benefits and Coverage

For many employers, the Supreme Court's decision will immediately impact their health benefits and coverage. Employers can review their benefits and leave policies to know what is currently covered and determine if anything will change as a result of the ruling. Some employers already provide travel benefits for medical care and treatment if employees cannot obtain them in their state. These benefits typically cover the cost of gasoline, airfare and hotels. Other employers provide relief funds for employees to access reproductive care, including doulas and lactation consultants. Understanding their current benefits offerings will help employers determine whether they should make any changes to their reproductive coverage and leave policies in response to the Supreme Court's decision.

The way employers fund their health insurance benefits may influence how they respond to the recent ruling. For instance, self-insured employers will generally have more flexibility in structuring health benefits. In contrast, fully insured group health plan options will depend on state-specific laws.

With the recent ruling, many employees will likely have questions about their health plan coverage and possible ancillary benefits. Employers should be knowledgeable about their benefits and leave policies to effectively support their employees and answer any questions they may have.

Communicate With Employees

To better address employee concerns and evaluate whether modification of health benefits is appropriate, employers should consider reaching out to their employees. Using surveys or speaking directly to employees can allow employers to get a pulse on their employees' thoughts and feelings about the ruling. Any feedback provided by employees can aid employers in deciding whether there are any changes or needs that must be addressed, including mental health concerns. This can also provide employers with an opportunity to answer any questions employees may have about how the ruling impacts their health benefits coverage.

Supporting employees' mental health may be especially important at this time, given the rise in mental health issues prior to the Supreme Court's decision. Reaching out and connecting with employees may provide them with opportunities for much-needed mental health assistance.

Consider Altering Health Benefits

After employers evaluate their benefits and communicate with employees, they may consider whether they should make any changes to their benefits to comply with any legal changes as a result of the Supreme Court's ruling. They may also consider expanding coverage, such as offering child care benefits, additional leave or assistance with out-of-state travel. Altering health benefits is a major decision, and employers need to consider many factors before making changes, including overall plan costs, quality of benefits and employee health and well-being. Not all employers will agree on the proper course of action, nor will they experience similar issues in response to the ruling.

In response to the Supreme Court's ruling, some employers are considering making the following changes to their benefits:

- More robust leave, including paid and unpaid
- Flexible schedules
- Child care benefits
- Adoption benefits

Any changes employers make to their benefits or coverage should be clearly communicated to their employees. Employers may want to consult with legal counsel before making any changes.

Conclusion

Benefits offerings considerations due to the Supreme Court's ruling is a rapidly developing issue, and it's currently unclear what the landscape will look like over the next weeks and months. Employers should monitor the situation in their state and any state where their employees work. Consulting with legal counsel can help ensure that employers' health benefits and policies comply with any changes in the law.

For more information on health care benefits, contact us today.