Employee Benefits Report

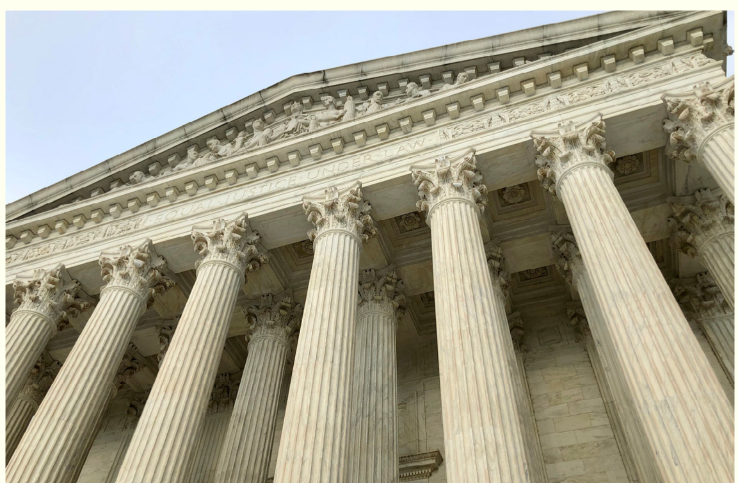
EmployeeBenefits
progressive ingenuity. financial security.

www.memployeebenefits.com

Compliance September 2022 Volume 20 • Number 9

Employers Should Beware of Compliance Issues with Abortion Benefits

The recent Supreme Court ruling on abortion has left many employers scrambling to understand the impact it will have on their ability to provide health coverage for their employees.



The ruling, which effectively reversed *Roe v. Wade,* means that states are now free to restrict or even end access to abortions.

In response, some employers are offering coverage for employees to travel out of state for abortions. This is a complicated issue, and employers must be aware of the potential compliance and liability issues before moving forward.

Are You Fully Insured or Self-Insured?

When it comes to abortion-

continued on next page

Survey Finds Changes in Benefits Priorities

These are highlights of SHRM's 2022 Benefits Survey.

Shuffling Priorities. The ranking order of benefits has returned to its pre-pandemic status, with health care and retirement benefits in the top two spots again. Overall, employers now consider that offering benefits is more important than ever.

Healthcare. Healthcare benefits continued to be viewed as the most important benefit, with 72% of employers offering fully insured health plans and 26% providing self-insured plans.

Telehealth and Mental Health Care. More companies are providing access to telehealth services (up from 62% to 93%) and mental health care (up from 86% to 91%) in their benefits package.

Financial Wellbeing. Employers are more focused on providing

continued on next page

related benefits, self-insured employers might have more wiggle room in restrictive states, depending on how courts will view the interaction between the Employee Retirement Income Security Act (ERISA) and state statutes. The advantage is that they can customize what coverage they offer.

On the other hand, non-grandfathered, fully insured small-market plans are obligated to conform to their state's definition of essential health benefits and provide coverage accordingly. As a result, employers can only offer the coverage carriers are legally permitted to provide, which might not cover abortion-related benefits in some states. Experts recommend providing stand-alone health reimbursement arrangements (HRA) as an alternative.

In many states, abortion has been included on the list of essential health benefits, and others might follow suit. Some might even add abortion-related travel benefits to the list.

Self-insured employers could change the coverage they provide to include travel expenses and abortion providers outside of the network.

An option for fully insured employers would be to switch to a self-insured model, but that might not be feasible for businesses with few employees. However, a self-funded plan would give employers more customization options.

Travel and Tax Considerations

Employers need to be aware of the tax implications of employee travel reimbursements. Generally, reimbursements will be taxable compensation unless they qualify as medical expenses. Depending on what is reimbursed, some costs might qualify as medical care, but not all. To comply with the Affordable Care Act, reimbursements that qualify as medical expenses must be integrated with the business' group health plan.

Get Everyone on Board

Experts recommend that employers review any plans that provide abortion-related coverage to ensure compliance, as laws vary from state to state and access to medical treatment can differ. This is especially critical for multistate firms.

Companies should also consider talking to their medical carriers, third-party administrators (TPA), and employee assistance programs (EAP) about the abortion-related travel and lodging benefits they can provide. Some companies are also looking for solutions that don't rely on what their carriers or TPAs can do, such as setting up hardship funds or lifestyle accounts to cover the cost of travel and lodging without being restricted by their health plan.

Other issues employers should consider seeking expert legal advice for include:

- **ERISA and tax code limitations:** While group health plans can cover transportation for medical care, problems can arise if coverage is offered separately from the plan and exceeds IRS limits.
- **Mental health parity and nonquantitative treatment limits:** Compliance issues could arise if the travel benefit is included in the health plan but not provided for mental health or substance use disorder care that is not locally accessible.
- **Privacy protection:** Group health plans are subject to HIPAA privacy and security rules. A business associate agreement may be necessary when a new vendor is added. Travel and lodging benefits offered outside of the plan may have to abide by other privacy laws.

Employers might also consider exploring other options, such as telemedicine, women's health services, or healthcare navigation. Instituting policies to provide time off or leave for women who have to travel to get the care they need should also be considered.

financial wellbeing, offering retirement and savings options, with 94% offering 401(k) plans and 83% matching employee contributions. Sixty-eight percent also offer a Roth 401(k).

Flexible Work Arrangements. Sixty-three percent of employers now offer a hybrid work solution; 63 percent said they subsidize equipment employees need to work from home, equating to an average of approximately $891.

Other Benefits. The percentage of employers offering paid maternity leave has declined since 2020, from 53% in 2020 to 35%, while paternity leave dropped from 44% to 27%. Family caregiving benefits also dropped slightly from 64% to 59%. On the other hand, more companies (78% now compared to 74% in 2020) are offering professional development benefits to help employees recover after the pandemic. But undergraduate or graduate tuition assistance dropped to 48% from 56% in 2019, and the percentage of companies offering student loan repayment assistance has declined to 7% from 8% in 2020.

continued on next page

Using Spending Accounts

Specialists advise employers to consider reimbursing abortion travel through health reimbursement arrangements (HRA), health savings accounts (HSA), or health flexible spending accounts (FSA). If opting for an HRA or FSA, expenses will require supporting evidence that the abortion was performed, which is not the case for an HSA as individuals are expected to maintain their own records.

Risk of Liability

Employers should be cautious about changing the group health plan to offer abortion-related travel coverage if they are in a state where abortions are illegal, as this could expose them and their employees to legal risks.

In Texas, for example, most abortions are now banned after six weeks, and private citizens can sue any person aiding or abetting a prohibited abortion. So, experts warn that employers offering abortion-related travel benefits may face legal action.

What Should Employers Consider?

Experts advise businesses wishing to provide their employees with abortion-related benefits to consider evaluating their provider's network. If it's limited, it might be possible to extend in-network access or add a benefit for out-of-network treatment so employees can get an abortion in states where it is still legal.

Secondly, employers should consider adding travel and lodging coverage under their existing plan, as the IRS sees abortions as medical care, so associated costs are classed as medical expenses.

Removing the Stigma Surrounding Debt Benefits

Debt is often a taboo topic, but it's essential to talk about it openly.

According to a recent study by Nerdwallet, the average American family has more than $155,000 in debt. When expenses arise unexpectedly, as they do two or more times a year for one-third of Americans, this can cause families a lot of stress.

With almost 70% of Americans lacking emergency savings, any unexpected expense can put families under enormous pressure. These situations typically amount to around $2,000 — two weeks of income for the median household. When forced to dip into savings on these occasions, 50% of American workers cannot rebuild them.

If they have no savings, employees are forced to make less than ideal choices, such as taking out payday loans, which often leads to a cycle of debt. This can affect mental health, work productivity, and job satisfaction, all of which invariably have repercussions for the employer.

continued on next page

For example, according to Financial Health Network's 2022 Employee Debt Report, 65% of employees reported that debt stress affects their physical health, while 50% spend at least an hour per week at work handling debt-related matters. Additionally, 39% missed at least one day of work in the last year due to debt-related stress or handling debt-related matters, and 29% reported that debt stress has affected their performance often or very often in the year.

The Importance of Breaking the Debt Stigma

It's clear that debt has a major impact on employees, and in turn on employers. However, instead of getting support, out of shame many employees feel they need to hide their debt from their employer.

Research from Salary Finance shows that only 13% of employees feel they can talk to their employers about their financial problems and get the help they need. When asked why, 20% stated that money wasn't something people talked about at work, and 13% said they didn't feel their employer cared, so there was no point in discussing it.

If employers can break the stigma around debt and create an open dialogue about finances, employees are more likely to trust their employer. Additionally, a company culture that is open and non-judgmental about debt can make it easier for employees to ask for help when they need it.

Providing Practical Solutions

A Consumer Affairs survey discovered that during the Great Resignation, 40% of employees who left their jobs did so because they wanted better benefits. In addition, according to Financial Health Network, 68% said they feel it's important for employers to offer debt-related financial wellness benefits, and 62% said they would be more likely to stay with a company that provided such benefits.

Employers who want to attract and retain the best talent should consider introducing financial wellness benefits that help employees get out of debt and improve their financial resilience. These programs can provide guidance on topics such as budgeting, credit management, and student loan repayment. Some employers also offer tools such as financial calculators, personalized advice, and access to financial counselors. More direct help can also be offered in the form of student loan repayment assistance, emergency savings accounts, and affordable credit that can be used to pay off high-interest debt.

Some of these benefits were included in the Financial Health Network survey, which revealed that a relatively low percentage of employees had access to them. For example, only 28% had emergency savings accounts that their employers made contributions to, while 66% who didn't have this benefit stated they would use it if they had it.

This is an opportunity for employers to differentiate themselves by offering these types of benefits, which can have a major impact on employees' financial wellbeing and, consequently, their job satisfaction, performance, and loyalty to the company. ■

Can Menopause Benefits Create a Happier, More Productive Workforce?

For many years, women in the workforce have ignored what makes them different from their male counterparts to prove they are just as capable.

Slowly, employers realized they needed to support their female workers but limited ithat support to issues related to fertility and child-rearing. However, this ignores a crucial time in a woman's life — menopause.

This phase of a woman's life can be physically and emotionally challenging. The symptoms of menopause can include hot flashes, night sweats, weight gain, and mood swings. These symptoms can make it difficult for a woman to focus at work and be productive.

A survey by AARP found that 90% of women feel their work performance suffers during menopause, while a Frost & Sullivan study found that 12% of working women consider their menopause symptoms to be debilitating. The resulting decline in productivity costs businesses an estimated $150 billion annually in lost workdays and decreased output. And it's not a short period in a woman's life — menopause can last, on average, four years and up to 12 years or even longer.

continued on next page

Despite this, most women in the United States don't have access to menopause benefits at work. Only a small percentage of companies offer any kind of support, whether it's flexible work arrangements, discounts on healthcare and menopause products, or simply more education and awareness about the issue. In fact, many employers don't know how to deal with the issue, so they avoid it altogether.

This is a missed opportunity for businesses. As the workforce ages, more women will be going through menopause and they'll be looking for workplaces that understand and support them during this time.

How Employers Can Support Women Going Through Menopause

AARP's study reveals that 31% of women between the ages of 40 and 89 are not provided with information about menopause by any source. This lack of awareness can make it difficult for women to feel comfortable talking about their symptoms and seeking support.

Employers can start by educating themselves and their employees about menopause, including understanding the causes and symptoms and how they impact work performance. Once everyone is on the same page, it'll be easier to develop policies and benefits that support employees going through menopause.

Destigmatizing menopause in the workplace is also crucial. Many women feel they need to hide their symptoms for fear of being seen as weak or less capable. Through education and awareness campaigns, employers can create an open and supportive environment by normalizing conversations about menopause. This can help employees feel more comfortable discussing their symptoms and seeking help.

Flexible work arrangements can also be helpful. This could mean anything from allowing women to take breaks during the day to working from home on days when they're not feeling their best.

Discounts on menopause products like supplements, skincare, and clothing can also make a big difference. These products can help alleviate some of the symptoms women experience and make them feel more comfortable and confident at work.

Employers should also consider creating a menopause-friendly workplace by creating private, comfortable spaces for women when they experience symptoms.

Finally, employers might consider offering other benefits and resources that support employees during menopause and beyond, including access to mental health resources, wellness programs, and even financial planning support.

Employers can create a more productive and happier workforce by offering these kinds of benefits and support. It would also make the company a more attractive employer for top talent, especially as more women enter leadership roles.

more on next page

Proposed Overtime Rule Scheduled for October

The US Department of Labor (DOL) is now expected to release its proposed overtime rule in October, according to the spring regulatory agenda released on June 21st. The proposed rule will provide guidance on how bona fide executive, administrative, and professional employees can be exempted from the minimum wage and overtime requirements laid out by the Fair Labor Standards Act (FLSA).

Changes That Might Be Coming

One priority for the DOL with this rule is to possibly increase the salary level from $35,568, though the amount of the increase is unknown. Some are advocating for levels to rise to the $47,476 enjoined by a court in 2016, while others want an even more substantial increase ranging from $62,000 to $80,000 or higher.

Another area the proposed rule might tackle is the implementation of a methodology that would increase salary levels without involving the DOL. One approach would be to use an automatic annual or periodic increase linked to an economic indicator, such as the consumer price index.

The DOL might also follow through on making changes to the duties test, which it has considered doing a few times in the past few years. The duties test is used to help determine whether an employee's primary job duty is executive, professional, or administrative in nature and thus exempt from overtime requirements.

Some believe the administration intends to align federal rules with those in California. The California rules state that an employee qualifies for exemption if they spend more than 50% of their time on exempt duties where they usually exercise independent judgment and discretion. Many currently exempt employees could lose their status as a result.

Others think the DOL may also increase the restrictions for the administrative exemption, making it harder for employees to qualify. They warn that if any of these changes are enacted in any significant way, they will surely lead to litigation.

The DOL has not yet released any details on the proposed rule, so it is unclear what changes will be proposed. Monitoring the situation is advised, though experts warn that taking any decisions or action would be premature as the process is still in the early stages.