



Webcast: Dobbs Decision: Implications for employers

Tuesday, July 19, 2022

Today's discussion



The current status of state laws



Responses from carriers and vendors



Potential implications and considerations for employers

U.S. Supreme Court overturns Roe v. Wade

- The U.S. Supreme Court issued its decision in Dobbs v. Jackson Women's Health Organization and concluded that the U.S. Constitution does not confer a right to abortion. The court overturned both Roe v. Wade and Planned Parenthood of Southeastern Pa v. Casey.
- With the decision on how to regulate abortion now left to the states, a patchwork of laws is emerging (and is likely to continue to emerge for the foreseeable future) as some states move to ban or limit abortion while others create additional protections for people who perform or obtain the procedure.
- Both Texas and Oklahoma have already enacted laws that enable private citizens to bring a civil action against a "person" for aiding and abetting an individual in obtaining a prohibited abortion.



Employers should review how this decision will impact their workforce and their group health plans and discuss the issues with legal counsel.



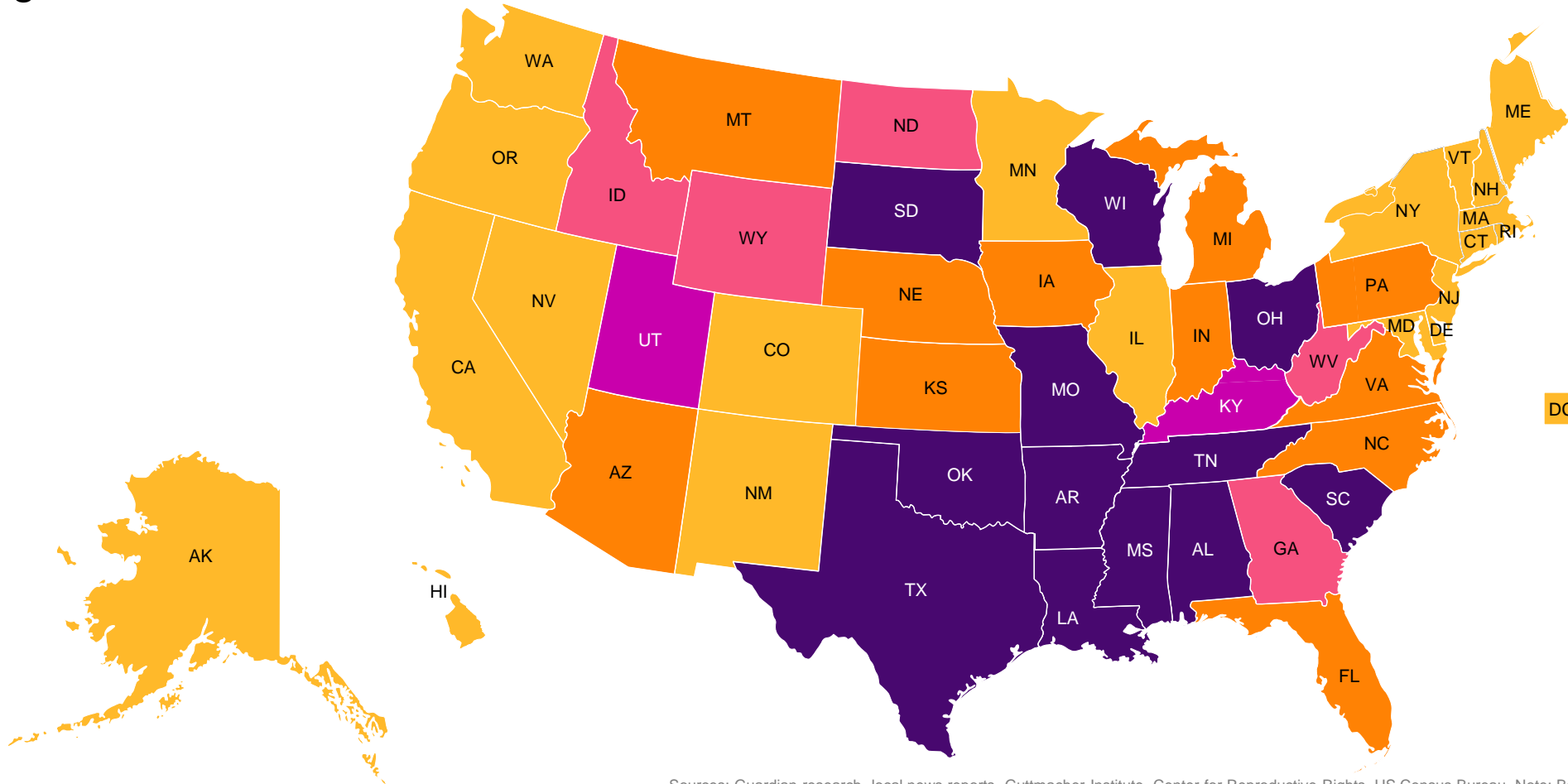
Employers should continue to monitor developments on these issues in the states in which they do business.

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Where do we stand in the states?

The legal status of abortion

Status	States	Women of reproductive age
Banned	12	16.7m
Ban blocked	2	1.5m
Ban or severe restrictions soon	5	5.3m
Threatened	11	16.3m
Legal	20 and DC	26.5m



Sources: Guardian research, local news reports, Guttmacher Institute, Center for Reproductive Rights, US Census Bureau. Note: Banned states include those with 6-week bans.

Compliance considerations for plan sponsors

Fully-insured plans

These plans are subject to state insurance law and these laws may limit coverage for abortion-related services. State laws regulating insurance are not preempted by ERISA for fully-insured plans

Self-insured plans

These plans are governed by ERISA and are not subject to state insurance law and have much greater flexibility in determining how services are covered

Employers providing services under their group health plan should consider the following:

- Mental Health Parity
- ERISA reporting and disclosure
- HIPAA Privacy protections
 - HSA compliance

Additional considerations



Are there compliance issues if an employer provides travel expense coverage for all employees, including those who are not enrolled in the medical plan?

- Travel to access abortion services constitutes medical care.
- As a result, providing abortion-related travel benefits to individuals who are not enrolled in your group health plan may create a new group health plan (subject to applicable federal law, including the ACA's insurance market reforms, HIPAA, COBRA, etc.)
- Employers may consider an integrated health reimbursement arrangement (HRA), an excepted benefits HRA, or an employee assistance program (EAP) that qualifies as an “excepted benefit” (all of which would be ERISA-covered plans).



Are there tax issues with travel benefits?

- The taxability of medical benefits depends on whether the service is considered medical care under IRC section 213.
- Travel to access abortion services constitutes medical care if the travel is principally to obtain a legal abortion by a licensed provider. [IRS Publication 502](#) explains what a reimbursable or tax-deductible medical expense is under IRC section 213(d).
- This also means that these travel expenses (up to any applicable limits) can be reimbursed via an HSA, HRA or health FSA (assuming they are not reimbursed via the medical plan). Please note that there are dollar limits applicable to some travel benefits (e.g., lodging) and anything reimbursed over those limits would be taxable.

What's next?

President Biden – Executive Order (July 8, 2022)

- Guidance/regulations

State Legislative Action

- Special sessions?
- Some states have enacted or are considering laws intending to block patients from traveling across state lines to access clinics and from receiving pills through the mail or via telemedicine.
- Other states may consider criminal penalties for violations of their abortion laws.

Litigation; for example:

- Can a state regulate ERISA-covered travel?
- What does “aiding and abetting” mean and who is included?
- Can a state regulate drugs that are FDA approved?
- Director and Officer (D&O) claims of accuracy of statements made relative to programs that may be misleading, false, not as equitable as disclosed, violating state laws by implementing benefits and a breach of fiduciary duty of assets, etc.

Marketplace and employer response



Access



**Travel benefits
and offerings**



**Related areas
of coverage and
implications**



**Emerging
questions and
considerations**

Abortion care in the United States: Key facts

- 1 Under a third of abortion care (31%) is paid for through insurance plans. ¹
- 2 43% of abortions are performed at 6 weeks or less; 7% are performed at 14 weeks or more. ²
- 3 Over 90% of abortions are performed on those ages 20 years or more. ²
- 4 An estimated 625K abortions were performed in the US in 2019, down about 17% over a decade. ²
- 5 54% of abortions are performed with medication as opposed to surgical procedure. ²
- 6 Drugs used for abortion, including misoprostol and mifepristone and methotrexate, are used for medical indications unrelated to abortion. ³
- 7 It is medically necessary to remove nonviable fetal tissue for some medical conditions, including ectopic pregnancy and partial miscarriage. ⁴
- 8 Abortion centers historically provide other reproductive services, including birth control and cancer screening. ⁵
- 9 Some state abortion bans could prohibit certain fertility services. ⁶

Sources: (1) Health Affairs, 2022 [LINK](#) (2) CDC, 2021 [LINK](#) (3) National Public Radio, 2022 [LINK](#) (4) American College of OB-GYN, 2019 [LINK](#) (5) Fivethirtyeight.com, 2022 [LINK](#) (6) New England J of Med, 2022 [LINK](#)

Additional considerations

Wellbeing, employee experience and connection to DEI

