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## Travel Benefits for Abortion Growing Quickly Among Employers

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The number of U.S. employers offering travel benefits for abortion services is likely to double over the next few years in the wake of the U.S. Supreme Court's recent *Dobbs v. Jackson Women's Health Organization* decision, according to a new survey from consultancy WTW.

Thirty-five percent of employers now offer travel and lodging benefits for abortions. Another 16 percent plan to offer abortion travel benefits in 2023 and 21 percent are considering it, the survey found.

Forty-four percent of employers that offer or plan to offer travel benefits for abortion or other medical procedures have enhanced those benefits due to the court ruling. Another 46 percent are planning to enhance or considering enhancing these benefits in the future, the WTW survey found.

"There are a number of reasons at play here that are both economic and moral," said Lauren Winans, chief executive officer of Next Level Benefits, an HR consulting firm in Pittsburgh.

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"Retention, social responsibility, staying in step with competitors and greater diversity at the top are all playing a role in influencing employers to react."

- ( <https://www.shrm.org/ResourcesAndTopics/topics/employee-relations/Pages/navigating-roe-v-wade-workplace.aspx> )

## Benefit Design

Most employers limit abortion-travel benefits, with annual caps being the most common approach. Among those that offer or plan to offer travel benefits for abortion services, 43 percent have an annual limit and 22 percent expect to establish a limit in the future. Likewise, 28 percent have a lifetime limit and 20 percent have a limit per occurrence. Sixty-four percent said they will limit reimbursable expenses to IRS tax-free amounts, the survey found.

Some employers provide travel benefits specifically for abortion, while others offer travel benefits for a variety of medical procedures, such as organ transplants or bariatric surgery. Eighty-six percent of employers align their travel benefits for abortion with their benefits for other procedures, the survey found.

"Some employers are broadening abortion-travel benefits to include any type of medical care that is currently prohibited in a state," said Bethany Corbin, an attorney with Nixon Gwilt Law in Charlotte, N.C. "This encompasses gender-affirming care along with abortion and reduces the risk for an employer's benefit plan being challenged for discrimination."

"We can expect to see more travel benefit coverage and alignment of those across a wider range of services," predicted Courtney Stubblefield, senior director of health and benefits at WTW.

Nevertheless, "I think it's OK to have a special policy for abortion because that is a discrete issue," said Sharona Hoffman, a professor of law and bioethics at Case Western Reserve University School of Law in Cleveland. "Employers might be worried about being accused of disability discrimination if they don't offer travel funds for all medical care. However, pregnancy is not a disability, so I would argue they are not discriminating among disabilities."

In general, employers should try to avoid hassles for the person using the benefit.

"It is important to keep the process as smooth and private as possible," Winans said. "The last thing an employee or their dependent needs is to have to fill out forms or fight through a complex process. There is no need to overcomplicate a benefit meant to provide relief to those that need it. Keep it simple, keep privacy a priority, and ensure the employee's experience is at the core of administering the benefit."

Among employers with fully insured health plans, 93 percent expect to offer coverage for elective abortions by 2023 in states where abortion is permitted. Among employers that self-insure their health plans, 82 percent expect to cover elective abortions by 2023 in states where abortions are permitted, the WTW survey found.

Another survey from the Integrated Benefits Institute, a benefits research organization based in Oakland, Calif., showed that 62 percent of employers cover paid time off for employees who need abortion services, including travel and recovery. Forty-six percent of employers said they were considering making adjustments to their coverage for abortion.

## State Laws Vary

The *Dobbs* decision permits states to decide whether to ban or allow abortions. Shortly after the ruling, U.S. Attorney General Merrick Garland confirmed that states cannot prohibit women from getting an abortion in another state. However, the law is unsettled and rapidly changing in this area.

"Prohibiting interstate travel would certainly be constitutionally questionable and generate litigation," Hoffman said. "But if a state legislature passes such a law, prosecutors would likely pursue such cases until a court decision precludes them from doing so. If a travel prohibition is in place even temporarily, employers should not fund the travel because they would be assisting individuals in committing a crime."

"Some states make it unlawful to aid and abet abortions, and in those states, it is possible that aggressive prosecutors will pursue employers for providing travel funds," she added.

Sensitive information could be leaked. "Individuals who are anti-abortion may report the company for offering these travel benefits in states with 'aiding and abetting' laws and may also turn over proprietary documents and data that show which women have received abortions under the company's travel benefits program," Corbin said. "This means that employers need to carefully assess how they are going to operationalize any abortion-travel benefit program to minimize risk and protect employee privacy.

"Part of the difficulty is that the boundaries of these 'aiding and abetting' laws have not yet been established, so it is unclear exactly what conduct will trigger these statutes," she added.

Remember that employees will have different health needs and face different life situations. "HR officials will need to formulate thoughtful policies that are tailored to their workforces and address a variety of applicable scenarios," Hoffman said.

For example, remote workers who live in a state that bans abortion should have access to the travel benefit, but those who live in a state that permits abortion should not be entitled to it, Hoffman said.