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Attorney: Employers in ‘new world’ when it comes to covering abortion services

The Supreme Court’s decision to overturn Roe v. Wade means employers will have to navigate laws state by state when it comes to offering benefits that involve abortion services, a legal expert said at a recent Business Health Care Group meeting.

“Plan sponsors, I think, never really had to delve into this thicket of legal issues before,” said John Barlament, an attorney and shareholder at Reinhart Boerner Van Deuren. “Now, I think we’re in a whole new world.”

Some state laws on abortion pre-date the existence of health plans, posing difficulties when it comes to compliance. On top of that, county district attorneys will be deciding on how to enforce them.

Employers could face criminal or civil penalties, depending on the law. And there could be other consequences like harm to their reputation, loss of business or loss of license for a third-party administrator or pharmacy benefit managers.

An 1849 Wisconsin law makes it a felony to perform an abortion, unless it’s to save the life of the mother. Gov. Tony Evers and Attorney General Josh Kaul are currently **challenging** it.

The Employee Retirement Income Security Act, a federal law governing employer health plans, has “strong preemption provisions” when it comes to state laws, Barlament said. But analyzing the applicability of the preemptions can be “tricky” as they depend on how general or specific a state law is and other Supreme Court rulings, he noted.

Employers will also have to grapple with the Pregnancy Discrimination Act. Guidance on the law requires health plans to cover abortions when it comes to saving the life of the mother as well as complications from the procedure. That may preempt some state laws and pose challenges for employers seeking to cut back on abortion coverage, Barlament said.

Many employers are considering travel benefits for their workers to receive abortion services, Barlament said. The Internal Revenue Code offers some tax-free benefits for medical travel, but it probably won’t shield all expenses, he said.

The code also bars providing tax-free benefits for illegal operations or treatments, which could pose issues when it comes to people crossing state lines to receive abortion services that are illegal in their home state, Barlament noted.