

# CLIENT ALERTS

---

## Supreme Court Decision in Dobbs Presents Challenges for Employers' Benefit Plans

### Client Alert

6.29.2022

On June 24, 2022, the Supreme Court of the United States overturned nearly 50 years of established Constitutional precedent with the release of its decision in *Dobbs v Jackson Women's Health Organization*. The practical effect of the opinion relegates the determination of the legality regarding abortion to the various states. Consequently, employers have new considerations regarding the effects various state law may have on their employee benefits plans. But employers will have to fill the void created by the decision, with no real assurance that employment and benefits strategies will be free from civil liability or criminal prosecution.

Two immediate considerations for employers to tackle in this new legal world concern group health benefits and travel benefits:

- Some employers may currently provide group health plan benefits covering abortion services. Depending on the type of group health plan and the location of employees, some employers may need to revisit the appropriateness of offering such benefits. For example, a self-funded group health plan operating in a state that does not permit abortion may still be able to cover abortion services pursuant to the broad preemptive effect of state laws by the Employee Retirement Income Security Act of 1974 ("ERISA"). However, this preemptive effect does not extend to criminal laws of general applicability. Moreover, employers with insured group health plans would have to provide benefits in accordance with applicable state law, as ERISA does not preempt laws governing insurance.
- Some employers with employees in states which ban abortion may elect to offer travel benefits (e.g., additional payments, reimbursements, paid time off, etc.) to employees

### Related People

Mark W. Jane  
Shareholder

Nicholas Nahat  
Senior Attorney

### Related Services

Employee Benefits

Labor and Employment

## CLIENT ALERTS

---

to obtain abortion services in states where abortion is legal. In so doing, employers would need to shape such benefits to address potential tax, discrimination, and privacy concerns. Moreover, such employers might need to assess whether providing such benefits could lead to a claim of “aiding and abetting” the acquisition of illegal services, depending on whether an applicable state ushers in such laws.

These are just two key areas employers will need to address in this new legal world. It is better to be proactive, rather than reactive, when confronting possible challenges to current policy affecting your employees or benefits, across a wide number of jurisdictions. The options available to employers will continue to evolve as states address the legality of abortion. Contact your Butzel Attorney in order to advise on the particular circumstances of your company.

**Mark Jane**

734.213.3617

[jane@butzel.com](mailto:jane@butzel.com)

**Nicholas Nahat**

248.258.2520

[nahat@butzel.com](mailto:nahat@butzel.com)