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News & Notes
Fall 2022

Employer Violated Title VII by Revoking Health Coverage for Employee's Same-Sex Spouse

A recent case in a Maryland district court held that a religious employer violated Title VII's prohibition against sex discrimination by revoking health coverage for an employee's same-sex spouse under a health plan exclusion that prohibited coverage for same-sex spouses (Doe v. Catholic Relief Servs).

The employee-plaintiff obtained health coverage through his employer, a Catholic social services agency. During the hiring process, the employee was informed that the employer's health plan covered all dependents. The employee successfully enrolled his same sex spouse in the employer's health plan. However, several months into his employment a dependent audit flagged the same sex spouse's coverage as inconsistent with the employer's religious belief that marriage is a union between a man and a woman. The employee was informed that the plan prohibited dependent coverage for same-sex spouses and that the spouse's coverage would be terminated at the end of the month.

The employee sued the employer in district court for violations of Title VII of the Civil Rights Act of 1964 (Title VII). The parties asked the court to rule on their claims without a trial.

The district court cited the Supreme Court's Bostock decision in concluding that when an employer discriminates against an employee based on sexual orientation, the employer "necessarily and intentionally discriminates against that individual in part because of sex" and therefore has liability under Title VII. As a result, the case's outcome depended on whether the employer was exempt from Title VII.

The employer argued that it was exempt from Title VII based on its status as a religious organization. Under this exemption, religious organizations may intentionally discriminate against applicants and employees based on their religion—for example by hiring and employing only individuals of a particular religion. The employer argued this exemption applied broadly to ANY characteristic that could be tied to the organization's religious beliefs. The district court rejected this interpretation and concluded that religious organizations are not exempt from Title VII's prohibition against discrimination based on characteristics other than religion. *Thomson Reuters* https://bit.ly/3RuDmOm

New Study Shows Walking For As Little As Two Minutes After a Meal Can Help With Blood Sugar

Researchers have found that walking for as little as two to five minutes after a meal, even a non-strenuous stroll, can lower your blood sugar. How does movement help? Muscles need glucose to function, so movement helps clear sugars from the bloodstream. Keeping blood sugars from spiking is good for the body as large spikes and fast falls can raise the risk for diabetes and heart disease. The post-meal stroll helps keep blood sugar and insulin levels stable.

Studies have shown blood sugar levels will spike within 60 to 90 minutes after eating, so it's best to get moving soon after a meal. Compared to sitting, standing after a meal reduced glucose by 9.5%. Light intensity walking, however, reduced glucose by 17%.

Want to get more out of your efforts than lower blood sugars? The CDC says those who are physically active for 150 minutes per week have a 33% lower risk of all-cause mortality than those who are physically inactive. *CNN Health* https://cnn.it/3Bh7RC6

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Shred It Before You Toss It or Pay A Fine

In August, 2022, the Office for Civil Rights (OCR) within the U.S. Department of Health and Human Services (HHS) announced a large settlement with a doctor's office to resolve allegations related to improper disposal of protected health information ("PHI") that was a potential violation of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule (the "Privacy Rule").

Since Employer sponsored health plans are also "Covered Entities" here is what you need to know:

The Privacy Rule requires that "covered entities" have administrative, technical, and physical safeguards to protect the privacy of PHI in any form. "Covered entities" must implement reasonable safeguards to limit incidental, and avoid prohibited, uses and disclosures of PHI, including in connection with the disposal of PHI.

Failing to implement reasonable safeguards to protect PHI in connection with disposal could result in impermissible disclosures of PHI and serious financial consequences.

Covered Entities are not permitted to simply abandon PHI or dispose of it in containers that are accessible by the public or unauthorized persons. In determining what is a reasonable disposal method, Covered Entities should (i) assess potential risks to an individual's privacy; and (ii) consider such issues as the form, type, and amount of PHI to be disposed.

Proper disposal methods may include, but are not limited to:

- For PHI in paper records: shredding, burning, pulping, or pulverizing the records so that PHI is rendered essentially unreadable, indecipherable, and otherwise cannot be reconstructed.

- For PHI on electronic media: clearing (using software or hardware products to overwrite media with non-sensitive data), purging (degaussing or exposing the media to a strong magnetic field in order to disrupt the recorded magnetic domains), or destroying the media (disintegration, pulverization, melting, incinerating, or shredding). *JD Supra.com:* https://bit.ly/3APbyxq

Employers May Pay More As Affordability Threshold Decreases

The IRS recently announced adjustments decreasing the affordability threshold for plan years beginning in 2023, which may require employers to contribute a bit more to employee's health care in 2023 to be compliant with the ACA.

Under the Affordable Care Act (ACA), applicable large employers must offer affordable minimum essential coverage to at least 95% of their full-time employees (and their dependents) or be subject to an employer shared responsibility penalty. In 2022 the ACA deems plans as "affordable" if the employee-required contribution for self-only coverage is no more than 9.61% (it is adjusted each year) of the employee's "household income." That percentage has been adjusted to 9.12% for 2023. This is the lowest affordability threshold since the passage of the ACA.

Since calculating each employee's "household income" would be administratively burdensome (it is very difficult to know what a spouse or children may add to the household's income), the law allows three "safe harbors" for employers to determine affordability based on other criterion 1) an employee's Form W-2 wages, 2) an employee's rate of pay, or 3) the Federal Poverty Level (FPL). If one of the safe harbor methods can be satisfied, an offer of coverage is deemed affordable.

The FPL safe harbor is the easiest to apply; an employer has just one calculation and provides employers with a predetermined maximum required employee contribution that will in all cases result in coverage being deemed affordable.

Under the FPL safe harbor, employer-provided coverage offered to an employee is affordable if the employee's monthly cost for self-only coverage does not exceed the adjusted percentage (9.12% for 2023) of the FPL for a single individual, divided by 12. The federal poverty guidelines in effect 6 months before the beginning of the plan year may be used for an employer to establish contribution amounts before the plan's open enrollment period. For plan years beginning in 2023, a plan will meet the ACA affordability requirement under the FPL safe harbor if an employee's required contribution for self-only coverage does not exceed $103.28 per month.

Seyfarth.com: https://bit.ly/3KLy9Qj