

June 21, 2001

EMPLOYMENT ALERT!

Re: Mandatory Coverage of Prescription Contraceptives

On June 12, 2001, a federal judge in Seattle, in the case of *Erickson v. Bartell Drug Co.*, issued a ruling requiring a group health plan to cover prescription contraceptives. This Employment Alert serves to provide information regarding this legal development, and its implications with respect to employer plans.

Case Summary

The *Bartell Drug* ruling declares that the denial of prescription contraceptive coverage by a group health plan is a violation of Title VII of the 1964 Civil Rights Law. Title VII makes it unlawful for employers to discriminate against its employees. A component of Title VII is the Pregnancy Discrimination Act (PDA), which is designed to ensure that women are not discriminated against because of “pregnancy, childbirth, or related medical conditions.”

The *Bartell Drug* court interpreted Title VII and the PDA to be Congress’ attempt to outlaw discrimination against women in the terms and conditions of their employment, including the benefits an employer provides its employees. Toward that end, the court summarily held that “in light of the fact that prescription contraceptives are used only by women, Bartell’s choice to exclude that particular benefit from its generally applicable benefit plan is discriminatory.”

Other Legal Actions

The *Bartell Drug* court is the first to fully consider the legality of a plan’s exclusion of prescription contraceptives. However, last December, the EEOC with great fanfare put employers on official notice that it considers the exclusion of prescription contraceptives from a group health plan to be a clear violation of Title VII and the PDA. The agency further advised that it was bringing charges against employers for such violations.

True to its word, the EEOC has brought suit in Minnesota federal district court against United Parcel Service (UPS) in regard to the UPS group health plan’s exclusion of contraceptives. Significantly, in April of this year, UPS attempted to have the case thrown out, claiming that the EEOC had no case.

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However, the court held that the EEOC had a legally supportable claim and allowed the suit to proceed.

Coinciding with the timing of these court rulings, bills mandating the coverage of contraceptives by group health plans are being debated in both the Oregon Legislature and the US Congress. In Oregon, Senate Bill 608 is in the hands of the Joint Ways and Means Committee. US Senate Bill 104 also waits in committee. While it is entirely possible that neither of these bills will become law, there is enough activity surrounding the subject to give the appearance of a trend.

Conclusion

The EEOC ruling last year led most employers to take a wait-and-see approach. However, as a result of the *Bartell Drug* decision and the EEOC's challenge of the UPS plan, as well as the pending Oregon and federal legislation of prescription contraceptives, the handwriting is clearly on the wall. Already, nine states have passed laws requiring coverage in varying degrees. Exactly where this will lead is not certain, but the issue is one that employers need to be thinking about.

If you have questions or concerns regarding the Employment Alert, and what effect the *Bartell Drug* case may have on your group health plan, please do not hesitate to contact one of our experienced employment law attorneys.