

Locke Lord QuickStudy: Employment Law in the Wake of Dobbs

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Although the Supreme Court issued its decision in *Dobbs. v. Jackson Women's Health Organization* more than a month ago, its effects continue to ripple outward, and likely will for the foreseeable future. Employers must be particularly mindful of this decision because it could significantly impact their workforce and operations. Some key matters for employers' consideration are:

1. Decisions regarding employee benefits and leave time; and
2. Employee expression in the workplace.

Regarding employee benefits, employers are encouraged to review our firm's recent [article](#) addressing some of the *Dobbs* decision's implications on health plans, which in turn, will impact employers and the health benefits they provide to employees. Other employee benefits—most notably, employer-paid travel expenses related to reproductive health—likewise will be impacted by federal and state government responses to the *Dobbs* decision. Employers should also consider their obligations and offerings under state and federal family or medical leave statutes. Noteworthy among those are the federal Pregnancy Discrimination Act and the Family and Medical Leave Act, which provide protected leave from work for pregnancy or related medical conditions— which could arguably extend to reproductive health-related matters.

For now, the *Dobbs* decision does not appear to have significantly changed the landscape of employment discrimination law. The Equal Employment Opportunity Commission's [position](#) is that Title VII prohibits discrimination against employees relative to their decisions about pregnancy, having an abortion, or their consideration of having an abortion. Some states may attempt to take a different stance; however, doing so would likely result in litigation to determine whether a state's approach is preempted by federal law.

Employers are reminded that Title VII's protections include religion, gender, and pregnancy. While the differences of opinion based on *Dobbs* cannot be avoided, renewed focus on respect and tolerance in the workplace may be helpful to avoid increased divisiveness, concerns or even claims of harassment, discrimination, or retaliation. These issues or claims may flow directly from employers' or coworkers' actions in response to an employee's decision related to reproductive health or they may stem from other discussions or actions in the workplace or among employees which are, or are perceived to be, related to beliefs or actions involving *Dobbs*.

In addition to potential coverage under Title VII, certain discussions between employees—such as those regarding employer-provided compensation or benefits for employees seeking to obtain reproductive healthcare services—may rise to the level of alleged protected concerted activity covered by the National Labor Relations Act (NLRA). Whether part of a unionized workforce or not, the NLRA protects employees’ rights to engage in “concerted activity.” Concerted activity occurs where (a) two or more employees take action for their mutual aid or protection regarding terms and conditions of employment, or (b) where a single employee, acting on behalf of other employees, brings group complaints to the employer’s attention, tries to induce group action, or seeks to prepare for group action.

The *Dobbs* decision has created a number of material issues with which employers will have to wrestle for the foreseeable future. These issues will likely not be clarified for a significant time period due to the protracted legislative, rulemaking, and legal processes required to do so. In the meantime, the best approach for employers is to take reasonable steps to ensure they are following the existing and changing laws regarding employee benefits and leave time as well as those pertaining to employee expression. In addition, employers should foster workplaces where employees and their opinions related to the *Dobbs* decision are treated with dignity and respect. Approaching all *Dobbs* related topics in a neutral, professional manner—and encouraging employees to do the same—may ease the burdens imposed on employers by the *Dobbs* decision.

We will monitor as the patchwork of *Dobbs*-influenced legislation, rulemaking, and case law develops and provide periodic updates regarding their impact on employee benefits, expression, and other aspects of employment law.

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