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Despite Windsor, Federal Court Rejects Challenge to a Self-Insured ERISA Health Plan's Denial of Coverage for Same-Sex Spouses

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Following the U.S. Supreme Court's decision in , the requirement that an ERISA health plan provide health coverage for same-sex spouses has often hinged on whether an employee benefit plan was insured or self-insured and, in the case of insured plans, the requirements of state insurance law. In states where same-sex marriage is recognized, the state insurance and other laws generally require ERISA plans to provide coverage for same-sex spouses (if spousal coverage is offered under the plan). In the case of self-insured plans that aren't subject to state insurance law (because ERISA preempts the state insurance law), some have started to question whether federal law now requires self-insured health plans to provide coverage for same-sex spouses.

A federal district court in the Southern District of New York found that a self-insured health plan that specifically excludes same sex couples does not run afoul of ERISA. , 2014 WL 1760343 (S.D.N.Y. May 1, 2014). The case involved an employee of St. Joseph's Medical Center in New York, who married a person of the same sex in 2011. Later that year, the employee sought to add her spouse as a dependent under St. Joseph's self-insured health plan. Inasmuch as the plan specifically excluded same-sex spouses and domestic partners from coverage, the employee's request to have her spouse covered under the plan was denied. The employee and spouse thereafter filed a putative class action against the employer and its third party administrator claiming that, after , ERISA requires a self-insured plan to provide coverage for same-sex couples. More specifically, plaintiffs claimed that the employer and third party administrator violated ERISA section 510, which generally prohibits interference with the attainment of employee benefits, and ERISA's fiduciary duty rules by enforcing an unlawful exclusion from coverage.

The court first observed that ERISA gives employers broad discretion in writing the terms of welfare benefit plans and does not include an outright anti-discrimination provision. The court then determined that there could not be any violation of ERISA section 510 because there was no adverse employment action. It also rejected plaintiffs' argument that changed the legal landscape concerning the requirement to provide benefits to same sex spouse. In so ruling, the court considered the only other decision to have addressed the application of to ERISA-covered plans, , 2013 WL 3878688

(E.D. Pa. Jul. 29, 2013) (holding that the provision of spousal benefits to a deceased's same-sex spouse in a plan that did not define "spouse" was required following) and found that it was distinguishable on the ground that the St. Joseph's plan specifically excluded same-sex spouses from coverage whereas dealt with a plan that did not define the term "spouse." In light of the foregoing, the court determined that there had been no fiduciary breach.

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