

FAMILY BUILDING BENEFITS



NCCMP Annual Conference
March 31, 2026



AGENDA

Discrimination and LGBTQ Inclusion

Contracting

Practical Considerations



DISCRIMINATION/ LGBTQ INCLUSION

“Infertility” requirement

- 12 months of unprotected sex or 6-12 cycles of donor insemination
- Requires same-sex couples to pay for costly procedures before they are eligible for same coverage as a straight couple—“Queer tax”(?)

Class action suit against Aetna

Gay couple in NYC files EEOC complaint against the city and have filed suit in Federal court

Recent case law on discrimination issues

ACA Nondiscrimination




BRISKIN ET AL V. CITY OF NEW YORK ET AL

The New York Times

Gay Couple Was Denied I.V.F. Benefits. They Say That's Discriminatory.

A former lawyer for New York City and his husband have filed a complaint against the city saying they were denied insurance coverage because of a definition of infertility that excludes gay men.

Give this article



Nicholas Maggipinto, left, and Corey Briskin filed a complaint against the City of New York. Eric Hart for The New York Times

By Precious Fondren

- Alleges New York City’s employee health plan discriminates against gay male employees by denying them access to in vitro fertilization (IVF) benefits that are available to other employees
- Claims brought under Title VII of the Civil Rights Act of 1964 (sex and sexual-orientation discrimination); Equal Protection and Due Process under the U.S. Constitution; New York State and City Human Rights Laws
- Highlights the concept often referred to as a “queer tax”— requiring same-sex couples to incur significant out-of-pocket costs before qualifying for benefits
- Filed in May 2024; currently in discovery



AETNA CLASS ACTION

- Plaintiffs claims that Aetna’s fertility coverage policies unlawfully discriminated against LGBTQ+ and same-sex couples by defining “infertility” in ways tied to heterosexual intercourse, effectively denying equal access to artificial insemination and IVF benefits
- Aetna agreed to revise its fertility coverage policies to provide equal access regardless of sexual orientation, aligning with updated clinical guidelines, and to provide a \$2 million fund for class members
- Plaintiffs alleged discrimination based on sex and sexual orientation under Section 1557 of the Affordable Care Act, as well as state and local civil rights laws, depending on the plan involved.



ACA NONDISCRIMINATION

- Section 1557 of the Affordable Care Act prohibits discrimination by covered plans on the basis of race, color, national origin, age, disability and *sex*
- Applies to insured plans, plus self-insured plans that receive federal funding (usually retiree drug subsidies or an employee group waiver plan)
- 2024 final rule under the Biden administration interpreted *sex* to include sexual orientation and gender identity—enjoined and vacated by federal courts



BOSTOCK AND SKRMETTI

- Two recent Supreme Court cases shed light on the current state of “discrimination” as it relates to sexual orientation and gender identity
- *Bostock v. Clayton County* (2020) – Title VII covers sexual orientation and gender identity discrimination
 - Textualist approach; opinion by Justice Gorsuch
 - Appears to tie discrimination back to sex-based stereotypes
 - E.g., firing a transgender employee who is biologically male for wearing a dress, makeup, etc.
- *United States v. Skrametti* (U.S. Supreme Court, 2025)
 - Upheld a Tennessee law banning puberty blockers and hormone therapy for minors when used to treat gender dysphoria, ruling that the law does not violate the Equal Protection Clause
 - Law was sex-neutral—boys and girls treated equally with respect to the restrictions
 - Majority unpersuaded that discrimination based on gender identity was impermissible under Equal Protection

CONTRACTING



- What is the contract?
 - Presentation materials vs written agreement
- Spelling out tax implications, particularly for a VEBA
- Who handles tax reporting?
- Claims reporting and coordination with TPA/fund office

CONTRACTING CHECKLIST

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- Formulary
- Confidentiality / HIPAA
 - Use of de-identified data
- Co-branding and use of fund name
- Balance billing
- Cybersecurity best practices

CONTRACTING CHECKLIST (cont)

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PRACTICAL CONSIDERATIONS



- Provider model notices – who reviews?
- Alignment with employer/union priorities
- Cultural considerations

PARTICIPANT COMMUNICATION

- Purchasing tissue
- Genetic selection
- Surrogate coverage – who is covered?

UNCOMFORTABLE
QUESTIONS?



THANK YOU

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