

EEOC's Enforcement Guidance on Pregnancy Discrimination Addresses Contraceptive Coverage

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The U.S. Equal Employment Opportunity Commission (EEOC) recently issued Enforcement Guidance: Pregnancy Discrimination and Related Issues (the Guidance) which addresses and clarifies various requirements of the Pregnancy Discrimination Act. By way of background, the Pregnancy Discrimination Act was passed in 1978 and amended Title VII of the Civil Rights Act of 1964 (Title VII) to confirm that discrimination based on pregnancy, childbirth, or related medical conditions is a form of sex discrimination prohibited by Title VII. As applicable to employer-sponsored health plans, the Guidance states that, because prescription contraceptives are available only for women, an employer could violate Title VII by failing to provide coverage of prescription contraceptives (whether for birth control or medical purposes) where it provides coverage for prescription drugs, devices, and services that are used to prevent the occurrence of medical conditions other than pregnancy (the Title VII Contraceptive Mandate). The Guidance caveats in a footnote that it merely explains the Title VII Contraceptive Mandate and does not address whether certain employers may be exempt from such mandate under the U.S. Constitution's Free Exercise Clause or the Religious Freedom Restoration Act, which was the basis of the U.S. Supreme Court's recent decision in *Burwell v. Hobby Lobby Stores, Inc.* Whether the Title VII Contraceptive Mandate would withstand a legal challenge in court on the basis of such laws remains to be seen. In the meantime, employers should cautiously approach the design or implementation of group health plans that are contrary to the Guidance. A copy of the Guidance is available [here](#). A copy of EEOC's related Q&A document is available [here](#). A copy of EEOC's related Fact Sheet for Small Businesses is available [here](#).