

The U.S. Equal Employment Opportunity Commission

FOR IMMEDIATE RELEASE
Wednesday, December 13, 2000

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EEOC ISSUES DECISION ON TWO CHARGES CHALLENGING THE DENIAL OF HEALTH INSURANCE COVERAGE FOR PRESCRIPTION CONTRACEPTIVES

WASHINGTON - The U.S. Equal Employment Opportunity Commission (EEOC) today issued a Commission Decision finding merit in two charges of discrimination alleging violations of Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act. The Commission based its decision on the grounds that the respondents in the charges excluded the cost of prescription contraceptive drugs - available only to women - from their employee health plan while covering a number of other preventive drugs, devices, and services. The plan also covers surgical sterilization for both men and women as well as Viagra.

The charging parties sought to use contraceptives both for birth control and other medical purposes.

The Commission concluded that the respondents' plan violates the Pregnancy Discrimination Act's prohibition against discrimination on the basis of pregnancy. Enacted by Congress in 1978, the law requires equal treatment of women "affected by pregnancy, childbirth, or related medical conditions" in all aspects of employment, including fringe benefits. It protects women from discrimination because they have the ability to become pregnant, and not just because they are already pregnant. The Commission also concluded that the exclusion constitutes prohibited sex discrimination since prescription contraceptives are available only for women.

Commenting on the EEOC's mandate to enforce federal laws prohibiting sex-discriminatory terms and conditions of employment, EEOC Chairwoman Ida L. Castro said, "The selective exclusion of health coverage for prescription contraceptives by this employee health plan violates the law since it covers a number of comparable prescription drugs and other services."

A Commission Decision is a formal Commission determination as to whether there is reasonable cause to believe that unlawful discrimination has occurred with respect to a specific charge or charges. Based on the confidentiality provisions of Title VII, the Commission cannot release the identities of either the charging parties or the respondents. A Question and Answer document on the decision, along with the full text of the Commission Decision, will be available shortly on the Commission's Web site at www.eeoc.gov.

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Questions And Answers: Commission Decision On Coverage Of Contraception

What does this Commission Decision address?

- This Commission Decision addresses two charges of discrimination pending at EEOC which challenge the employers' failure to provide health insurance coverage for prescription contraceptives while covering a number of other preventive drugs, devices, and services. The Commission Decision, which is based on the specific facts in the charges under consideration, finds that the exclusion in this health plan discriminates on the basis of sex and pregnancy, in violation of Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act.

What is the Pregnancy Discrimination Act?

- The Pregnancy Discrimination Act (PDA) was enacted by Congress in 1978 as an amendment to Title VII to clarify that Title VII's prohibition against sex discrimination includes discrimination on the basis of pregnancy. It was passed in response to a Supreme Court decision which held that discrimination on the basis of pregnancy is not sex discrimination.

What does the Pregnancy Discrimination Act require?

- The PDA requires equal treatment of women "affected by pregnancy, childbirth, or related medical conditions" in all aspects of employment, including the receipt of fringe benefits. It bars employers from treating women who are pregnant or affected by related medical conditions differently from others who are similarly able or unable to work. In a 1991 decision entitled *Int'l Union, UAW v. Johnson Controls*, the Supreme Court held that the PDA protects women from discrimination because they have the ability to become pregnant, and not just because they are already pregnant.

How is the PDA relevant to coverage of prescription contraceptives?

- Because the PDA prohibits discrimination against a woman based on her ability to become pregnant, it necessarily covers a health plan's exclusion of prescription contraceptives since they are a means by which a woman may control precisely that ability to become pregnant. The PDA does not require that all employers provide contraceptives to their employees through their health plans. It does require, however, that employers provide the same insurance coverage for prescription contraceptives that they do for other drugs, devices, or services that are used to prevent the occurrence of medical conditions other than pregnancy.

What factors did the Commission look at in determining whether the Respondents' health plan violated the PDA?

- The Commission carefully considered the particular coverage provided by the health plan at issue. That plan covered, among other things, vaccinations; prescription drugs to prevent the development of medical conditions, such as those to lower or maintain blood pressure

or cholesterol levels; anorectics (weight loss drugs) for those 18 years of age and under; preventive care for children and adults; and preventive dental care. Because each of these drugs and services is used to prevent the occurrence of a medical condition, the Commission determined that the Respondents should cover prescription contraceptives in the same way.

What if a woman wants to use prescription contraceptives not for birth control but for other medical purposes?

- Oral contraceptives are widely recognized as effective in treating certain medical conditions that exclusively affect women, such as dysmenorrhea (menstrual cramps) and pre-menstrual syndrome. The Commission Decision recognizes that the Respondents' exclusion of prescription contraceptives constitutes sex discrimination, regardless of whether the contraceptives are used for birth control or other medical purposes. Because prescription contraceptives are available only for women, 100 percent of those affected by the exclusion are women. This, by definition, constitutes sex-discrimination.

Did the Commission consider arguments by the Respondents that their exclusion of prescription contraceptives is lawful?

- The Respondents advanced four reasons as to why their exclusion of prescription contraceptives did not violate the law. The Commission carefully considered these arguments but found them without merit
 - First, the Respondents asserted that their insurance plan covered only abnormal physical or mental conditions and therefore they had no obligation to cover contraceptives. However, this argument does not hold up since the plan covers numerous preventive drugs and services, as discussed above. In addition, it covers surgical sterilizations and Viagra where patients complain about decreased sexual interest or energy.
 - The Respondents also stated that the exclusion was permissible because it was based on cost considerations. However, Congress explicitly rejected a cost defense for pregnancy and sex discrimination; in any event, the Commission Decision cites studies that show that the cost of coverage of prescription contraceptives is, in fact, very low and is certainly less than the cost of childbirth.
 - The Respondents argued that the exclusion of prescription contraceptives does not constitute sex discrimination. However, because prescription contraceptives are available only for women, the exclusion amounts, by definition, to sex discrimination.
 - Finally, the Respondents argued that the charging parties' claims are preempted by the Employee Retirement Income Security Act (ERISA). However, while ERISA does preempt certain state laws that regulate insurance it explicitly exempts federal law from preemption. As a result, this argument is without merit.

What are the next steps in processing these charges?

- The charges have been sent back to the field with instructions for further processing in accord with the Commission Decision. This will include efforts to resolve the case through the conciliation process.

Will EEOC identify the charging parties and the health plan at issue?

- Based on strict confidentiality provisions in the law, EEOC is prohibited from providing any identifying information about the parties to this case.

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