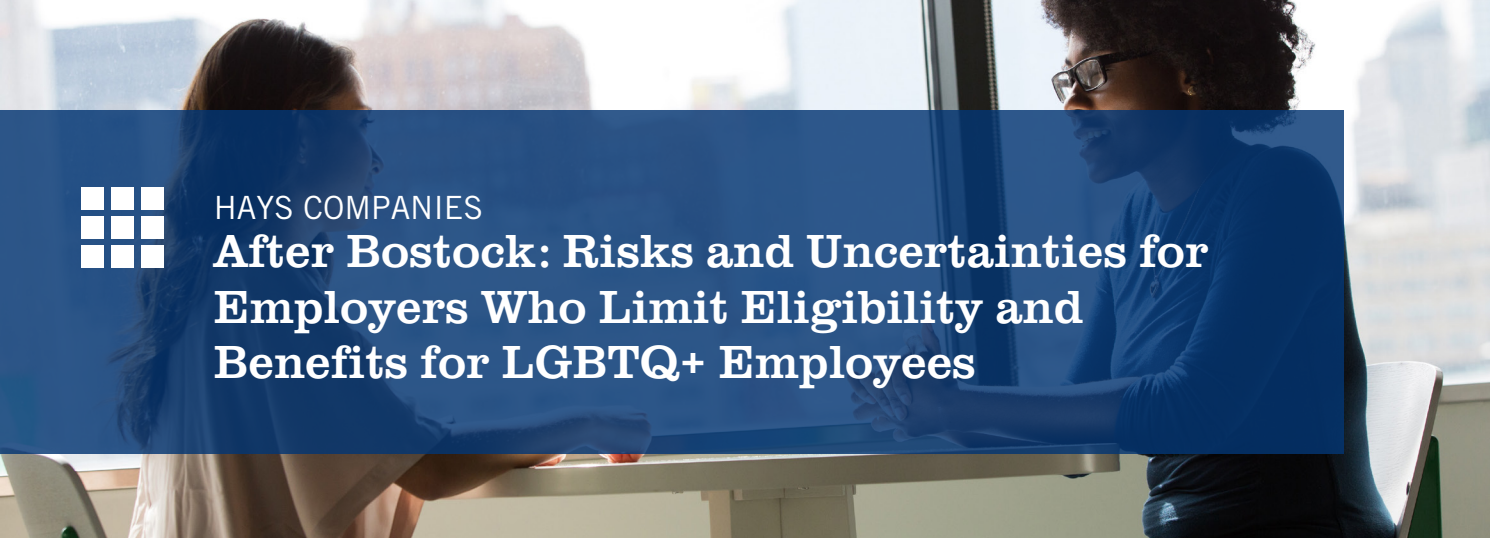

HAYS COMPANIES

After Bostock: Risks and Uncertainties for Employers Who Limit Eligibility and Benefits for LGBTQ+ Employees

Last summer, the Supreme Court released its landmark decision in *Bostock v. Clayton County,* holding that discrimination on the basis of sexual orientation and gender identity is discrimination on the basis of sex and therefore prohibited by Title VII. The decision left open many questions, including how an employer's protections under the Religious Freedom Restoration Act interact with Title VII's guarantees of non-discrimination for LGBTQ+ employees. The expansiveness of the ruling is currently being tested through employee-brought litigation and Biden Administration policies, with this trend extending to employee benefits and health care.

Included in this wave of litigation is an ongoing Fourth Circuit District Court case, Doe v. Catholic Relief Services. In Doe v. Catholic Relief Services, the employer, a Catholic church-affiliated organization, initially allowed an employee to cover his same-sex spouse under their group health plan before later informing him that, due to the church's views on marriage, it could not offer benefits to same-sex spouses. The employer later terminated the spouse's health coverage and threatened to terminate the employee if he pursued legal action.

In a preliminary ruling in the matter, the Fourth District Court judge overseeing the case allowed the employee's claims under Title VII and other federal and state laws to proceed, citing Bostock's holding that LGBTQ+ discrimination is actionable as a form of sex discrimination. The Court noted, but did not yet rule on, the question left open by Bostock regarding whether or not the Religious Freedom Restoration Act protects an employer's decision to revoke a same-sex spouse's benefits based on a sincerely held religious belief.

Additionally, the Biden Administration's Department of Health and Human Services (HHS) has modified its interpretation of Section 1557 of the ACA, which prohibits health facilities and programs that receive federal funds from discriminating on the basis of sex. The Department now considers sexual orientation and gender identity discrimination a form of sex discrimination, in line with the Court's holding in Bostock. The Department is likely to make new rules based on its change in stance and has made clear that it will investigate and resolve complaints of health care discrimination under their new interpretation of Section 1557's sex-discrimination protections.

As the full implications of the Bostock decision have yet to be realized, employers subject to Section 1557 and/or federal or state discrimination laws should remain aware of the real potential for litigation when establishing benefit plan rules (e.g., regarding eligibility and/or covered services) that may be considered discriminatory on the basis of sexual orientation or gender identity, even where the policies are made on the basis of a sincere religious belief.

Contact

Visit us online or send us a message to learn more about the Hays Difference and our service offerings.

www.hayscompanies.com | info@haysccompanies.com

Hays
PART OF THE BROWN & BROWN TEAM