

Chapter 1

Dimensions of Discrimination

Overview

Such dimensions are divided as follows:

- I. Favoring the Prohibited Class
 - a. Medical Reimbursement Plan-Chapter 4
 - b. Cafeteria Plan
 - c. Premium only Plan
 - d. Flexible Spending Account
 - e. Dependent Child Assistance Plan

2. Disfavoring the Protected Class Appendix R
 - a. Designated Individual Status
 - i. Age
 - ii. Sex
 - iii. Race, Religion or Ethnicity
 - iv. Pregnancy
 - v. Handicapped or Disabled

 - b. Designated Health Status
 - i. Newborns' and Mothers' Health
 - ii. Mental Health
 - iii. Women's Health Cancer Rights

3. Violating Trade and Commerce Laws
 - a. Antitrust, Competition, Price Discrimination-Appendix B
 - b. Unfair Trade Practices-Appendix C

4. Violating ACA and New Prohibited/Protected Classes (Appendix D)
 - a. Consumers
 - b. Insurers
 - c. Providers

Favoring the Prohibited Class

There are five benefit arrangements to be tested for discrimination and are summarized as follows:

Medical Reimbursement Plan (HCI)

Self-Funded

Eligibility

Benefits

Miscellaneous

Cross Section

Classification

Fully Insured

Benefits

Cafeteria Plan

Eligibility

Contributions and Benefits

Key Employee Concentration

Premium Option Plan

Eligibility

Benefits

Flexible Spending Account (Health)

Eligibility

Benefits

Dependent Child Assistance Plan

Eligibility

Contributions and Benefits

Owners' Concentration

Average Benefits

A specially designed single Work-Product is available for the discrimination testing of all or any one of these benefits arrangements. Each of these are discussed in a Chapter4.

Disfavoring the Protected Class

Conditions determining eligibility for the protected class are these: (a) age; (b) sex; (c) race; (d) religion; (e) ethnicity; (f) disability; (g) pregnancy; (h) health status or (i) work status.

The protection for these classes was obtained from the following federal laws:

1. The Civil Rights Act of 1964 (and 1991)

a. Sex

b. Race, Religion and Ethnicity

2. Rehabilitation Act of 1973

Handicapped

3. The Age Discrimination in Employment Act of 1967
Age
4. The Americans with Disability Acts of 1990
Disability
5. Pregnancy Discrimination Act of 1978
Pregnancy
6. Health Status
 - a. Newborns' and Mothers' Health Protection Act of 1996
 - b. Mental Health Parity Act of 1996
 - c. Women's Health and Cancer Rights Act of 1998
 - d. HIPAA
7. Work Status
 - a. COBRA and Amendments
 - b. FMLA
 - c. USERRA
 - d. Child Support and Incentive Act of 1998
 - e. Equal Pay Act of 1963

Violating Trade and Commerce Laws

Because ACA has denied the long-standing antitrust exemption enjoyed by insurers, the issue of health care plans and Federal Trade and Commerce have immediately become a matters of concern. Moreover, the potential infractions include not only the trade and commerce laws but include the unfair trade practices laws that have, in a sense, an almost unmeasurable depth and scope. With the unfair trade practices dimension, the importance of several new developments must be considered: (a) role of Sarbanes-Oxley and newer practices with ERM; (b) impact of the Supreme Court decision *MetLife v. Glenn*; (c) new financial reforms to be adopted, and the (d) growing dominance of globalism.

An outline of the ways by which Federal Trade and Commerce Laws affect discriminations are as follows:

Part A-Antitrust, Competition, Trade Restraint

1. Six Important Acts
 - a. Sherman Antitrust
 - b. Clayton Antitrust
 - c. Robinson Patman
 - d. National Cooperative Research
 - e. Export Trading Company

- f. McCarran-Ferguson.
- 2. Six Typical Per Se Anti-Competition Infractions
 - a. Horizontal Price Fixing
 - b. Vertical Price Fixing (Resale Price Maintenance)
 - c. Bid Rigging
 - d. Market Division
 - e. Boycotts
 - f. Tying Arrangements.
- 3. Rule of Reason Infractions
 - a. Facts and Circumstances
 - b. Single Entity without Antitrust Infraction.

Part B-Unfair Trade Practices

- 1. One Important Act
 - a. Federal Trade Commission
- 2. Traditional Infractions
 - a. Litmus Tests
 - i. Is Commerce Affected?
 - ii. Is Competition Reduced?
 - iii. Is Practice either Unfair or Deceptive?
 - iv. Is Tendency to Monopoly Increased?
 - v. Is Public Policy Offended?
 - b. Are Any of These Elements Present
 - i. Liability?
 - ii. Deceit?
 - iii. Fraud?
 - iv. Illegality?
 - v. High Pressure?
 - c. Are Any of These Elements Also Present
 - i. Confusion
 - ii. Misunderstanding
 - iii. Quality of Product or Service
 - iv. Questionable Advertising
- 3. Recently-Arrived Infractions
 - a. Sarbanes-Oxley
 - b. Enterprise Risk Management
 - c. New Demands on Plan Fiduciaries *MetLife v. Glenn*
 - d. Globalism

Violating ACA

1. Consumers

- a. Annual Reviews of Health Insurance Premiums
- b. Health Insurance Ombudsman
- c. Information Regarding Coverage Options
- d. Appeal and Grievance Procedures
- e. Uniform Summaries of Benefits
- f. Minimum Benefits

2. Insurers

- a. Loss Ratio and Cost Accounting
- b. Risk Pooling
- c. Premium Rating Rules
- d. Insurer's Rebates
- e. Qualified Benefit Plan.

3. Providers

- a. Quality of Care Payment Structure
- b. Discrimination in Care and Services
- c. Rx Plans
- d. Public List of Hospital Charges
- e. Clinical Trials.