

FAQs for Employers in New Jersey

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GENERAL INFORMATION

1. Is abortion still legal in NJ?

Yes, abortion is still legal in New Jersey. Abortion is an independent and fundamental right protected by both the New Jersey Constitution and state legislation.¹ The United States Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* does **not** diminish abortion rights and access in New Jersey.

2. What kinds of expenses do people seeking abortion face?

Abortion-related medical and non-medical expenses may present a serious barrier to accessing care, particularly for lower-wage workers in states where abortion is banned or restricted, who may need to travel long distances to get a legal abortion. According to the [Henry J. Kaiser Family Foundation](#), the majority of self-pay, first trimester abortions cost about \$600.² Related expenses may include airfare, rental car, gas, lodging, meals, and childcare, and these costs may be doubled if the patient needs to travel with a companion. Non-medical expenses may total thousands of dollars, making abortion unaffordable for many people.³ The Federal

¹ N.J.S.A. § 10:7-1(a) (“[T]he New Jersey Supreme Court has recognized that the right to reproductive choice is a fundamental right enshrined in the State Constitution, that this right is independent of the United States Constitution”); N.J.S.A. § 10:7-2(a) (“Every individual present in the State, including, but not limited to, an individual who is under State control or supervision, shall have the fundamental right to . . . choose whether to carry a pregnancy, to give birth, or to terminate a pregnancy. The New Jersey Constitution recognizes the fundamental nature of the right to reproductive choice, including the right to . . . terminate a pregnancy”); *Right to Choose v. Byrne*, 91 N.J. 287, 306 (1982) (holding that people have a “fundamental right” to make “one of the most intimate decisions in human experience, the choice to terminate a pregnancy or bear a child”); *Planned Parenthood of Cent. N.J. v. Farmer*, 165 N.J. 609, 612–13 (2000) (same).

² KFF, *Employer Coverage of Travel Costs for Out-of-State Abortion* (May 16, 2022), <https://www.kff.org/policy-watch/employer-coverage-travel-costs-out-of-state-abortion/>; see also Business Insider, *Gas, Food, and a Hotel: Americans Seeking An Abortion Out of State Already Shell Out Up to \$10,000 for the Procedure* (June 24, 2022), <https://www.businessinsider.com/abortion-costs-roe-v-wade-out-of-state-supreme-court-2022-5>.

³ Business Insider, *supra* note 2; see also Fed. Res. Bd., *Economic Well-Being of U.S. Households in 2020 – May 2021*, <https://www.federalreserve.gov/publications/2021-economic-well-being-of-us-households-in-2020-dealing-with-unexpected-expenses.htm>.

Reserve Board reports that 35% of Americans do not have sufficient cash, savings, or credit to cover a \$400 emergency expense.⁴

POTENTIAL LIABILITY

3. What kind of legal liability may a New Jersey employer face if it pays for out-of-state employees' travel to New Jersey for abortion care?

New Jersey employers that are considering paying for out-of-state employees to travel to New Jersey for abortion care should **consult a lawyer** to assess potential legal risks. It remains unclear how states with abortion bans or restrictions (“ban states”) will seek to enforce existing criminal prohibitions on “aiding and abetting” or otherwise assisting their residents in obtaining abortions, whether ban states will enact laws that expressly punish assisting a patient to travel for an abortion, and how courts will respond to the extraterritorial application of such laws. It is also unclear whether courts will entertain cross-state civil suits under laws that purport to authorize private citizens to sue people who help others obtain abortions.

For an overview of state abortion laws, you can check these resources:

- [Center for Reproductive Rights' State Law Tracker](#)
- [Guttmacher Institute Interactive Map](#)
- [New York Times' Tracker](#)
- [Washington Post's Tracker](#)

Criminal and civil liability exposure depends on various factors, including the states where your employees are located and whether your company offers a self-insured plan (subject to the federal Employee Retirement Income Security Act of 1974, known as “ERISA”) or a fully insured plan regulated by state law. An employer that offers abortion care and medical travel benefits through an ERISA plan may be less exposed to potential civil causes of action brought under state laws because of ERISA’s broad conflict preemption provisions.⁵

EMPLOYEE SUPPORT

4. What kind of support are employers offering employees who need to travel for an abortion?

With federal protection for abortion eliminated, many employers are considering how they can assist employees who live in states where access to abortion is not available.⁶ [This unofficial](#)

⁴ Fed. Res. Bd., *supra* note 3.

⁵ See Section 514(a) of ERISA, codified at 29 U.S.C. 1144(a); see also *Considerations for Employers and Employer Plan Sponsors Related to Potential Changes in the Effect of Roe v. Wade* Morgan Lewis (May 6, 2022), <https://www.morganlewis.com/pubs/2022/05/considerations-for-employers-and-employer-plan-sponsors-related-to-potential-changes-in-the-effect-of-roe-v-wade>.

⁶ Andrew E. Graw, Julie Levinson Werner, and Batool T. Banker, *Employer-Paid Travel Assistance for Interstate Abortion Access*, Lowenstein Sandler (June 29, 2022),

[database](#) tracks responses from some large employers, including company statements and policies on paying travel costs and providing paid time off.

Employers who wish to expand benefits should consult with an employee benefits lawyer regarding the best way to structure new or expanded employee benefits (*e.g.*, medical, mental health, travel, childcare, paid time off, and legal services benefits). Employers may also want to seek legal counsel on how best to protect the privacy of employees who use the expanded benefits.⁷

As a starting point, some employers are conducting a self-audit to identify what medical, travel, paid time off, and other benefits their current policies cover; whether their current benefit plan imposes obstacles to timely and affordable abortion care (such as high deductibles and network provider limitations); and whether benefits should be expanded to promote health care access in general. Employers with offices in states that ban abortion may want to consider employee relocation and remote work policies for employees who wish to move out of such states.

5. What are the tax implications of providing these benefits?

Unless an employer provides a benefit through a flexible spending account (FSA), health savings account (HSA), or a health reimbursement account (HRA), paid benefits provided by an employer generally will be deemed taxable income to the employee under Internal Revenue Code Section 61. Accordingly, employers will be responsible for withholding employment taxes on benefit payments.

6. Where can I learn more?

We share this resource as plain language guidance for NJ employers. Various law firms and employee benefits consultants have published detailed articles on legal compliance and benefit structuring options which you may wish to review. Some of these articles are: [Employer-Paid Travel Assistance for Interstate Abortion Access](#) (Lowenstein Sandler, June 29, 2022); [Impact of Dobbs v. Jackson Women’s Health Organization for Employer-Provided Health Benefits](#) (Ropes & Gray, June 27, 2022); [Considerations for Employers and Employer Plan Sponsors Related to Potential Changes in the Effect of Roe v. Wade](#) (Morgan Lewis, May 6, 2022).

<https://www.lowenstein.com/news-insights/publications/client-alerts/employer-paid-travel-assistance-for-interstate-abortion-access-eben-employment>.

⁷ Various benefit structure considerations are addressed in the Andrew E. Graw article, *supra* note 6.