

## Does Hobby Lobby Have to Pay for My PrEP?

In the wake of the *Hobby Lobby* ruling, gay men may be vulnerable to employers who would attempt to block access to HIV drugs.

BY MATT BAUME, OCTOBER 27 2014 8:00 AM ET

Last June the Supreme Court ruled that religious-minded business owners could essentially line-item veto some forms of birth control out of their employees' health care plans. Does that mean that antigay bosses can target queer employees by doing the same with HIV prevention pills?

The *Hobby Lobby* decision was a major victory for religious conservatives, who in recent years have increasingly sought exemptions from laws designed to protect LGBT people. And while the case focused on birth control, the decision could have significant implications when it comes to health care for workers who are at elevated risk of acquiring HIV, such as sexually active gay men.

PrEP is a daily regimen of the drug Truvada, which when taken daily as prescribed can reduce the risk of transmission by 99 percent, according to studies. Although Truvada has been approved as HIV treatment for more than a decade, it's only relatively recently that it's been adapted as a preventive measure. And the number of prescriptions is still small.

Because it's so new, there haven't been any publicized incidents of PrEP-related discrimination, says Iván Espinoza-Madrigal, legal director for the Center for HIV Law and Policy. But, he adds, "that doesn't mean it's not happening."

While the Americans With Disabilities Act bars most workplaces from discriminating against employees with HIV, Espinosa-Midrial says HIV-positive workers have been discriminated against when it was discovered they were taking Truvada. "I wouldn't be surprised if people are suffering the same impact if they're on PrEP," he says.

But HIV-negative people taking preventive measures are a bit different from HIV-positive individuals, says Scott Schoettes, HIV Project director and senior attorney at Lambda Legal.

"We're not dealing with people who are living with HIV," Schoettes says. "They don't have a qualifying disability."

But, he points out, "this is medically necessary care. We have guidelines now from the [Centers for Disease Control and Prevention], talking about PrEP and when it's

appropriate to prescribe PrEP."

And although the Affordable Care Act contains provisions about providing preventive care, Schoettes says, "there have been problems in some places with HIV medications being placed on specialty tiers and made expensive or unavailable altogether. ... We are looking at ways to prevent all of those practices."

The good news is that insurance companies are prohibited from designing benefit programs specifically to discourage disabled or at-risk people from enrolling. And existing laws do provide some level of protection.

"When it comes to nondiscrimination protection, they apply to people who are living with HIV ... or association with people who are living with HIV," says Espinosa-Madrigal.

"For instance, if I work at a restaurant and people find out that my partner is HIV-positive, they might not know my status, and I haven't disclosed my status, but the fact that they are associating me with somebody who is HIV-positive is enough to cover me with legal protection."

Although both the use of Truvada as PrEP and the *Hobby Lobby* decision are recent developments, LGBT nonprofits are prepared to defend access to health care.

"We've heard about some doctors who are reluctant to prescribe PrEP," says Schoettes. "I think that's problematic and something that will need to be addressed," potentially through litigation. "A person's health care should not be dependent on their doctor's viewpoints on their sex lives."

And of course, a refusal to cover treatment or preventive measures would have significant public health consequences.

"Any type of barrier to treatment runs counter to very sound public health policies," says Espinosa-Madrigal. "If an employer is using moral or religious beliefs to deny people access to health care ... it would contribute to the epidemic."

Fortunately, there have been, so far, no documented cases of antigay employers trying to use the *Hobby Lobby* decision as a weapon against queer health care. But the possibility still exists.

"The decision could mean that religious interests now trump other interests in many circumstances, with religious believers entitled to impose their views at others' expense in ways systematically rejected in the past," Lambda Legal's Law and Policy Project national director, Jennifer Pizer, wrote after the decision.

"Right now we're still trying to assess the impact of *Hobby Lobby* in the workplace and minimizing the harm," says Espinosa-Madrigal.

LGBT employees often have unique health care needs, he says, such as reproductive services, transgender care, and HIV-related treatments. "Post-*Hobby Lobby*, it is important to revisit insurance policies to make sure that the policies cover all of these important segments."

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