

Take Action:

GET YOUR PRESCRIPTION CONTRACEPTIVES COVERED

A Practical Guide for Employees

AN UPDATE

Since the Center's *Take Action* guide was published in early 2001, important progress has been made in the drive to expand insurance coverage of women's contraceptive needs. Major legal developments are outlined below. In addition - and probably due in part to these advances in the law - many employers have added contraceptive coverage to their health plans. **In order to keep the momentum going, we need to know - and let others know - about your efforts to persuade your employer to add this coverage to your health plan!** *Please tell us about your efforts, including whether you use our suggestions in *Take Action* to advocate for this important coverage, and how your employer responds. You can email us at info@nwlc.org, or call us on our toll-free line at 1-866-PILL-4-US. Your story might inspire other women to follow your lead and get the health care coverage they need and deserve.*

Here are the major legal developments since *Take Action* was published:

- **In June 2001, a federal court ruled that an employer is violating the federal law against sex discrimination in the workplace by failing to provide insurance coverage for prescription contraceptives in an employee health plan that covers other prescription drugs and devices and preventive care.** In *Erickson v. Bartell Drug Co.*, 141 F. Supp.2d 1266 (W.D. Wash. 2001), in which NWLC served on the plaintiff's legal team, the court ruled that the exclusion of prescription contraceptives in these circumstances violates Title VII of the Civil Rights Act of 1964, which prohibits sex discrimination (including pregnancy discrimination) in the workplace by employers with at least 15 employees. In its decision, the court recognized that the exclusion of prescription contraceptives creates a gaping hole in the coverage offered to female employees, leaving a fundamental and immediate healthcare need uncovered, and ordered the company to cover the expenses of prescription contraceptives and related medical services to the same extent and on the same terms that the expenses of other drugs, devices and preventive services are covered in the employees' health plan. The court's ruling confirms the December 2000 decision of the Equal Employment Opportunity Commission (EEOC) that is described in *Take Action*. After the court's ruling, Bartell appealed, but the case was settled in March 2003. In the settlement, Bartell agreed to continue the contraceptive coverage it began providing in compliance with the district court's order; to reimburse its former employees for some of their contraceptive costs; and to provide prescription contraceptive drugs and devices and related clinical services to current employees with no co-pay through 2006.

- **Unfortunately, one appellate court ruled against contraceptive coverage.** In March 2007, under the particular factual circumstances in the case, a divided Eighth Circuit Court of Appeals panel held that Union Pacific's failure to provide contraceptive coverage was not sex discrimination under federal law. *In re Union Pacific Railroad Employment Practices Litigation*, 479 F.3d 936 (8th Cir. 2007). In our view, this decision was in error and reflects a basic misunderstanding of the fundamental principles of discrimination. Nonetheless, it implicates Title VII rights of individuals living in Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota. One district court in Missouri has reconsidered its previous ruling in favor of employees and has followed the *Union Pacific* decision. *Stocking v. AT&T Corp.*, No. 03-0421-CV-W-HFS, 2007 WL 3071825 (W.D. Mo. 2007).
- **Employers covered by Title VII are taking note of their legal obligation to include coverage of prescription contraceptives if they are providing health insurance to their employees that otherwise covers prescription drugs and devices and preventive care.** Consequently - and sometimes under pressure from employees - some employers, including large companies such as Daimler/Chrysler and Dow Jones, have added contraceptive coverage. After female faculty and staff members at the University of Nebraska urged the university administration to add contraceptive coverage - with legal assistance from the Center - the university agreed. The Center also partnered with the union American Federation of State, County, and Municipal Employees (AFSCME) to obtain contraceptive coverage for municipal employees in Eugene, Oregon. In January 2007, Wal-Mart, the nation's largest private sector employer, began offering contraceptive coverage to its employees. This victory was achieved after 5 years of litigation, with the Center as part of the legal team.
- **Students have a right to contraceptive coverage, too.** In November 2001, the Center and two other groups sent a letter to George Washington University on behalf of several law students, advising the university that failing to cover prescription contraceptives violated both Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex by educational institutions that receive federal funds, and a District of Columbia law that prohibits sex discrimination. The Center argued that the principles of Title VII are also applicable to Title IX. The university amended its student health insurance plan to include contraceptive coverage. Similarly, law students at the University of Cincinnati, with assistance from the Center, successfully negotiated for contraceptive coverage. The University of Cincinnati began covering prescription contraceptives in its student health plan in the fall of 2006.
- **Twenty-five states have enacted contraceptive coverage laws that require insurance policies in those states to include contraceptive coverage if other prescription drugs and devices are covered.** They are: Arizona, Arkansas, California, Connecticut, Delaware, Georgia, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, Washington, Wisconsin, and

West Virginia. Similar legislation has been introduced in other states as well. For more information on the state laws, see *Contraceptive Equity Laws in Your State: Know Your Rights--Use Your Rights*, a consumer guide to the state contraceptive equity laws, at <http://www.nwlc.org/pdf/ConCovStateGuideAugust2007.pdf>, and our fact sheet, *Contraceptive Coverage: A Multi-Track Approach*, at <http://www.nwlc.org/pdf/Contraceptive%20Coverage%20MultiTrack%20Approach%20Aug%202000.pdf>. In addition, a bill is pending in the U.S. Congress that would provide the same mandate all across the country, called the Equity in Prescription Insurance and Contraceptive Coverage Act (EPICC).

- **State employment discrimination laws are being used to establish the principle that failure to provide contraceptive equity is sex discrimination under state law.** In two states – Montana and Wisconsin – advocates, including the Center, successfully obtained rulings from state attorneys general interpreting the state's employment discrimination law to require contraceptive coverage. In Michigan, the Civil Rights Commission issued a similar ruling. Using these laws is critical since they have the potential to reach many more women by filling gaps in state contraceptive coverage laws and federal law.

For more information, and to keep abreast of new developments on contraceptive coverage as they unfold, please visit our web site at www.nwlc.org and click on Reproductive Choices, then go to Contraceptive Coverage. For an on-line version of the *Take Action* brochure and related materials, go to www.nwlc.org/pill4us. You can download *Take Action* there, or, if you need more copies, just call the Center at 1-866-PILL-4-US and we will send them to you at no charge.