



Wal-Mart Accused of Gender-Discrimination Because of Anti-Gay Insurance Policies

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In *Cote v. Wal-Mart Stores*, Wal-Mart is facing the possibility of a class action suit from a former employee who claims that the company's denial of healthcare benefits to her same-sex spouse amounts to sex discrimination. The suit was filed by Gay and Lesbian Advocates and Defenders (GLAD) and the Washington Lawyers' Committee for Civil Rights and Urban Affairs alleging that Wal-Mart violated Title VII of the Civil Rights Act of 1964 ("Title VII") by discriminating against Cote because of her sex. Title VII prohibits employers from discriminating against employees on the basis of sex, race, color, national origin, and religion.

By way of brief background, Cote and her wife, Smithson, entered into a state-recognized marriage in Massachusetts in 2004. From 2008 through 2012, Cote attempted to add Smithson to her health insurance during Wal-Mart's open enrollment periods, which was a benefit available to other Wal-Mart employees. However, when Cote entered her spouse's gender as "female," the online system would not let her continue the process, and when she further inquired with Wal-Mart; she was told that the company did not offer health insurance coverage to same-sex spouses. Wal-Mart's denial of benefits has been very costly to Cote and her wife because in 2012 Smithson was diagnosed with ovarian cancer. The couple now has at least \$150,000 in medical expenses, which arguably would have been covered if Cote were able to add her spouse to her health insurance.

Cote previously filed a complaint with the U.S. Equal Employment Opportunity Commission (the "EEOC"), a precondition to filing a discrimination lawsuit in federal court. In January, the EEOC held that Wal-Mart violated gender discrimination laws by denying benefits to Smithson.

Now, the lawsuit filed in the U.S. District Court for the District of Massachusetts, alleges that employees who had a valid same-sex marriage license and would have otherwise qualified for coverage were discriminated against pursuant to Title VII solely because of their partner's gender. The lawsuit requests certification of a class of current and former gay Wal-Mart workers who were married before Jan. 1, 2014 and a wide array of damages, including any out-of-pocket medical expenses, punitive damages, plus attorney fees and costs. In response, Wal-Mart stated, "we have not yet seen the details of the lawsuit and, out of respect for Ms. Cote, we are not going to comment other than to say our benefits coverage previous to the 2014 update was consistent with the law."

Interestingly, Title VII is rarely used in gay rights cases and in the past courts have been somewhat skeptical of this argument. However, the Supreme Court's decision in *Obergefell*, recognizing a federally protected right to same-sex marriage, may give courts more latitude in recognizing same-sex couples as individuals with protected rights against gender discrimination.

If you or your institution has any questions or concerns regarding employment related issues, please contact James G. Ryan at jryan@cullenanddykman.com or at 516-357-3750.

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