Access to Employer-Sponsored Health Coverage for Same-Sex Spouses

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Employer-sponsored health insurance (ESI) covered over half of the non-elderly population in the U.S. in 2015, half of whom received coverage as a dependent. 1,2 In fact, nearly all employees who have access to health insurance also have access to opposite-sex spousal coverage. 3 However, for same-sex couples, this route to coverage has historically been limited. Two recent Supreme Court rulings (United States v Windsor in 2013 and Obergefell v Hodges in 2015) significantly changed the legal landscape for same-sex couples and paved the way for greater access to health insurance through the workplace. Using data collected through the most recent Kaiser Family Foundation and the Health Research & Educational Trust (HRET) Employer Health Benefits Survey, we provide the first national estimates of same-sex spousal health coverage, looking at both the share of firms offering such coverage as well as the share of covered workers with access to spousal benefits.

Background

Prior to the Windsor and Obergefell decisions, same-sex couples faced limited options for obtaining spousal coverage through an employer and when they did, this benefit was treated differently under federal law from benefits received by heterosexual married couples. While some employers offered domestic partner benefits for same-sex partners 4 and a growing number of states began to recognize same-sex marriage 5, in 2012, less than half of all workers with health coverage had access to same-sex health benefits. 6 In addition, because the federal government did not recognize same-sex marriages, where such benefits were offered, they were not considered tax exempt which meant that same-sex couples faced higher tax burdens compared to heterosexual counterparts.

In June 2013, in Windsor, the Supreme Court overturned a major portion of the Defense of Marriage Act (DOMA) which had, for federal purposes, defined marriage as between a man and a woman. The Windsor decision required federal recognition of same-sex marriages, even if a couple lived in a state that did not recognize same-sex marriage. As a result, employer-sponsored health benefits provided to legally married same-sex couples were now considered tax exempt. 7 Windsor, however, did not require states to issue same-sex marriage licenses or recognize those performed elsewhere, leading to a patchwork of recognition across the U.S. and lack of access to legal same-sex marriage for many couples where they lived. In 2015, the Supreme Court’s ruling in Obergefell legalized same-sex marriage nationwide, requiring all states to recognize same-sex marriages and issue marriage licenses to same-sex couples. While neither decision required private employers to offer same-sex spousal coverage if they offered coverage to opposite-sex spouses 8, it was expected that wider access to marriage would lead to greater access to coverage. In fact, one study found that the legalization of same-sex marriage in New York was associated with an increase in employer-sponsored insurance among
same-sex couples. In addition, an increasing number of states (21 states and DC) have protections in place that prohibit employers from discriminating against individuals based on sexual orientation, and presumably would require employers offering opposite-sex spousal coverage to extend that benefit to same-sex spouses. Furthermore, it is likely that employers who refuse to offer same-sex spousal coverage if they offer coverage to opposite-sex spouses would face legal challenges. Still, given that employers are not required to provide same-sex spousal coverage parity to their employees, assessing such coverage is important for understanding the interplay between legal recognition of same-sex marriage and health insurance access within the workplace.

Findings

**Firms Offering**

In 2016, less than half (43%) of firms offering health insurance coverage to opposite-sex spouses, also provided coverage to same-sex spouses and 16% did not provide this coverage. Another 41% reported they had not encountered this as a benefits issue. This was driven by small employers (those with fewer than 200 workers), who represent the majority of employers overall (98%) and are less likely to offer same-sex spousal coverage. Indeed, the likelihood of employers offering same-sex spousal coverage increased with firm size.

Among firms offering opposite-sex spousal coverage, large firms (those with 200 or more employees) were more likely to also offer this benefit to same-sex spouses than smaller firms (85% vs 41%). More than eight in ten (85%) large firms with opposite-sex spousal coverage offered such coverage, 10% did not, and 5% reported they had not encountered this benefits issue. Among the largest firms (those with more than 1,000 workers), 94% offered coverage to same-sex couples. By contrast, just 41% of small employers (3-199 workers) offered coverage to same-sex spouses. Sixteen percent did not and 43% said they had not encountered it.
**Covered Workers**

While the majority of firms in the United States are small, and most do not offer same-sex spousal ESI, the majority of workers are employed by large firms (200 or more workers) (70%), most of whom do offer this benefit. In 2016, among employees who worked at firms offering opposite-sex spousal health benefits, 84% also had access to same-sex spousal coverage; 8% did not have access to this benefit, and 8% worked at firms who reported they had not encountered this benefits issue.\(^2\)

Most at large firms (those with 200 or more employees) who have access to opposite-sex spousal coverage also have access to same-sex spousal coverage (94%). Just 5% did not, and 1% worked at firms that reported they had not encountered the issue. Among workers at the largest firms (1,000+ workers), virtually all (97%) had access to same-sex spousal coverage.

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**Figure 2**

Among Firms Offering Spousal Benefits, Percentage of Firms and Covered Workers with Access to Same-Sex Spousal Benefits, 2016

![Chart showing percentage of firms and covered workers with access to same-sex spousal benefits.]

**Figure 3**

Among Firms Offering Spousal Benefits, Percentage of Covered Workers with Access to Same-Sex Spousal benefits, by Firm Size 2016

![Chart showing percentage of covered workers with access to same-sex spousal benefits by firm size.]

*Distribution is statistically different from distribution for all other firms not in the indicated size category (p < .05).

NOTE: "Not encountered" refers to firms where no workers requested domestic partner benefits and there is no corporate policy on coverage for same-sex spouses. Eighty-nine percent of small firms (3-199 workers) offering health benefits and 99% percent of larger firms offer spousal health benefits.

Workers at small firms offering opposite-sex spousal coverage were less likely to have access to health insurance benefits for same-sex spouses, though a majority did (59%). Sixteen percent did not have access to this benefit and another 26% worked at firms that report they have not encountered this issue.

**DOMESTIC PARTNER BENEFITS**

As mentioned above, prior to the recent Supreme Court decisions guaranteeing the right to marriage for same-sex couples, domestic partnership benefits provided an important way for same-sex couples to gain access to coverage. Some have raised questions about whether federal and state recognition of same-sex marriage would diminish domestic-partnership benefits but data from the Employee Health Benefits Survey show no statistical difference between the share of firms offering same-sex domestic partner health coverage in 2016 compared to 2013, among all firms offering health benefits. Further, the survey found that 99% of large firms offering same-sex domestic partner health benefits also offer same-sex spousal benefits and 58% of large firms offering same-sex spousal coverage offer same-sex domestic partner coverage.

**Conclusion**

These findings indicate that in 2016, while less than half of firms offering opposite-sex spousal coverage also offer coverage to same-sex spouses, the majority of covered workers (84%) had access to these benefits. Still, not all do and this varies significantly by employer size, with employees at small firms being less likely to have access to same-sex spousal coverage. In some cases, lack of access to this benefit could be a policy decision (16% of firms providing opposite-sex spousal coverage reported that they do not offer coverage for same-sex spouses). In addition, many firms (41%), especially the smallest firms, say they have not encountered this benefits issue. This could be because many of these small firms are likely to be individually or family-run small businesses that may have genuinely not been approached about this as a benefits issues, reflect the relatively recent nature of federal marriage recognition, and/or reflect the reluctance of some employees to proactively seek such benefits, particularly at small firms. Going forward, it will be important to monitor access to same-sex spousal coverage in the workplace over time and against changes in the legal landscape.

**Methods**

The Kaiser Family Foundation/Health Research & Educational Trust (Kaiser/HRET) 2016 Annual Employer Health Benefits Survey is based on a telephone survey of 1,933 randomly selected non-federal public and private employers with three or more workers. Researchers at HRET, NORC at the University of Chicago, and the Kaiser Family Foundation designed and analyzed the survey. National Research, LLC conducted the fieldwork between January and June 2016. In 2016, the response rate among firms which offer health benefits was 40%. For fuller methods see The Kaiser Family Foundation/Health Research & Educational Trust (Kaiser/HRET) 2016 Annual Employer Health Benefits Survey (2016) available here: http://kff.org/health-costs/report/2016-employer-health-benefits-survey/.
Endnotes

1 Kaiser Family Foundation. Kaiser Commission on Medicaid and the Uninsured. The uninsured: A primer—key facts about health insurance and the uninsured in America. 2015. Available at: http://kff.org/uninsured/report/the-uninsured-a-primer/. (See supplemental tables - Table 1: 270.2 million non-elderly people, 55.5% of whom are covered by ESI.)


8 However, the Windsor decision ensures federal employees and contractor employees, have access to same-sex spousal coverage at parity with opposite-sex spousal coverage offerings and the Obergefell ruling means that spousal coverage benefits should be extended to state and municipal employees across the nation to the same degree as their heterosexual counterparts.


