Access to Employer-Sponsored Health Coverage for Same-Sex Spouses: 2018 Update

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Using the latest data from our annual Employer Health Benefits Survey (EHBS), we assessed access to employer sponsored health insurance (ESI) coverage for same sex spouses in 2018, as well as trends over time; ESI remains the primary way people in the U.S. receive health coverage, either directly or as a spouse or other dependent. We found that while access to same sex-spousal coverage through ESI is increasing, it remains significantly less common than the offer of opposite sex spousal coverage. In 2018, nearly two-thirds (63%) of employers offering health insurance to opposite sex spouses also offered coverage to same sex spouses and the share of employees with such access has increased over time so most (88%) now have access. These increases follow two Supreme Court rulings (United States v Windsor and Obergefell v Hodges) which changed the legal landscape for same-sex couples, ultimately guaranteeing the right to marriage nationwide and paving the way for wider access to health insurance through the workplace. Still, neither court decision requires private employers to offer this benefit and tracking access through ESI remains important.

Findings

Firms Offering

In 2018, nearly two-thirds (63%) of firms offering health insurance coverage to opposite-sex spouses also provided coverage to same-sex spouses, a significant increase from 43% in 2016 (see Figure 1). The share of firms reporting that they do not provide such coverage (6% in 2018) also declined significantly from 2016 (when it was 16%). Just under a third (31%) of firms reported they had not encountered this as a benefits issue, a finding driven by small employers (those with fewer than 200 workers), who represent the majority of employers overall (98%).

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The likelihood of employers offering both opposite sex spousal coverage and same-sex spousal coverage increases with firm size (see Figure 2). Large firms (those with 200 or more employees) were more likely to offer coverage to same-sex spouses compared to smaller firms (87% vs 62%). Almost nine in ten (87%) large firms with opposite-sex spousal coverage offered such coverage, 9% did not, and 4% reported they had not encountered this benefits issue. Among the largest firms (those with more than 1,000 workers), 93% offered coverage to same-sex couples. By contrast, just 62% of small employers (3-199 workers) offered coverage to same-sex spouses. Six (6%) percent did not and 32% said they had not encountered it.
Covered Workers

While the majority of firms in the United States are small, the majority of covered workers are employed by large firms (200 or more workers) (see Figure 3). In 2018, among employees who worked at firms offering opposite-sex spousal health benefits, 88% also had access to same-sex spousal coverage, up significantly from 84% in 2016 and 2017 (see Figure 4). Six percent (6%) did not have access to this benefit, and 6% worked at firms who reported they had not encountered this benefits issue.
As with firms offering, the share of employees with access to same-sex spousal coverage increases with firm size (see Figure 5). Most covered workers (95%) 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. 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), nearly all (97%) had access to same-sex spousal coverage.

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 (72%). Nine percent (9%) did not have access to this benefit and another 19% worked at firms that report they have not encountered this issue.

**Domestic Partner Benefits**

Prior to the 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, as was the case in 2016 and 2017, we found no statistical difference between the share of large firms offering same-sex domestic partner health coverage in 2018 compared to 2012, among large firms offering health benefits. Further, almost all (96%) large firms offering same-sex domestic partner health benefits also offer same-sex spousal benefits; 66% of large firms offering same-sex spousal coverage offer same-sex domestic partner coverage. Additional data on domestic partner benefits can be found in the full EHBS survey.7

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*Estimate is statistically different from estimate 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.

Conclusion

These findings indicate that access to employer coverage for same-sex spouses is increasing in the U.S., though it still is significantly less than access to opposite sex spousal coverage. Coverage varies significantly by employer size, with employees at small firms being less likely to have access to same-sex spousal coverage and the largest employers almost uniformly offering this benefit. In some cases, lack of access to this benefit could be a policy decision though that appears to be declining, with smaller shares of firms saying they do not provide same sex spousal coverage. 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 annual survey was conducted between January and July of 2018 and included 2,160 randomly selected, non-federal public and private firms with three or more employees. In 2018, the response rate among firms which offer health benefits was 32%. For fuller methods see The Kaiser Family Foundation 2018 Annual Employer Health Benefits Survey available at: www.kff.org/ehbs.
Appendix

Case Background for Supreme Court Cases

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 heterosexually married couples. While some employers offered domestic partner benefits for same-sex partners⁸ and a growing number of states began to recognize same-sex marriage⁹, in 2012, less than half of all workers with health coverage had access to same-sex health benefits.¹⁰ 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.¹¹ *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 spouses¹², 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.¹³ In addition, an increasing number of states (22 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.¹⁴ Furthermore, employers who refuse to offer same-sex spousal coverage while providing coverage to opposite-sex spouses could face legal challenges. Still, employers are not required to provide same-sex spousal coverage parity to their employees.
Endnotes


2 Additional detail about these Supreme Court cases is available in the Appendix.

3 This increase was driven by the smallest firms so this finding may have some year-to-year volatility based on the mix of small firms sampled.


12 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.
