

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EMMA GOIDEL, on behalf of herself and all
others similarly situated,

Plaintiff,

-against-

AETNA INC.;

Defendant.

**CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

1. Plaintiff Emma Goidel, by and through her attorneys, Emery Celli Brinckerhoff Abady Ward & Maazel LLP and the National Women's Law Center, on behalf of herself and others similarly situated, for her Complaint alleges, upon personal knowledge as to herself and information and belief as to other matters, as follows:

PRELIMINARY STATEMENT

2. This class action challenges Aetna's discriminatory health insurance policy that, on its face, engages in sex discrimination by denying LGBTQ (lesbian, gay, bisexual, transgender, queer, intersex, or non-binary) individuals equal access to fertility treatment.

3. Plaintiff Emma Goidel and her spouse, like many LGBTQ individuals, want to have children. And, like many LGBTQ individuals, Ms. Goidel cannot conceive through intercourse with her partner and can become pregnant only through fertility treatments such as intrauterine insemination ("IUI") and in vitro fertilization ("IVF").

4. Ms. Goidel and her spouse are enrolled in Aetna's Student Health Plan for Columbia University ("the Policy"), which provides broad coverage for IUI and IVF.

5. Aetna's Policy provides immediate coverage, without any out-of-pocket cost, to individuals based on their representation that they have not gotten pregnant after having unprotected sex for 12 months.

6. But Aetna's same Policy requires individuals who cannot conceive through intercourse due to their sexual orientation or gender identity to pay *out of pocket* for 12 cycles of IUI *before* Aetna will provide them with coverage for fertility treatments.

7. Because of Aetna's Policy, Ms. Goidel and her spouse, and all other similarly situated LGBTQ individuals, have been forced to pay tens of thousands of dollars out of pocket—in Ms. Goidel's case, nearly \$45,000 for one successful pregnancy—that others are not required to pay in order to become pregnant.

8. Aetna's Policy language openly discriminates against Plaintiff and other LGBTQ individuals based on their sexual orientation and gender identity and violates their rights under Section 1557 of the Patient Protection and Affordable Care Act (“ACA”), the New York State Human Rights Law (“NYSHRL”), and the New York City Human Rights Law (“NYCHRL”).

9. Aetna's discriminatory Policy is an illegal tax on LGBTQ individuals that denies the equal rights of LGBTQ individuals to have children.

10. At best, these individuals incur great costs due to Aetna's Policy language.

11. At worst, these exorbitant costs are prohibitive and entirely prevent people who are unable to shoulder them—disproportionately LGBTQ people of color—from becoming pregnant and starting a family.

12. In addition to financial injury, Aetna's Policy has caused Ms. Goidel and other LGBTQ individuals to suffer significant physical and emotional harm.

13. Aetna's discrimination is deliberate. It has continued to enforce this discriminatory Policy against Ms. Goidel and other LGBTQ individuals despite the passage of Section 1557, despite the clear definition of sex discrimination under federal and state law to include LGBTQ individuals, and despite being specifically informed by the New York State agency that regulates Aetna and other health insurance issuers that such health insurance policies constitute illegal discrimination on the basis of gender identity and sexual orientation.

14. Plaintiff brings this case now, on behalf of herself and all others who are unable to conceive through intercourse due to their sexual orientation or gender identity, to end Aetna's willful disregard of federal and state nondiscrimination law by prohibiting Aetna from implementing and enforcing this discriminatory policy in its New York student health plans.

JURISDICTION AND VENUE

15. This Court has jurisdiction under 28 U.S.C. § 1331. This action arises under 42 U.S.C. § 18116(a).

16. This Court has supplemental jurisdiction over the pendent state and city law claims under 28 U.S.C. § 1367(a).

17. The acts complained of occurred in the Southern District of New York, and venue is lodged in this Court under 28 U.S.C. § 1391(b).

THE PARTIES

18. Plaintiff **EMMA GOIDEL** is a 31-year-old woman and is a citizen of the United States. At all relevant times, Ms. Goidel has been a resident of New York State, and she has had health insurance provided through the Columbia University student health plan supplied and administered by Aetna, Inc.

19. Defendant **AETNA INC.** ("Aetna") is a company incorporated under the laws of the State of Connecticut and whose principal place of business is in Hartford,

Connecticut. Aetna is an insurance provider that supplies and administers health insurance plans for educational institutions, employers, and individuals in New York State. Aetna operates its business throughout the United States, including in the State of New York.

20. Aetna receives federal financial assistance including through credits, subsidies, and/or contracts of insurance. For example, Aetna provides coverage of medical services in exchange for payments through Medicaid. At all relevant times, Aetna has provided and administered student health plans for all Columbia University students, spouses, and dependents, throughout all Columbia University schools, who choose to enroll in health insurance through the university. Aetna also provides and administers student health plans for numerous other colleges and universities in the State of New York.

FACTUAL ALLEGATIONS

I. Aetna's Discriminatory Policy

21. Since May of 2019, Ms. Goidel and her spouse have been enrolled in the Policy.¹

22. At all relevant times, Ms. Goidel's spouse was a Columbia University student, and Ms. Goidel was enrolled under the Policy as her spouse's dependent.

23. Under the Policy, Aetna covers "services for the diagnosis and treatment (surgical and medical) of infertility" for enrollees between the ages of 21 and 44 (inclusive).

24. "Infertility" is defined under the Policy as:

a disease or condition characterized by the incapacity to impregnate another person or to conceive, defined by the failure to establish a clinical pregnancy ***after 12 months of regular, unprotected sexual intercourse or therapeutic donor insemination***, or after six (6) months of regular, unprotected sexual

¹ See Aetna, Aetna Student Health Plan Design and Benefits Summary: Columbia University, Policy No. 704502 (Policy Year 2020–2021), <https://www.aetnastudenthealth.com/schools/columbia/pdfs2021.pdf>.

intercourse or therapeutic donor insemination for a female 35 years of age or older.

25. This means that there are only two ways to meet Aetna's definition of infertility for those under age 35: (1) "12 months of regular, unprotected sexual intercourse" or (2) 12 months of "therapeutic donor insemination" (e.g., IUI²). For those age 35 and over, the same conditions apply, but the number of months is reduced to 6.

26. Under this Policy, an individual who has the capacity to become pregnant through sexual intercourse with their partner can demonstrate infertility by simply representing to Aetna that they have had 12 or 6 months, depending on their age, of "regular, unprotected sexual intercourse" without a pregnancy.

27. Aetna imposes no out-of-pocket cost for such individuals to meet Aetna's definition of infertility.

28. But for Ms. Goidel and other LGBTQ individuals, the only way to meet Aetna's definition of infertility is to pay for 12 or 6 months of IUI, depending on their age.

29. Aetna therefore imposes significant out-of-pocket costs on such LGBTQ individuals that it does not impose on others before allowing LGBTQ individuals to qualify for Aetna's insurance coverage for fertility treatment.³

30. Once a member qualifies for coverage under the Policy, Aetna covers "basic infertility services."

² Intrauterine insemination ("IUI") "is a procedure that places sperm past the cervix and in a woman's uterus around the time of ovulation." *Intrauterine Insemination (IUI)*, Am. Soc'y for Reprod. Med., <https://www.reproductivefacts.org/news-and-publications/patient-fact-sheets-and-booklets/documents/fact-sheets-and-info-booklets/intrauterine-insemination-iui/> (last revised 2016).

³ For purposes of this complaint, the terms "fertility" services or treatment and "infertility" services or treatment will be used interchangeably. Plaintiff seeks equal access to services that will enable her to get pregnant, which she will refer to as fertility services or treatments, but those services are defined by Aetna to be "infertility" services or treatments as part of its infertility program.

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