



New York Prohibits Reproductive Health Decision-Making Discrimination

Insights

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Following in the footsteps of New York City, which earlier this year prohibited employers from discriminating against applicants or employees based on their sexual and reproductive health decisions, New York State has followed suit and passed its own law. On November 8, 2019, Governor Cuomo signed a bill prohibiting employers from discriminating against an employee based on the employee's or dependent's "reproductive health decision making." Both the State and City law seek to counteract the federal government's efforts to curtail reproductive healthcare access. The recently passed state law has several legal requirements that New York employers should be aware of.

What Does The New Law Prohibit and Require?

The new law, which adds Section 203-e to the New York Labor Law, defines "reproductive health decision making" as "including, but not limited to, the decision to use or access a particular drug, device or medical service without the employee's prior informed affirmative written consent." Under the new law, employers may not:

- Access information regarding reproductive health decision making of an employee or their dependent;
- Discriminate or take any retaliatory action against an employee with respect to compensation, terms, conditions, or privileges of employment because of the employee's or their dependent's reproductive health decision making, including, but not limited to, a decision to use or access a particular drug, device or medical service;
- Require an employee to sign a waiver or other document which purports to deny an employee the right to make their own reproductive health care decisions; or
- Retaliate against any employee for exercising any rights granted under the new statute.

The new law also contains a notice provision. Employers who provide an employee handbook are now required to provide notice of employee's "rights and remedies" under Section 203-e in their employee handbook. The New York State Department of Labor has not yet provided guidance as to what constitutes must be included in this notice of rights, but the agency may issue such guidance in the future.

Lastly, the new law makes clear that it shall not be construed to limit the rights that any employee may have through a collective bargaining agreement.

What Are The Penalties For Violating The New Law?

Violation of this new law comes with steep consequences. The law includes a private right of action allowing employees to file suit against their employer for violations. An aggrieved employee may be entitled to monetary damages, including back pay and benefits, as well as attorneys' fees and costs.

A court may also award liquidated damages unless the employer "proves a good faith basis to believe that its actions" were complied with the law. Finally, a court may afford injunctive relief to the employee and/or award reinstatement.

What Should New York Employers Do?

The new law took effect immediately upon its November 8 enactment, so you need to take immediate steps to ensure that human resources personnel, supervisors, and managers are trained regarding this new law. Further, you must revise your employee handbooks to include a section providing a notice of your employees' rights and remedies under the new law.

We will continue to monitor further developments, including if the Department of Labor provides any guidance on the "notice" requirement in employee handbooks, so you should ensure you are subscribed to [Fisher Phillips' alert system](#) to gather the most up-to-date information. If you have any questions, please contact your Fisher Phillips attorney or any attorney in our [New York City office](#).

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