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New York State Bans Discrimination Based on Reproductive Health Decisions

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Effective immediately, the New York Labor Law includes a section banning discrimination based on an employee's "reproductive health decision making." Prior to Governor Andrew Cuomo signing this bill into law, New York City had already added "sexual and reproductive health decisions" to its ever-growing list of protected categories under the New York City Human Rights Law earlier this year (detailed in a previous [alert](#)).

However, New York State's law goes further than the City's law and requires employers to amend their employee handbooks to provide notice to employees of their rights and remedies under this anti-discrimination law. Employers should also ensure that the proper management and Human Resources personnel are aware of the new law and that company processes will maintain the confidentiality of employee reproductive health decisions and medical records.

What Does the Law Prohibit?

The new law bans discrimination based on an employee's "reproductive health decision making," which is broadly defined as "including, but not limited to, the decision to use or access a particular drug, device or medical service." The law prohibits an employer from:

- Accessing an employee's personal information regarding the employee's reproductive health decisions or those

of the employee's dependents, without the employee's prior informed affirmative written consent;

- Discriminating or taking any retaliatory action against an employee based on the employee's reproductive health decisions or those of the employee's dependents; and
- Requiring an employee to sign a waiver or other document which purports to deny the employee the right to make his or her own reproductive health care decisions.

Penalties

The law allows employees to bring a civil action in court for any violation. Employee remedies against any employer that "commits or proposes to commit" a violation of this law include, but are not limited to, back pay, benefits and reasonable attorneys' fees and costs, as well as injunctive relief and/or reinstatement. Additionally, if successful in a civil court action, an employee may recover liquidated damages equal to 100 percent of any damages awarded "unless the employer proves a good faith basis to believe that its actions . . . were in compliance with the law."

The new law also provides for civil penalties (the amount of such penalties are unspecified) for retaliation against an employee for bringing

a complaint under the law. Retaliation is defined as “discharging, suspending, demoting, or otherwise penalizing” an employee for (a) “making or threatening to make a complaint to an employer, a co-worker, or to a public body” that an employer violated the law; (b) “causing to be instituted any proceeding under or related to” the law; or (c) “providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry into any such violation” of the law.

Next Steps for Employers

The new law states that employers who provide employee handbooks *must* include in their materials a notice of employee rights and remedies under the law. While the State has not yet provided guidance on the form of the required notice, the law is in effect and employers should take steps immediately to (1) confirm that their employee handbooks include reproductive health decisions as a protected category and (2) amend their employee handbooks to affirm that medical records will remain private and that retaliation for employee reproductive health decisions is prohibited. Employers should also ensure that supervisors, managers, and Human Resources employees are aware of the new law and that the company has a process in place to maintain the confidentiality of employee reproductive health decisions and medical records.

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