

Client Alert

New York State Prohibits Employers from Discriminating or Retaliating Against Employees Based on Their (or Their Dependents’) Reproductive Health Decisions

December 30, 2019 – On November 8, 2019, Governor Cuomo signed a bill amending and adding [Section 203-e](#) to New York State Labor Law, which prohibits employers, regardless of size, from discriminating or retaliating against employees based on their or their dependents’ reproductive health decisions, and provides a number of remedies for such violations. Section 203-e is *already* in effect, meaning, to comply with this new law, all employers must immediately update their employment handbooks and training materials to provide proper notice to their employees of their rights and remedies pursuant to this new section of law.

The amendment to the New York State Labor Law comes less than one year after the [New York City Human Rights Law was amended](#) to add “sexual and other reproductive health decisions” to the list of protected categories.

Prohibitions of Section 203-e

Though it follows in the footsteps of the New York City precedent, Section 203-e actually adds greater statutory protections for employees, by specifically **prohibiting** employers from:

- Accessing an employee’s personal information regarding that employee’s or that employee’s dependents’ reproductive health decision-making, 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;
- Requiring 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, including the use of a particular drug, device or medical service; and
- Discriminating or taking any retaliatory action against an employee with respect to compensation, terms, conditions, or privileges of employment regarding an employee’s or an employee’s dependents’ reproductive health decision-making.

Employees' Right to Bring a Civil Action

Section 203-e also provides employees the right to bring a civil action where a court may award damages and other equitable relief for violations of the law, including, but not limited to, back pay, benefits and reasonable attorney's fees and costs incurred in litigation; injunctive relief against an employer for violating this law; reinstatement; and liquidated damages equal to one hundred-percent of the award for damages (unless an employer proves a good faith basis to believe that its actions were in compliance with the law). Furthermore, any act of retaliation shall subject the employer to *separate* additional civil penalties.

Employers Must Update Their Employee Handbooks

Importantly, Section 203-e specifically states that, if an employer provides an employee handbook to its employees, the handbook must be updated to include a notice of employee rights and remedies under this new section of law.

We anticipate that the New York State Department of Labor will provide further guidance regarding the form and substance of the statutory notice to be provided to employees in employee handbooks including, potentially, the actual form to be utilized.

However, in order immediately to comply with Section 203-e, all New York State employers should proceed with updating their handbooks and policies to provide notice to their employees of their rights and remedies under this law, including, but not limited to, affirming the privacy of employees' (and their dependents') medical records (and protecting against inadvertent disclosures), adding the protected characteristic to all employment materials where applicable, and stressing that discrimination and retaliation based on an employee's or a dependent's reproductive health decisions are strictly prohibited by the employer as well as applicable law.

If you require any assistance regarding drafting or revising employee handbooks, policies, and training materials, to ensure compliance with New York State Labor Law, please contact us.

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