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## New York Reproductive Health Decision Law Requires Employee Handbook Update

New York Labor Law Section 203-e has been amended to forbid discrimination based on an employee's "reproductive health decision making." The new law, which went into effect in November 2019, requires New York employers to update their employee handbooks to inform employees of their rights and remedies under new regulations that ban discrimination and retaliation based on an employee's or a dependent's reproductive health decision making. Notably, earlier in 2019, New York City amended the New York City Human Rights Law to add "sexual and reproductive health decisions" to its list of protected categories. The new state law effectively extends such protection statewide.

The new Labor Law amendments are intended to ensure that employees and their dependents can make their own reproductive health care decisions without the risk of adverse employment consequences. For example, the Affordable Care Act requires health insurers to cover birth control methods approved by the Food and Drug Administration, with no out-of-pocket costs. However, more than 100 federal lawsuits have been filed by employers seeking to opt out of providing this benefit, citing religious or other personal beliefs. The amendments to New York's Labor Law are intended to eliminate this type of action.

### Prohibited Conduct

Section 203-e defines "reproductive health decision making" as "including, but not limited to, the decision to use or access a particular drug, device or medical service." Under the new section:

- An employer may not require an employee to sign a waiver or document that would deny the employee the right to make their own reproductive health decisions.
- An employer may not discriminate or retaliate against an employee with respect to compensation, terms, conditions or privileges of employment based on reproductive health decisions.
- An employer may not access an employee's personal information regarding the employee's (or dependent's) reproductive decisions without the employee's prior informed affirmative written consent.

### Penalties for Violating the Law

The new law allows for private civil actions in which a court may award employees damages for violations that include back pay, benefits, reasonable attorney's fees and costs, reinstatement and injunctive relief. An employee may also recover liquidated damages equal to 100% of any damages awarded (essentially, double

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damages) “unless the employer proves a good faith basis to believe that its actions ... were in compliance with the law.”

An employer determined to have retaliated against an employee exercising rights granted by the new law will be subject to separate civil penalties. Retaliation is defined as “discharging, suspending, demoting, or otherwise penalizing an employee” for making or threatening to make a complaint that her rights under the law have been violated, or providing information or testimony to investigators conducting a hearing or inquiry into alleged violations by the employer.

### Next Steps for Employers

Employers that provide employee handbooks to their workforce must update the publication to include “a notice of employee rights and remedies” under Section 203-e. The new law offers no specific directions about the language or content of the notice, however; the state is expected to (but has not yet) issued separate guidance.

Until such state guidance is issued, New York employers should promptly review their employee handbooks to add information about Section 203-e’s requirements based on the language of the section, and statements that reproductive health decisions are now a protected category and that discrimination and retaliation based on those decisions is prohibited. Employers should also include information about the new law in their annual training materials. Once the state guidance has been issued, we will send an update.

### Related Professionals

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