

Legislative Update NOVEMBER 2019*

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NEW YORK STATE LAW NOW PROHIBITS DISCRIMINATION BASED ON REPRODUCTIVE HEALTH DECISION MAKING, AND REQUIRES EMPLOYERS TO NOTIFY EMPLOYEES OF THEIR RIGHTS AND REMEDIES UNDER THIS NEW LAW

On November 8, 2019, Governor Cuomo signed into law a new section (203-e) to the State's Labor Law. Section 203-e prohibits discrimination and retaliation based on reproductive health decision-making of an employee or an employee's dependent, including but not limited to a decision to use or access a particular drug, device or medical service. The new law prohibits employers from:

- Accessing an employee's personal information regarding reproductive health decisions of the employee or his or her dependent, without prior informed affirmative written consent.
- Discriminating or taking any retaliatory personnel action against an employee with respect to compensation, terms, conditions or privileges of employment because of or based on the reproductive health decisions of the employee or the employee's dependent.
- Requiring an employee to sign a waiver or other document that purports to deny employees the right to make their own reproductive health care decisions.

Under this new law: "An employer that provides an employee handbook to its employees must include in the handbook notice of employee rights and remedies under this section."

The law permits an employee to bring a lawsuit for back pay, benefits, and reasonable attorney fees and costs, as well as reinstatement and injunctive relief against any employer that "commits or proposes to commit" a violation of this law. A court may award liquidated damages "equal to 100% of the award for damages ... unless the employer proves a good-faith basis to believe that its actions ... were in compliance with the law." The law also provides for additional penalties against any employer that retaliates against an employee for bringing a complaint under the law. Retaliation is defined as "discharging, suspending, demoting or otherwise penalizing" an employee for making or threatening to make a complaint, instituting a proceeding, or "providing information to or testifying before any public body conducting an investigation, hearing or inquiry."

Source: SHRM

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