

## New Legislation Prohibits Employment Discrimination Based on Reproductive Health Decision Making

On November 8, 2019, Governor Cuomo signed legislation that provides certain protections for employees based on “reproductive health decision making.” Under the new legislation, which is codified in New York Labor Law Section 203-e, “reproductive health decision making” includes, but is not limited to, “the decision to use or access a particular drug, device or medical service” related to reproductive health. Simply put, employers in New York cannot take adverse employment actions against employees based on decisions such as obtaining fertility-related medical procedures, using birth control drugs or contraceptive devices, or having an abortion.

The law prohibits employers from accessing an employee’s personal information regarding the employee’s, or the employee’s dependent’s, reproductive health decision making without the employee’s prior informed affirmative written consent. The law prohibits employers from discriminating against or taking retaliatory action against an employee with respect to compensation, terms, conditions, or privileges of employment because of or on the basis of the employee’s, or his/her dependent’s, reproductive health decision making. An employer also may not require an employee to sign a waiver or other document that attempts to deny the employee the right to make their own reproductive health decisions.

The law gives employees the right to file a claim in court against an employer alleged to have violated the prohibition on discrimination based on reproductive health decision making. Employers are prohibited from retaliating against employees who exercise their right to: (1) make or threaten to make a complaint to an employer, a co-worker, or to a public body, that the employer violated the law; (2) causing to be instituted any proceeding under the law; or (3) providing information to or testifying before any public body conducting an investigation, hearing, or inquiry into any alleged violation of the law. Prohibited retaliatory actions include discharging, suspending, demoting, or otherwise penalizing an employee for engaging in these protected actions.

The new law also requires employers that provide an employee handbook to their employees to include in the employee handbook a notice of employee rights and remedies under New York Labor Law Section 203-e. So, employers that have employee handbooks should promptly revise their handbooks to comply with this new requirement.

Employers should train their supervisors and managers on these changes in the law. Additionally, employers should refrain from asking any questions to employees or making any comments about reproductive health decisions.

If you have any questions about this Information Memo, please contact [Stephanie H. Fedorka](#), any of the [attorneys](#) in our [Labor and Employment Law Practice](#), or the attorney in the firm with whom you are regularly in contact.



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