



## *New York State Bans Discrimination Based on Reproductive Health Decision Making*

On November 8, 2019, Governor Cuomo signed into law an amendment to the New York State Labor Law banning employment discrimination based on an employee's "reproductive health decision making" or that of an employee's dependents. The law adds a new Section 203-e to the New York State Labor Law and yet another category to the ever-increasing list of characteristics protected from employment discrimination. It also follows a similar law enacted in New York City last year. The new law, which took effect upon signing by the Governor, can be found [here](#).

### **What Does the New Law Prohibit?**

The new law defines "reproductive health decision making" 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 for Violating the Law**

The law allows employees to bring a civil action in court for any violation. Available remedies include, but are not

limited to, back pay, benefits, reasonable attorneys' fees and costs, reinstatement and injunctive relief. Liquidated damages equal to 100 percent of any damages awarded may also be recovered, unless an employer proves a good faith basis to believe that its actions in violation of the law were in compliance with it.

The law also subjects employers to a civil penalty in an unspecified amount for any retaliation against an employee for exercising his or her rights under the law. Retaliation is defined as discharging, suspending, demoting or otherwise penalizing an employee for (1) making or threatening to make a complaint to an employer, co-worker or a public body; (2) instituting a proceeding under, or related to, the law; or (3) providing information to, or testifying before, any public body conducting an investigation, hearing or inquiry into any violation of the law.

### **Additional Requirements**

Similar to the New York State Paid Family Leave Benefits Law, the new law requires that employers with employee handbooks must include in their handbooks notice of employees' rights and remedies under the law. The State has not yet issued any guidance about the form of the notice that is required, nor is it known at this time if the State will do so. However, as the law took effect on November 8, 2019, employers should take immediate steps to comply with the notice requirements, including amending their handbooks by (1) adding reproductive health decision making as a protected class, including a statement affirming the privacy of medical records and, specifically, matters related to reproductive health; (2) stating that retaliation is prohibited; and (3) listing the



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rights and remedies available to employees under the law. Employers should also ensure that human resources personnel and supervisors are trained about the new law and take appropriate steps to maintain the confidentiality of employees' reproductive health decisions and those of employees' dependents.

#### Additional Assistance

*Should you have any questions regarding New York State's additional anti-harassment guidance, or any other labor and employment matter, please contact any of the attorneys on our Labor & Employment Practice Team. ■*

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