



Labor, Employment & Employee Benefits

NY Discrimination Law Expanded to Protect Employee's Reproductive Health Decisions: Update to Employee Handbooks Required

Syracuse ♦ Ithaca ♦ New York City

January 2020

New York has expanded its protection of employee rights to include an employee's (and their dependent's) right to make decisions concerning their reproductive health. Specifically, the law prohibits an employer from taking any discriminatory or retaliatory action against an employee because the employee or an employee's dependent has made any health decision relating to their reproductive rights. Such decisions could include an employee's or their dependent's use of any particular drug, device or medical service concerning their reproductive health. The law is therefore designed to ensure that an employee's, or their dependent's, decision to use birth control or receive abortion services, cannot adversely affect their employment.

The new law dictates that employers cannot terminate, demote, or adversely affect an employee's work duties or other terms and conditions of employment as a result of the employee's or their dependent's reproductive healthcare decisions. The law further prohibits employees from waiving their rights to any reproductive healthcare decisions. The new law also prohibits employers from gaining access to an employee's or their dependent's personal information relating to reproductive healthcare decisions without the employee's informed written consent.

Employees proving a violation of this new law may recover substantial damages, including:

1. an award of back pay, lost benefits and their reasonable attorneys' fees;
2. injunctive relief;
3. an order of reinstatement; and/or
4. an award of "double damages," unless the employer can prove a good faith basis to believe that its actions were in compliance with the law.

Significantly, the new law also mandates that employers include in their employee handbooks a notice to their employees about their rights and remedies under the law. Consequently, employers should review their employee manuals for necessary updates and specifically include a section addressing an employee's rights and remedies under this law.

Employers should also ensure that all management personnel are familiar with the law, and that all information relating to an employee's reproductive decision-making cannot be accessed.

If we can provide you with additional insight and information regarding changes to the law and how they may impact your business, please contact :

John L. Valentino ♦ 315.701.6308 ♦ JValentino@bhlawpllc.com

