

Labor & Employment Law Alert: New York State Prohibits Discrimination Based Upon Reproductive Health Decision Making

New York State recently enacted a new provision of the New York State Labor Law, Section 203-e, which prohibits employers from discriminating against employees based upon either the employee's or a dependent's reproductive health decision making.

The new law, which took effect November 8, 2019, defines reproductive health decision making as including but not being limited to "the decision to use or access a particular drug, device or medical service." Under Section 203-e, employers are prohibited from:

- Accessing either an employee's, or an employee's dependent's, information concerning reproductive health decision making without the employee's prior affirmative, informed and written consent;
- Discriminating against employees on the basis of reproductive health decision making by them or their dependents;
- Retaliating against an employee, which includes but is not limited to termination, suspension, demotion or otherwise penalizing the employee on the basis of his or her reproductive health decision making; and
- Requiring an employee to sign a waiver which denies the employee the right to make his or her own reproductive health care decisions.

Section 203-e provides employees the right to file a claim in court for an employer's alleged violation of the above restrictions. If an employer is found to have violated the statute, a court may award the employee damages, including back pay and benefits, order reinstatement and/or grant injunctive relief against the employer. Additionally, a court may award liquidated damages totaling 100% of the damages award unless the employer "proves a good-faith basis to believe that its actions...were in compliance with the law."

The new law requires employers that provide a handbook to employees to include in the handbook a notice of employees' rights and remedies under the law. Therefore, employers should revise their handbooks to ensure that employees' rights and remedies under Section 203-e are included and also ensure that reproductive health decision making is included in handbooks as a protected category. Additionally, employers should ensure that managers and supervisors are trained on these new requirements.

As employers navigate these issues, our Firm's labor and employment attorneys are standing by to provide legal advice.

