

## Employment Counseling & Litigation

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# New York State Prohibits Discrimination Based on Reproductive Health Decisions

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### What You Need To Know:

- Per recent legislation, New York state now prohibits discrimination based on an employee's or an employee's dependent's "reproductive health decision making."
- The new law also prohibits employers from accessing an employee's personal information regarding reproductive health decision making without written consent, or requiring an employee to sign any document denying the employee the right to make his or her own reproductive health care decisions.
- As of January 7, 2020, employers that have employee handbooks are required to include information regarding rights and remedies under the law in their handbooks.

As of November 8, 2019, New York state law prohibits discrimination based on an employee's or an employee's dependent's "reproductive health decision making." The new state law expands upon the New York City Human Rights Law ban, enacted earlier this year, that prohibits discrimination based on "sexual and reproductive health decisions."

#### What the State Law Prohibits

The state law, which can be found in Section 203-e of the New York State Labor Law, prohibits an employer from:

1. 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;
2. Discriminating or taking retaliatory personnel 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 the employee's dependent's reproductive health decision making;
3. Requiring an employee to sign a waiver or other document which purports to deny an employee the right to make their own reproductive health care decisions.

#### Required Action by Employers

In an unusual provision, the new law requires employers that provide an employee handbook to their employees to include in the handbook notice of the employee's rights and remedies under the law. This requirement takes effect on January 7, 2020.

#### The Takeaway

Employers should promptly update their employee handbooks to amend the list of protected classes, provide the required notice, and specify that retaliation for exercising rights under the law is prohibited. In addition, employers should train supervisors and human resources personnel regarding the new law, and ensure those individuals do not make employment-related decisions based upon reproductive health choices. Lowenstein Sandler's Employment Law Practice Group members regularly draft and update employee handbooks and counsel employers on legal compliance matters. We would be pleased to address any questions you may have.

# Contacts

Please contact the listed attorneys for further information on the matters discussed herein.

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