

New York City Law Protects Employees from Reproductive Health Decision Discrimination

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On January 20, 2019, [Int. No. 863-A](#) (“Law”), which, among other things, prohibits employment discrimination based on an individual’s sexual and reproductive health choices, became law following the New York City Council’s approval of the measure last month. Effective May 20, 2019, the Law expands the already significant list of protected categories under the New York City Human Rights Law (“NYCHRL”).

Covered Services

Under the Law, sexual and reproductive health decisions encompass “any decision by an individual to receive services, which are arranged for or offered or provided to individuals relating to sexual and reproductive health, including the reproductive system and its functions,” such as:

- fertility-related medical procedures;
- sexually transmitted disease prevention, testing, and treatment; and
- family planning services and counseling, such as birth control drugs and supplies, emergency contraception, sterilization procedures, pregnancy testing, and abortion.

The Law, which applies to New York City employers with four or more employees, does not require covered employers to provide specific reproductive health benefits. Rather, it focuses on protecting employees from discrimination based on their sexual and reproductive health choices. New York City law has been at the forefront in establishing anti-discrimination and accommodation requirements related to disability and pregnancy, some of which will overlap with certain aspects of the Law.¹

¹ For more information, please see the Epstein Becker Green *Act Now* Advisories titled “[New Disability Discrimination Guidance Sheds Light on New York City’s ‘Cooperative Dialogue’ Requirements](#)” and

Enforcement

The Law will be enforced by New York City's Commission on Human Rights ("Commission"). An employee alleging a violation of the Law may either file a complaint with the Commission or proceed directly to court. As with other claims brought under the NYCHRL, actions must be brought to the Commission within one year or filed in court within three years of the alleged violation.

Under the NYCHRL, civil penalties may be imposed for violations, with greater penalties (up to \$250,000) available for willful, wanton, or malicious acts. If filed in court, the plaintiff could seek damages, including punitive damages, injunctive relief, attorneys' fees, and costs.

What Employers Should Do Now

- Revise equal employment opportunity statements and policies in handbooks, employment applications, and elsewhere that list the categories protected from discrimination, harassment, and retaliation to include "sexual and other reproductive health decisions."
- Train human resources personnel, as well as supervisors and managers, on any changes made to current policies and practices pursuant to the Law, including topics such as permissible interview questions and what may or may not be included in job postings.

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["New York City Council Enacts Mandatory Lactation Accommodation for Employees, Including a Written Policy."](#)

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