

New York Law Prohibits Discrimination Based on Employees' Reproductive Health Decisions

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On November 8, 2019, Governor Cuomo signed [A584/S660](#) ("Law") into law, one bill in a series of legislation meant to protect reproductive health rights. Under the Law, all New York employers are prohibited from discriminating against an employee based on the employee's sexual and reproductive health choices. With the exception of the notice requirement (described below), the Law became effective immediately.

Employee Protections

Specifically, the Law amends the New York Labor Law to prohibit employers from:

- Accessing personal information regarding either the employee's or the employee's dependent's reproductive health decision-making without prior informed affirmative consent. This information may include, but is not limited to, the decision to use or access a particular drug, device, or medical service;
- Discriminating or retaliating against an employee on the basis of that employee's or dependent's reproductive health decision-making;
- Requiring employees to sign any document that could deny their right to make reproductive health care decisions; and
- Retaliating against employees who exercise their rights under the Law.

New York employers with employee handbooks are also required to include a notice of employee rights and remedies under the Law. It is unclear whether employers are required to use specific language or provide any further notice beyond a provision in the employee handbook, but the New York Department of Labor may issue further guidance on this matter. A [second bill](#), enacted on November 25, 2019, delayed the effective date for this notice requirement until January 7, 2020.

New York City employers should know that the Law's requirements are in addition to the City's [similar reproductive health discrimination law](#), which went into effect in May 2019.¹

The Law explicitly states that the prohibitions under the Law shall not be construed to limit any rights provided through a collective bargaining agreement.

Enforcement

The Law permits employees to file a civil lawsuit in court for alleged violations of the Law.

Under the Law, the court may award the prevailing employee with damages, including back pay, benefits, attorneys' fees and court costs, as well as injunctive relief. Additionally, courts can order reinstatement of the employee. Employees may also be entitled to an award of liquidated damages, unless the employer can prove it had a "good faith basis" to believe its actions were in compliance with the Law. Finally, employers may also face separate civil penalties should they discharge, suspend, demote, or otherwise penalize an employee for threatening to make or making a complaint, filing a lawsuit, or providing information to an inquiry, investigation, or hearing relating to the employer's violation of the employee's rights under the Law.

What Employers Should Do Now

- Revise employee handbooks to include a notice of employee rights and remedies as provided by the Law, and be on the lookout for further guidance or instructions regarding the form of such notice from the New York Department of Labor.
- 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.
- Consider review of fertility or reproductive health policies, including surrogacy policies.

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¹ For more information, please see the Epstein Becker Green *Act Now* Advisory titled "[New York City Law Protects Employees from Reproductive Health Decision Discrimination](#)."

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