

CLIENT ALERT: Employee Handbook Notices Now Mandated by New York State's Reproductive Health Bias Law

Recent appellate court action has activated a new handbook requirement affecting New York employers. Initially, a lower court issued an injunction blocking certain provisions of the 2019 New York State Reproductive Health Bias Law, which, among other things, protects employee rights to make reproductive health care decisions, including abortion. The law required a notice to employees in any employee handbook, but until recently, that provision was blocked by the injunction. On appeal, the injunction was lifted, and the handbook requirement has been re-activated.

Background

In 2019, New York enacted the New York State's Reproductive Health Bias Law (New York Labor Law Section 203-e), which prohibits, among other things, any discriminatory or retaliatory personnel action against an employee for their or their dependent's reproductive health decision making. Reproductive health decision making includes, but is not limited to, the decision to use or access a particular drug, device or medical service, including abortion.

The law also precludes employers from accessing an employee's personal reproductive health information without their consent. Employers may not require an employee to sign a waiver or other document that purports to deny an employee the right to make their own reproductive health care decisions. Additionally, the law requires that employers with employee handbooks must include a notice of employees' rights and remedies that the law provides.

Employees who believe their rights under the law have been violated may bring a civil action. Damages available include back pay, benefits and reasonable attorneys' fees and costs, injunctive relief, reinstatement and/or liquidated damages (unless it is proven that the employer had a good faith basis to believe that it complied with the law).

When the law passed in 2019, religious organizations filed suit claiming that the mandatory handbook notice provisions violated their First Amendment

freedom of speech. In March 2022, the United States District Court agreed, and granted a permanent injunction enjoining the employee handbook notice requirement.

The permanent injunction remained in place until January 2, 2025, when the United States Court of Appeals for the Second Circuit vacated the injunction and reinstated the law's mandatory handbook language provision.

Impact on Employers

New York employers who maintain an employee handbook are now required to include a notice of employees' rights and remedies under the law. The law does not provide any sample or suggested language, leaving employers to draft their own notices describing the protections set forth in the Reproductive Health Bias Law.

Employers who have questions about New York State's Reproductive Health Bias Law and its requirements – including the employee handbook notice requirement – are encouraged to consult with their MBJ attorney.

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