

1142--A

2015-2016 Regular Sessions

I N A S S E M B L Y

January 8, 2015

Introduced by M. of A. JAFFEE, DINOWITZ, COOK, GALEF, GOTTFRIED, CAHILL, FAHY, CLARK, SCHIMEL, TITUS, MOSLEY, ZEBROWSKI, PICHARDO, SIMON, STECK, BRINDISI, MAYER, SIMOTAS, ARROYO, JOYNER, AUBRY, LINARES, SEAWRIGHT, ABINANTI, SKOUFIS -- Multi-Sponsored by -- M. of A. BARRON, BRENNAN, BROOK-KRASNY, BUCHWALD, CROUCH, DAVILA, DUPREY, GLICK, HOOPER, LUPARDO, MARKEY, PERRY, RIVERA, WRIGHT -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to discrimination based on an employee's or a dependent's reproductive health decision making

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The labor law is amended by adding a new section 203-e to  
2 read as follows:

3 S 203-E. PROHIBITION OF DISCRIMINATION BASED ON AN EMPLOYEE'S OR A  
4 DEPENDENT'S REPRODUCTIVE HEALTH DECISION MAKING. 1. AN EMPLOYER SHALL BE  
5 PROHIBITED FROM ACCESSING AN EMPLOYEE'S PERSONAL INFORMATION REGARDING  
6 THE EMPLOYEE'S OR THE EMPLOYEE'S DEPENDENT'S REPRODUCTIVE HEALTH DECI-  
7 SION MAKING, INCLUDING BUT NOT LIMITED TO, THE DECISION TO USE OR ACCESS  
8 A PARTICULAR DRUG, DEVICE OR MEDICAL SERVICE WITHOUT THE EMPLOYEE'S  
9 PRIOR INFORMED AFFIRMATIVE WRITTEN CONSENT.

10 2. AN EMPLOYER SHALL NOT:

11 (A) DISCRIMINATE NOR TAKE ANY RETALIATORY PERSONNEL ACTION AGAINST AN  
12 EMPLOYEE WITH RESPECT TO COMPENSATION, TERMS, CONDITIONS, OR PRIVILEGES  
13 OF EMPLOYMENT BECAUSE OF OR ON THE BASIS OF THE EMPLOYEE'S OR DEPEND-  
14 ENT'S REPRODUCTIVE HEALTH DECISION MAKING, INCLUDING, BUT NOT LIMITED  
15 TO, A DECISION TO USE OR ACCESS A PARTICULAR DRUG, DEVICE OR MEDICAL  
16 SERVICE; OR

17 (B) REQUIRE AN EMPLOYEE TO SIGN A WAIVER OR OTHER DOCUMENT WHICH  
18 PURPORTS TO DENY AN EMPLOYEE THE RIGHT TO MAKE THEIR OWN REPRODUCTIVE

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 HEALTH CARE DECISIONS, INCLUDING USE OF A PARTICULAR DRUG, DEVICE, OR  
2 MEDICAL SERVICE.

3 3. AN EMPLOYER THAT PROVIDES AN EMPLOYEE HANDBOOK TO ITS EMPLOYEES  
4 MUST INCLUDE IN THE HANDBOOK NOTICE OF EMPLOYEE RIGHTS AND REMEDIES  
5 UNDER THIS SECTION.

6 4. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT ANY RIGHTS OF  
7 AN EMPLOYEE PROVIDED THROUGH ANY OTHER PROVISION OF LAW OR COLLECTIVE  
8 BARGAINING UNIT.

9 5. AN EMPLOYEE MAY BRING A CIVIL ACTION IN ANY COURT OF COMPETENT  
10 JURISDICTION AGAINST AN EMPLOYER ALLEGED TO HAVE VIOLATED THE PROVISIONS  
11 OF THIS SECTION. IN ANY CIVIL ACTION ALLEGING A VIOLATION OF THIS  
12 SECTION, THE COURT MAY:

13 (A) AWARD DAMAGES, INCLUDING BACK PAY, BENEFITS AND REASONABLE ATTOR-  
14 NEYS' FEES AND COSTS INCURRED TO A PREVAILING PLAINTIFF;

15 (B) AFFORD INJUNCTIVE RELIEF AGAINST ANY EMPLOYER THAT COMMITS OR  
16 PROPOSES TO COMMIT A VIOLATION OF THE PROVISIONS OF THIS SECTION;

17 (C) ORDER REINSTATEMENT; AND/OR

18 (D) AWARD LIQUIDATED DAMAGES EQUAL TO ONE HUNDRED PERCENT OF THE AWARD  
19 FOR DAMAGES PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION UNLESS AN  
20 EMPLOYER PROVES A GOOD FAITH BASIS TO BELIEVE THAT ITS ACTIONS IN  
21 VIOLATION OF THIS SECTION WERE IN COMPLIANCE WITH THE LAW.

22 6. ANY ACT OF RETALIATION FOR AN EMPLOYEE EXERCISING ANY RIGHTS GRANT-  
23 ED UNDER THIS SECTION SHALL SUBJECT AN EMPLOYER TO SEPARATE CIVIL PENAL-  
24 TIES UNDER THIS SECTION. FOR THE PURPOSES OF THIS SECTION, RETALIATION  
25 OR RETALIATORY PERSONNEL ACTION SHALL MEAN DISCHARGING, SUSPENDING,  
26 DEMOTING, OR OTHERWISE PENALIZING AN EMPLOYEE FOR:

27 (A) MAKING OR THREATENING TO MAKE, A COMPLAINT TO AN EMPLOYER,  
28 CO-WORKER, OR TO A PUBLIC BODY, THAT RIGHTS GUARANTEED UNDER THIS  
29 SECTION HAVE BEEN VIOLATED;

30 (B) CAUSING TO BE INSTITUTED ANY PROCEEDING UNDER OR RELATED TO THIS  
31 SECTION; OR

32 (C) PROVIDING INFORMATION TO, OR TESTIFYING BEFORE, ANY PUBLIC BODY  
33 CONDUCTING AN INVESTIGATION, HEARING, OR INQUIRY INTO ANY SUCH VIOLATION  
34 OF A LAW, RULE, OR REGULATION BY SUCH EMPLOYER.

35 S 2. This act shall take effect immediately.