

# STATE OF NEW YORK

3791--A

2017-2018 Regular Sessions

## IN SENATE

January 27, 2017

Introduced by Sens. KRUEGER, AVELLA, BAILEY, CARLUCCI, DILAN, HOYLMAN, MONTGOMERY, PARKER, PERALTA, RIVERA, SANDERS, SAVINO, SERRANO, SQUADRON, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- reported favorably from said committee and committed to the Committee on Insurance -- 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 § 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 depen-  
14 dent'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  
19 health care decisions, including use of a particular drug, device, or  
20 medical service.

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

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1 3. An employer that provides an employee handbook to its employees  
2 must include in the handbook notice of employee rights and remedies  
3 under this section.

4 4. An employee may bring a civil action in any court of competent  
5 jurisdiction against an employer alleged to have violated the provisions  
6 of this section. In any civil action alleging a violation of this  
7 section, the court may:

8 (a) award damages, including, but not limited to, back pay, benefits  
9 and reasonable attorneys' fees and costs incurred to a prevailing plain-  
10 tiff;

11 (b) afford injunctive relief against any employer that commits or  
12 proposes to commit a violation of the provisions of this section;

13 (c) order reinstatement; and/or

14 (d) award liquidated damages equal to one hundred percent of the award  
15 for damages pursuant to paragraph (a) of this subdivision unless an  
16 employer proves a good faith basis to believe that its actions in  
17 violation of this section were in compliance with the law.

18 5. Nothing in this section shall be construed to limit any rights of  
19 an employee provided through any other provision of law, common law or  
20 collective bargaining unit.

21 6. Any act of retaliation for an employee exercising any rights grant-  
22 ed under this section shall subject an employer to separate civil penal-  
23 ties under this section. For the purposes of this section, retaliation  
24 or retaliatory personnel action shall mean discharging, suspending,  
25 demoting, or otherwise penalizing an employee for:

26 (a) making or threatening to make, a complaint to an employer,  
27 co-worker, or to a public body, that rights guaranteed under this  
28 section have been violated;

29 (b) causing to be instituted any proceeding under or related to this  
30 section; or

31 (c) providing information to, or testifying before, any public body  
32 conducting an investigation, hearing, or inquiry into any such violation  
33 of a law, rule, or regulation by such employer.

34 § 2. This act shall take effect immediately.