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KD Alert: New York Labor Law Now Prohibits Discrimination Based on an Employee's or Employee's Dependent's Reproductive Health Decision Making

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A new addition to the New York Labor Law (Section 203-E) prohibits discrimination based on an employee's or an employee's dependent's reproductive health decision making.

Specifically, this new section of the New York Labor Law prohibits an employer from: (1) discriminating or taking "any retaliatory personnel action against an employee with respect to compensation, terms, conditions, or privileges of employment because of or on the basis of the employee's or dependent's reproductive health decision making, including, but not limited to, a decision to use or access a particular drug, device or medical service; (2) requiring "an employee to sign a waiver or other document which purports to deny an employee the right to make their own reproductive health care decisions, including use of a particular drug, device, or medical service;" and (3) retaliating against an employee for exercising its rights under this section of the New York Labor Law. For example, as a result of this new section of the New York Labor Law, employers are now expressly prohibited from taking any employment action due to an employee's decision or the employee's dependent's decision to have (or not have) an abortion.

Stressing the importance of this new section, Section 203-E of the New York Labor Law requires that all employers who provide an employee handbook to its employees must include in the employee handbook notice of the rights and remedies provided by this new section of the New York Labor Law. Accordingly, to ensure compliance it is important that all employers with employee handbooks revise their handbook as soon as possible.

Should an employer violate Section 203-E of the New York Labor Law, an employee may be entitled to back pay, benefits, injunctive relief, reinstatement, liquidated damages, and reasonable attorneys' fees and costs. As a result, it is important that each employer takes all necessary steps to ensure that they do not discriminate based on an employee's or an employee's dependent's reproductive health decision making and that they comply with this new section of the New York Labor Law.

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