

New York District Court Permanently Enjoins Reproductive Health Notice of Rights Requirement for Employee Handbooks

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A Northern District of New York court has [permanently enjoined the statewide requirement](#) that employers include a notice of workers' rights and remedies in their employee handbooks regarding the prohibition on discrimination based on reproductive health care choices.

The requirement, [which took effect in November 2019](#), was part of a broader bill amending the New York Labor Law to prohibit employers from accessing information on employees' or dependents' reproductive health without prior consent, as well as generally prohibiting discrimination and retaliatory 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." To that end, employers that maintain an employee handbook were required to include in the handbook a notice of employee rights and remedies under this law.

In *CompassCare et al. v. Cuomo*, Case 1:19-cv-01409-TJM-DJS, several faith-based employers challenged the law in its entirety on the basis of violations of constitutional protections under the First Amendment. While the majority of the claims were previously dismissed, in its [March 29, 2022 decision](#), the Northern District of New York found that the notice requirement compelled the Plaintiffs to deliver a message contrary to their religious beliefs as they relate to reproductive choices including birth control and abortion. Specifically, the court found that “Plaintiffs’ handbooks . . . represent Plaintiffs’ statements to their employees about the rules that govern conduct in the workplace, the values of the organizations, and the religious perspective that guides the organizations’ operations,” and, as such, “[r]equiring that Plaintiffs also include in those handbooks a statement that the law protects employees who engage in behavior contrary to that promoted by the Plaintiffs would compel them to promote a message about conduct contrary to their religious perspective.”

The district court further found that, applying the strict scrutiny standard, the State of New York failed to prove that requiring written notice in employee handbooks is the least restrictive means to achieve the State’s interest in ensuring workers have notice of their rights under the law. Specifically, the court found that State did not demonstrate why offering the information “in a variety of other ways, including by advertising the provision generally, producing posters to be placed in workers’ view at the job site, and in general statements of workers’ rights provided by the Department [of Labor] itself” would not achieve the same goals, as “[d]oing so would not require the Plaintiffs to produce such speech themselves, or to include that speech in handbooks describing workers’ rights and responsibilities produced under the employers’ imprimatur.”

Based on the above, the court concluded that the law’s notice requirement runs afoul of the First Amendment’s free speech protections, and further that Plaintiffs would suffer irreparable harm from the provision and lack an adequate remedy at law, and therefore the requirement must be permanently enjoined.

While it remains to be seen whether the decision will be appealed, for the moment employers in New York are no longer obligated to include the written notice in their employee handbooks. We will continue to monitor and report on further developments.

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