

New York City Moves to Prohibit Discrimination Based on Family Planning and to Protect Reproductive Choice

By Devjani Mishra and Emily Haigh on December 26, 2018

Update: The amendment to the NYC Human Rights Law was fully enacted on January 20, 2019 and will become effective May 20, 2019.

In case you missed it: On December 20, 2018, the New York City (NYC) Council added “sexual and other reproductive health decisions” to the list of protected classes under the NYC Human Rights Law. This measure is awaiting the mayor’s signature, which is expected. If signed, it will go into effect 120 days after enactment.

This new protected category encompasses:

any decision by an individual to receive services, which are arranged for or offered or provided to individuals relating to sexual and reproductive health, including the reproductive system and its functions. Such services include, but are not limited to, fertility-related medical procedures, sexually transmitted disease prevention, testing, and treatment, and family planning services and counseling, such as birth control drugs and supplies, emergency contraception, sterilization procedures, pregnancy testing, and abortion.¹

At the Council’s November 19, 2018 hearing on the proposed legislation, Council members stated that the bill is intended to “protect women and men from ever fearing whether their personal health and reproductive choices will risk their jobs.” Council members discussed the importance of reproductive choice and family planning to employees, and identified scenarios in which the

new protections would come into play. For example, a covered employer will be prohibited from terminating an employee should it discover and disagree with an employee's choice to have an abortion, undergo in vitro fertilization (IVF) or seek treatment for sexually transmitted infections.

The Council took note of recent federal measures aimed at enabling employers to deny certain types of reproductive health benefits to employees, but made clear that the legislation does not require NYC employers to provide specific reproductive health benefits. Rather, the crux of the new law is the obligation not to discriminate against individuals based on their family planning or reproductive health decisions.

New York City employers should anticipate that the new legislation will take effect in 2019, and plan to revise their handbooks to incorporate "sexual and other reproductive health decisions" to the list of categories protected from discrimination. Human resources personnel, managers and supervisors should also be aware of this change, and should make sure to insulate any information relating to an employee's reproductive health from any employment decisions concerning that individual.

¹ As we have previously reported, New York City law has long imposed robust anti-discrimination and accommodation requirements related to disability and pregnancy, which would overlap some aspects of the new legislation. See, e.g., Emily Haigh and Devjani Mishra, *New York City Will Require Employers to Provide Greater Workplace Accommodations for Lactating Employees*, Littler ASAP (Nov. 19, 2018); Eli Z. Freedberg, *New York City Law Requiring Employers to Engage in a "Cooperative Dialogue" for Accommodation Requests Takes Effect October 15, 2018*, Littler ASAP (Sept. 21, 2018).

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