

Second Circuit Reinstates New York Reproductive Health Bias Law's Notice Requirement in Employee Handbooks

3 min read

May 8, 2025

On January 2, 2025, the U.S. Court of Appeals for the Second Circuit vacated a permanent injunction that barred the enforcement of a requirement under the New York Labor Law Section 203-e (the “Act”) that New York State employers must include a notice in their employee handbooks regarding the Act’s prohibition against discrimination based on an employee’s or their dependent’s reproductive health decisions. New York employers are now required to include such a notice in their employee handbooks.

Background

In *CompassCare v. Hochul*, the Plaintiffs, a group of three religious organizations, challenged the constitutionality of the Act. The Plaintiffs argued that the Act unconstitutionally infringed their First Amendment freedoms of expressive association, speech, and religion.

Additionally, the Plaintiffs argued that the Act compelled speech in violation of their First Amendment rights by requiring them to notify employees, in their employee handbooks, of the employees’ rights and remedies under the Act.

New York Labor Law §203-e

The Act prohibits an employer from accessing an employee’s personal information regarding the employee’s or their dependent’s “reproductive health decision making, including but not limited to, the decision to use or access a particular drug, device or medical service without the employee’s prior informed affirmative written consent.”

The Act also prohibits an employer from discriminating or retaliating against an employee based on the employee’s or their dependent’s reproductive health decision-making, including the decision to use or access a particular drug, device, or medical service.

In addition, the Act requires that an employer must include a notice of employee rights and remedies under the Act in their employee handbooks (the “Notice Provision”).

Procedural History

The Northern District of New York permanently enjoined the enforcement of the Act’s Notice Provision, while also dismissing the Plaintiffs’ expressive-association claim. Both parties appealed the District Court’s decision.

Second Circuit’s Decision

Notice Provision Reinstated

The Second Circuit reversed the permanent injunction and reinstated the Notice Provision. The Court held that the Notice Provision is a content-based regulation of speech and is subject to the rational basis standard of review. Under that standard, the Court held that the Notice Provision is “reasonably related to the State’s interest in preventing deception of employees as to their statutory rights, and that the Notice Provision’s proscribed method of notification is not unjustified or unduly burdensome.”

Further, the Court found that the Notice Provision is like many other state and federal laws requiring “workplace disclosures-in employee handbooks or through other means, and by all employers or certain categories of employers-of health, safety, and civil rights information.”

Moreover, the Court maintained that the Notice Provision does not interfere with the Plaintiffs’ greater message and mission, and Plaintiffs are able to “share with their employees, in the handbooks or else, their moral, political, and religious views, their expectations for employees, and even their disagreement with the Act.”

Expressive Association

The Second Circuit also vacated the dismissal of the Plaintiffs’ expressive-association claim, in light of the Court’s decision in *Slattery v. Hochul*, and remanded it to the District Court for further consideration. In *Slattery*, the Second Circuit held that an employer may have an associational rights claim if the law forces an employer to employ individuals who act or have acted against the “very mission” of the employer’s organization.

To make this showing, an employer must show that the Act “threatens its very mission not only in a vague and generalized sense, but in the context of a specific employment decision.” This would require an assessment of:

- (1) the responsibilities of the position at issue, including whether it is client-facing and whether it involves expressly or implicitly speaking for the organization, and
- (2) the particular conduct or attribute of the employee that renders the employment of that person, in that position, a threat to the employer’s mission.

On remand, the District Court must determine whether each Plaintiff has separately plausibly alleged that the Act “burdens its distinct associational rights by forcing it to employ individuals who act or have acted against its very mission, and whether it has plausibly alleged that the statute burdens its associational rights with respect to specific employment decisions.”

Takeaways

New York employers must comply with the Notice Provision of the Act and ensure that their employee handbooks include a notice of employee rights and remedies under the Act.

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