

FACT SHEET

States Take Action to Stop Bosses' Religious Beliefs from Trumping Women's Reproductive Health Care Decisions

April 2015

Across the country, employers are using their religious beliefs to discriminate against their employees because they disagree with their employees' personal reproductive health care decisions. Women are being punished, threatened, or fired for using birth control, for undergoing in vitro fertilization in order to get pregnant, or for having sex without being married. It is unfair that a person would be fired or discriminated against because of a decision about whether to prevent pregnancy or start a family.

Employers should not be allowed to use their personal religious beliefs to discriminate against employees, who typically come from all different faiths. Fortunately, states have begun to step forward to protect employees, introducing legislation to make it clear that bosses cannot obstruct or coerce an employee when that employee makes a personal reproductive health care decision.

Employers are Increasingly Using their Religion to Discriminate Against their Employees for their Private Reproductive Health Decisions

Women remain at serious risk of workplace discrimination based on their reproductive health decisions and based on an employer's religious beliefs about such decisions.

Employers are discriminating against women for seeking to prevent pregnancy and threatening to fire workers for using birth control.

- In 2012, politicians in Arizona revised a long-standing law requiring insurance coverage of birth control to make it easier for a boss to penalize an employee for using it.¹
- After Wisconsin passed a law in 2009 requiring insurance plans to cover birth control, the Madison Catholic Diocese warned employees that if they took advantage of the benefit, they could face termination.²

Allowing employers to penalize women for their reproductive health decisions jeopardizes the health of women and any children they might have. Access to birth control is an essential part of women's health care, and birth control has long term benefits to women's educational and career opportunities and families' economic wellbeing.³ Forcing women to choose between their job and birth control places them in an untenable situation.

Employers are firing women for pursuing pregnancy through the use of assisted reproductive technology

- Christa Dias, an unmarried teacher for two schools with the Archdiocese of Cincinnati, Ohio, was fired after she became pregnant through artificial insemination.⁴

- Kelly Romenesko was fired from her 7 year job teaching French at two Wisconsin Catholic schools because she and her husband used in vitro fertilization to become pregnant.⁵
- Emily Herx was fired from her teaching job at a Catholic school in Indiana for using in vitro fertilization. According to a local paper, Herx wrote a letter to school officials after being informed of her firing in which, she lamented being forced to choose between keeping her job and starting a family.⁶

Employers are firing women for having sex outside of marriage

- Christine John, a kindergarten teacher at a Christian school in Michigan, was called into a meeting with school officials. They asked why she was four months pregnant when she was married only two months before. John says that officials told her that premarital sex is strictly forbidden by the school and that her services were no longer needed.⁷
- In 2014, after an anonymous letter revealed her pregnancy, unmarried middle school teacher Shaela Evenson was fired by a Catholic school district in Montana for having sex outside of marriage. She was fired despite her 10 year career at the school and the fact that the principal called her an “excellent teacher.”⁸
- After revealing her pregnancy, preschool teacher Michelle McCusker was fired from a Catholic school in New York for becoming pregnant outside of marriage.⁹

These women were dedicated to their jobs and fully qualified for their positions. It is unfair that they – or any person – would be fired simply because of their decisions related to their reproductive health, including how to start a family.

Discrimination Based on Reproductive Health Decisions May Fall Into Gaps in Existing Laws

Many state and federal laws – particularly those that protect against discrimination on the basis of sex or pregnancy – offer protections against reproductive health discrimination. For example, recent guidance from the agency that interprets and enforces the federal law prohibiting sex and pregnancy discrimination in employment states that this law “necessarily includes a prohibition on discrimination related to a woman’s use of contraceptives.”¹⁰

Yet, narrow or erroneous decisions by courts and officials have created loopholes in the existing laws that leave women without a legal remedy when they face discrimination for their reproductive health decisions.

- A federal court in Michigan in 2001 held that firing an employee for taking time off work in order to undergo fertility treatment was not pregnancy discrimination under federal law because infertility is not part of “pregnancy, childbirth, or related medical conditions.”¹¹
- In the case of Kelly Romenesko, who was fired for using in vitro fertilization, an investigator for the state’s agency charged with enforcing anti-discrimination laws upheld her termination. The agency said that she had not been fired for becoming pregnant, which would have been illegal, but for undergoing in vitro fertilization, which was not protected under state law.¹²

State laws must make it clear that an employer cannot ask an employee to choose between a job and decisions about whether, when, or how to start a family.

State Legislators Are Stepping In to Ensure that Non-Discrimination Laws Explicitly Protect Reproductive Health Decisions

In 2015, so far, five states (Missouri,¹³ New York,¹⁴ Ohio,¹⁵ Virginia,¹⁶ and Washington¹⁷) have introduced bills to explicitly prohibit discrimination in the workplace based on an individual’s reproductive health decision.

In 2014, five states (Illinois,¹⁸ Michigan,¹⁹ New York,²⁰ and North Carolina,²¹ Ohio²²) and the District of Columbia considered bills to protect employees from discrimination based on their reproductive health decisions. In New York, the Assembly passed the bill. In December 2014, the District of Columbia passed the Reproductive Health Non-Discrimination Amendment Act, and the mayor signed it on January 23, 2015.²³ It is now in its congressional review period.

When introducing the Reproductive Health Non-Discrimination Amendment Act of 2014, District of Columbia Councilmember David Grosso explained, “While the District enjoys some of the strongest non-discrimination laws in the country, this specific legislation signals that we stand by the rights of women and families to make their own reproductive health decisions.”²⁴ Affirming his support for the New York legislation, New York State Senator Gustavo Rivera said, “It is simply unacceptable that under New York law women are still susceptible to discriminatory practices in the workplace when it comes to making personal decisions about their reproductive health.”²⁵

True religious freedom gives each of us the right to make our own personal decisions, including whether and when to use prescription birth control and whether and when to have children, based on our own beliefs and what is best for our health and the well-being of our families. State non-discrimination laws must explicitly reaffirm this basic principle.

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3. Brief for the National Women's Law Center and Sixty-Eight Other Organizations As *Amici Curiae* In Support of the Government, *Sebelius v. Hobby Lobby Stores, Inc.* 723 F.3d 1114 (10th Cir. 2013), *cert. granted*, 134 S.Ct. 678 (Nov. 26, 2013) (No. 13-354); *Conestoga Wood Specialties Corp. v. Sebelius*, 724 F.3d 377 (3d Cir. 2013), *cert. granted*, 134 S.Ct. 678 (Nov. 26, 2013) (No. 13-356), <http://www.nwlc.org/resource/nwlc-supreme-court-amicus-brief-supporting-contraceptive-coverage-benefit>.
4. *Jury Rules Discrimination by Cincinnati Archdiocese*, RECORD-JOURNAL (Meriden, Ct.), June 8, 2013, 2013 WLNR 14096999.
5. *Teacher Appeals Firing: Appleton Catholic System Cites In Vitro Pregnancy*, JOURNAL SENTINEL (Madison, Wis.), May 11, 2006, <http://news.google.com/newspapers?nid=1683&dat=20060511&id=-yMqAAAAIbAJ&sjid=GkUEAAAAIbAJ&pg=6530,702621>.
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7. *Teacher Punished for Pregnancy*, GRAND RAPIDS PRESS, May 12, 2005, 2005 WLNR 7571283.
8. Molly Redden & Dana Liebelson, *A Montana School Just Fired a Teacher for Getting Pregnant. That Actually Happens All the Time*, MOTHER JONES (Feb. 10, 2014, 10:32 AM), <http://www.motherjones.com/politics/2014/02/catholic-religious-schools-fired-lady-teachers-being-pregnant>.
9. Statement of Michelle McCusker, *Pregnant Teacher Fired by Catholic School* (Nov. 21, 2005), <http://www.nyclu.org/node/861>.
10. Equal Emp't Opportunity Comm'n, No. 915.003, EEOC Enforcement Guidance on Pregnancy Discrimination and Related Issues (July 14, 2014), http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm.
11. *LaPorta v. Wal-Mart Stores, Inc.*, 163 F. Supp. 2d 758 (W.D. Mich. 2001).
12. See Redden & Liebelson, *supra* note 12.
13. H.B. 354, 98th Gen. Assemb., 2015 Sess. (Mo. 2015).
14. S. 2709, 2015 Leg., Reg. Sess. (N.Y. 2015).
15. S.B. 68, 131st Gen. Assemb., Reg. Sess. (Ohio 2015).
16. H.B. 2287, 2015 Gen. Assemb., Reg. Sess. (Va. 2015).
17. Council B. 790, Period 20 (D.C. 2014) (to be codified as D.C. CODE § 2-1401.05).
18. H.B. 6299, 98th Gen. Assemb. Reg. Sess. (Ill. 2014).
19. H.B. 5416, 2015 Leg., Reg. Sess. (Mich. 2014).
20. S. 6578, 2015 Leg., Reg. Sess. (N.Y. 2015).
21. S.B. 855, 2013 Gen. Assemb., Reg. Sess. (N.C. 2014).
22. S.B. 355, 130th Gen. Assemb., Reg. Sess. (Ohio 2014).
23. Council of District of Columbia, *Reproductive Health Non-Discrimination Amendment Act of 2014: Bill History*, <http://lms.dccouncil.us/Legislation/B20-0790?FromSearchResults=true> (last visited Feb 27, 2015).
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