

KNOW YOUR RIGHTS

Existing Laws May Protect Health Care Professionals Who Provide or Support Abortion from Discrimination in Employment

In June 2022, the U.S. Supreme Court issued a [devastating decision](#) in *Dobbs v. Jackson Women's Health Organization*, which declared that there is no federal constitutional right to abortion.¹ The decision has created legal chaos and harm to patients, to abortion providers, and to health care professionals who support abortion. In the wake of the decision, it is even more important for health care professionals to be aware of their rights to non-discrimination in employment and privileges as they provide, support, and train in abortion care.

These materials have been prepared by NWLC for informational purposes and are not legal advice. They might also not reflect the most up to date information in a rapidly shifting legal landscape. For more information on this, please see the disclaimer below. Organizations and individuals are encouraged to contact a lawyer licensed in their jurisdiction for advice on their specific circumstances.

Health Care Professionals Face a Range of Discrimination in Employment and Training Settings

Even before *Dobbs*, health care professionals across the country reported hostility and outright discrimination in employment due to their support for abortion access or participation in abortion care. From denying admitting privileges to rescinding job offers to prohibiting health care professionals from speaking out publicly about abortion, [employers and institutions](#) have unfairly penalized those who provide or support abortion care.²

After the *Dobbs* decision, with states moving to criminalize abortion care, hostile lawmakers are increasingly targeting health care professionals, and numerous health care professionals are fearful that they will face employment discrimination because of their views about abortion or their willingness to

provide abortion care where it is lawful to do so. Fortunately, federal law offers explicit protections against discrimination in some circumstances, and some state laws do too.

Federal Protections for Health Care Professionals: The Church Amendments

Discrimination in employment or staff privileges based on a health care provider's participation in abortion—or willingness to participate in abortion—has been illegal in certain workplaces since 1976 under a federal law known as the Church Amendments.

The Church Amendments prohibit health care institutions that receive federal funding (including Title X grants, Hill-Burton funds, and reimbursement through Medicaid or Medicare) from discriminating against health care personnel, including applicants for education/training programs, because of

- their participation in a lawful abortion;
- their participation in sterilization; or
- their “religious beliefs or moral convictions respecting” abortion or sterilization.³

On September 17, 2021, in response to Texas's bounty hunter law (TX SB 8), the federal Department of Health and Human Services (HHS) released guidance affirming these protections. The guidance clarified, for example, that:

- A covered “hospital in State A . . . cannot deny or withdraw admitting privileges to a physician on the basis that the physician performs lawful abortions in State B or any other state.”
- A covered “state university medical center. . . cannot deny employment privileges to a physician employed by the university because the physician performed lawful abortions at a previous job.”⁴

HHS has not released any specific guidance regarding these protections since the Dobbs decision.

Your Right to File a Federal Complaint

If an individual employee or applicant for employment, or an individual in an educational training program, believes they have faced discrimination of the type prohibited by the Church Amendments, they can file a complaint with the HHS Office for Civil Rights (OCR) asking OCR to investigate and to require the institution to come into compliance.

A complaint must:

- Be filed in writing by mail, fax, e-mail, or via the [OCR Complaint Portal](#), and
- Name the health care or social service provider involved, and describe the acts or omissions, they believe violated the Church Amendments.

More information can be found at <https://www.hhs.gov/conscience/complaints/filing-a-complaint/index.html>. The National Women's Law Center may be able help an individual file a written complaint. To inquire about assistance, please email providerintake@nwlc.org.

Examples of Possible Discrimination Protected by State or Federal Law

These state and federal laws mean that in some cases a health care institution cannot, for example:

- Deny you admitting privileges because you perform lawful abortions;
- Rescind a job offer because of your background in abortion services or advocacy;
- Threaten your job because you want to speak or have spoken publicly about abortion outside of your role as an employee;
- Forbid you from moonlighting at an abortion clinic, simply because they don't want you to be involved in abortion care, despite abortion being legal;
- Retaliate against you for lawfully giving a patient a referral for or information about abortion;
- Retaliate against you for performing a lawful abortion in another state;

- Retaliate against you because you provided an abortion under EMTALA, and/or the standard of care for patients experiencing miscarriage or other pregnancy complications; or
- Discriminate against you as an applicant to an educational institution or training program based on your attitudes about abortion.

These are illustrative examples, but because state laws are in flux, whether or not something would be protected by state or federal law must be determined jurisdiction by jurisdiction. For more information, please email providerintake@nwlc.org.

Contact the National Women’s Law Center for More Information or Assistance

If you believe you have experienced discrimination or threats from a health care institution in terms of your employment or admitting privileges, the National Women’s Law Center wants to hear from you.

We can talk to you about the federal and state laws that offer protection to health care providers who have faced such discrimination, and we can talk to you about next steps, including helping to file a written complaint. We may also be able to help you find a local attorney to assist you with your legal needs including, but not limited to,

- Employment contract negotiations;
- A challenge to your employment contract;
- Pursuing remedies to allegations of employment law violations; and/or
- Legal advice about an allegation of employment, education, and/or training-related discrimination.

Please contact:

National Women’s Law Center
providerintake@nwlc.org

DISCLAIMERS

This Know Your Rights document outlines basic information pertaining to rights and protections specific to employment and education/training related discrimination known as of [date published]. It is not intended to provide a comprehensive overview of all rights and legal remedies available to health care professionals who provide abortion care, or all details of the statutes, rules, regulations, and guidance, referenced or mentioned herein. Please reference the full text of the law or document for more details. Given the quickly changing legal landscape post-Dobbs, this document may well not have up-to-date information. Organizations and individuals are urged to check their local laws and rules before taking action, or seek the advice of a lawyer licensed in their jurisdiction.

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FOOTNOTES

- 1 Banker, M., & Tanner, A. (2022, July 12). *Dobbs V. Jackson Women’s Health Organization: The Court Takes Away A Guaranteed Nationwide Right To Abortion*. National Women’s Law Center. <https://nwlc.org/resource/dobbs-v-jackson-womens-health-organization-the-court-takes-away-a-guaranteed-nationwide-right-to-abortion/>
- 2 León, N. (2018). *Diagnosing Discrimination: Barriers Facing Health Care Providers Who Support and Perform Abortion*. National Women’s Law Center. <https://nwlc.org/wp-content/uploads/2018/04/ProviderDiscrimReport2018.pdf>
- 3 Church Amendments, 42 U.S.C. § 300a-7 (amended 2017), <https://www.hhs.gov/sites/default/files/ocr/civilrights/understanding/ConscienceProtect/42usc300a7.pdf>
- 4 U.S. DEPT. OF HEALTH & HUM. SERVS., GUIDANCE ON NONDISCRIMINATION PROTECTIONS UNDER THE CHURCH AMENDMENTS (Sept. 7, 2021), <https://www.hhs.gov/conscience/conscience-protections/guidance-church-amendments-protections/index.html>.