

Know Your Rights: Health Care Professionals who Provide or Support Abortion

As a health care professional, you have the right to provide, support, and advocate for abortion. You also have the right to negotiate your employment contract to protect your ability to moonlight in abortion services or to obtain abortion training.

If you face discrimination for providing or supporting abortion:

There are federal laws and state laws that explicitly protect you from some forms of discrimination or other adverse action if you provide or support abortion.

- A federal law known as the Church Amendment includes a provision that protects health care professionals against discrimination because of their participation in abortion or willingness to participate in abortion. It also protects health care personnel from discrimination because of their moral convictions on abortion.
- A handful of states – including California, Iowa, Kentucky, Indiana, Michigan, Pennsylvania, South Dakota, Texas, and Washington – have laws that protect health care personnel from such discrimination.

In some cases, other legal protections may exist. For instance:

- If you are a state or federal employee, constitutional protections – like the First Amendment – allow you to speak publicly as a private citizen about abortion without retaliation;
- Federal law may in some cases protect an employee who advocates together with one or more other employees for change or clarity within the workplace;
- Some state laws also offer employees protection against retaliation for engaging in political activity, or for engaging in lawful activity outside of working hours away from the job.

These laws mean that in many cases a health care institution cannot, for example:

- Deny you admitting privileges because you are an abortion provider;
- Rescind a job offer because of your background in abortion services or advocacy;
- Threaten your job because you want to speak publicly about abortion;
- Forbid you from moonlighting at a local abortion clinic simply because they don't want you to be involved in abortion;
- Retaliate against you for giving a patient referrals for or information about abortion; or
- Retaliate against you because you provided abortion as the standard of care for patients experiencing miscarriage or other pregnancy complications.

If you face discrimination or your employment rights have been violated, you may be able to file a written complaint under federal and possibly state law.

If you are signing an employment contract and want to provide or support abortion:

If you are signing an employment contract, be on the lookout for provisions in the contract that could be used to restrict your ability to provide abortions or speak out about abortion. In particular:

- **Non-compete clauses.** This kind of provision states you will not compete with the employer in a specified area for a specified time after you leave employment. Sometimes these clauses are explicitly written to also restrict your ability to moonlight while you are employed.
- **Full time devotion to duty.** This kind of clause explicitly states that while you are employed you are to devote your entire working time solely to your employer, and not to any other employment. It could be used to prevent you from “moonlighting” outside of your normal work, for example at an abortion clinic.
- **Morality clauses.** These clauses prohibit certain behavior. For example, some Catholic hospitals require employees to “live by Catholic values.” Those hospitals then sometimes point to these clauses to justify prohibiting employees from providing abortions even on their own time or in a second job, or for advocating publicly around abortion access.

If you see one of these clauses in your contract, you should ask the employer to remove it. There are arguments that you can make in support of your request to remove the clause. For example:

- Major medical associations, like the American Medical Association Council on Ethical and Judicial Affairs, disfavor non-compete clauses, especially in areas where the services you want to provide (abortion) are scarce. State and local medical professional associations may also have statements disfavoring non-compete clauses.
- Your state might have a law prohibiting non-compete clauses, or there might be court decisions from your state saying that non-compete clauses are not allowed.

A local employment attorney can help you with the best arguments to bring to your potential employer. Note, however, that your prospective employer may still refuse to alter the contract. In that case, you will have to decide whether or not to move forward with employment. If you decide to accept employment, it important at the very least for you to have a clear understanding of what the contract does and does not prohibit you from doing.

With the law on your side, great things are possible.

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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, or if you are concerned about restrictive clauses in your employment contract, 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 contract negotiations, employment law violations, or challenging your employment contract.

Please contact:

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