D.C. Enacts Workplace Protections for Reproductive Health Decisions

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On December 19, 2014, the District of Columbia City Council unanimously approved the Reproductive Health Non-Discrimination Amendment Act of 2014 (the "Act"). The bill, which is subject to the requirements of mayoral approval and congressional review, would expand the prohibition in the District of Columbia Human Rights Act ("DCHRA") against employment discrimination based on sex (*i.e.*, gender) to also include "reproductive health decisions."

The Act does not exhaustively define "reproductive health decisions," but does state that it protects "a decision by an employee, an employee's dependent, or an employee's spouse related to the use or intended use of a particular drug, device, or medical service, including the use or intended use of contraception or fertility control or the planned or intended initiation or termination of a pregnancy." Controversially, the Act does not provide for any exception for religious employers, whether for-profit or not-for-profit. Accordingly, assuming that the Act ultimately becomes law, if an employer objects to or disapproves of an employee's "reproductive health decisions" on religious, moral, or other grounds, those decisions cannot form the basis for the employee's termination or any other adverse employment action.

Much of the press coverage of the Act has focused on a possible conflict between its protection of "reproductive health decisions" and the U.S. Supreme Court's decision in *Burwell v. Hobby Lobby*. In that decision, the Supreme Court held that for-profit employers with sincerely-held religious beliefs are not subject to the mandate in the Affordable Care Act to provide insurance coverage for contraceptives. However, the Act does not at least directly clash with *Hobby Lobby* because it does not require that employers provide any insurance coverage for any "reproductive health" procedure, drug, or device. Whether the Act's lack of any religious exemption is permissible under *Hobby Lobby*, on the other hand, is a more complex question that will likely be decided by the appellate courts in the coming years.

