

# Forming Families

*Attorney Melissa  
Brisman: Fertility  
and the Law*

*How Employers  
Protect Their  
Teams with  
Responsible  
Fertility Care*

*The Process and  
Considerations  
of Egg and  
Sperm Donation*

*ARC Partner  
Practice Spotlight:  
Find the Reproductive  
Materials You Need  
with These Great  
Providers*



Thank you for joining us for the Fall 2024 edition of Forming Families, our quarterly update on all aspects of fertility treatment and the family-forming journey. ARC Fertility is proud to offer a valuable perspective for employers, team members, families, and medical professionals into the ever-evolving state of fertility medicine.

Eggs and sperm are the building blocks of life and are essential for fertility medicine. According to the CDC, 26,700 cycles in 2021 used frozen donor eggs or donated embryos, and an additional 1,552 cycles used embryos from fresh donor eggs. 40.6% of embryo transfer cycles using donor eggs or embryos led to live births for women of all ages. The CDC also reports that donor sperm use resulted in a higher likelihood of live births when adjusted for maternal age.

Understanding the best ways to use these indispensable donated cells is a must, and that means not just their medical use but all the attendant legal and regulatory considerations. That's why this issue of Forming Families is featuring an interview with leading fertility attorney Melissa Brisman, as well as insights on the egg and sperm donation process, and thoughts on how employers can take all these factors into consideration when providing benefits for their teams.

Read on to discover how to safely, effectively, and legally make the best use of donated eggs and sperm when forming your family.

Sincerely,



**David Adamson, MD**  
Founder and CEO  
ARC Fertility

# Attorney Melissa Brisman on the Legal Considerations of Fertility Medicine

*Melissa Brisman is an innovator and leader in reproductive law. Having experienced the joy of parenthood through gestational surrogacy twice – first with twin boys, then with a daughter – she is a trusted voice among fertility clinics, intended parents, and surrogates. Forming Families caught up with Melissa to discuss what families and employers need to know about donated reproductive materials and the law.*



## **What are the primary legal considerations during the egg and sperm donation process?**

There are three categories of donors: A non-identified donor, a genetically related donor, and the friend or acquaintance donor. The legal concerns are going to be different depending on how you found the donor, whether you meet them, and what sort of arrangement is in play. Importantly, if any specific terms are agreed upon between donor and recipient, attorneys should be involved on both sides.

## **As an attorney, what specific services do you provide for people who are undergoing fertility treatment?**

I might look at a client's insurance and help them advocate for benefits or point them to different grants. I might do a surrogacy agreement, or an agreement for egg donation. I often help people who do what we call "third-party reproduction," meaning they need materials from a person outside their family unit. I can also help women agree to receive full custody of any embryos or ova frozen before a separation or divorce, or before their partner decides against having children.

## **Let's talk about the major legal pitfalls to avoid when you're donating or receiving reproductive materials.**

Make sure you don't feel a biological connection to any babies that may result from your donation. You don't want a donor saying, "I want to have a lot of children out in the world." They're not parents, they're just giving a biological donation. Also, donors can only protect their anonymity so much but should expect the recipients to respect their privacy. One major pitfall is when picking donors for the wrong reason, like one who looks like them or has the same heritage or IQ, to the point of ignoring more important factors, like medical history. And always be sure to include your partner in any decision, whether that be to donate or accept material.

## **What are the most important questions someone should ask an attorney regarding donating or using reproductive matter?**

You want to retain a lawyer who practices in this field. If you had a broken leg, you wouldn't go to a neurosurgeon. I know how to handle the very personal and specific factors in fertility law, but I can't do your real estate closing. Find out how many donor contracts they've done. How long have they been practicing fertility law? What states are they licensed in? A lawyer's fees are a very small portion of this process, and not expensive compared to other areas of the law. You really want to make sure you have attorneys on both sides of the process as well.

## **What are some major concerns emerging for attorneys in your field and for people who use fertility services?**

You're going to see more sperm banks open as treatment becomes cheaper. There are now sperm matching services where you can meet the donor and you're going to see that expand. Be careful to vet these new places and make sure they're using proper protocols and screening techniques. The free market gives you a lot of choices, but sometimes people can take advantage. Make sure you're at a place you can trust.



# Navigating Egg and Sperm Donations: The 5 Most Important Topics in a Donor Contract



## **Informed Consent**

Legal contracts define paternal rights and responsibilities for every sperm and egg donation. Donors must be fully informed about the procedures, risks, and legal implications of donating their reproductive material.

*Source: Reproductive Lawyer*



## **Anonymity**

Donors have the right to remain anonymous, but the laws regarding the anonymity period vary by jurisdiction. Some states allow donors to stay anonymous, while others require donors to reveal their identity later in life if the child asks. This enables children born from donor eggs or sperm access to identifying information.

*Source: Reproductive Lawyer*



## **Compensation**

Depending on the specific location and arrangement, the amount of money donors receive can vary. Donors will often be compensated for their effort, time, and possible discomfort.

*Source: Reproductive Lawyer*



## **Medical Screening**

Donors undergo many tests and medical screenings to ensure they are healthy and suitable candidates for the donation process.

*Source: Reproductive Lawyer*



## **Privacy**

Certain aspects of the contract grant egg and sperm donors specific rights to confidentiality and privacy.

*Source: Reproductive Lawyer*

# Protect Your Team with Effective and Legally Responsible Fertility Care



*The family-forming experience can be stressful, and parents have enough to consider without worrying about the legal necessities of treatment. Employers who want to build and support the best and most diverse teams must choose a fertility treatment plan that not only provides effective and reliable results, but ensures employees receive accurate and helpful legal guidance.*

Between doctor's visits, medication regimens, regular treatment, and trying to conceive, the family-forming journey is stressful before cost even becomes a factor. Once it does, anxiety can skyrocket, especially if the parents lack access to comprehensive family-forming benefits through their workplace. Families are so caught up in factors like cost, procedures, and probabilities, that the legal ramifications of their care may not even occur to them in a timely manner.

But the legal considerations of fertility care are numerous. Of course, there are issues of rights and representation: everyone is entitled to the best and most compassionate family-forming treatment, whether they be of any orientation, marital status, age, ethnicity, or background. In some situations, people who aren't straight, cisgendered, married, white, or Christian may need to fight against unconscious or even deliberate bias to create the families they deserve.

But cases like these are only the tip of the iceberg when the law intersects with fertility treatments. This is especially true when using donated reproductive cells like sperm or eggs. The donor and the recipient both have important rights. Ignoring these considerations could leave people open to litigation, and harm the wellbeing of any children conceived using donated cells and tissues.

Misunderstanding or infringing on the rights of donors and patients can lead to liability for donors, practitioners, patients, and even employers who provide fertility care for their workers. Because fertility coverage can be a major attractor of qualified and diverse team members, employers who provide these benefits need to use a service that understands the medical, ethical, and legal ramifications of their treatment.

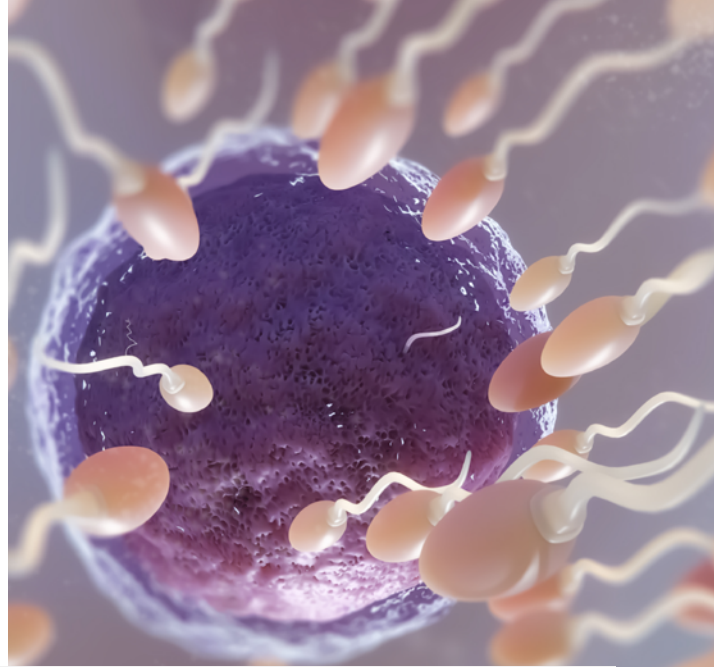
ARC Fertility only partners with the most progressive and responsible fertility care centers. These experts are keenly aware of the legal requirements of their field and will work to ensure all procedures are performed in accordance with regulations and with respect to everyone's rights. ARC's dedicated wellness advisors can help patients contact attorneys who focus on fertility and ensure employees receive care that is not only effective, but legally sound and considerate. And team members will appreciate employers who help them form families in the most responsible way.



# Egg and Sperm Donation Is Complicated

Let These ARC Partners Make It Simple

The law is only one important face of the egg and sperm donation process. With so much to consider, these ARC Partner Practices are ideal for helping patients and employers understand and make the best use of any available services.



## Samara Rothchild

Attorney

Samara has been practicing law since 2004. As a graduate of Rutgers University and New York Law School, Samara has extensive experience in contract drafting and negotiation. She brings her knowledge of contracts as well as her patience, compassion, and professionalism to every unique situation. Samara has been guiding and assisting clients for over 20 years and was successfully able to transfer her legal talent to family formation and reproductive law. She is as comfortable representing clients in court as she is counseling them individually. Samara's favorite part of the process is when she can represent her clients to obtain their parentage orders and orders of adoption. Our clients appreciate her approachability, diligence, and caring nature.

*"I am honored to work with ARC Fertility and promote the important work they do. Every new life is precious, and I am proud to be a part of the process. Dealing with infertility is challenging enough, and ARC can help ease the financial pressure of treatment to ensure that care is available to all who need it."*



## Kristen Kane

Legal Assistant

Kristen received a Bachelor's degree in criminal justice from Monmouth University in 2021, and a Master's degree in 2022. Her strong organizational skills and attention to detail help ensure your case is completed promptly and with care. Kristen's dedication and sunny disposition showcase her commitment to ensuring a positive experience for everyone. Kristen's favorite part of the process is receiving pictures of all the babies and feeling a sense of pride that her assistance helped create the miracle of life.

*"We've enjoyed partnering with ARC. While infertility is a challenging experience, ARC streamlines the financial side, making it stress-free. Their support enhances accessibility to fertility treatments for many of our clients."*