

A hand in a dark suit jacket is shown from the wrist up, pointing upwards with the index finger. The years 2021, 2022, 2023, 2024, and 2025 are overlaid on the hand, with 2024 being the largest and most prominent. The background is a blurred outdoor scene with trees and a bright sky.

# BUSINESS IN 2024

WEEKLY WEBINAR SERIES



**BOND** SCHOENECK  
& KING ATTORNEYS

# Your Host



## Kristen E. Smith

Member

[ksmith@bsk.com](mailto:ksmith@bsk.com)

Syracuse, NY

# TODAY'S AGENDA

**Kristen Smith – (12:00PM-12:05PM)**

- Introduction

**Kali Schreiner – (12:05PM-12:15PM)**

- Request for Access to Personal Accounts Prohibited

**Adam Mastroleo– (12:15PM-12:25PM)**

- US DOL's Final Independent Contractor Rules

**Kristen Smith – (12:25PM-12:35PM)**

- 2024 State of the State Initiatives of Interest to Employers

**Thomas Eron – (12:35PM-12:45PM)**

- US House Votes to Repeal NLRB Rule

**Kristen Smith – (12:45PM)**

- Questions

# Request for Access to Personal Accounts Prohibited



**Kali R. Schreiner**

Associate

[kschreiner@bsk.com](mailto:kschreiner@bsk.com)

Syracuse, NY

# N.Y. LABOR LAW 201-i

- Effective March 1, 2024
- Purpose: The law restricts employers from requesting or requiring access to an employees' and/or applicants' social media account.
- Justification for the addition cited a growing concern that employers were taking advantage of access to social media accounts, leading to unfair and discriminatory hiring practices

# Employer Broadly Defined

Section 201-i (c) broadly defines an employer as:

- (i) a person or entity engaged in a business, industry, profession, trade or other enterprise in the state;
- (ii) the state of New York;
- (iii) a county, city, town, village or any other political subdivision or civil division of the state;
- (iv) a school district or any government entity operating a public school, college, or university;
- (v) a public improvement or special district;
- (vi) a public authority, commission or public benefit corporation; or
- (vii) any other public corporation, agency, instrumentality or unit of government which exercises governmental power under the laws of the state; and
- (viii) shall include an agent, representative or designee of the employer.

The law does not apply to any law enforcement agency, fire department or a department of corrections and community supervision.

# Prohibitions

- The new law prohibits employers from requesting, requiring or coercing employees or job applicants to:
  - (i) – disclose any user name and password, password alone, or other login information for accessing a personal account through an electronic communication device
    - Electronic Communication Device: “any device that uses electronic signals to create, transmit, and receive information” including, but not limited to:
      - Computers;
      - Telephones; and
      - Personal digital assistants.

# Prohibitions Continued

- (ii) – Accessing an employees' personal accounts in the presence of the employer.
- (iii) - Reproducing in any manner:
  - photographs, video or other information contained from personal accounts.

An employer **cannot discharge or discipline** an employer for their refusal to disclose protected information.

An employer **cannot fail or refuse to hire** any applicant for their refusal to disclose protected information.



# Covered Accounts & Access

- **Personal accounts** are broadly defined as an “account or profile on an electronic medium where users may create, share, and view user-generated content, including uploading or downloading videos or still photographs, blogs, video blogs, podcasts, instant messages, or internet website profiles or locations that is used by an employee or an applicant exclusively for personal purposes.”
- The law does not apply to **non personal accounts** that provide access to an employers’ internal computer or information systems.

# Exemptions – Part 1

- New law contains several carveouts that will permit employers to access social media under certain circumstances.
- An employer **will not be prohibited from:**
  - Requesting or requiring employees to disclose access information to an account provided by the employer where →
    - the account is used for business purposes; and
    - prior notice was given to the employee of the “employer’s right to request or require such access information.”
  - Requesting or requiring employees to disclose access information to an account known to an employer to be used for business purposes.

## Exemptions – Part 2

- Accessing electronic communication devices paid for in whole or in part by the employer where:
  - the payment for such devices was conditioned on the employer’s right to access,
  - the employee had prior notice, and
  - explicitly agreed to such conditions.

**An employer is not allowed to access any personal accounts on such a device.**

- Accessing an account to comply with a court order.
- Restricting access to certain websites while using an employer’s network or while using a device paid for by the employer.

# Permitted Activity

- Duty to screen employees or applicants prior to hiring or to monitor or retain employee communications as established by federal law or self regulatory organization.
- Employers may view, access or utilize information about an employee or job applicant that is publicly available without login information.
- Employers will be permitted to view social media posts including photographs, videos, or messages that an employee, client, or third party voluntarily shares with an employer for purposes of obtaining reports of misconduct or investigating misconduct.
- The law does not prevent an employee from voluntarily adding an employer or the employer's agent as a social media connection.
- **Affirmative Defense:** The employer acted to comply with requirements of federal, state or local law.

# Next Steps for the Employer

1. Employers should carefully review their social media policies and implement appropriate internal procedures.

2. Employers should construct required notices and acknowledgments to ensure compliance with the law's exemptions.

3. Employers should review their hiring practices to ensure compliance.

# US DOL's Final Independent Contractor Rules



## Adam P. Mastroleo

Member

[amastroleo@bsk.com](mailto:amastroleo@bsk.com)

Syracuse, NY

# Why do we care?

- Impact of Classification
  - Tax obligations
  - Wage and Hour issues
  - Unemployment Insurance and/or Workers' Compensation Insurance
- Classification Problems
  - General audit
  - Employee claims

# Historical Context

- Pre-2021
  - From 1940s until 2021, rule was consistent
  - “Economic Realities” test
  - Courts considered 6 factors, and no one factor controlled
- 2021 Rule
  - More employer friendly
  - Elevated 2 core factors:
    - (1) Nature and degree of control over relevant work
    - (2) Individual’s opportunity for profit and loss



# Historical Context (cont'd)

- 2021 Rule
  - Relegated 3 factors:
    - (1) Amount of skill required for the work
    - (2) The degree of permanence of the working relationship
    - (3) Whether the work is part of an integrated unit of production

# The 2024 Rule

- 2024 Rule
  - Return to the 6-factor test, with no one factor presumed to carry more weight than others
  - Factors include:
    - (1) Opportunity for profit or loss depending on managerial skill
    - (2) Investments by the worker and potential employer
    - (3) The degree of permanence of the work relationship
    - (4) The nature and degree of control over performance of the work
    - (5) The extent to which the work performed is an integral part of the employer's business, and
    - (6) The skill and initiative of the worker

# Impact of the 2024 Rule

- Effective March 11, 2024
    - According to the DOL, the rule is intended to “reduce the risk that employees are misclassified as independent contractors.”
    - Increase in enforcement activity?
  - New York State DOL standard
  - Formalize process
    - Talk to counsel
    - Checklist and routine re-evaluation
- \*\*Independent Contractor agreement will not save you

# 2024 State of the State Initiatives of Interest to Employers



**Kristen E. Smith**

Member

[ksmith@bsk.com](mailto:ksmith@bsk.com)

Syracuse, NY

# Hochul's 2024 State of the State: Proposals of Interest for Employers

- Establish First-in-Nation Statement Paid Pre-Natal Leave
  - Expand NYS Paid Family Leave (PFL) to cover **40 hours** of **additional** paid leave for pre-natal medical appointments
- Create and Distribute a Youth Workers Bill of Rights
  - Dramatic increase in child labor complaints
  - Direct DOL to publish and distribute “bill of rights” with working papers
- Expand Recovery of Stolen Wages
  - Give DOL more tools for enforcement
  - Focus on high turnover/low stability industries?

# Hochul's 2024 State of the State: Proposals of Interest for Employers

- Protect Outdoor Workers from Extreme Weather Hazards
  - OSHA has no official standards around extreme weather in the workplace
  - Directing NYS DOL to issue guidance to ensure worker safety in extreme weather (heat, poor air quality, extreme precipitation)
  - E.g., breaks, shade measures, free water, visibly displayed thermometers
- Strengthen Healthcare Workforce
  - Goal to increase healthcare workforce by 20% over 5 years

# US House Votes to Repeal NLRB Rule



## Thomas G. Eron

Member

[teron@bsk.com](mailto:teron@bsk.com)

Syracuse, NY

# Your Questions



## **Kristen E. Smith**

Member

[ksmith@bsk.com](mailto:ksmith@bsk.com)

Syracuse, NY



## Request for Access to Personal Accounts Prohibited

Kali Schreiner, [kschreiner@bsk.com](mailto:kschreiner@bsk.com)

## US DOL's Final Independent Contractor Rules

Adam Mastroleo, [amastroleo@bsk.com](mailto:amastroleo@bsk.com)

## 2024 State of the State Initiatives of Interest to Employers

Kristen Smith, [ksmith@bsk.com](mailto:ksmith@bsk.com)

## US House Votes to Repeal NLRB Rule

Tom Eron, [teron@bsk.com](mailto:teron@bsk.com)

### **New York Employment Law: The Essential Guide**

NYS Bar Association Members can buy the book from the bar [here](#).

Non-NYS Bar Association Members can purchase through Amazon [here](#).

# Thank You

The information in this presentation is intended as general background information.  
It is not to be considered as legal advice.  
Laws can change often, and information may become outdated.

All rights reserved.

This presentation may not be reprinted or duplicated in any form without the express written authorization of Bond, Schoeneck & King PLLC.