

# BUSINESS IN 2026

WEEKLY WEBINAR SERIES



# Your Host



## Gabriel S. Oberfield

Member

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

New York, NY

# Today's Agenda

## Gabe Oberfield – (12:00PM-12:05PM)

- Welcome and Agenda
- Gov't and Reg Affairs: NYS Budget Update

## Christa Cook – (12:05PM-12:15PM)

- Trump Administration Drops Appeal to Defend Dear Colleague Letter on DEI – Implications for Higher Education Institutions

## Laura Harshbarger – (12:15PM-12:20PM)

- EEOC Chair Comments on Alleged 'Fearmongering'

## Rachel Kreutzer – (12:20PM-12:25PM)

- USDOL Issues Guidance on FMLA leave

## Gavin Gretsky – (12:25PM-12:30PM)

- New York State Amends the New York State Fair Credit Reporting Act to Limit the Use of Credit Reports in Employment

## G. Oberfield – (12:30PM)

- Wrap Up

# What's New in Gov't and Reg Affairs

- **New Municipal Administrations Forming:**
  - In NYC, for instance, commissioners chosen for high-focus portfolios
    - Among them: health and mental hygiene, and corrections
- **Special Elections**
  - Seats vacated during 2025 – two in each house of the NYS legislature
- **Budget**
  - MCO tax survives for this budget cycle
- **Bills**
  - Will Medical Aid in Dying get signed? What about other chapter amendments?
- **Federal Gov't**
  - A partial shutdown is underway – how long will it last?



NYS Gov. Kathy Hochul  
Credit: <https://www.governor.ny.gov/>

# Trump Administration Drops Appeal to Defend Dear Colleague Letter on DEI – Implications for Higher Education Institutions



**Christa R. Cook**

Member

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

Syracuse, NY

# Trump Administration Drops Appeal to Defend Dear Colleague Letter on DEI

- Dear Colleague Letter and related guidance from DOE –
  - On January 21, 2025, President Trump signed an Executive Order, “Ending Illegal Discrimination and Restoring Merit-Based Opportunity.”
  - February 14, 2025 Dear Colleague Letter (DCL)
  - DOE released Frequently Asked Questions (FAQs) and End DEI portal
  - August 14, 2025, in *AFT v. DOE*, the U.S. District Court for the District of Maryland ruled that the DCL was unlawful.
  - In October 2025, the DOE appealed to the U.S. Fourth Circuit Court of Appeals and on January 21, 2026, withdrew its appeal, thus effectively conceding the invalidation of the DCL.

# DOE's Abandonment of Dear Colleague Letter on DEI - Implications for Colleges and Universities

- The DOE's decision to withdraw its appeal in *AFT* may be viewed as a concession in the context of that specific case.
  - Has the Trump Administration abrogated its position on DEI generally?
  - Does it indicate a reluctance to continue aggressive enforcement of its position?
- What is “unlawful DEI”?
- What, if anything, in the law actually changed?
- The Trump Administration's approach to DEI-related issues has never primarily rested upon case law or any one document.



# DOE's Abandonment of Dear Colleague Letter on DEI - Implications for Colleges and Universities

- There are some differences between lawful and unlawful programs that may fall under a DEI framework. Certain issues in the DCL were consistent with pre-existing law and had been deemed to be unlawful prior to issuance of the DCL.
  - (E.g., Compliance risks based on demographically restricted scholarships and programs that are not “open to all” students).
- July 2025 DOJ memo
- Institutions will need to make an objective assessment of the legality of DEI programs and practices, with the advice of legal counsel and considering their institutional risk tolerance.



# EEOC Chair Comments on Alleged 'Fearmongering'



**Laura H. Harshbarger**

Member

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

Syracuse, NY

# USDOL Issues Guidance on FMLA Leave



**Rachel E. Kreutzer**

Associate

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

New York, NY

## Jan. 5, 2026 DOL Opinion Letter FMLA2026-2: Overview

- **What changed:** travel to or from medical appointments can be covered under FMLA
- **What counts:** travel that is reasonably necessary and prevents work
- **What do employers need to do:** track correctly, designate promptly, train managers
- **Plus:** some examples

# FMLA Basics (Quick Refresher)

- Up to 12 workweeks of unpaid, job-protected leave in a 12-month period
- For an employee's own serious health condition or to care for a spouse, child, or parent
- “Serious health condition” generally involves overnight hospitalization, inpatient care, and continuing treatment from a medical provider, as defined by the statute and implementing regulations (e.g. cancer, diabetes, Alzheimer's disease, pregnancy and certain mental health conditions)

## FMLA Basics, continued

- Can be intermittent or on a reduced schedule when medically necessary
- Employers must keep health benefits, restore the job (or equivalent), and avoid interference/retaliation

# The New Guidance

- FMLA leave can be used for time traveling to/from qualifying medical appointments
- Must be reasonably necessary to obtain treatment for a qualifying serious health condition
- Covers employee's appointments and trips to accompany a spouse, child, or parent
- Only travel directly tied to getting/providing care counts
- Ordinary commuting to the regular worksite is not FMLA leave

# How to Track and Designate

- Count only the time the employee cannot work due to the appointment + necessary travel
- If the employee works part of the day, count only the time missed (travel + treatment)
- Employer can request “medical facts within the knowledge of the health care provider regarding the [employee’s] condition”
- Health care providers do not need to list or estimate travel time on certifications; certification is still valid without travel-time details
- Use standard FMLA notice, designation, and re/certification steps



# Practical Examples

- Grace works 9am-5pm and requests intermittent FMLA leave for daily dialysis treatments. With her employer's agreement, she schedules appointments at 4pm. The 30 minutes of travel time, the time spent receiving treatment, and any work time missed through the end of her 5pm shift qualify as FMLA leave.
- David requests intermittent FMLA leave to take his mother to biweekly medical appointments for a serious health condition. Each visit includes travel time, waiting time, the appointment, and helping his mother return home, totaling 2-2.5 hours every other week. This time is FMLA-protected and counts against his FMLA entitlement.

# Common Pitfalls

- Undercounting by skipping necessary travel time that prevents work
- Overcounting by including ordinary commuting time
- Treating unrelated activities (e.g., shopping) as protected time
- Delaying or denying designation because the provider didn't list travel time
- Imposing scheduling preferences that conflict with medical necessity
- Not training managers to send these absences to HR promptly

# What Employers Should Do Now

- Update policies and trainings to reflect that necessary travel tied to qualifying care can be covered under FMLA when it prevents work
- Tell HR/leave admins that providers don't need to quantify travel time; lack of travel detail doesn't invalidate leave
- Configure timekeeping/designation to capture only travel + treatment time; exclude commute/unrelated errands
- **Key takeaway:** treat covered travel time like appointment time when it prevents work, and document/designate using your standard FMLA process

# Review Article

<https://www.bsk.com/news-events-videos/united-states-department-of-labor-issues-guidance-on-fmla-leave-for-time-traveling-to-and-from-medical-appointments>

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## United States Department of Labor Issues Guidance on FMLA Leave for Time Traveling to and From Medical Appointments

January 29, 2026

By: Samuel G. Dobre, Jason F. Kaufman, and Patrick J. Caldarelli

On January 5, 2026, the United States Department of Labor (DOL) issued an opinion letter (FMLA2026-2) clarifying whether time spent traveling to and from medical appointments may qualify as protected leave under the Family and Medical Leave Act (FMLA). The DOL concluded that employees may use FMLA leave not only for the medical appointment itself, but also for travel time reasonably necessary to obtain treatment for a qualifying serious health condition.

The FMLA entitles eligible employees up to 12 weeks of leave during any 12-month period for the treatment of “serious health conditions” and to care for certain family members with a serious health condition. A “serious health condition” generally involves overnight hospitalization, inpatient care and continuing treatment from a medical provider, as defined by the statute and implementing regulations. Examples of qualifying serious health conditions may include cancer, diabetes, Alzheimer’s disease, pregnancy and certain mental health conditions. Time spent attending medical appointments to diagnose or treat a qualifying serious medical condition is a recognized and permissible use of FMLA leave.

# New York State Amends the New York State Fair Credit Reporting Act to Limit the Use of Credit Reports in Employment



**Gavin T. Gretsky**

Associate

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

Syracuse, NY

# The Amendment

- On December 19, 2025, Governor Hochul signed Senate Bill 03072 into law amending the NYS Fair Credit Reporting Act (FCRA)
- New York joins 10 other states and several cities, including New York City with similar laws in effect
- Effective date is April 18, 2026

# Restrictions on Employers

- Employers, labor organizations, or employment agencies may not:
  - Request or use an applicant's or employee's consumer credit history for employment purposes or;
  - Discriminate against an applicant or employee based on their consumer credit history.



# Definitions

- Consumer Credit History
  - An individual's credit worthiness, credit standing, credit capacity or payment history as indicated by:
    - (1) a consumer credit report,
    - (2) credit score or
    - (3) information an employer obtains directly from the individual regarding:
      - (i) details about credit accounts, including the individuals number of credit accounts, late or missed payments, charged-off debts, items in collections, credit limit or prior credit report inquiries or
      - (ii) bankruptcy judgments or liens

# Definitions Continued

- Consumer Credit Report
  - Any written or other communication of any information by a consumer reporting agency that bears on a consumer's credit worthiness, credit standing, credit capacity or credit history

# Exemptions under the Amendment

- An employer that is required to use an individual's consumer credit history for employment purposes
- Positions such as peace officers or police officers or positions with law enforcement or in an investigative function with a law enforcement agency
- Persons in a position with a high degree of public trust subject to background investigation by a state agency
- Persons in a position that requires security clearance under state or federal law
- Persons in a position that requires the employee to be bonded under state or federal law
- Persons in non-clerical positions that have regular access to trade secrets, intelligence information or national security information
- Persons in positions that have signatory authority over third party funds or assets valued at \$10,000 or more or that involve a fiduciary responsibility to the employer with the authority to enter financial agreements valued at \$10,000 or more on behalf of the employer
- Persons in positions with regular duties that allow the employee to modify digital security systems established to prevent the unauthorized use of the employer's or client's networks or databases.

# Impact on Local Laws

- Does not alter or exempt duty to comply with laws regarding consumer credit history that provide greater protection than what is laid out in the amendment.
- NYC's Stop Credit Discrimination in Employment Act (SCDEA)
  - Additional exemption reporting requirement

# Consumer Credit Reporting Agencies

- Prohibited from providing consumer credit history in a consumer report for employment purposes
- Unless one of the statutory exemptions applies to the position or employer

# State and Municipal Agencies

- State and municipal agencies may not request or use consumer credit history of an applicant, licensee, or permittee for licensing or permitting purposes
  - Unless required to do so by law
- May still use other information

# Next Steps

- Effective date is April 18, 2026
- Review current practices
- Identify potential exemptions



# Workplace 2026

## Annual Labor & Employment Law Conference

| Date                    | Location         |
|-------------------------|------------------|
| Thursday, June 11, 2026 | Albany           |
| Thursday, May 21, 2026  | Corning          |
| Thursday, June 25, 2026 | Long Island      |
| Thursday, June 18, 2026 | New York City    |
| Thursday, June 4, 2026  | Rochester        |
| Tuesday, June 23, 2026  | Saratoga Springs |
| Thursday, May 28, 2026  | Syracuse         |
| Tuesday, June 9, 2026   | Westchester      |

Registration for all programs will be available starting Spring 2026

# Questions?



**Gabriel S. Oberfield**

Member

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

New York, NY

## Government and Regulatory Affairs: NYS Budget Update

Gabe Oberfield, [goberfield@bsk.com](mailto:goberfield@bsk.com)

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### Sexual Harassment Prevention Training

To combat harassment in the workplace, every New York State employer must provide harassment prevention training for all employees annually.

For more information on Bond's online sexual harassment training [click here](#) or email [bondonline@bsk.com](mailto:bondonline@bsk.com)

# Thank You

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It is not to be considered as legal advice.  
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