BUSINESS IN 2026

WEEKLY WEBINAR SERIES

BOND SCHOENECK & KING ATTORNEYS

Your Host

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Today's Agenda

Gabe Oberfield – (12:00PM-12:05PM)

- Welcome and Agenda

Liz Heifetz – (12:05PM-12:10PM)

- Court Order Affects Haitians' Temporary Protected Status

Hailey Trippany and Kaydeen Maitland – (12:10PM-12:15PM)

- New Healthcare Privacy Regulations Become Enforceable on February 16

Courtney Ryan – (12:15PM-12:20PM)

- NYAG Ramps Up Price Fixing Enforcement

Katie Stiffler – (12:20PM-12:25PM)

- USDOL Clarifies Employee FMLA Leave Tracking

Sam Knice – (12:25PM-12:30PM)

- NYLL 196-d Inapplicable to Bonuses & Commissions

G. Oberfield – (12:30PM)

- Wrap Up

Court Order Affects Haitians' Temporary Protected Status

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TPS Remains in Effect Until Further Notice

- **Protection from Removal:** TPS beneficiaries are protected from detention and deportation for the duration of the stay.
- **Employment Authorization:** Individuals with valid Employment Authorization Documents (EADs), including those automatically extended under the court's order, may continue working in the U.S. while the stay is in effect. These protections remain in place, but the court has not issued a final ruling and the situation may evolve.

Extended Validity of EADs:

- The following EADs issued under Haiti TPS retain their validity and are granted automatic extension per the court's order:

- Original expiration dates: Feb. 3, 2026; Aug. 3, 2025; Aug. 3, 2024; June 30, 2024; Feb. 3, 2023; Dec. 31, 2022; Oct. 4, 2021; Jan. 4, 2021; Jan. 2, 2020; July 22, 2019; Jan. 22, 2018; July 22, 2017.

Employer Compliance Considerations While TPS Remains in Effect

- Ensure Forms I-9 reflect court-ordered extensions
- Confirm HR systems recognize TPS extensions
- Monitor USCIS / DOJ updates
- Do not reverify prematurely
- Be ready to pivot if courts act quickly

Federal government is appealing this order but in the interim the stay remains in effect.

New Healthcare Privacy Regulations Become Enforceable on February 16

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Who Does This Requirement Apply To?

HIPAA requires "Covered Entities" to maintain and provide a Notice of Privacy Practices ("NPP") that describes how protected health information is used and disclosed.

Covered Entities fall into three categories:

Healthcare Providers	Health Plans (unless the plan is fully insured and does not handle Protected Health information, then insurer is responsible)	Healthcare Clearinghouses

Different notice and distribution rules apply for each category of Covered Entity

Update Overview

- Regulatory changes made under the 2020 CARES Act aligned HIPAA's use and disclosure requirements with more the stringent use and disclosure requirements related to the substance use disorder ("SUD") treatment information under 42 CFR Part 2.
- The required changes incorporate the more stringent notice requirements under the "Part 2" rules, and additional disclosures regarding the potential of information that is disclosed in an authorized manor to fall outside of the protections of HIPAA.
  - Note: the Department of Health and Human Services ("HHS") provides a template NPP for Covered Entities to use. However, these templates have not yet been updated to encompass the new requirements.

Required NPP Content Updates by Feb. 16, 2026

Update uses/disclosures to reflect 42 CFR Part 2. State Part 2 records barred from legal proceedings absent consent/court order.

Fundraising: provide opt-out before communications.

Warn that disclosed PHI may be redisclosed.

Reproductive health notice provisions currently stayed/not required.

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42 CFR Part 2 Final Rule: Operational Impacts for CEs

- Include required Part 2 confidentiality notice and applicable consent with disclosures.
- Enforcement aligned with HIPAA; breach notification applies.
- Patient Rights: accounting/restrictions; complaints to HHS.
- Single consent permits future HIPAA Treatment, Payment, and Health Care Operations (TPO) uses in some cases.

Next Steps…

REVISE THE NPP BY THE FEBRUARY 16TH DEADLINE.

REVIEW AND COMPLY WITH ANY NOTICE AND DISTRIBUTION REQUIREMENTS APPLICABLE TO YOUR ORGANIZATION.

ENSURE YOUR ORGANIZATION'S PRIVACY POLICY *AND* PRIVACY PRACTICES ALIGN WITH THE CONTENT OF THE UPDATED NPP.

CONSIDER UPDATING ANY BUSINESS ASSOCIATE AGREEMENTS TO REQUIRE BUSINESS ASSOCIATES TO COMPLY WITH THE MORE STRINGENT "PART 2" REQUIREMENTS.

CONSIDER CONTACTING BOND FOR YOUR LEGAL NEEDS.

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NYAG Ramps Up Price Fixing Enforcement

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Overview

- On January 28, 2026, the Attorney General finalized six new rules and issued one new proposed rule to address excessive price increases during emergencies.
- NY's price-gouging law (General Business Law § 396-r) prohibits selling essential goods or services at "unconscionably excessive" prices during an "abnormal disruption of the market," including under circumstances such as extreme weather, natural disasters, power outages, or a declared state of emergency.
- New framework aims to protect consumers while ensuring that businesses maintain consistent pricing practices and proper documentation.

Unfair Leverage

- Factors analyzed in determining whether a price increase constitutes a violation include whether the excess amount is unconscionably extreme, whether the increase was a result of exercising unfair leverage or unconscionable means, or whether the price spike was achieved by a combination of both.
- New rules set forth examples of conduct that qualifies as an exercise of unfair leverage or unconscionable means. During an abnormal market disruption, businesses are prohibited from:
  - Engaging in deceptive acts or practices that misrepresent or obscure the total price of essential products;
  - Conditioning the sale of essential products on a customer's agreement to excessively burdensome payment terms;
  - Refusing to honor previously agreed upon contracted-for prices;
  - Engaging in high pressure sales tactics, including but not limited to acts of undue influence, physical confinement, or the use or threats of violence; and
  - Unfairly leveraging their market position (i.e., exploiting consumers' lack of available alternatives).

Unfair Leverage

- Businesses with substantial market power are under heightened scrutiny.
- The new rules create a presumption that any seller with a relevant market share **greater than 30%** for an essential product has violated the price-gouging law if they increase their prices by *any* amount during a market disruption, regardless of how minimal.
- This presumption can be rebutted with evidence that the profit made per sale remained the same both pre- and post-market disruption, or that the seller faced increased costs outside of their control.

10% Price Increase Rule

- Prima facie proof of a price-gouging violation includes either:
  - (1) a gross disparity between the price of essential goods sold during an abnormal market disruption and the price of the same goods sold prior to the disruption; or
  - (2) the price of essential goods grossly exceeds the price that the same or similar goods could be obtained elsewhere.
- The new rules create a presumption that **any price increase over 10%** during an abnormal disruption constitutes a "gross disparity" under the first prong and may support an enforcement action.

New Essential Products

- The new rules extend price-gouging protections to newly created goods and services that emerge after a disruption begins (e.g., COVID-19 test kits), preventing businesses from exploiting the absence of historic pricing data.
- The price of a new essential product cannot be more than **10% greater** than the pre-disruption price of a comparable product in the area, or a price-gouging violation is presumed.

Newly Proposed Rule Addressing Weather-Related Disruptions

- If adopted, this proposed rule would establish specific examples detailing when weather conditions trigger an abnormal market disruption, serving to clarify standards for price increases related to storms, extreme temperatures, and other similar weather-related emergencies.
- Businesses distributing essential goods must maintain thorough documentation to justify significant price increases during these periods. Without legitimate cost-based evidence to support price hikes, businesses may face enforcement action(s).

Impacts and Compliance Recommendations

- While the new price-gouging rules provide greater clarity, they also expand liability – particularly for businesses with significant market power, businesses selling essential goods, and businesses operating in emergency-related sectors. Maintaining routine internal documentation processes is more important for affected businesses now than ever before.
- Businesses can mitigate their potential liability by endeavoring to do the following:
  - Review pricing policies and update compliance programs.
  - Align pricing with the 10% increase threshold to avoid enforcement action(s).
  - Maintain detailed and contemporaneous documentation of all price changes and cost increases. Poorly documented cost factors may invalidate your business's affirmative defense(s) if faced with a price-gouging enforcement action. Businesses with substantial market power face heightened scrutiny to prove that price increases are not attempts to exploit emergency conditions for excess profit.
  - Preserve audit-ready records relating to prices and costs for at least several years.
  - When pricing a new product that launches during or after an emergency, set prices according to a trusted formula that is supported by documented evidence.
  - Monitor emergencies and potential emergencies to ensure readiness and compliance during periods of market disruption.

USDOL Clarifies Employee FMLA Leave Tracking

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Family and Medical Leave Act ("FMLA")

- Allows eligible employees to take up to 12 workweeks of leave in a 12-month period for several qualifying reasons, including a serious health condition, to care for the employee's spouse, child, or parent with a serious health condition, etc.

- How do we count FMLA leave during school closures of less than one week?s

FMLA Leave During School Closure of Less Than One Week

- Jan. 5, 2026 the U.S. Department of Labor issued an opinion letter clarifying how schools must track an employee's FMLA utilization during school closures of less than one week

- When an employee takes leave for part of a workweek, the amount of leave taken is determined based on the actual week and only the amount of leave the employee actually takes is counted

FMLA Leave During School Closure of Less Than One Week

- When a school closes for part of a week during which an employee uses less than one full week of leave, the period when the school was closed must not be counted as FMLA leave, unless the employee was scheduled and expected to work during the period and did not
- For example:s if an eligible employee takes FMLA leave each Tuesday afternoon for physical therapy, but the school is closed all day on Tuesday because of bad weather and the employee is not required to report to work, the time utilized for that day must not be deducted

FMLA Leave During School Closure of Less Than One Week

- On the other hand, when school is closed for part of a week during which an employee is slated to use a full week of leave, the entire week may be counted as FMLA leave
- For example: if an employee was on FMLA leave Monday through Friday, but the school closed on Tuesday, the full week may be counted, despite the employee not being required to report to work due to the closure

FMLA Leave During School Closure of Less Than One Week

- Whether a school closure was planned or unplanned does not impact the amount of FMLA leave an employee must use, nor does the specific reason for a school's temporary closure
- Whether a school requires an employee to work on a future "make up" day also does not impact the analysis
  - The "make up" day is unrelated to the employee's protected use of FMLA leave
  - An employee's ability to take FMLA leave on a "make up" day must be evaluated independently of the day that "make up" day replacess

NYLL 196-d Inapplicable to Bonuses & Commissions

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New York Labor Law § 196-d

"No employer or his agent or an officer or agent of any corporation, or any other person shall demand or accept, directly or indirectly, any part of the gratuities, received by an employee, or retain any part of a gratuity or of any charge purported to be a gratuity for an employee. This provision shall not apply to the checking of hats, coats or other apparel. Nothing in this subdivision shall be construed as affecting the allowances from the minimum wage for gratuities in the amount determined in accordance with the provisions of article nineteen of this chapter nor as affecting practices in connection with banquets and other special functions where a fixed percentage of the patron's bill is added for gratuities which are distributed to employees, nor to the sharing of tips by a waiter with a busboy or similar employee."

What is a gratuity?

- Money given by a customer to an employee for services provided to the customer.
- Can be in any form:
  - Cash;
  - Credit card;
  - Check; or
  - Any other payment method.
- A charge made to the customer in addition to charges for food, drink, lodging, and other specified materials or services, is presumed to be a tip, and must be given to the employee who provides customer service.

Cain v. United Mortgage Corp. (E.D.N.Y. 2025)

- Plaintiff brought this action under Title VII, 42 U.S.C. § 1981, the Age Discrimination in Employment Act ("ADEA"), and corresponding provisions of state and local law, contending that he was discriminated against and subjected to a hostile work environment, and that he was terminated because of his race, his age, and in retaliation for his protected complaint regarding race discrimination.
- Among the state law claims was one under NYLL §196-d, which prohibits employers from demanding or retaining gratuities received by employees.

Cain v. United Mortgage Corp. (Cont'd)

- The Court explained that section 196-d is intended to protect tips or gratuities paid by customers.
- In evaluating whether a charge is a gratuity, the court focuses on "the expectation of the reasonable *customer*."
- A commission, on the other hand, is a portion of the total value of a transaction that an employee receives from his **employer** for completing the transaction, and therefore does not fall into the statutory definition of a gratuity.
- Ultimately, because plaintiff's claim involved commissions rather than customer tips, the court held §196-d was inapplicable and granted defendants summary judgment on that claim.

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

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Questions?

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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

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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.