



BUSINESS IN 2026

WEEKLY WEBINAR SERIES



Your Host



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New Webinar Schedule (Effective April 1)

- **First Tuesday** of the Month: Legal Updates
- **Third Tuesday** of the Month: Special Edition Topic

Today's Agenda

Kerry Langan – (12 p.m.)

- Welcome and Agenda
- Program Formatting Changes

Christopher Cruz Sierra – (12 - 12:05 p.m.)

- New York Childcare Capital Construction Funding Program

Samuel Wiles – (12:05 – 12:10 p.m.)

- New NLRB General Counsel Guidance Memo

Sabrina Salama – (12:10 – 12:20 p.m.)

- Decision Dismissing Title IX and FLSA Claims Based on the Ministerial Exception

Jacqueline Zahn – (12:20 – 12:30 p.m.)

- Major Changes to Third-Party Practice: An Overview of New York's AVOID Act

Kerry Langan – (12:30 p.m.)

- Questions / Wrap Up

New York Childcare Capital Construction Funding Program



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Background of the Program

- \$100 million in funding
- Designed to expand the availability of licensed, registered and permitted childcare services across NY.
- This initiative is part of the State's broader efforts to ensure families have access to reliable and affordable childcare.

Application Window and Administration

- February 2, 2026 - **March 13, 2026**
- Two major State entities are responsible for the program's administration
 - New York Office of Children and Family Services (OCFS)
 - Dormitory Authority of the State of New York (DASNY)
- Both agencies will jointly review and evaluate applications

Who Can Apply?

- A broad range of institutions are eligible to apply for funding, including:
 - Private and public colleges and universities
 - Municipalities
 - Nonprofit corporations
 - Public authorities

Eligible Uses of Funding

- Awarded funds may support both **new construction and expansion of existing facilities**
 - Building new childcare centers
 - Renovating or reconstructing interior/exterior spaces
 - Architectural and engineering work, including stamped construction documents
 - Purchasing necessary childcare equipment

Application Requirements

- At the time of submission, applicants must provide several pieces of documentation:
 1. Site control: proof that the applicant owns, leases or otherwise controls the property
 2. Construction feasibility: showing the project can be completed as proposed
 3. Attestation: commitment to accept families receiving childcare assistance
 4. Project budget:
 - All sources and uses of funds
 - Amount requested
 - Letters of commitment from each funding source

New NLRB General Counsel Guidance Memo



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Decision Dismissing Title IX and FLSA Claims Based on the Ministerial Exception



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Background

- Plaintiff was a Chaplain Resident in EHS's Clinical Pastoral Education and Training Program for the term May 23, 2022 to May 22, 2023 in which he received a stipend
- During that time, he worked under defendant Asnel Valcin, his supervisor
- Allegations that he was treated differently than other residents in the program
- Allegations that he was not paid overtime wages and was required to work off the clock

Procedural History

- Plaintiff commenced this action on December 26, 2024
- Defendants requested leave to file motion to dismiss
- Plaintiff requested leave to file motion for conditional certification of collective action
- Plaintiff filed an Amended Complaint on May 7, 2025

Plaintiff's Claims Asserted in the Amended Complaint

- Gender Discrimination under the NYSHRL, NYCHRL, and Title IX
- Religious Discrimination under the NYSHRL and NYCHRL
- Hostile Work Environment under the NYSHRL and NYCHRL
- Retaliation under the NYSHRL and NYCHRL
- Retaliation under NPCL § 715-b
- Wage-and-hour claims under the FLSA
- Wage-and-hour claims under the NYLL

Supplemental Briefing Order

- Court filed a supplemental briefing order whereby parties were to address:
 - Whether the ministerial exception, which precludes application of employment discrimination laws to claims concerning the employment relationship between a religious institution and its ministers, applies here
 - The applicability of *Penn v. New York Methodist Hospital*, 884 F.3d 416, 425 (2d Cir. 2018)
 - Whether the ministerial exception extends to Plaintiff's Title IX, FLSA, NYSHRL, NYCHRL, NYLL, and NPCL claims

Ministerial Exception

- Derived from the First Amendment's Free Exercise and Establishment Clauses
- Purpose is to ensure that the authority to select and control who will minister to the faithful is the church's alone
- Bars employment-discrimination claims brought by ministers against the religious groups that employ or formerly employe them
- Operates as an affirmative defense

Who Does the Ministerial Exception Apply to?

- US Supreme Court has not defined the limits of a “religious group”
- No rigid formula in deciding when an employee qualifies as a minister, courts consider the following factors:
 - The formal title given to the employee by the Church
 - The substance reflected in that title
 - His own use of that title
 - The important religious functions he performed for the church
 - Whether the employee’s position reflected a significant degree of religious training and a formal process of commissioning

Penn v. N.Y. Methodist Hospital

Relevant Facts in <i>Penn</i>	Present in Davenport?
Hospital was originally affiliated with a religious organization, established by a church	Yes
Despite becoming more secular, Hospital kept vestiges of its religious heritage	Yes
Involved a chaplain resident operating under the Hospital's Department of Pastoral Care	Yes
Purpose of the Pastoral Care Department was to minister patients, family, and staff; facilitate the patient's receipt of rituals; counsel patients and families; offer prayer, ritual, and devotional materials; participate in coordinating and conducting chapel services	Yes
As resident chaplain, plaintiff performed religious functions	Yes

Holding

- The ministerial exception bars Plaintiff's Title IX and FLSA claims
- The Court declined to exercise supplemental jurisdiction over Plaintiff's state law claims
- The Amended Complaint was dismissed in its entirety

Court's Analysis with Regard to Title IX Claim

- Recent Supreme Court's precedent flatly bars ministers from bringing employment-discrimination claims against the religious groups that employ them
- Valid and neutral laws posing no threat to dogma may not apply to an internal church decision that affect the faith and mission of the church itself
- Here, a judgment would penalize Defendants for how they selected their chaplains, assigned them job duties at the hospital, or expressed their faith while serving as spiritual counselors
- It would also force the Court to preempt the hospital's governance and internal organization

Court's Analysis with Regard to FLSA Claim

- Second Circuit has not decided whether the wage-and-hour claims fall within the First Amendment's reach
- Just as the initial function of selecting a minister is a matter of church administration and government, so are the functions which accompany such selection, including determination of a minister's salary
- Prosecution of unpaid-wages claim by a chaplain who counseled families of patients in traumatic situations would involve an undisputed spiritual dimension

Implications of This Decision

- Demonstrates that even if an employer is not necessarily a “religious institution,” it may still nonetheless qualify as a religious group
- Extends the ministerial exception to FLSA claims
- Allows for the applicability of the ministerial exception at the motion to dismiss stage, allowing for earlier resolution

Major Changes to Third-Party Practice: An Overview of New York's AVOID Act



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Overview of New York's AVOID Act

- On February 13, 2026, Governor Hochul signed into law an Amendment to CPLR § 1007, which is the procedural rule governing Third-Party Practice in New York
- The amendment, titled the Avoiding Vexatious Overuse of Impleading to Delay (AVOID) Act – imposes stringent new deadlines on defendants and third-party defendants seeking to implead (or bring in) additional parties.
- These new deadlines will apply to all actions commenced **on or after April 18, 2026**

What is Third-Party Practice?

- In a lawsuit, the person being sued (the defendant) may believe that someone else is actually responsible for some or all of the harm claimed by the plaintiff
- Third-party practice is the legal process that allows the defendant to bring that other person or company into the case
- The purpose of third-party practice is efficiency: it allows all related issues and all potentially responsible parties to be resolved in one proceeding rather than through multiple separate lawsuits

Third-Party Practice Prior to the AVOID Act

- Prior to the AVOID Act, New York law did not impose explicit deadlines for filing third-party complaints
- Courts instead exercised broad discretion in determining whether a late impleader would unduly delay the main action or prejudice other parties
- The AVOID Act's stated purpose is to stop defendants from filing third-party claims late in the litigation as a tactic to slow down the case or extend discovery and motion practice

Key Provisions of the AVOID Act

New 90-Day Deadline

- Defendants must now file third-party actions within ninety (90) days of serving their answer in the main action
- Any third-party action filed outside this 90-day window requires a court order
- Once the Plaintiff files a Trial Note of Issue (document telling the court that discovery is complete and the case is trial-ready) no third-party action can be commenced unless the party demonstrates “good cause” or that allowing the filing would be “in the interest of justice”

Key Provisions of the AVOID Act

Mandatory Severance

- If a defendant misses the new deadlines, the Court is required to sever or dismiss that third-party claim from the underlying lawsuit
- This does not eliminate the defendant's ability to seek recovery from that third party. Instead, the defendant will have to pursue those claims in a separate, standalone action, rather than keeping all parties in one unified case.

Key Provisions of the AVOID Act

Limited Exceptions for Third-Party Claims Brought Against a Plaintiff's Employer

- A defendant may bring a claim against the plaintiff's employer outside the standard deadlines and without a court order when either:
 1. The claim seeks indemnification or contribution for a “grave injury” under Workers' Compensation Law § 11, or
 2. The employer's identity was not known until after the normal deadlines expired.
- When this exception applies, the third-party claim against the employer must be filed within 90 days of:
 - Discovering the employer's identity, or
 - Knowing or having reason to know that the plaintiff sustained a qualifying “grave injury”

Key Practical Implications

- **Earlier Investigation & Tender Decisions:** Defendants must quickly assess liability, review indemnity provisions, and issue tenders – often before depositions or meaningful discovery. Insurers may need to adjust internal workflows so coverage and strategy decisions can be made within the Act’s deadlines.
- **Earlier and Broader Impleader:** To avoid losing third-party rights, defendants may implead more parties earlier, increasing initial motion practice and early-stage discovery.
- **Higher Costs if Deadlines Are Missed:** Missing the 90-day deadline may require separate lawsuits to recover against a liable third party – adding cost, delay, and reducing settlement leverage.
- **More Litigation Over Key Definitions:** Courts will likely see disputes over what qualifies as “good cause,” meets the “interest of justice,” or when a defendant “should have known” about a grave injury.

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

Thank You

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It is not to be considered as legal advice.
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