

2024

# BUSINESS IN 2023

WEEKLY WEBINAR SERIES

2022

2021

2020



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# Introduction



## Adam P. Mastroleo

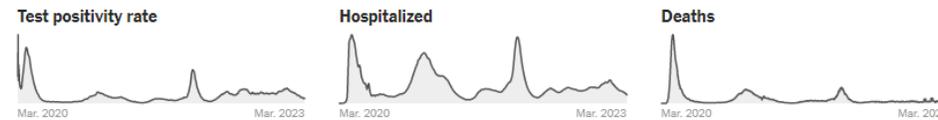
Member

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Syracuse, NY

# Current COVID Data in New York

## New reported cases



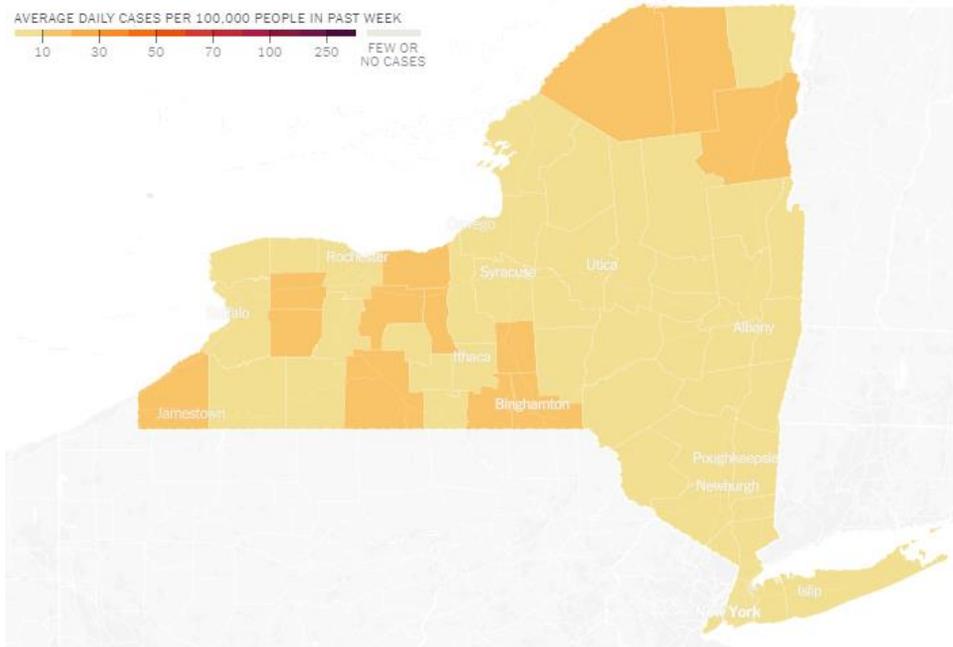
	DAILY AVG. ON MAR. 13	PER 100,000	14-DAY CHANGE
Cases	1,276	7	-45%
Test positivity	4.7%	—	-19%
Hospitalized	1,707	9	-25%
In I.C.U.s	195	1	-28%
Deaths	35	<1	+286%

# Current COVID Data in New York

## Hot spots

AVERAGE DAILY CASES PER 100,000 PEOPLE IN PAST WEEK

10 30 50 70 100 250 FEW OR NO CASES



	CASES DAILY AVG.	PER 100,000	14-DAY CHANGE	TEST POSITIVITY	HOSPITALIZED AVG. PER 100,000	14-DAY CHANGE	DEATHS DAILY AVG.	PER 100,000
New York	1,276	7	-45%	5%	9	-25%	34.8	0.18
Franklin >	9	19	+38%	9%	3	-46%	<0.1	0.04
Broome >	28	15	-10%	10%	20	+32%	0.3	0.14
Essex >	5	13	-34%	11%	13	-24%	0.2	0.47
Cortland >	6	13	-47%	13%	14	-5%	<0.1	0.12
St. Lawrence >	13	12	-12%	10%	6	-41%	0.1	0.10
Genesee >	7	11	-8%	11%	18	+2%	<0.1	0.08
Seneca >	4	11	+35%	10%	9	-3%	<0.1	0.19
Wyoming >	4	11	+7%	12%	15	-12%	0.2	0.49
Chautauqua >	14	11	-6%	10%	8	+22%	0.2	0.15
Steuben >	10	10	-28%	11%	6	-36%	<0.1	0.05

# Preparing a Response to an Administrative Charge



## Adam P. Mastroleo

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# Employment Discrimination/Retaliation Litigation

- Federal, State, and Local Laws prohibit discrimination and retaliation
  - Title VII of the Civil Rights Act of 1964 (race, color, religion, gender, pregnancy, sexual orientation, national orientation)
  - Americans with Disabilities Act
  - Age Discrimination in Employment Act
  - New York State Human Rights Law (age, religion, disability, domestic violence victim status, gender identity or expression, familial status, marital status, military status, national origin, predisposing genetic characteristics, pregnancy-related condition, race/color, sex, sexual orientation)

# Employment Discrimination/Retaliation Litigation

- Federal, State, and Local Laws prohibit discrimination and retaliation
  - New York City Human Rights Law (age, immigration or citizenship status, color, disability, gender, gender identity, marital status, national origin, pregnancy, race, religion, sexual orientation, status as a veteran or active military member)

# Employment Discrimination/Retaliation Litigation

- Claim Process
  - Administrative Agencies:
    - New York State Division of Human Rights
    - New York City Commission on Human Rights
    - Equal Employment Opportunity Commission
  - Courts
    - New York State Court
    - Federal Court

# Employment Discrimination/Retaliation Litigation

- New York Division of Human Rights Process:
  - Complaint
  - Response/Rebuttal
  - Factual Investigation by Administrative Agency can include request for specific documents, interviews
  - Initial Determination (Probable Cause/No Probable Cause)
  - Mandatory Pre-Hearing Settlement Conference
  - Trial
  - Final Order by Commissioner
    - Reinstatement, training of staff, etc.
    - Monetary damages, including back pay, compensatory damages for mental anguish, attorney's fees, civil fines and penalties

# Employment Discrimination/Retaliation Litigation

- EEOC Process:
  - Charge
  - Response/Rebuttal
  - Factual Investigation by Administrative Agency can include request for specific documents, interviews
  - Possible outcomes following investigation:
    - Dismissal and Notice of Rights (including 90-day Right to Sue Notice)
    - Probable Cause Finding, with invitation to Conciliation
      - If conciliation is not successful, the EEOC has the right to file a lawsuit in federal court. If it decides not to, the Complainant will receive a 90-day Right to Sue Notice)

# Employment Discrimination/Retaliation Litigation

- Response to Administrative Complaints:
  - Determine when response is due
  - Determine whether insurance is available
  - Determine who will be preparing the response
  - Identify relevant documentation
    - Relevant policies (EEO/Harassment)
    - Relevant documentation
      - Employment file
      - Letters/Emails/Texts or other correspondence
      - Relevant disciplinary records
      - Comparator information

# Employment Discrimination/Retaliation Litigation

- Response to Administrative Complaints (cont'd):
  - Identify and speak to witnesses
  - Identify defenses available (e.g., legitimate, non-discriminatory, non-retaliatory reasons for taking action)
  - Prepare Written Response
    - Letter format
    - Determine how much detail to provide
    - Identify relevant Exhibits
    - Explanation of facts, as well as defenses
  - Wait for agency to respond with request for additional information or interviews

# Update on Mandatory Arbitration Clauses



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# What is the EFAA?

- Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021
- Also known as the #MeToo Bill
- Was signed into law by President Biden on March 3, 2022

# What did the EFAA do?

- Amended the Federal Arbitration Act to invalidate mandatory arbitration agreements that preclude an employee from filing a lawsuit in court arising from workplace sexual assault or sexual harassment
- Historically, these types of provisions have frequently been used in employment contracts

# Johnson v. Everyrealm Inc., et al.

- On February 24, 2023, Hon. Paul A. Engelmayer, a Federal District Court Judge presiding in the Southern District of New York issued a decision which may well set precedent for the true scope of the EFAA, which also may have been broader than initially expected
- In Johnson v. Everyrealm Inc., Judge Engelmayer held that the EFAA prohibits not only the mandatory arbitration of workplace sexual harassment or sexual assault claims, but prohibits other claims brought in the same case from being subject to mandatory arbitration as well
- In a companion case, Yost v, Everyrealm Inc., et al., Judge Engelmayer held that for the EFAA to prohibit other claims from being subject to a mandatory arbitration agreement, the sexual harassment claims must at least be plausibly pled

## Johnson v. Everyrealm Inc., et al.

- In his employment agreement, Johnson “agree[d] that any dispute or controversy arising out of or relating to any interpretation, construction, performance, or breach of this Agreement, shall be settled by arbitration to be held in the State of New York, in accordance with the rules then in effect of the American Arbitration Association.”
- Johnson subsequently brought a lawsuit against Evergreen for sexual harassment, race bias, retaliation, and pay discrimination, and Evergreen moved to compel arbitration of such claims

# Johnson v. Everyrealm Inc., et al.

- The EFAA provides that:
- “Notwithstanding any other provision of this title, at the election of the person alleging conduct constituting a sexual harassment dispute or sexual assault dispute, or the named representative of a class or in a collective action alleging such conduct, no predispute arbitration agreement or predispute joint-action waiver shall be valid or enforceable with respect to a case which is filed under Federal, Tribal, or State law and relates to the sexual assault dispute or the sexual harassment dispute.”

# Johnson v. Everyrealm Inc., et al.

- Focusing on the emphasis of “case”, Judge Engelmayer held that:
- “With the ordinary meaning of “case” in mind, the text of § 402(a) makes clear that its invalidation of an arbitration agreement extends to the entirety of the case relating to the sexual harassment dispute, not merely the discrete claims in that case that themselves either allege such harassment or relate to a sexual harassment dispute (for example, a claim of unlawful retaliation for a report of sexual harassment).”
- “Accordingly, the Court holds that, where a claim in a case alleges “conduct constituting a sexual harassment dispute” as defined, the EFAA, at the election of the party making such an allegation, makes pre-dispute arbitration agreements unenforceable with respect to the entire case relating to that
- dispute”

# Takeaways

- Judge Engelmeyer's holding in *Everyrealm* appears to be the most substantiative decision as to the scope of the EFAA to date, prior cases had clarified that the EFAA is not applied retroactively to its effective date, and that claims must have accrued after the effective date of the EFAA to receive its protections.
- This decision will very likely get appealed, if nothing else, to seek clarification from the Second Circuit as to the true scope of the EFAA.

# Recent Developments with the Child Victims Act



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# Wrapping Up the Recruitment Process



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# Recruitment Steps

- Updated job description
- Job Posting
- Screening of Applicant résumés
- Interviews
- Background/reference checks
- Hiring decision

# Closing the Deal

- Conditional offer of employment
  - In writing
  - welcoming
  - No unintended contractual commitment
  - Explanation of duties & commitments
  - Salary
  - Benefit references
  - Other terms
- Conditions
  - Employment eligibility (I-9 compliance)
  - Medical exam
  - Drug test

# Addressing Some Potential Complications

- Restrictive Covenants
  - Former employer's
  - Yours
- Commission sales personnel in NY
- Risks in withdrawing an offer
- Employment contracts
  - Arbitration agreements & jury waivers
- Salary negotiations
- Wage Theft Prevention Act compliance

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## Update on Mandatory Arbitration Clauses

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## Wrapping Up the Recruitment Process

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### **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

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It is not to be considered as legal advice.  
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