



BUSINESS IN 2024

WEEKLY WEBINAR SERIES

 **BOND** **SCHOENECK & KING** ATTORNEYS

Your Host



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TODAY'S AGENDA

Gabe Oberfield – (12:00PM-12:05PM)

- Intros / Agenda
- One-House Bills and Other Legislative Updates

Sam Brewster – (12:05PM-12:15PM)

- Federal Court in Texas Strikes Down NLRB Joint Employer Rule

Camisha Parkins (G. Oberfield, sponsor) – (12:15PM-12:25PM)

- U.S. Dept. of Education to Require 'Financial Value Transparency'

James Lauria – (12:25PM-12:35PM)

- New York State's New Analog to the Federal Corporate Transparency Act

Jennifer Tsyn – (12:35PM-12:45PM)

- Tenant Disputes and Abandoned Premises

G. Oberfield – (12:45PM)

- Questions / Wrap Up

Where We Are on the NYS Budget

- We have the one-house bills...
- Deeper negotiations are underway...
- Budget due on April 1, 2024.



Credit: Albany.org

Eastern District of Texas Strikes Down NLRB's New Joint Employer Rule



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Chamber of Commerce of the United States v. National Labor Relations Board (NLRB)

- On March 8, 2024, U.S. District Court Judge Campbell Baker of the Eastern District of Texas struck down the NLRB's new joint employer rule.
- Action brought by U.S. Chamber of Commerce and a coalition of business groups against NLRB challenging rule's lawfulness.
- Under the new rule, employers are more easily deemed joint employers for purposes of the NLRA.
- Judge Baker found the new rule was overly broad and failed to create a clear standard for employers to follow.

Joint Employment under the NLRA

- Board's rule relates to whether an entity is a "joint employer" for purposes of the National Labor Relations Act (NLRA)
- NLRA imposes significant obligations on employers, such as:
 - Duty to bargain in good faith with employees' bargaining representative (*i.e.*, union) over essential terms and conditions of employment;
 - Duty to furnish information upon request by a union; and
 - Duty to refrain from interfering with employees exercising their NLRA rights.
- NLRA does not distinguish "employer" from "joint employer"

NLRB 2023 Joint Employer Rule

- NLRB issued new “final” rule on October 27, 2023 (effective March 11, 2024).
- Replaced “direct and immediate control” with less-demanding standard
- **New rule includes “two-part” test –**
 - Entity is a joint employer where:
 - 1) it qualifies as a common-law employer (*i.e.*, has the power to control the material details of how work is to be performed); and
 - 2) if a common-law employer, it controls one or more “essential terms and conditions of employment” (e.g., “work rules and directions governing the manner, means and methods of the performance of duties”).

NLRB 2023 Joint Employer Rule cont'd

- Rule includes two broad propositions –

(e) For the purposes of this section:

(1) Possessing the authority to control one or more essential terms and conditions of employment **is sufficient to establish status as a joint employer**, regardless of whether control is exercised.

(2) Exercising the power to control indirectly (including through an intermediary) one or more essential terms and conditions of employment **is sufficient to establish status as a joint employer**, regardless of whether the power is exercised directly.

Texas Court's Decision

- Granted U.S. Chamber's motion for summary judgment.
- **Three main conclusions:**
 - 1) "Two-part" test is only one step for practical purposes.
 - The first step necessarily satisfies second step.
 - 2) Broad propositions are *overly* broad.
 - Propositions "would treat virtually every entity that contracts for labor as a joint employer because virtually every contract for third-party labor has terms that impact, at least indirectly, at least one of the specified 'essential terms and conditions of employment.'"
 - 3) Rule failed to create a clear standard for employers to follow.

Impact & Looking Ahead

- Decision extends effective date beyond March 11, 2024.
- Decision likely does not foreclose future litigation over the legality of the Board's rule.
 - NLRB may choose to appeal the decision to the Fifth Circuit Court of Appeals.
 - Service Employees International Union's petition remains pending in the D.C. Circuit Court of Appeals (asking NLRB to expand the essential job terms).

U.S. Department of Education to Require “Financial Value Transparency” Reporting from Higher Ed Institutions



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(under the guidance of Gabriel S. Oberfield)

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BACKGROUND

- “Financial Value Transparency” (FVT) framework was established in October 2023.
- U.S. Department of Education (ED) aims to protect students at higher education institutions (IHE) from overwhelming debt after graduation.
- FVT Framework is designed to require all postsecondary institutions to provide students with an estimate of out-of-pocket expenses necessary to complete programs at the institution.

What Information Must Be Reported?

IHEs should expect to report the estimated costs of the following starting **July 1st, 2024**:

- Program costs (tuition, fees, books, and supplies)
- Non-federal grant aid
- Loan burden (private and federal)
- Graduates' earnings
- Applicable occupational and licensing requirements

Which Programs are Required to Report FVT Information?

- Undergraduate, certificate and graduate programs at postsecondary institutions that are eligible to participate in Title IV of the Higher Education Act of 1965, as amended, must meet the FVT reporting requirements.

Where Can Students Access the FVT Information?

- ED will develop and maintain a program information website for the FVT information.
- The website will be made available to all students.
- Students at **certificate** and **graduate degree** programs will be required to acknowledge having seen the financial information on the website before enrollment.
- ED has not yet provided a timeframe for the completion of the website.

The Impact of FVT Reporting on IHEs

- Bond will provide more detailed guidance on the impact of financial value transparency reporting on institutions once ED has made the reporting website publicly available.
- Stay tuned for further updates!

The Corporate Transparency Act & The New York LLC Transparency Act



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Federal Corporate Transparency Act

- Passed in 2021, took effect in 2024.
- New government database aimed at deterring money laundering, fraud and financial terrorism.
- Existing Entities – One year to file appropriate reports.
- New Entities – 30 days to file.
- Exemptions exist for certain larger operating companies, churches, nonprofits and securities brokers.
- Reporting centers around disclosing an entity’s “beneficial owners”.
- Civil and criminal penalties exist for violations.

Reporting Companies and Beneficial Ownership

- Unless an exemption is met, reporting companies are entities that require some kind of state registration for legal formation.
- Reporting requirements include information on the entity itself, the applicant, and all beneficial owners.
- Beneficial owners have “substantial control” over the reporting entity.
- Includes managers and 25% or more equity owners.
- Reporting information includes date of birth, legal name, addresses and some kind of personal identifying number (passport or driver’s license info).

NY LLC Transparency Act

- Originally signed in December of 2023, the governor signed an amended version on March 1, 2024. Won't take effect until January 2026.
 - The amendment removed the public database requirement.
- Specifically stated goal to address the widespread anonymous ownership of property in the state.
- Includes reporting requirements for out-of-state entities that are “doing business” in New York.
- Follows the reporting requirements of the CTA (beneficial ownership).
- Main Differences from CTA:
 - Applies only to LLCs.
 - Filing for exemptions – Attestation of Exemption.
 - Update Process – Annual updates.

New Firm Policies for the CTA

- Encourage Attorneys to inquire about CTA issues with clients whenever they open a new matter
- Include information in Engagement Letters about the filing of a beneficial ownership information report.
- Creation of a Bond CTA Attorney Committee to oversee filings and provide company applicants for formations.
- Create Client Beneficial Owner Certificate – Information gathering and attestation.
- Log CTA information.
- Client outreach for pre-existing entities.

Applicability to Property Owners?

- Would the new transparency laws apply to entities formed for the purpose of owning real estate in NY? Still an open issue.
- Does the law apply retroactively to existing entities?
- What about the issue of “doing business” in a state?

Tenant Disputes and Abandoned Premises



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Your Questions



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More Info Coming Soon



WORKPLACE 2024

One-House Bills and Other Legislative Updates

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New York State's New Analog to the Federal Corporate Transparency Act

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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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