

2023

# BUSINESS IN 2022

WEEKLY WEBINAR SERIES

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& KING ATTORNEYS

1



## COVID Update



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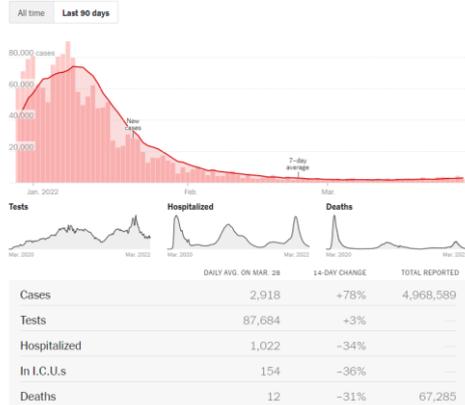
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2

## Current COVID Data in New York

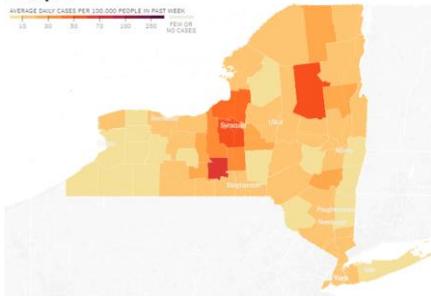
### New reported cases



- Case numbers increasing significantly
- No policy changes to date

## Current COVID Data in New York

### Hot spots



	CASES DAILY AVG.	PER 100,000	14-DAY CHANGE	HOSPITALIZED AVG. PER 100,000	14-DAY CHANGE	DEATHS DAILY AVG.	PER 100,000	FULLY VACCINATED
New York	2,918	15	+78%	5	-34%	11.7	0.06	76%
Tompkins >	69	67	+170%	8	-36%	0.1	0.14	79%
Onondaga >	244	53	+117%	7	-8%	0.2	0.04	73%
Hamilton >	2	51	+57%	5	-36%	0	—	83%
Oswego >	53	45	+131%	8	-7%	0.1	0.09	59%
Cayuga >	29	38	+231%	7	-20%	0.1	0.16	59%
Cortland >	14	30	+233%	8	-26%	0.2	0.38	59%
Madison >	20	29	+249%	6	-20%	0	—	61%
Franklin >	13	27	+18%	5	-21%	0	—	69%
Greene >	11	23	+257%	8	-41%	0.1	0.3	62%
Schuyler >	4	22	+146%	6	-54%	0	—	62%

## Affirmative Action Program(s) & OFCCP's Federal Contractor Portal



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5

## Affirmative Action Program(s) & OFCCP's Federal Contractor Portal

- The Office of Federal Contract Compliance Programs (OFCCP) is responsible for ensuring that federal contractors comply with laws and regulations that prohibit discrimination.
- Federal contractors that meet certain criteria must develop and maintain Affirmative Action Programs (AAP)
  - Supply and service contractors with at least 50 employees and that have a federal contract of \$50,000 or more
- AAPs address non-discrimination and outline employers' policies and practices for recruiting and hiring women, minorities, people with disabilities, veterans, etc.



6

## Affirmative Action Program(s) & OFCCP's Federal Contractor Portal

- The OFCCP has implemented a new platform – the Contractor Portal- where covered federal contractors and subcontractors must certify, on an annual basis, whether they are meeting their AAP obligations.
- Federal Contractors can now register their organization on the Portal.
  - Use 2018 EEO-1 data to register
- OFCCP Contractor Portal User Guide
- Contractor Portal Frequently Asked Questions
- OFCCP Contractor Portal Technical Help Desk



## OFCCP Portal – Certification

- March 31, 2022 - Certification period begins
  - Contractors will be able to certify that they maintain an AAP
- Certification period ends on June 30, 2022
  - Deadline for certifying the status of AAPs
- OFCCP clarified contractors will be required to certify whether, at the time of certification, they have developed and maintained an AAP for each establishment or functional unit.

## OFCCP Portal – Certification

- Contractors who do not register and certify by the deadline are more likely to be selected for compliance evaluations, but contractors who do certify may still be selected for audits.
- OFCCP plans to host a webinar on March 31, 2022 at 2pm, addressing the certification process.

## OFCCP Portal – Pay Equity Audits

- On March 15, 2022, OFCCP issued Directive 2022-01
- Signals that OFCCP will be focusing on pay equity enforcement efforts
- Directive addresses federal contractors' regulatory requirement to “perform in-depth analyses of its total employment process to determine whether and where impediments to equal opportunity exist.” 41 CFR 60-2.17(b)

## OFCCP Portal – Pay Equity Audits

- OFCCP’s Directive takes the position that pay equity audits are required to be completed by contractors to analyze any gender or race-based disparities in a contractor’s compensation system.
- Pay audits will be requested and scrutinized in compliance evaluations
  - “Failure to provide the required pay equity audit will be considered by OFCCP as an admission of noncompliance with these regulatory requirements.”
- What about the attorney-client privilege for these pay equity audits?

## EEOC Guidance on Caregiver Discrimination



### **Lisa R. Feldman**

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## EEOC Caregiver Discrimination Guidance

- March 14, 2022
- Supplements earlier EEOC caregiver guidance
- Two updates:
  - <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws> (Section I)
  - <https://www.eeoc.gov/laws/guidance/covid-19-pandemic-and-caregiver-discrimination-under-federal-employment>



13

## Caregiver Discrimination

- Crafted with pandemic in mind, good to be mindful more broadly
- Violates EEOC laws if based on:
  - any protected characteristic under the laws the EEOC enforces
    - e.g. sex (includes pregnancy, sexual orientation, gender identity) race, color, religion, national origin, age (40 and above), disability, genetic information
  - associational discrimination (person receiving care)
  - intersectional discrimination (2 or more EEOC protected characteristics)



14

## Other Key Takeaways

- Generally, flexibility not guaranteed for Caregiving (EEOC)
  - Exception: Unable to perform job duties due to pregnancy/childbirth/related medical conditions - must be treated same as other employees temporarily unable to perform job duties

## Key Takeaways

- Even Benevolence
- Poor Performance – Apply performance measures consistently
- Retaliation and Harassment prohibited

## Closing Note

- Presentation covered EEOC guidance only
  - Keep in mind:
    - Other federal laws
    - State laws
    - Local laws

## Affordable Care Act Reporting: Recent Developments



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## General Reporting Rule

- The ACA requires applicable large employers (“ALEs”) to report whether minimum essential coverage that was affordable and provided minimum value was offered to full-time employees
- Employers who sponsor self-funded plans also report months of coverage for all enrolled individuals
- Reporting Forms
  - IRS Forms 1094-C and 1095-C

## Expiration of Good Faith Transition Relief

- “Good Faith” transition relief for incorrect or incomplete IRS Forms 1094-C and 1095-C has expired
  - Relief was provided for tax years 2015-2020
- ALEs subject to information return penalties under Code Sections 6721 and 6722

## ACA Reporting Failure Penalties

- 2022 Penalties
  - 1095-C/1094-C:
    - \$280 per late/incorrect return furnished to employees; \$280 late/incorrect Form 1094-C and copies of Form 1095-C filed with IRS
  - 2022 maximum penalty will not exceed \$3,426,000
  - Increased penalties if IRS finds failure due to intentional disregard

## ACA Reporting Failure Penalties

- Reduced penalties apply if late or corrected forms are furnished or filed within certain time periods
  - Corrected within 30 days
    - Per-return penalty is \$50 (capped at \$571,000)
  - Corrected by August 1
    - Per-return penalty is \$110 (capped at \$1,713,000)
- Penalties may be reduced or eliminated if employer can show reasonable cause

## Affordable Care Act Reporting Deadlines

- IRS recently proposed new regulations regarding due date for furnishing Form 1095-C to employees
- Regulations make permanent 30-day automatic extension from January 31
  - Regulations are proposed, but likely to be finalized
- Extended deadline to March 2<sup>nd</sup>
- If the due date falls on a weekend or legal holiday, deadline is extended to next business day

## Takeaways

- Confirm ALE status, if unclear
- Review Forms IRS Forms 1094-C and 1095-C closely
  - Review for completeness and accuracy
  - Helpful to review a sample set to determine if any errors exist
- If unsure how to complete forms, consult with advisor
- Review vendor contracts to determine the party responsible for mistakes

## NYC Pay Transparency Law Update



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25

## New York City Pay Transparency Law Update



26



## COVID Update

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## EEOC Guidance on Caregiver Discrimination

Lisa Feldman, [feldman@bsk.com](mailto:feldman@bsk.com)

## Affordable Care Act Reporting: Recent Developments

John Godsoe, [jgodsoe@bsk.com](mailto:jgodsoe@bsk.com)

## NYC Salary Transparency Law Update

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27



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28