



1



## Introduction

### COVID & NY HERO Act Update



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2

# New York's Freedom of Information Law – An Overview



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3

## The Law

- Public Officers Law § 84-90
- Requires public agencies to allow its records for public inspection and copying unless they are exempt from disclosure
  - “Agency” means any state or municipal department, board, bureau, division, commission, committee, public authority, public corporation, council, office or other governmental entity performing a governmental or proprietary function for the state or any one or more municipalities thereof, except the judiciary or the state legislature
  - “Record” includes reports, statements, memoranda, opinions, books, manuals, pamphlets, drawings, photos, letters, emails
- **Presumption of access**



4

## Exemptions

1. Exempt under other state/federal law
2. Would constitute an unwarranted invasion of personal privacy
3. Would impair present or imminent contract awards or collective bargaining negotiations
4. Trade secrets, or would cause substantial injury to the competitive position of the subject enterprise
5. Could endanger the life or safety of any person

## Continued List of Exemptions

6. Inter-agency or intra-agency materials, which are not:
  - Statistical or factual tabulations or data
  - Instructions to staff that affect the public
  - Final agency policy or determinations
  - External audits
7. Compiled for law enforcement purposes which, if disclosed, would:
  - Deprive a person of a right to a fair trial or impartial adjudication
  - Identify a confidential source or disclose confidential info related to a criminal investigation
  - Reveal criminal investigative techniques or procedures
  - Interfere with law enforcement investigations or judicial proceedings

## Interfere With Law Enforcement Investigations or Judicial Proceedings Exemption

- Effective Dec. 29, 2021, NY enacted a procedural hurdle requiring agencies citing exemption to follow a judicial review process
- On March 18, 2022, the judicial review procedure was rescinded
- Under the amended law, if the agency citing the FOIL exemption is not the same agency conducting the at-issue investigation, the agency must receive confirmation from the investigating agency that disclosing such records would impede the ongoing investigation
  - No longer any judicial review or other additional requirements for agencies utilizing this FOIL exemption. Effective retroactive to Dec. 29, 2021



7

## Things to Know

- Most agencies have a Records Access Officer, or person to whom FOIL requests should be addressed
- Within 5 business days of receipt of FOIL request, shall make record available, deny request in writing or furnish a written acknowledgement of receipt and statement of the approximate date upon which such request will be granted or denied
- Committee on Open Government publishes opinion letters which provide analysis of the application of exemptions and what is required to be disclosed under the law



8

## From the Bond Lawyers Who (*Literally*) Wrote the Book on New York Employment Law...



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## NYLL Section 203-e Deemed Partially Un-Constitutional



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# COVID & Legal Update for Employers



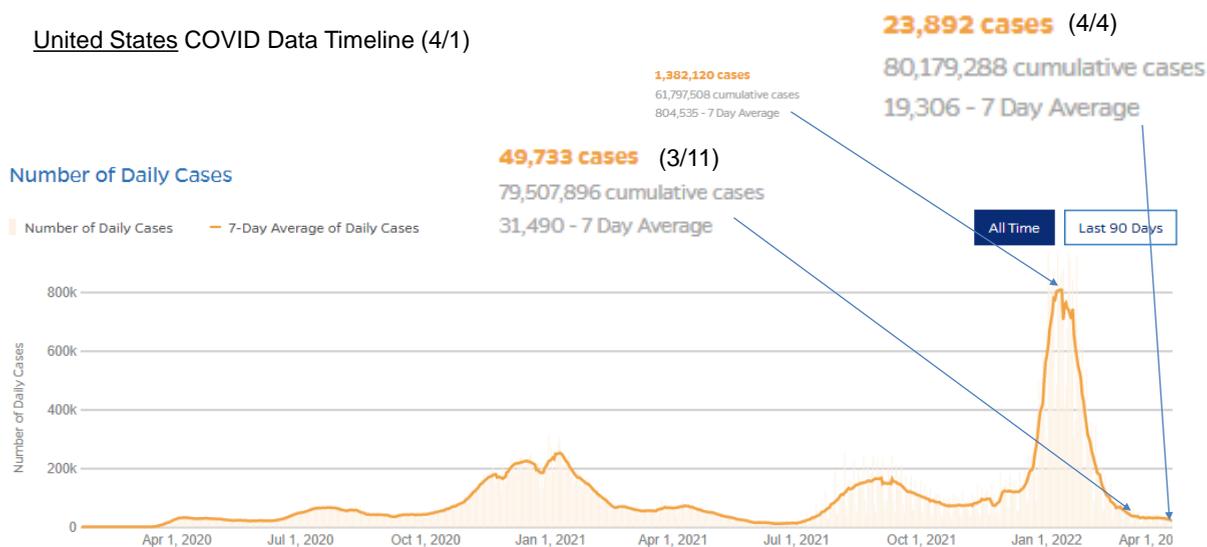
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11

### United States COVID Data Timeline (4/1)

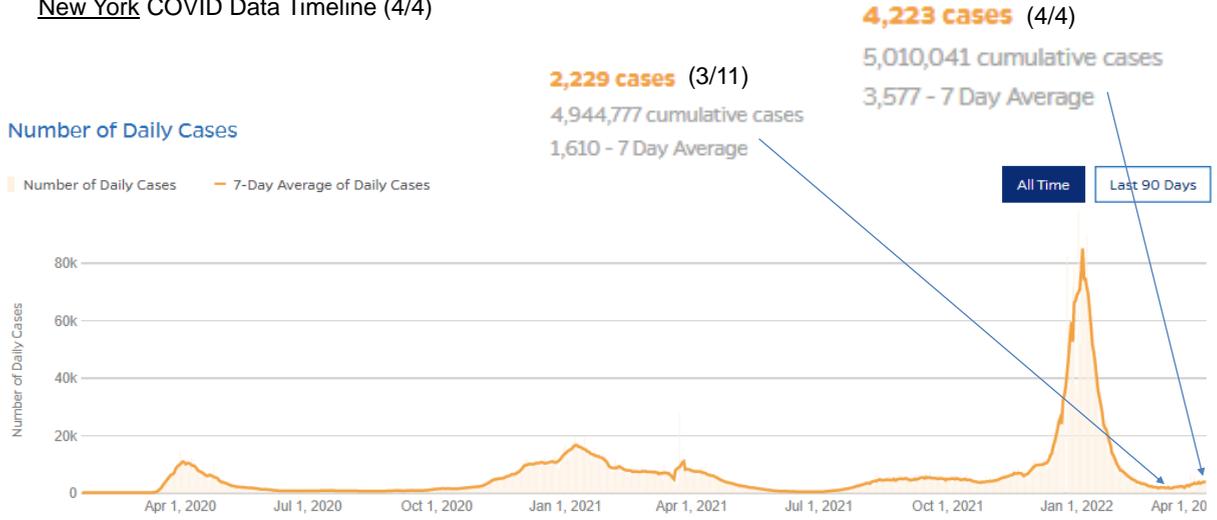


Data Sources: Cases and deaths data from JHU CSSE; testing and vaccine data from JHU CCI; and hospitalization data from the U.S. Department of Health and Human Services.



12

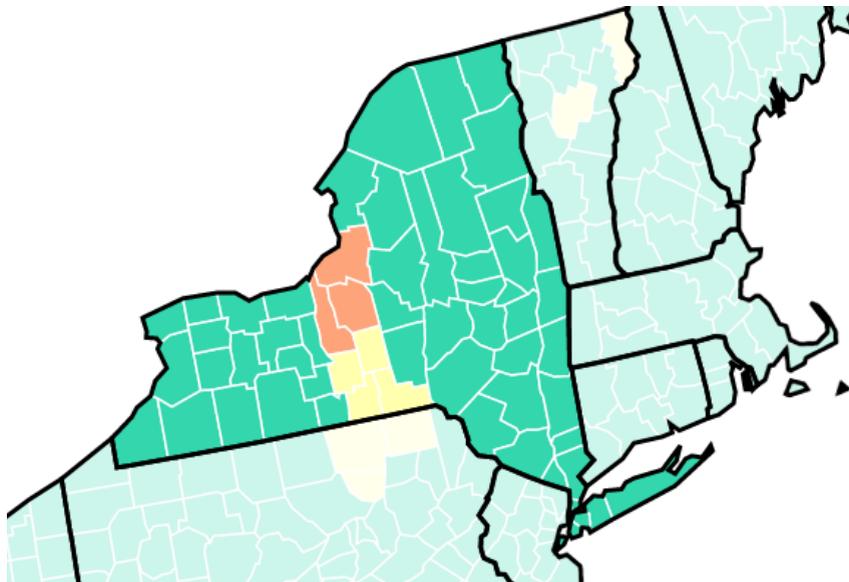
New York COVID Data Timeline (4/4)



**Data Sources:** Cases and deaths data from JHU CSSE; testing and vaccine data from JHU CCI; and hospitalization data from the U.S. Department of Health and Human Services.



13



14

## Some FAQs

- HERO Act “Emergency Designation” (Still) Not Extended
- HERO Act Plan?
- Employee Masking?
- COVID Paid Leave?
- Handbook Updates?



15

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### New York Employment Law: The Essential Guide

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16