

CORONAVIRUS

WEEKLY WEBINAR SERIES

 **BOND** SCHOENECK
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April 6, 2021

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1

Introduction

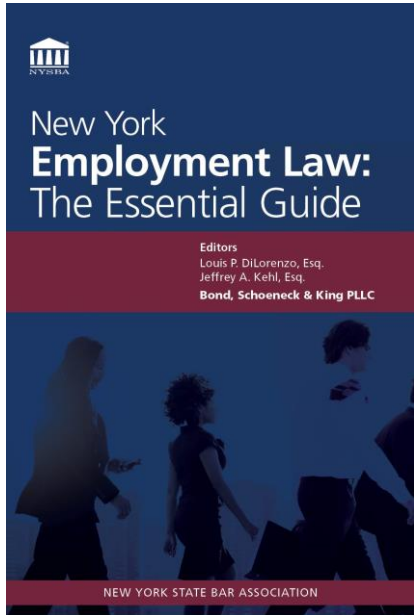


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2



Bond Writes Guide on Employment Law

More than 80 attorneys at Bond contributed to write a comprehensive 435-page guide to employment law in New York. Published under the auspices of The New York Bar Association (NYSBA), *New York Employment Law: The Essential Guide* is available to NYSBA members at the discounted price of \$95, and non-members for \$130.

Bar Association Members can buy the book from the bar [here](#).

Non-Bar Association Members can purchase through Amazon [here](#).



3



4

Putney Twombly Lawyers Have Joined Bond



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5

PPP “To Do” List



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6

PPP “To-Do” #1:

Application Eligibility

- Expanded eligibility for nonprofits (per location exception)
- Must have used all First Draw PPP monies prior to disbursement of Second Draw PPP
- Show revenue reduction for Second Draw PPP



7

PPP “To-Do” #2:

Forgiveness Preparation

- Plan accordingly for reliance on Safe Harbors for FTE reductions
 - Safe Harbor 1: for 2021 PPP borrowers, unable to operate at same level of business activity due to shutdown orders issued between March 1, 2020 and end of covered period
 - Safe Harbor 2: for 2021 PPP borrowers, satisfied if employee headcount on last day of covered period is equal or greater to Feb. 15, 2020 levels



8

PPP “To-Do” #3:

Process for Changes of Ownership

- Change of Ownership means:
 - 20% of common stock/ownership interest sold or transferred
 - Sale of at least 50% of assets
 - A merger
- In all circumstances, must notify lender and provide transaction documents
- Depending on status of PPP, and type of transfer and ownership percentages, SBA approval may be needed



9

COVID-19 –

Leave Related Hypothetical Case Studies



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10

Case Study #1

- Rebecca works for a company with 120 other employees, and learns on April 10, 2021, that her son has been exposed to COVID-19 and placed on a quarantine period of 10 days. Rebecca is not able to work remotely and needs to care for her son. What leave is Rebecca entitled to?
 - Has her employer extended the FFCRA through the ARPA?
 - Is NY COVID-19 leave applicable?
 - Is paid family leave applicable?
 - Is NY Paid Sick Leave applicable?



11

Case Study #1

- On the sixth day that Rebecca is out of work to care for her son, he tests positive for COVID-19. Rebecca has not been placed on a mandatory order of quarantine but is seeking testing for herself. What leave now applies?
 - Does the FFCRA apply?
 - Does NY COVID-19 leave apply?
 - What about the January 20, 2021 NY DOL Guidance?
 - Does NY Paid Sick Leave apply?
 - Does this analysis change if Rebecca tests positive two days later?



12

Case Study #2

- Sam works for an employer with 60 other employees. He contracts COVID-19 and is subject to an order of quarantine. Sam cannot perform the requirements of his job remotely. What leave is available to him?
 - Does the FFCRA apply through extension of the ARPA?
 - Does the NY COVID-19 leave apply?
 - Does NY Paid Sick Leave apply?
 - Do FMLA or PFL apply?



13

Case Study #3

- Thomas received the COVID-19 vaccine yesterday and returned to work without incident. The next day, he wakes up with a headache, fever, and muscle pain. How should his employer, a company with 300 employees, handle this situation?
 - Does the FFCRA apply via the ARPA?
 - Does the NY COVID-19 leave apply?
 - What about the January 20, 2021 guidance?
 - Is there guidance that speaks to this situation?
 - “Guidance for Workers Who Have Signs or Symptoms After COVID-19 Vaccination.”
 - Do PFL or FMLA apply?
 - Does NY Paid Sick Leave apply?



14

American Rescue Plan Act

- Extension of tax credits for paid leave (FFCRA)
- Effective April 1, 2021 – September 30, 2021
- Tax credits available for original EFMLA and EPSL reasons, plus:
 - Employee getting COVID vaccine
 - Employee recovering from complications due to receiving the vaccine
 - Employee seeking or awaiting the results of a COVID-19 test or diagnosis IF the employee has been exposed to COVID-19 or the employer has requested such test or diagnosis
- Resets 80 hours of EPSL
- Voluntary



15

American Rescue Plan Act

- Increases the EFMLA credit amount from \$10,000 to \$12,000;
- Expands EFMLA eligibility for all categories;
- Disqualifies employers from the tax credit where they treat highly compensated individuals, full-time employees or employees with more tenure differently



16

Frequently Asked Questions

- Does the ARPA leave run concurrently with NY's Paid Vaccination Leave?
- Can I claim the tax credit if I only provide EPSL, but not EFMLA?
- Can I claim the tax credit if I only provide paid leave for vaccination, but not any other EPSL qualifying event?



17

COVID-19

Emerging Student Vaccination Requirements on College Campuses



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18

Higher Education: Mandatory COVID-19 Vaccinations

- Rutgers University
- Cornell University
- Nova Southeastern University (Florida)
- St. Edward's University (Texas)
- Fort Lewis College (Colorado)



19

Rutgers – New Jersey Statutory and Regulatory Framework

- Robust Tort Immunity for Public Universities: N.J.S.A. 59:6-3
- Education Law requires certain vaccines of higher ed students: N.J.S.A. 18A:61D-1
- Regulations provide broad discretion to institutions of higher education to establish additional vaccine requirements for students, if recommended by Advisory Committee on Immunization Practices: N.J.A.C. 8:56-6.4(c)
- 23 Labor Unions – Not yet required of faculty and staff



20

Cornell University

- Public Health Issue – Extraordinary spread on college campuses
- Mandatory Vaccines already required—adding to it
- Case Law supporting other vaccine mandates:

Garcia v. N.Y.C Dept. of Public Health, et al., 31 N.Y. 3d 601 (2018).

Formal Order Den. Req. for Prelim. Inj., *Kiel v. Regents of the Univ. of Cali.*, No. HG20-072843 (Cal. Super. Ct. Dec. 4, 2020).



21

Rollout of Mandate

- Vaccine is widely available
- Information Campaign – Public Health and College Experience
- Advance Exemptions Notice: Medical and Religious
- Vaccine Hesitancy among People of Color:

<https://health.cornell.edu/resources/especially-for/students-of-color/compliance-testing-flu-vaccine-requirements>



22

Update from Albany



Caitlin A. Anderson

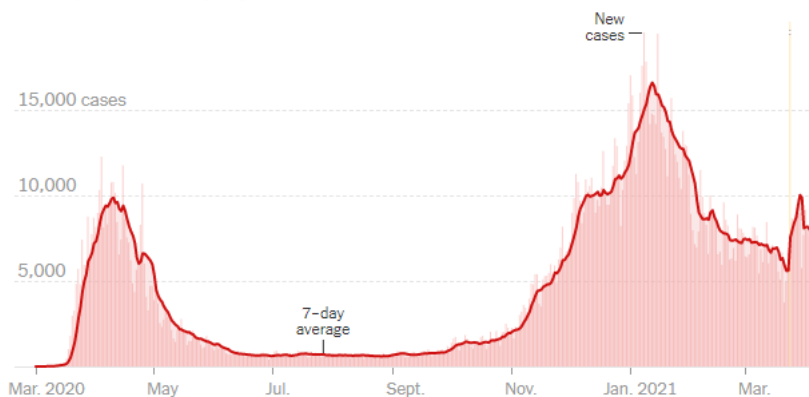
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23

How trends have changed in New York

New reported cases by day

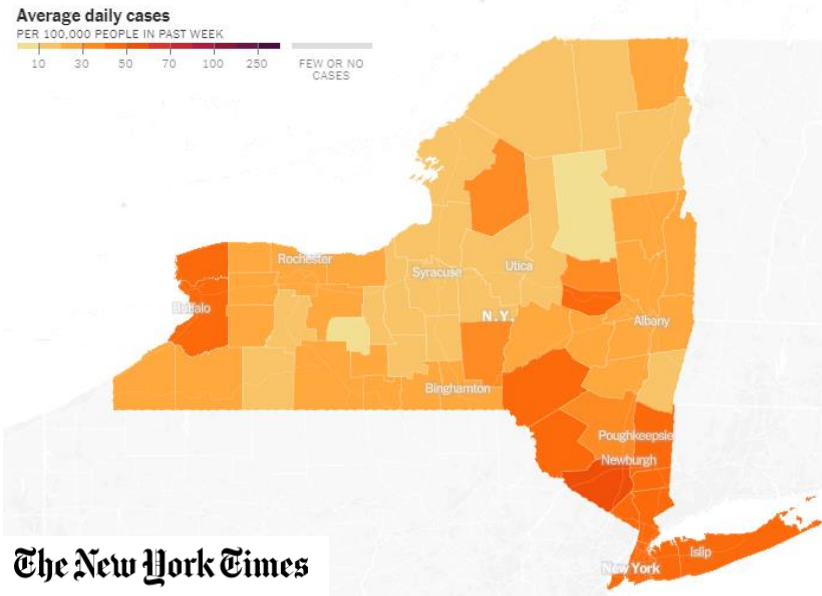


These are days with a reporting anomaly. Read more [here](#).

The New York Times



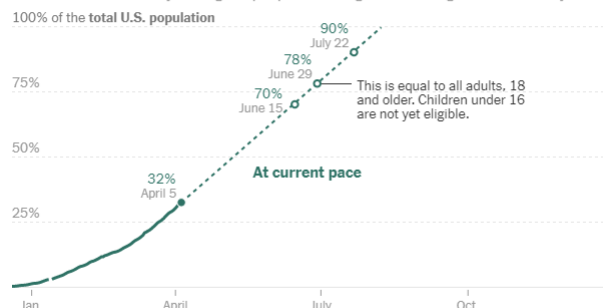
24



Vaccine Rollout

At the current pace of vaccination, everyone could get a shot this year. But no vaccine has been authorized for children under 16.

Based on the seven-day average of people receiving a first or single dose each day.



Source: Centers for Disease Control and Prevention | Note: Total population includes states, territories and three countries with [special agreements](#) with the United States: Palau, Micronesia and the Marshall Islands.

- 34.4% of New Yorkers have received the first shot.
- 21.6% are fully vaccinated.
- US: Over 3 million shots being administered per day.

Travel Advisory



ANDREW M. CUOMO
Governor

Department
of Health

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

LISA J. PINO, M.A., J.D.
Executive Deputy Commissioner

DATE: April 1, 2021

Updated Interim Guidance for Quarantine Restrictions on
Travelers Arriving in New York State

- Issue: CDC updated travel guidance last week; fully vaccinated travelers (domestic and international) do not need to quarantine.
 - NY has not updated its guidance yet.



27

High-Level Budget Overview

- Still hasn't passed yet – Senate scheduled for noon session.
- Big issues:
 - Increasing taxes on high income earners – 9.65% for income over \$1 million, 10.3% for \$5-\$25 million, 10.9% for over \$25 million.
 - Corporate tax rate increasing from 6.5% to 7.25%.
 - Excluded worker fund.
 - Mobile sports betting.



28

Other budget issues

- Increased funding for roads.
- Decreasing minimum hunting age for big game from 14 to 12.
- Universal Pre-K – 4 days a week, applies statewide.
- Local governments could lose state funding if they do not comply with the police reform EO.
- \$1.3 billion to overhaul Penn Station.
- Rental assistance program – payments can cover rental and utility arrears back to March 2020 and 3 months prospectively



29

Putney Twombly Lawyers Join Bond

Dan Murphy, dmurphy@bsk.com

PPP “To Do” List

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COVID-19 Leave-Related Hypotheticals

Theresa Rusnak, trusnak@bsk.com

COVID-19 Emerging Student Vaccination Requirements on College Campuses

Monica Barrett, mbarrett@bsk.com

Update from Albany

Caiti Anderson, canderson@bsk.com

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30