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TODAY'S AGENDA

Gabe Oberfield – (12:00PM-12:10PM)

- Intros / Agenda
- NYS and NYC Budgets
- The End of the Public Health Emergency (Generally)

Corinne Tierney – (12:10PM-12:20PM)

- Updates to NYC Artificial Intelligence Law, Local Law 144

Elizabeth Heifetz – (12:20PM-12:30PM)

- Bond's Pro Bono Work in Immigration Law – and Community Implications

Paige Carey – (12:30PM-12:40PM)

- The End of the PHE – What Do School Leaders Need to Know?

G. Oberfield – (12:40PM-12:45PM)

- Questions / Wrap Up

New York State Budget...Nearing a Deal

Sources: [NYTimes.com](https://www.nytimes.com), [PoliticoPro](https://www.politico.com), [City and State](https://www.cityandstate.com), and [NBCNewYork.com](https://www.nbcnewyork.com)

- A \$229B State budget is nearing passage – one month late:
 - Budget bills released following Gov. Hochul’s announcement of a ‘conceptual agreement’ late on Thursday, April 27th.
 - Bills likely voted on **today**.
- Highlights
 - **Healthcare provider rates**
 - Larger rate increases sought across the continuum than ultimately received
 - Increases in some instances larger than in the Governor’s initial proposal
 - Interplay with home-health wage parity standards and minimum wage
 - **Minimum wage** → Up to \$17 in New York City, LI and Westchester, \$16 elsewhere by 2026 (with inflationary elevator to peg future increases)
 - **Cigarettes** → state taxes up, but ban on menthols, out
 - **Bail reform** → in, along the lines the Governor had sought
 - **Supportive housing proposal** → out
 - **Funding for the Metropolitan Transit Authority** → in, with distinct tax implications (City vs. suburban areas)
 - **Funding for migrant resettlement** → in
 - **Over-time natural gas ban** → in



New York State Capital – Office of General Services

New York City Budget Proposal

Sources: NYC.gov, PoliticoPro, and City and State

- \$106.7B overall proposal
- Budget negotiations follow, with City fiscal year to begin on July 1, 2023
- Concerns had been voiced (e.g., by Comptroller) that NYC could not resolve its own budget without State-level resolution, first



New York City Mayor Eric Adams
(credit: NYC.gov)



New York City Comptroller Brad Lander
(credit: NYC.gov)

Despite Fiscal Challenges, Budget Protects Critical Programs for Working New Yorkers While Realizing Significant Agency Savings

No Cuts to Budgets for Libraries and Cultural Institutions

New York City Still Faces \$4.3 Billion in Costs Related to Asylum Seeker Crisis Through FY24

NEW YORK – New York City Mayor Eric Adams today released New York City's \$106.7 billion [Fiscal Year 2024 \(FY24\) Executive Budget](#). Mayor Adams unveiled the largest Executive Budget in city history to protect critical programs that support working New Yorkers, while simultaneously preparing for economic headwinds by continuing his strong track record of fiscal responsibility. The budget also includes strategic investments that improve New Yorkers' quality of life, including investments that create sustainability and resiliency programs, strengthen the city's mental health resources, build out the college-to-career pipeline, and uplift working people.

FY23 and FY24 remain balanced, with outyear gaps of \$4.2 billion, \$6.0 billion, and \$7.0 billion in fiscal years 2025 through 2027, respectively. Growth of \$4.0 billion in FY24 over the Preliminary Budget is driven by asylum seeker costs and funding labor settlements with the city's workforce.

End of the Public Health Emergency

Sources: The White House, Federal Dept. of Health and Human Services, PoliticoPro, City and State, and McKnight's

- When is the COVID-19 Public Health Emergency expected to end?
 - “**Based on current COVID-19 trends**, the Department of Health and Human Services (HHS) is planning for the federal Public Health Emergency for COVID-19 (PHE) declared by the Secretary of the Department of Health and Human Services (Secretary) under Section 319 of the Public Health Service (PHS) Act **to expire at the end of the day on May 11, 2023.**”
- Federally driven settings-based vaccination requirements per May 1, 2023, press release:
 - “HHS and DHS announced ... they will start the process **to end their vaccination requirements for Head Start educators, CMS-certified healthcare facilities, and certain noncitizens at the land border.** In the coming days, further details related to ending these requirements will be provided.”



(Credits: whitehouse.gov)

PHE's End – What Will Change?

Source: Federal Department of Health and Human Services

- **Medicare** program:
 - COVID-19 vaccination and treatment
 - Continuing access to COVID-19 vaccinations without out-of-pocket costs (and same for Medicare Advantage if done in-network)
 - Treatment for COVID 19 conditions also will be covered
 - Nursing home admissions and 'three-day stay requirement'
 - The general requirement of a preceding hospital stay to initiate Medicare coverage will resume
- **Telehealth:**
 - Most flexibilities will extend until the end of 2024, due to earlier Federal legislation that extended them (Consolidated Appropriations Act of 2023)
 - 'Routine' hospice generally not included
- **Medicaid**
 - Notably, the continuous enrollment provisions are terming, and we are seeing re-enrollment requirements rolled out across the country.
 - COVID coverages generally to continue, and telehealth => state level policy



NB: commercial insurances operate distinctly – many COVID-19 era benefits will fade.

Tracking of COVID-19

Sources: McKnight's, CNN, CDC.gov

- Centers for Disease Control and Prevention will diminish reliance on local provider data and will use hospitalizations as a proxy
 - Implications for healthcare providers and mandated collection practices → TBD
 - Local jurisdictional echoes → likewise TBD



 Centers for Disease Control and Prevention
CDC 24/7: Saving Lives, Protecting People™

Updates to NYC AI Law, Local Law 144



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New York City Local Law 144

- Effective January 1, 2023
- Enforceable **July 5, 2023** by the NYC Corporation Counsel and presumptively also the NYCCHR
- Regulates the use of automated employment decision tools (“AEDT”s), including artificial intelligence (“AI”), as they are used in the decision making for hiring and promoting of **New York City resident applicants**
- Purpose is to ensure transparency in AI usage in employment decision-making so as to avoid any discriminatory effects, intentional or not!

LL 144 – Regulation Highlights

- Automated Employment Decision Tool (“AEDT”) is defined as “any computational process, derived from machine learning, statistical modeling, data analytics, or artificial intelligence, that issues simplified output, including a score, classification, or recommendation, that is used to substantially assist or replace discretionary decision making for making employment decisions that impact natural persons.”
 - Final Adoption more narrowly defines AEDT to mean simplified output from a tool only applies to the law if it is (1) the sole factor in an employment decision, (2) one of several factors but more heavily weighted than other factors, or (3) used to overrule (not modify) conclusions derived from other factors (including human decision-making).

LL 144 – Regulation Highlights

- AEDT may **not** be used unless requirements are met:
 - (1) the tool has been subject to a bias audit within the last year; and
 - (2) a summary of the results (including the date of the results) of the most recent bias audit and distribution data (including selection rates and impact ratios for protected characteristics) for the tool have been made publicly available on the employer or employment agency's website.

LL 144 – Regulation Highlights

- Independent Bias Auditor: an independent bias auditor means “a person or group that is capable of exercising objective and impartial judgment on all issues within the scope of a bias audit of an AEDT.”
 - Final rule lists 5 disqualifying characteristics for such an independent bias auditor
- Historical Data: multiple employers or employment agencies which use the same AEDT *may* rely on the same bias audit conducted using the historical data of other employers or employment agencies, but **only** if the employer or employment agency “provided historical data from its own use of the AEDT to the independent auditor conducting the bias audit or if such employer or employment agency has never used the AEDT.”
- Test Data: can use test data if historical data isn’t available but they must explain (1) why historical data wasn’t used and (2) how the test data was generated/obtained.

Published Notice of Audit

- Public Notice Posting requirement can be met with “an active hyperlink to a website containing the required summary of results and distribution date, provided that such link is clearly identified as a link to results of the bias audit.” Summary must include:
 - (1) the date of the most recent bias audit of the AEDT and a summary of its results, which shall include the source and explanation of the data used to conduct the bias audit, the number of individuals the AEDT assessed that fall within an unknown category, and the number of applicants or candidates, the selection or scoring rates, as applicable, and the impact ratios for all categories; and
 - (2) the distribution date of the AEDT.

Notice of AEDT Usage for NYC Residents

Requires employers and employment agencies to satisfy these requirements for candidates/employees who reside in NYC **at least ten (10) business days before the AEDT is used.**

- (1) That an automated employment decision tool will be used in assessing the candidate/employee; AND
- (2) The job qualifications and characteristics that the tool will use in the assessment.

Note: This notice must allow the candidate/employee to request an alternative process or accommodation, **but no such alternative process is required to be provided.**

Penalties

- Civil penalty up to \$500 for first violation and each additional violation occurring on the same day as the first violation.
- Civil penalty between \$500-\$1500 for each subsequent violation
 - Each day the AEDT is used in violation of this law will constitute a separate and subsequent violation, and same with notice violations
- While enforceable by the NYC Corporation Counsel, proceedings to recover civil penalties need to be filed with the Office of Administrative Trials and Hearings or with the Department of Consumer and Worker Protection (“DCWP”)

Bond's Pro Bono Work in Immigration Law – and Community Implications



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Immigration Pro-Bono Work - Bond

Humanitarian Relief Cases

- Humanitarian Parole
- Affirmative Asylum—FGM
- Affirmative Asylum- Political Opinion, PSG

Updates in the Immigration Community

- **Recission of Title 42**
- [Title 42 of the United States Code](#), Chapter 6A, Subchapter II, Part G, Section 265 states:^[10]

- §265. "Suspension of entries and imports from designated places to prevent spread of communicable diseases

Whenever the Surgeon General determines that by reason of the existence of any communicable disease in a foreign country there is serious danger of the introduction of such disease into the United States, and that this danger is so increased by the introduction of persons or property from such country that a suspension of the right to introduce such persons and property is required in the interest of the public health, the Surgeon General, in accordance with regulations approved by the President, shall have the power to prohibit, in whole or in part, the introduction of persons and property from such countries or places as he shall designate in order to avert such danger, and for such period of time as he may deem necessary for such purpose." (July 1, 1944, ch. 373, title III, §362, 58 Stat. 704.)

- **What does this recission mean and what is the impact?**

Opportunities in Immigration Pro-Bono

- HP, TPS, SIJS, Asylum (affirmative and defensive), U-Visa, VAWA, etc...
- *Sanctuary for Families, Catholic Charities, HIAS, etc.*
- If you have questions, please contact me at: Eheifetz@bsk.com

The End of the Public Health Emergency

What do Institutions of Higher Education Need to Know?



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Two Major Federal Updates:

- **April 10, 2023** – H.J. Res. 7
 - Terminated the national emergency related to the COVID-19 pandemic
- **May 11, 2023** – PHE Terminates
 - Planned expiration date for our national public health emergency.

Relevance of State and Local Laws

- **SB 8091**

- Background:
 - Emergency law signed by Governor Cuomo on March 20, 2020.
 - Employees are entitled to at least 5 days of paid sick leave plus unpaid leave until the quarantine order ends, plus eligibility for family leave benefits after end of paid leave. After this 5-day period, leave is credited against PTO.
- **Status: In effect**

- **New York Labor Law § 196-C**

- Background:
 - Employers must provide employees with up to four hours of paid leave for each COVID-19 vaccine injection
 - AB 9513 → extended COVID-19 vaccination leave
- **Status: In effect until December 31, 2023**

Relevance of State and Local Laws: IHE Considerations

- **Current Impact:**
 - Employment considerations
 - COVID-19 Student and Faculty Policies
- **Practically:**
 - Obtaining a Quarantine Order
 - End of Vaccination Leave on Dec. 31, 2023

Student SNAP & Medicaid

- **Termination of PHE →**
 - Ends flexibilities related to student eligibility for federal benefit programs, including SNAP and Medicaid.
- **June 10, 2023**
 - End of temporary SNAP student exemptions

Student SNAP & Medicaid: IHE Considerations

- Conduct immediate and targeted outreach
 - State SNAP agencies must continue to apply the temporary exemptions to initial applications filed on or before **June 9, 2023**.
 - State SNAP agencies must also process SNAP recertification applications submitted through **June 30, 2023**, using the temporary exemptions.
- Prioritize Outreach
 - FASFA and Administrative Data
 - Compliance Consideration: 34 CFR 99.30

COVID-19 Testing

- **Pre-May 11**
 - PHE mandated that health insurance plans fully cover COVID-19 testing without employee cost-sharing on both an in- and out-of-network basis
- **Post May 11**
 - Medical plans do not have to pay for testing

COVID-19 Testing: IHE Considerations

- Phase out of free on-campus testing
 - No definitive date
- Movement towards traditional healthcare model
 - Insured vs. Uninsured

Your Questions



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WORKPLACE 2023

ANNUAL LABOR, EMPLOYMENT & HR CONFERENCE

Albany • May 31

Buffalo • May 23

Corning • May 4

Long Island • May 10

New York City • May 25

Rochester • May 18

Saratoga • May 16

Syracuse • May 11

Westchester • June 6

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NYS Budget and The End of the PHE

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The End of the PHE – What Do IHE's Need to Know?

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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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