



2023

BUSINESS IN 2022

WEEKLY WEBINAR SERIES

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1

COVID Update



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2

Workplace Investigations

Thursday, June 9, 2022

DoubleTree by Hilton Hotel, Syracuse

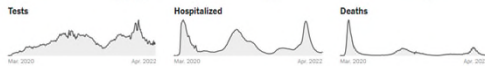
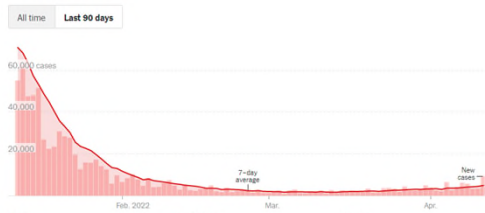
Registration opening soon



3

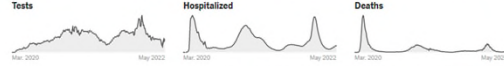
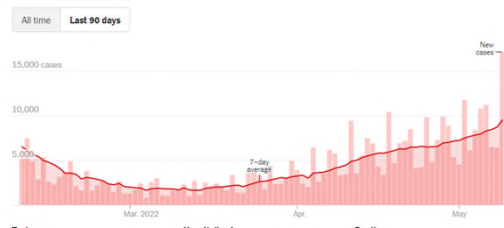
Current COVID Data in New York

New reported cases



	DAILY AVG. ON APR. 11	14-DAY CHANGE	TOTAL REPORTED
Cases	4,864	+67%	5,027,587
Tests	88,675	+8%	—
Hospitalized	1,310	+9%	—
In I.C.U.s	170	-3%	—
Deaths	8	-28%	67,413

New reported cases



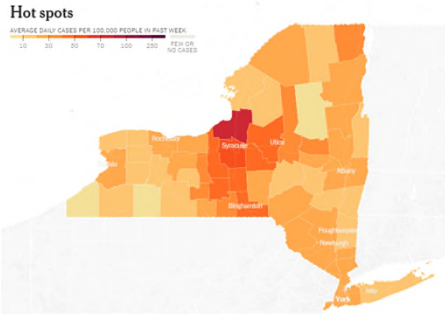
	DAILY AVG. ON MAY 9	14-DAY CHANGE	TOTAL REPORTED
Cases	9,460	+46%	5,232,634
Tests	92,270	+75%	—
Hospitalized	2,488	+31%	—
In I.C.U.s	223	+2%	—
Deaths	18	+8%	67,837

About this data

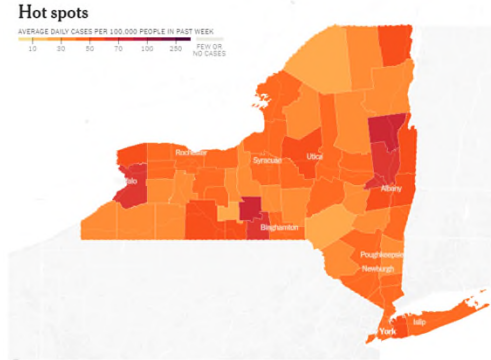


4

Current COVID Data in New York



April 11, 2022



May 9, 2022



5

Current COVID Data in New York

April 11, 2022

	CASES DAILY AVG.	PER 100,000	14-DAY CHANGE	HOSPITALIZED AVG. PER 100,000	14-DAY CHANGE	DEATHS DAILY AVG.	PER 100,000
New York	4,864	25	+67%	7	+9%	8.4	0.04
Oswego >	83	71	+56%	9	+10%	0.2	0.16
Onondaga >	238	52	-2%	10	+32%	0.6	0.12
Cayuga >	37	49	+30%	10	+36%	0.2	0.24
Cortland >	23	47	+58%	10	+28%	0	---
Tompkins >	47	46	-31%	9	+3%	<0.1	0.08
Oneida >	103	45	+137%	9	+29%	0.1	0.06
Madison >	31	44	+53%	9	+41%	<0.1	0.1
Broome >	82	43	+191%	10	+19%	0.1	0.07
Seneca >	13	38	+90%	10	+19%	0	---
Fulton >	20	37	+100%	2	-65%	0.2	0.31

May 9, 2022

	CASES DAILY AVG.	PER 100,000	14-DAY CHANGE	HOSPITALIZED AVG. PER 100,000	14-DAY CHANGE	DEATHS DAILY AVG.	PER 100,000
New York	9,460	49	+46%	13	+31%	18	0.09
Tompkins >	77	76	+25%	27	+74%	0.1	0.14
Warren >	45	70	+110%	9	+30%	0.1	0.17
Erie >	641	70	+31%	17	+110%	1.9	0.2
Schenectady >	94	60	+59%	7	+43%	0.3	0.18
Tioga >	29	60	+3%	29	+76%	0.1	0.3
Saratoga >	138	60	+51%	11	+74%	0.2	0.08
Oneida >	135	59	-5%	16	+4%	0.6	0.27
Nassau >	800	59	+75%	17	+18%	0.6	0.05
Steuben >	54	57	+79%	12	+86%	0.3	0.3
Albany >	167	55	+44%	15	+41%	0.2	0.07



6

5 Keys to a Good Employee Handbook



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7

5 Keys to a Good Employee Handbook

1. Knowledge and Understanding - Understand and know what is in your handbook

- What policies are in your handbook
- What policies are not in your handbook
- What *are your* policies
- Understand the:
 - Must haves
 - Should haves
 - Extras
- This depends on industry, employer size, location of employees, operations, practices, concerns/issues (learning from past experience), best practices
- Work with legal counsel to understand what you need
- Understand and plan how policy changes will be implemented (communication, roll out, transition, etc.) and any limitations
 - Unionized settings
 - Employees in different states



8

5 Keys to a Good Employee Handbook

1. Knowledge and Understanding
2. Plain English – Don't undervalue the importance of writing policies in plain English
 - Know your audience
 - Make policies understandable
 - Avoid legalese, or over complicated grammar or word choices
 - Less is often times more



9

5 Keys to a Good Employee Handbook

1. Knowledge and Understanding
2. Plain English
3. Stay Up to Date – Changes can happen fast and frequently for a number of reasons; try to keep your employee handbook up to date (reasonably) to avoid a wholly out of date handbook that requires
 - Changes in operations? Changes in policies?
 - Changes in laws requiring new policies? Changes in existing policies?
 - Other compliance concerns and issues?
 - Avoid total makeover/complete overhaul by conducting more frequent and consistent periodic reviews



10

5 Keys to a Good Employee Handbook

1. Knowledge and Understanding
2. Plain English
3. Stay Up to Date
4. Don't Over Legislate – You can't predict or account for every possible scenario or situation.
 - Keep policies and management discretion broad
 - Disciplinary procedures
 - "Zero Tolerance" policies leaves little room for management discretion to determine all of the circumstances and facts
 - Benefits – Avoid promises or guarantees of any benefits
 - Insurance benefits – Official Plan Documents control



11

5 Keys to a Good Employee Handbook

1. Knowledge and Understanding
2. Plain English
3. Stay Up to Date
4. Don't Over Legislate
5. Customize and Tailor – Handbooks should be tailored to your actual policies, procedures, intentions, and operations.
 - One size does not fit all
 - Templates may be a good starting point, but should always be reviewed and tailored/customized to your needs and wants
 - Use legal counsel to customize your policies to understand what is permissible, lawful, best practice, to avoid unintended consequences, etc.



12

Final Advice

- Your organization and policies will inevitably change

...Don't leave your handbook behind in the dust!



13

New Law Prohibiting Transcript Withholding & Higher Education Provisions in Enacted Budget



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14

New Law Prohibiting Transcript Withholding

Governor Hochul signed into law A.06938B, which amends New York State Education law by adding a new Article 13-C; §640, which prohibits degree-granting institutions and career schools from withholding transcripts of students who owe a debt to the institution. It is also unlawful under §640 for institutions to condition the release of a transcript upon the student's payment of the debt. Finally, institutions may not charge a higher fee or provide less favorable treatment of a transcript request because a student owes a debt to the institution.

15



15

New Law Prohibiting Transcript Withholding

The law provides authority for the Superintendent of Financial Services to impose a penalty of \$500 for each violation an institution has been found to have committed after notice and hearing. Furthermore, individuals who have been injured as a result of prohibited practices under §640 may bring a civil action against an institution to enjoin such practices, and a court, in its discretion, may award reasonable attorneys' fees to the prevailing plaintiff.

The new law is effective as of June 3, 2022.

16



16

Governor's Proposed Language in Art. VII Bill

As I reported in March, the Governor proposed similar language in her proposed budget in Art. VII. The difference in the Governor's language and the law that was just enacted is that the Governor gave the Higher Education Services Corporation the authority to suspend, limit or terminate a school's participation in the state financial assistance programs, such as TAP, for a violation.

The Governor's proposed language was eliminated from the Enacted Budget.

17



17

FY 2023 NYS Executive Budget

As I reported this past March there were provisions in the Governor's FY 2023 budget under Art. VII affecting higher education generally.

These provisions were subject to negotiation during the budget process, and a few made their way into the Enacted Budget.

18



18

Tuition Assistance Program (TAP)

There was limited availability for TAP for part-time students. TAP was available to part-time students who earned at least twelve credits in each of two consecutive semesters, were enrolled in at least six credits in an approved undergraduate degree program, and had a G.P.A. of at least a 2.00.

The Enacted Budget eliminates the requirement that a student must have earned twelve credits in two consecutive semesters, and only requires the student to be enrolled in at least six but less than twelve semester hours in an approved undergraduate degree program and have a G.P.A. of at least a 2.00.

19



19

TAP, continued

The Enacted Budget also expands part-time TAP to those enrolled in an approved non-degree workforce credential program at a community college which program directly leads to the employment or advancement of a student in a “significant industry” as identified by the NYS Department of Labor in its three most recent statewide significant industries reports published preceding the student’s enrollment in such program.

TAP for incarcerated students is restored in the Enacted Budget

20



20

College as Polling Places

The Enacted Budget also includes the Governor's proposal for campus polling places. Specifically, where there are three hundred or more individuals registered to vote on contiguous college property, there must be a polling place on the contiguous property or at a nearby location recommended by the college.

21



21

NYSED

There was language in the Governor's proposed budget to streamline some program review by New York State Education Department (NYSED), but that language was eliminated from the final Enacted Budget.

Also eliminated in the final budget was a proposal to transfer all functions of the NYSED relating to oversight of the health care professions to the Department of Health.

22



22

Employment Litigation Trends



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23

COVID-related Litigation: The First Two Years of the Pandemic

- Total cases: 5,659 state and federal lawsuits (over 600 class action lawsuits)
 - California – 1,780
 - New Jersey – 473
 - New York – 409
 - Florida - 385
 - Retaliation – 3,233
 - Disability Discrimination – 2,028
 - FFCRA/FMLA – 1,607
 - Various Wage and Hour Claims



24

Class Action Litigation

- Courts issued more rulings in workplace class action lawsuits and plaintiffs recovered more in settlements in 2021 than ever before
 - 1,607 rulings (2020 - 1,548 rulings)
 - \$3.62 billion in settlements (2020 - \$1.58; 2019 - \$1.34 billion)
- Wage and hour class actions continue to predominate
- Many COVID-related class actions prompted by return-to-work programs and vaccine mandates
- Trend likely to continue given the prospect of more government enforcement actions



25

Equal Employment Opportunity Commission

- Total number of charges fell 9.1% from 67,448 (2020) to 61,331 (2021)
 - In New York, the total number of charges fell 14% from 2,999 to 2,580
- Most common claims:
 - Retaliation – 56%
 - Disability discrimination – 37.2%
 - Race discrimination – 34.1%
- Types of discrimination claims on the rise:
 - Color
 - National origin
 - Race



26

EEOC continued

- Recovery for claimants through litigation trended downward from \$106 million (2020, record high) to \$34 million
- Recovery through resolution increased from \$333 million to \$351 million
- Merits findings for claimants increased from 17.4% to 19.2%
- The EEOC also filed 116 merit suits, up from 93 in 2020
- EEOC cited increased numbers of employees and increased fundings for these increases
- Plans to add additional employees in 2022 and increase enforcement actions



27

New York State Division of Human Rights

- Fiscal Year 2020
 - 6,386 new cases
 - 5,830 resolutions
- Fiscal Year 2021
 - 3,686 new cases
 - 4,156 resolutions
- Average processing time for a complaint now 570+ days
- 3,891 current active cases (down from 4,194 in 2020)
 - 2,240 in investigation
 - 1,651 in hearing process



28

NYSDHR continued

- Probable cause determinations:
 - 2020 – 15.7%
 - 2021 – 21.4%
- Hearing outcomes:
 - In 2020 and 2021, 77% of cases to reach hearing settled
 - In 2020, respondents prevailed in 28 of 36 hearings (77%)
 - In 2021, respondents prevailed in 32 of 35 hearings (91%)
- Disability discrimination (4,003), retaliation (3,910), and race/color discrimination (3,636) were the most common claims



29

Takeaways

- Review wage and hour policies to ensure compliance to help avoid potential class action lawsuits
- Take special care to avoid retaliation and disability claims; consult with counsel when necessary
- Expect further increases enforcement actions from state and federal government agencies



30

COVID Update

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Employment Litigation Trends

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New York Employment Law: The Essential Guide

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

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



31

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32