

2023

# BUSINESS IN 2022

WEEKLY WEBINAR SERIES

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# Introduction/Agenda, COVID Update, NYS Legislative Update



## **Gabriel S. Oberfield**

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# TODAY'S AGENDA

Gabe Oberfield – (12:00PM-12:10PM)

- Introduction
- COVID Update
- New York State Legislative Highlights – As We Near Session's End

Richard Weber – (12:10PM-12:20PM)

- The Adult Survivors Act – A New Law and Its Implications

Delaney Knapp – (12:20PM-12:30PM)

- Can “Business” Activities Ever Be Charitable? New York Thinks Not

Amelia McLean-Robertson – (12:30PM-12:40PM)

- New York State Climate Leadership and Community Protection Act (CLCPA) – And the Business Context

Oberfield (12:40PM-12:45PM)

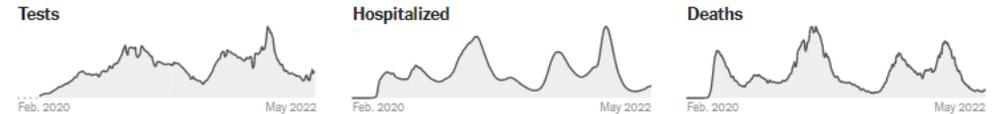
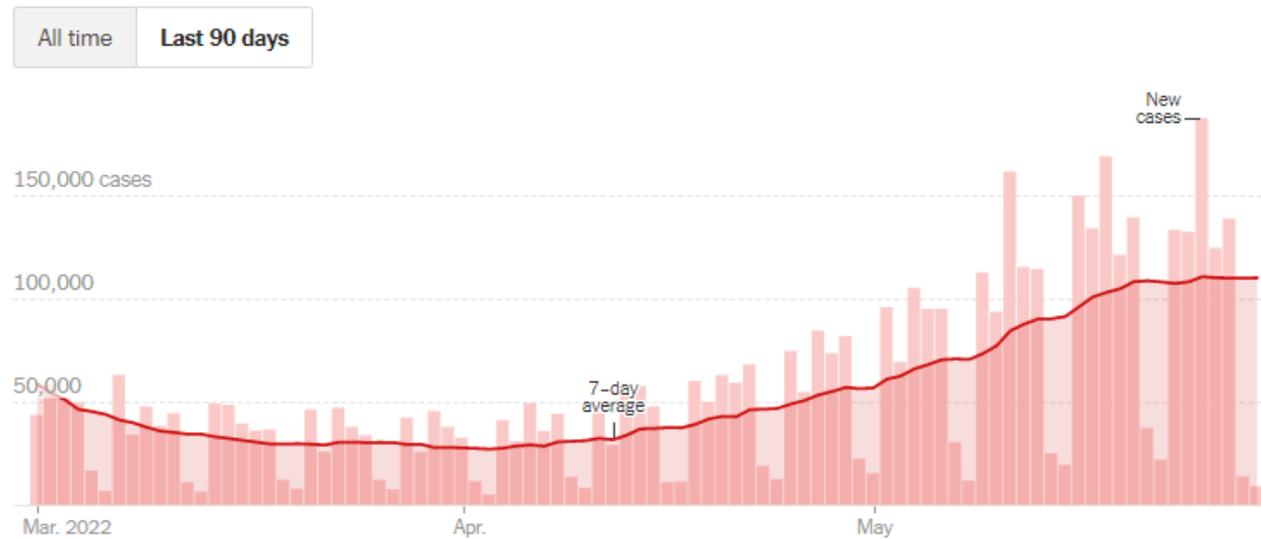
- Your Questions

# COVID Infection Trends & Information

# Today's COVID Picture, Nationally

Source: New York Times

## New reported cases



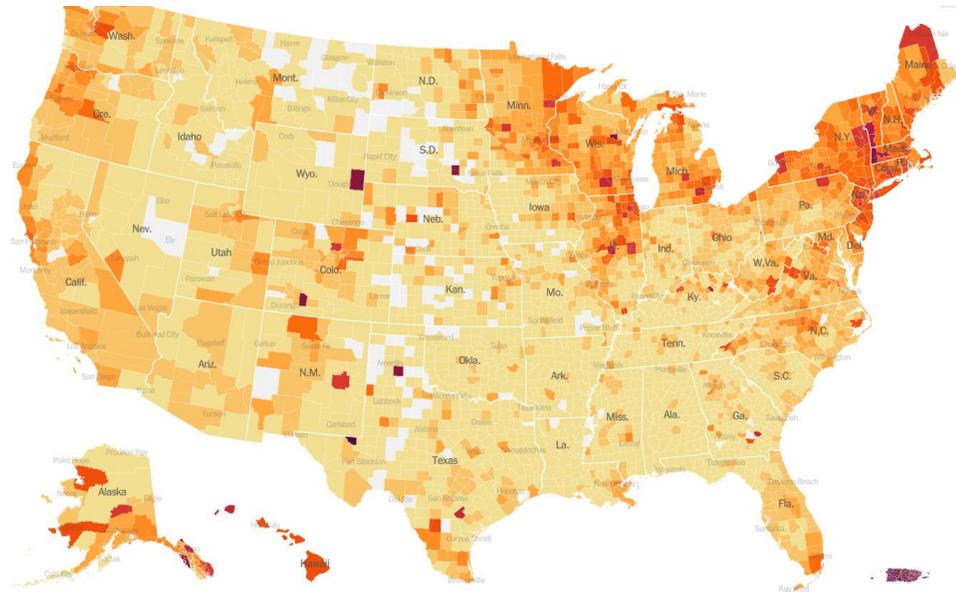
	DAILY AVG. ON MAY 29	14-DAY CHANGE	TOTAL REPORTED
Cases	109,997	+21%	83,931,049
Tests	950,858	+50%	—
Hospitalized	26,804	+23%	—
In I.C.U.s	2,896	+25%	—
Deaths	374	+20%	1,003,167

[About this data](#)

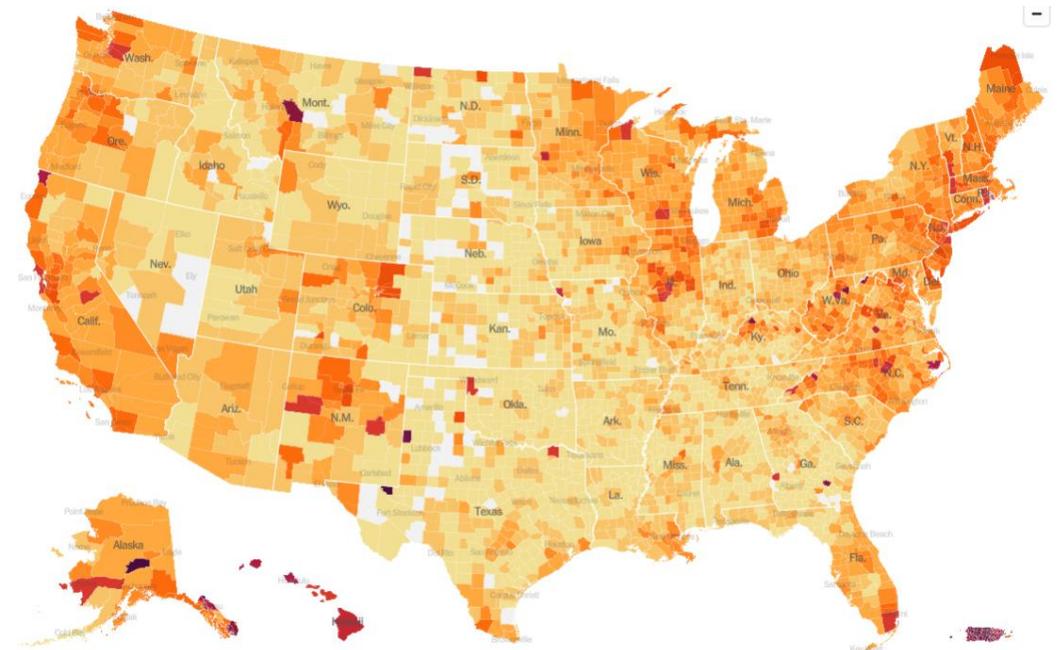
21 percent two-week uptick in cases nationally ... alongside corresponding morbidity and mortality

# Today's COVID Hotspots

Source: New York Times



As of May 17, 2022



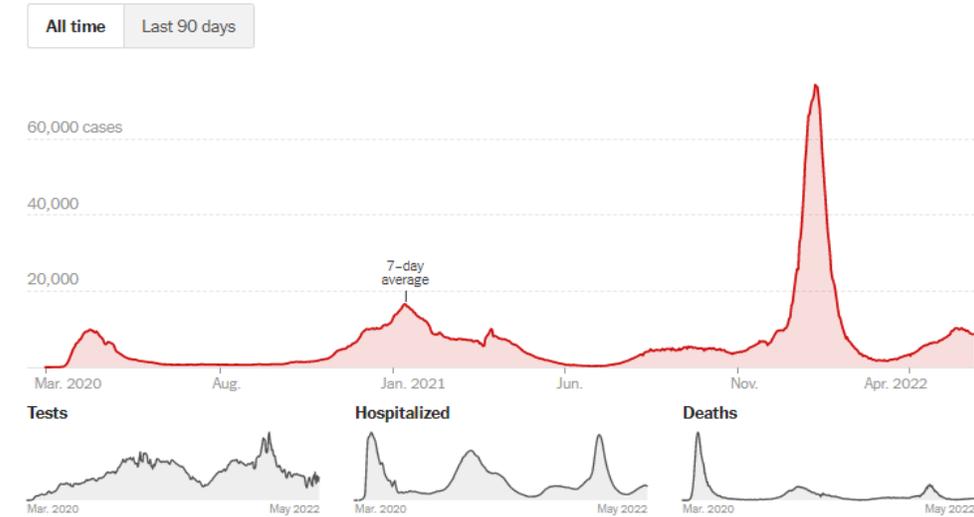
As of May 31, 2022:  
*Wider distribution across  
Northeast, Mid-Atlantic and Southwest*

# Today's COVID Picture, in New York State

Source: New York Times

- Average daily caseload statewide remains c. 9,000
  - NB: a 14 percent drop over the last two weeks
  - No new mandates (Federal, State or local)
  - **Recommendations** concerning indoor masking remain in place

## New reported cases



	DAILY AVG. ON MAY 29	14-DAY CHANGE	TOTAL REPORTED
Cases	8,705	-14%	5,404,333
Tests	89,003	-7%	—
Hospitalized	2,865	+3%	—
In I.C.U.s	261	-2%	—
Deaths	26	+16%	68,292

[About this data](#)

# Two-Week Differentials in New York

Source: New York Times

## May 17, 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	10,092	52	+40%	14	+22%	22.1	0.11
Erie >	613	67	-3%	17	+110%	2.1	0.23
Nassau >	903	67	+54%	17	+18%	1.3	0.09
Warren >	42	66	+14%	9	+30%	0.1	0.17
Niagara >	137	66	+25%	16	+97%	0.7	0.32
Washington >	39	63	+54%	9	+58%	0.1	0.23
Saratoga >	143	62	+14%	11	+74%	0.6	0.27
Schenectady >	93	60	+25%	7	+43%	0.4	0.24
Broome >	113	60	+7%	32	+77%	0.3	0.13
Columbia >	35	58	+50%	20	+62%	0.1	0.24
Tompkins >	59	58	-11%	27	+74%	0.1	0.14

## May 31, 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	8,705	45	-14%	15	+3%	25.7	0.13
Nassau >	770	57	-15%	20	—	1.1	0.08
New York City >	4,433	53	+2%	11	—	10.1	0.12
Suffolk >	770	52	-5%	15	—	2	0.14
Westchester >	456	47	-18%	14	—	0.8	0.08
Putnam >	45	46	-15%	10	—	0	—
Tompkins >	45	44	-23%	31	—	<0.1	0.08
Rensselaer >	68	43	-18%	20	—	0.3	0.16
Sullivan >	32	42	-5%	16	—	<0.1	0.11
Warren >	27	42	-37%	13	—	0	—
Schenectady >	65	42	-31%	10	—	0.4	0.23

# What Are We Watching in the NYS Legislature?



The final week – legislative session closes on June 2, 2022

# Assembly Member Richard Gottfried to Retire



Source: New York Times

- Has served continuously in the legislature since 1971
  - *longest-serving legislator in NYS history*
- Longstanding chairperson of the Assembly health committee
- Has represented the West Side of Manhattan
- New York Health Act – signature bill to establish universal health coverage in NYS –
  - *will not pass before session's end*

# New York State to Pass Reproductive Rights Protections

- Response to Supreme Court deliberations
- Several bills under simultaneous consideration
- Constitutional amendment is possible (with breadth under discussion)
  - *This would require a further ratification process*
- Governor Hochul on record – intends to sign legislation



Source: Wikipedia (KC Kratt (2017))

# Other Legislation Moving Near Session's End

- Examples include:
  - Gun control measures focused on assault rifles –
    - *in wake of mass shootings in Buffalo and in Uvalde, TX*
  - Several concerning opioid management and alternative therapies
  - Office of the Medicaid Inspector General and overpayments
  - In New York City – conversion of hotels into affordable housing



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# New York State Primary

- Statewide offices – including Governor and Lieutenant Governor:
  - June 28, 2022
- Federal primary – including Congress:
  - August 23, 2022
    - Follows the highly contested redistricting process
      - *Resulting, e.g., in longtime Members of Congress Carolyn Maloney and Jerrold Nadler running for the same seat*



# The Adult Survivors Act: What You Need to Know



## Richard L. Weber

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Syracuse, NY

# Adult Survivors Act Key Points:

- The new law creates a one-year “revival window” for claims of sexual abuse that would otherwise be barred by applicable statute(s) of limitations
- Effective date = November 24, 2022 – November 23, 2023
- Similar to Child Victims Act (which generated over 10,000 lawsuits throughout the state) . . .
- . . . But this law is not limited to youth-focused organizations
- The new law is *not a criminal* statute: It opens a window for civil lawsuits for monetary compensation related to sexual abuse offenses committed against individuals who were eighteen (18) or older at the time of the alleged assault

# Adult Survivors Act Key Points:

- The new law is not limited to the intentional acts of the individual abuser: the alleged victim may pursue claims against third-parties (such as employers, business owners and property owners) under theories such as negligent hiring, negligent supervision, negligent retention, negligent training, etc...)
- The new law allows recovery for “physical, psychological or other injury or condition” resulting from “conduct which would constitute a sexual offense . . . or incest . . .”
- The new law incorporates criminal law (Penal Law 130) terms concerning specific conduct that falls within the scope of the “revival” statute: rape, criminal sexual act, forcible touching, etc...

# Adult Survivors Act Key Points:

- What is “Forcible Touching”:
  - A person is guilty of Forcible Touching when he or she intentionally, and for no legitimate purpose, forcibly touches the sexual or other intimate parts of another person for the purpose of degrading or abusing such person or for the purpose of gratifying the actor’s sexual desire.
  - Includes conduct such as squeezing, grabbing, pinching, rubbing, etc.
- NO limit on the “age” of claims that may arise as a result of the new law
- For a potential defendant, early identification of potential insurance coverage is key

# Can “Business” Activities Ever Be Charitable? New York Thinks Not



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# Charitable LLCs – The Real MVP?

- LLCs are uniquely flexible from a governance perspective (no board of directors required!)
- Tax flexibility – capable of being corporations, partnerships or being disregarded entirely
- Allow for limitless variations on how ownership is structured and profits and losses are shared
- Despite this, they tend to play only a niche role in the nonprofit sector.

# IRS Notice 2021-56

- Historically, very limited guidance from the IRS on the interaction of LLCs and Internal Revenue Code Section 501(c)(3).
- IRS Notice 2021-56 – October 2021
  - General 501(c)(3) requirements
  - Articles of Organization and Operating Agreement
  - Exemption application

# Additional Requirements

- Membership
- Charitable purposes
- Dissolution
- Chapter 42 compliance provisions
- Contingency plan
- Consistent with applicable state LLC law and legally enforceable

# New York State Attorney General Comments

- “Where state law, as in New York, does not authorize creation of an LLC for charitable purposes, the IRS should refuse to authorize 501(c)(3) eligibility for LLCs domiciled in that jurisdiction.”

# New York Limited Liability Company Law

- Section 201 of the New York Limited Liability Company Law - "lawful *business* purposes."
- In the Attorney General's view, this precludes formation for "charitable" purposes because Section 102(e) of that law defines business as "every trade, occupation, profession or commercial activity."

# New York Department of State

- Department of State did not take this position in the past
- Articles of Organization have successfully been filed for many years with expressly charitable purposes, including direct references to Internal Revenue Code Section 501(c)(3) and similar language.

Thank you for your recent submission. The enclosed document has been reviewed pursuant to the appropriate statutes. We regret we have not been able to file this document. It is being returned to you for the following reasons:

- Please note that a limited liability company may only use business purposes.
- Note that the charitable purposes are unacceptable.

## More Questions than Answers

- What does this new interpretation mean for existing New York LLCs that have charitable purposes?
- Are they not validly existing under New York law, since they do not have “business” purposes, such that their activities will be viewed as being conducted directly by their members?
- Or is it only that their charitable/501(c)(3) purposes are void?

# More Questions than Answers

- Will the New York State Attorney General attempt to provide answers to these questions, or will the Department of State? Or will it be left to the courts?
- Will the IRS agree with New York's view, or will it rely on its own capacity to interpret federal tax laws and reach a different conclusion?

# The Climate Leadership and Community Protection Act



## Amelia McLean-Robertson

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# CLCPA Overview

- NYS Climate Leadership and Community Protection Act (CLCPA), effective January 1, 2020
- Game-changing law to decarbonize the following sectors of the economy:

Transportation

Buildings

Electricity

Industry

Agriculture and Forestry

Waste

Land Use

Local Government

# CLCPA Targets

- Carbon neutral economy, mandating at least an 85% reduction in total statewide greenhouse gas (GHG) emissions below 1990 levels
  - 40% reduction in emissions by 2030
  - 70% renewable electricity by 2030
  - 100% zero-carbon electricity by 2040

# CLCPA Energy Goals

- 9,000 MW of offshore wind by 2035
- 6,000 MW of distributed solar by 2025
- 3,000 MW of energy storage by 2030
  - (In January, Gov. called for target increase to 6,000 MW – currently only 2,000 MW planned)
- Commitments to climate justice and just transition

# Scoping Plan Required under the CLCPA

- CLCPA created 22-member Climate Action Council and tasked it with preparing a Draft Scoping Plan to meet statutory emission limits
- The Draft Scoping Plan recommends regulatory measures and other state actions to attain the law's mandates
- The Plan is available here: <https://climate.ny.gov/Our-Climate-Act/Draft-Scoping-Plan>
- The Draft Scoping Plan was issued 12/30/21 and identifies strategies by Sector for decarbonization
- The Draft Scoping Plan was informed by recommendations of Advisory Panels, Just Transition Working Group and Climate Justice Working Group
- Final Scoping Plan is due to the governor by 1/1/23

# Key Strategies

- The Draft Scoping Plan scenarios advance key strategies fundamental to achieving the CLCPA's GHG emission limits
- Transition from fossil fuels to electrification in buildings
- Zero emissions electricity
- Transportation electrification
- Enhancement of transit, smart growth, and reduced vehicle miles traveled (VMT)
- Transition to low-GWP refrigerants and enhanced refrigerant management
- Maximizing carbon sequestration in NY's land and forests
- Eliminate fugitive methane emissions across the waste, agriculture, and energy sectors

# Transportation and Electricity

**Transportation** – 28% of GHG emissions

- Plan envisions three million electric passenger vehicles on roads by 2030

**Electricity** – 13% of GHG emissions; the emissions in this sector have declined 46% since 1990

- Includes in-state and imported electricity and emissions from imported fuels
- Plan states that to achieve 70 X 30, focus on energy delivery, efficiency, and aggressive deployment of renewable energy and storage technologies

# Buildings

## **Buildings** – 32% of GHG emissions

- 6M residential and commercial buildings in NYS
- By 2030, 1 to 2 M homes electrified by heat pumps
- Recommends PSC prohibit new gas service to existing buildings by 2024
- Each year, 250,000 housing units will need electric heat pumps and adopt other energy efficiency measures starting in 2030 and thereafter
- Recommends State prohibit replacement of gas and oil equipment at the end of their useful life in stages between now and 2035
- Recommends adoption of State “all electric” building codes for new construction and mods to single family and low-rise buildings by 2024 and by 2027 for high-rise building

# Next Steps

## **Public comment period deadline is June 10<sup>th</sup>**

- To identify areas where additional clarity is needed in the scoping plan
- To further understand relevant needs and priorities of the public and how they connect to existing (or additional) climate strategies
- Highlight where New York residents and businesses can participate in achieving the State's climate goals
- Public and stakeholder input will occur in parallel to complementary continued analysis, speaker series input, and CAC discussion (public hearings and written submissions)
- Comments and questions to be shared by members of the public with the CAC via written format - submit via [climate.ny.gov](https://climate.ny.gov)

# Questions



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