

**BUSINESS IN**

**2022**

**WEEKLY WEBINAR SERIES**

2023

2021

2020

2019



**BOND** SCHOENECK  
& KING ATTORNEYS

# Introduction



**Erin S. Torcello**

Member

[estorcello@bsk.com](mailto:estorcello@bsk.com)

Buffalo, NY

# Recent Tidal Wave of Unionization Efforts



**Raymond J. Pascucci**

Member

rpascucci@bsk.com

Syracuse, NY

# NYS's Pending Wage Transparency Law



**Gianelle M. Duby**

Associate

[gduby@bsk.com](mailto:gduby@bsk.com)

Syracuse, NY

# NY HRL Updates



**Kerry W. Langan**

Member

[klangan@bsk.com](mailto:klangan@bsk.com)

Syracuse, NY

# NY Human Rights Law Amendments

On March 16, 2022, Governor Hochul signed three new bills into law:

- **Senate Bill S.3395B**
  - Amends the definition of “employer” to include New York State and public employers
- **Senate Bill S.5870**
  - Prohibits the release of an employee’s personnel file as retaliatory conduct
- **Senate Bill S.812B**
  - Establishes a toll-free confidential hot line for complainants of workplace sexual harassment

# Pending Legislation

- **Senate Bill S.849A**
  - Extends the statute of limitations for actions brought under NYSHRL from three years to six years
- **Senate Bill S.566A**
  - Extends the statute of limitations for filing complaints related to unlawful discrimination with the Division of Human Rights from one year to three years

# Avoiding Wage Class Actions



**Katherine S. McClung**

Member

[kmcclung@bsk.com](mailto:kmcclung@bsk.com)

Rochester, NY



# Class actions cannot happen to me. Can they?

- One employee can file a class action under the FLSA on behalf of any similarly situated employees
- One employee can file a class action under the NYLL on behalf of a putative class of employees that meets the numerosity requirement

# Why you should care – a lot!

- Assume that ABC company did not pay spread of hours / split shift pay to its non-exempt employees
  - It has 100 non-exempt employees on average
  - They are owed \$15 per week on average
- One non-exempt employee files a putative class action and wins
- The damages are:
  - \$468,000 in back pay
  - \$468,000 in liquidated damages
  - \$210,657.70 in pre-judgment interest
  - The employee's attorneys' fees and costs
  - **Total: Around \$1.5 million**

# Spread of Hours/Split Shift - Defined

- Requirement for New York employees
- Split Shift
  - A schedule of daily hours in which the working hours required or permitted are not consecutive. Meal periods of one hour or less shall not be considered an interruption of the consecutive hours.
- Spread of Hours
  - Interval between the beginning and end of an employee's workday, includes any time off-duty, including meals, rest periods, or time between shifts.

# Spread of Hours/Split Shift Pay

- Miscellaneous: An employee must be paid one additional hour at the minimum wage whenever:
  - The spread of hours exceeds 10 hours; or
  - There is a split shift; or
  - Both situations occur

**Note: Potential offset**

- Hospitality: An employee must receive one additional hour of pay at basic minimum hourly rate for each day where spread of hours exceeds 10.

**Note: No offset**

# Spread of Hours/Split Shift Case Study

- Employee at manufacturing plant in Rochester works one day this week from 6 a.m. to 12 p.m. and from 3 p.m. to 5 p.m.
  - Spread of hours > 10? ✓
  - Split shift? ✓
- Employee's hourly rate is \$14 / hour
- Employee must receive at least 9 hours (8 hours worked + 1 spread-of-hour/split shift) x upstate minimum wage (\$13.20) = \$118.80
- Employee's pay at hourly rate is \$14/hour x 8 hours worked = \$112
- Spread of hours pay due = \$118.8 - \$112.00 = \$6.80

# Rounding Time Punches

- Requirement for all employees working in U.S.
- Rounding permitted where:
  - Increments are to the nearest 5 minutes, one-tenth of an hour, or 15 minutes
  - Rounding method not used in a way that will fail to compensate employees for all hours worked over time
    - i.e., the arrangement averages out so that employees are fully compensated for all hours worked

# Frequency of Pay for Manual Workers

- In New York, “manual workers” in the private sector must be paid weekly and no later than seven calendar days after the end of the week in which the wages are earned
  - Large employers may apply for exception permitting them to pay semi-monthly
- NYDOL interprets “manual worker” to include any individuals who spend more than 25% of their hours worked performing physical tasks

## Introduction

Erin S. Torcello, [estorcello@bsk.com](mailto:estorcello@bsk.com)

## Recent Tidal Wave of Unionization Efforts

Raymond J. Pascucci, [rpascucci@bsk.com](mailto:rpascucci@bsk.com)

## NYS's Pending Wage Transparency Law

Gianelle M. Duby, [gduby@bsk.com](mailto:gduby@bsk.com)

## NY HRL Updates

Kerry W. Langan, [klangan@bsk.com](mailto:klangan@bsk.com)

## Avoiding Wage Class Actions

Katherine S. McClung, [kmcclung@bsk.com](mailto:kmcclung@bsk.com)

## 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

The information in this presentation is intended as general background information.  
It is not to be considered as legal advice.  
Laws can change often, and information may become outdated.

All rights reserved.

This presentation may not be reprinted or duplicated in any form without the express written authorization of Bond, Schoeneck & King PLLC.