

2024

BUSINESS IN 2023

WEEKLY WEBINAR SERIES

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Your Host



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TODAY'S AGENDA

Gabe Oberfield – (12:00PM-12:05PM)

- Intros / Agenda
- End-of-Session in the NYS Legislature (with Roger Bearden)

Lisa Feldman – (12:05PM-12:10PM)

- Details Concerning the Updated EEOC Know Your Rights Poster

Jared Joyce – (12:10PM-12:15PM)

- Regional Technology Hubs Program Launches, with \$500 Million in Funding

Paul Buehler – (12:15PM-12:25PM)

- The National Labor Relations Board's New Independent Contractor Test

Nicole Macris – (12:25PM-12:35PM)

- The Professional Pitfalls of Artificial Intelligence

John Riley – (12:35PM-12:45PM)

- Visas – A Loosening of Standards for Advanced STEM Applicants?

G. Oberfield – (12:45PM)

- Questions / Wrap Up

NYS Legislature – That’s a Wrap

Credit: Office of Governor Kathy Hochul

- Bill signings:
 - Reproductive rights
 - (S.1066B/A.1709B): “Ensures New York Providers Can Prescribe Medication Abortion and Deliver Reproductive Health Care Through Telehealth Services to Patients in States Where Abortion Services are Outlawed or Restricted”
 - LGBTQ+ rights
 - (S.2475-B/ A.6046-B): “Establishes New York as a ‘Safe Haven’ for Trans Youth by Protecting Private Health Information, Shielding Medical Professionals, and Prohibiting Law Enforcement From Targeting Trans Youth”
 - (S.993-A/A.4903) “Establishes That Individuals Have the Right to Receive Addiction Treatment and Rehabilitation Based on Their Gender Identity and Sexual Orientation”
 - (S.2442/ A.7367), (A.1142/ S.155), and (A.1371-A/ S.208-A) “Update Outdated Terminology Used on State Documents to Describe LGBTQ+ Individuals”
 - Numerous other bills awaiting transmittal to the Governor
- Healthcare staffing –
 - *Roger Bearden*



New York State Capital – Office of General Services

Legislative Update



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Details Concerning the Updates EEOC Know Your Rights Poster



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EEOC Know Your Rights Poster

- Updated [poster](#) – June 27, 2023 - replaces last poster update from October 2022
- Pregnant Workers Fairness Act (PWFA) – effective same day
- New poster reflects protections provided by PWFA
- For more info on the PWFA, see our May 23rd webinar [here](#)

What's New?

- Employment Practices Can Be Challenged As Discriminatory:
 - “Failure to provide reasonable accommodation for a disability; pregnancy, childbirth, or related medical condition; or a sincerely-held religious belief, observance or practice” (*emphasis added*)
 - “Conduct that coerces, intimidates, threatens, or interferes with someone exercising their rights, or someone assisting or encouraging someone else to exercise rights, regarding disability discrimination (including accommodation) or pregnancy accommodation”
- Types of Employment Discrimination That Are Illegal:
 - “Interference, coercion, or threats related to exercising rights regarding disability discrimination or pregnancy accommodation”

Reminders....

- Must post in conspicuous location in workplace where notices to applicants and employees customarily posted
- Electronic posting encouraged in a conspicuous location as well
- Monetary penalty - \$659 in 2023 (adjusted annually for inflation)
- ADA requirement
 - Post in location accessible to applicants and employees with disabilities that limit mobility
 - Make printed notices available in an accessible format, as needed, to persons with disabilities that limit ability to see or read
 - (Audio, electronic format able to be utilized by screen-reading technology, etc.)

Regional Technology Hubs Program Launches, with \$500 Million in Funding



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The Regional Technology and Innovation Hubs (Tech Hubs) Program

- The Tech Hubs Program is a regional competition aimed at strengthening U.S. economic and national security through the investment of more than \$500 million in regions that possess the potential to become globally competitive in the technologies and industries of the future.
- The Tech Hubs Program is divided into two phases, each of which is subject to its own Notice of Funding Opportunity and offers different types of awards.

Tech Hubs Program Phases: Phase 1

- Covered under the current Notice of Funding Opportunity.
- Phase 1 Awards:
 - Strategy Development Grants: Used to prepare to apply for an implementation grant under Phase 2.
 - Tech Hub Designation: Designates successful applicants as Tech Hubs.
- Only regions designated as a Tech Hub are eligible for Phase 2.

Tech Hubs Program Phases

- Phase 2
 - Details will be provided in a subsequent Notice of Funding Opportunity.
 - Phase 2 will award Implementation Grants to selected Tech Hub designees.

Eligible Applicants

- Applicants must be a consortia consisting of at least one member from:
 - An institution of higher education.
 - A governmental entity.
 - An industry group.
 - An economic development organization.
 - A labor or workforce training organization.

Eligible Applicants: Key Technology Focus Areas

- A consortium must select and clearly identify a core technology area within or at the intersection of one or more of the Key Technology Focus Areas that the Tech Hub would focus on if selected.
 - Artificial intelligence, machine learning, autonomy and related advances.
 - High performance computing, semiconductors, and advanced computer hardware and software.
 - Quantum information science and technology.
 - Robotics, automation and advanced manufacturing.
 - Natural and anthropogenic disaster prevention or mitigation.

Eligible Applicants: Key Technology Focus Areas

- Advanced communications technology and immersive technology.
- Biotechnology, medical technology, genomics and synthetic biology.
- Data storage, data management, distributed ledger technologies, any cybersecurity, including biometrics.
- Advanced energy and industrial efficiency technologies, such as batteries and advanced nuclear technologies, including but not limited to for the purpose of electric generation.
- Advanced materials science, including composites 2D materials, other next-generation materials, and related manufacturing technologies.

The National Labor Relations Board's New Independent Contractor Test



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NLRB Employee/Independent Contractor Factors:

1. the extent of control which, by the agreement, the master may exercise over the details of the work;
 2. whether or not the one employed is engaged in a distinct occupation or business;
 3. the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;
 4. the skill required in the particular occupation;
 5. whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work;
 6. the length of time for which the person is employed;
 7. the method of payment, whether by the time or by the job;
 8. whether or not the work is a part of the regular business of the employer;
 9. whether or not the parties believe they are creating the relation of master and servant; and
 10. whether the principal is or is not in business.
- And:**
11. entrepreneurial opportunity, including ability to work for others, hire employee, and hold proprietary interest in the work.

The Professional Pitfalls of Artificial Intelligence



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Visas – A Loosening of Standards for Advanced STEM Applicants?



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Options for Sponsoring Permanent Residence

- Priority Workers (Fastest/Hardest)
 - Extraordinary Ability (EB1A)
 - Major award winner, 1000s of citations, patents etc.
 - No employer necessary to sponsor
 - Outstanding Researcher/Professor (EB1B)
 - Slightly lower than EA, but have to work full-time as a researcher and the company has to employ three full-time researchers
 - Employer has to sponsor
 - Intracompany Transferee (EB1C)
 - If employee worked for an affiliate overseas for 1+ years and coming to the US to work in a managerial/executive/specialist position
 - “Fastest” – Premium Processing/Visa availability (apply directly with DHS)

Non-Priority Workers

- Non-Priority Workers
 - Typically go through the PERM process
 - Company has to apply through Department of Labor and DHS
 - Requires the company to demonstrate no qualified US workers through advertising and recruitment of minimally qualified candidates
 - Typical for workers in the US on H-1B or OPT who do not qualify as a priority worker
 - Downside:
 - Processing times – currently 2 years to get approval from DOL and DHS
 - If the employee changes positions, have to start the process all over (especially problematic for employees from India/China)
 - Advertising/recruiting costs

National Interest Waivers

- National Interest Waivers (NIW)
 - Discretionary category for Non-Priority Workers that DHS can grant if it's in the US national interest to approve the green without advertising/recruiting US workers first
 - Major benefits:
 - No DOL involvement (saves 18+ months currently)
 - No cost to advertise and interview US applicants
 - Premium processing (<45 days)
 - NOT tied to the job – promotions are fine
 - Once approved, it allows applicants from India/China to extend their H-1B status beyond 6 years until they are eligible to adjust status to permanent residence

NIW Standards

- Standard for NIWs
 - Because it is discretionary, has been hard to predict individual cases
 - So would typically use PERM process (prior to long waits)
 - Also, was previously not eligible for premium processing so took 1+ years
 - In 2016, DHS loosened the NIW standard somewhat, but still inconsistencies
- 2022 Announcement for Advanced STEM graduates
 - Advanced degree in STEM field given priority for NIWs
 - DHS Policy Manual:
 - USCIS recognizes the importance of progress in STEM fields and the essential role of persons with advanced STEM degrees in fostering this progress, especially in focused critical and emerging technologies or other STEM areas important to U.S. competitiveness or national security.

Critical and Emerging Technologies list

Critical and Emerging Technologies List

The following critical and emerging technology areas are of particular importance to the national security of the United States:

- Advanced Computing
- Advanced Engineering Materials
- Advanced Gas Turbine Engine Technologies
- Advanced Manufacturing
- Advanced and Networked Sensing and Signature Management
- Advanced Nuclear Energy Technologies
- Artificial Intelligence
- Autonomous Systems and Robotics
- Biotechnologies
- Communication and Networking Technologies
- Directed Energy
- Financial Technologies
- Human-Machine Interfaces
- Hypersonics
- Networked Sensors and Sensing
- Quantum Information Technologies
- Renewable Energy Generation and Storage
- Semiconductors and Microelectronics
- Space Technologies and Systems

Critical and Emerging Technologies Subcategories

Advanced Computing

- Supercomputing
- Edge computing
- Cloud computing
- Data storage
- Computing architectures
- Data processing and analysis techniques

Advanced Engineering Materials

- Materials by design and material genomics
- Materials with new properties
- Materials with substantial improvements to existing properties
- Material property characterization and lifecycle assessment

<https://www.whitehouse.gov/wp-content/uploads/2022/02/02-2022-Critical-and-Emerging-Technologies-List-Update.pdf>

Conclusion

- We are seeing quick approvals for advanced STEM degree holders, even in OPT/STEM OPT with limited work experience

Your Questions



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NYS Legislature – That’s a Wrap

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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.
Laws can change often, and information may become outdated.

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