


2022
BUSINESS IN 2021
WEEKLY WEBINAR SERIES
2020
2019
2018


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Introduction



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

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Diseases & Conditions ▾ Healthy Living ▾ Travelers' Health ▾ Emergency Preparedness ▾ More ▾

Coronavirus Disease 2019
 CDC is responding to the coronavirus outbreak.
[Learn More](#)

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Student Loan Reimbursement Programs

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Overview

- Section 127 of Internal Revenue Code
 - Gross income does not include amounts paid or expenses incurred by an employer for qualifying educational assistance
 - Maximum annual benefit is \$5,250
- CARES Act
 - Amended Code Section 127 to include tax-free student loan assistance
 - \$5,250 limit applies
 - December 31, 2020 sunset
- Consolidated Appropriations Act, 2020
 - Extended tax-free student loan provisions of CARES Act
 - New sunset: December 31, 2025

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Code Section 127 Basics

- Some of the more important Code Section 127 requirements include:
 - Separate written plan
 - Plan cannot be discriminatory in favor of employees who are highly compensated
 - Plan may not provide for more than 5% of the amounts paid by the employer for educational assistance to be paid to 5% owners
 - May not provide employees with choice between educational assistance and other taxable income
 - Employer must provide reasonable notification of the availability and terms of the program to employees

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Designing a Student Loan Reimbursement Program

- Design considerations include:
 - Eligibility
 - Limit to new hires?
 - Waiting period?
 - Limit to certain classification of employees?
 - Benefits
 - Provide \$5,250 or different amount?
 - Provide benefit over multiple years?
 - Lump sum or prorated benefit?
 - Other
 - Require degree?
 - Require post-payment service obligation?

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Wage and Hour Compliance Issues Arising with Remote Work



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Meal Breaks

- Employers must continue to comply with meal break requirements
- Lawful vs. unlawful auto-deduction policies



Hours Worked and Other Special Payments

- Non-exempt telecommuters and remote workers present particular challenges due to time and recordkeeping requirements
 - Employers have an obligation to ensure accurate timekeeping of hours worked by all non-exempt employees
 - Non-exempt employees must be paid for all hours worked (plus overtime premiums)
 - Spread of hours/split shift pay rules continue to apply in certain industries
 - Call-in pay?

Compensable Wait Time

- Standard: waiting to be engaged (not compensable) or engaged to wait (compensable)
 - How long are periods of inactivity?
 - Can employee effectively use the time for her own purposes?
 - Does employee need to be in a certain location?



Expenses: Federal and NY Law

- Employees may incur expenses to work from home
 - Cell phone usage
 - Webcam
 - Printer, ink, paper
 - Internet
- Employer must reimburse where expenses cause employee's compensation to decrease below minimum wage and/or any required overtime payments
- New York: reimbursement of expenses where agreement to pay
- Keep in mind other states may have different rules

Classification Issues

- Ensure employees are properly classified
 - Just because an employee is independent enough to work from home does not mean they are necessarily exempt
 - Misclassification of telecommuters is a hot area for wage and hour class action litigation
 - IBM settled a case for \$65 million for classifying IT specialists who worked remotely as exempt
 - Farmers Insurance was hit with a \$90 million jury verdict for misclassifying telecommuting insurance adjusters

(cont'd)



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Out-of-State Remote Workers

- Wage notices / paystubs
- Meal breaks
- Overtime
 - Exemptions
 - Entitlement
- Expenses
- Additional payments
- Posting requirements
- Recordkeeping



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Withholding State Taxes

- For out-of-state remote employees, how should you withhold state taxes?
 - Potential for double withholding



From the Bond “Mail Bag” (including HERO Act Compliance Issues)



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From the Bond “Mail Bag”...

Masks at work?

HERO Act: When is the deadline?

HERO Act: What plan should I use, if I have several different employee groups ?

Are more employers mandating COVID vaccination?

What are the COVID-related record-keeping requirements?



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Update from Albany



Caitlin A. Anderson

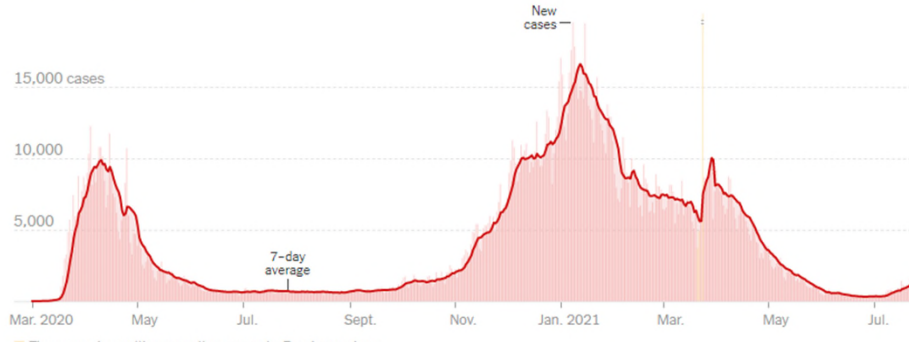
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New reported cases

The New York Times



These are days with a reporting anomaly. Read more [here](#).

AVG. ON JUL. 25

14-DAY CHANGE

	AVG. ON JUL. 25	14-DAY CHANGE
Cases	1,479	+162%
Tests	62,440	+15%
Hospitalized	850	+14%
Deaths	5	+12%



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	CASES DAILY AVG.	PER 100,000	14-DAY CHANGE	HOSPITALIZED DAILY AVG.	PER 100,000	14-DAY CHANGE	DEATHS DAILY AVG.	PER 100,000	FULLY VACCINATED
United States	51,939	16	+170%	30,475	9	+58%	269.0	0.08	49%
Arkansas ›	1,824	60	+162%	782	26	+59%	8.9	0.29	36%
Louisiana ›	2,414	52	+238%	823	18	+135%	10.3	0.22	36%
Florida ›	10,452	49	+208%	5,654	26	+106%	39.3	0.18	48%
Missouri ›	2,410	39	+76%	1,632	27	+37%	13.1	0.21	41%
Mississippi ›	911	31	+241%	438	15	+65%	5.3	0.18	34%
Alabama ›	1,495	30	+216%	672	14	+102%	5.7	0.12	34%
Nevada ›	850	28	+80%	937	30	+51%	8.4	0.27	44%
Alaska ›	195	27	+297%	72	10	+118%	0.4	0.06	45%
U.S. Virgin Islands	26	24	+65%	17	16	+245%	0.4	0.40	35%
Oklahoma ›	938	24	+199%	542	14	+78%	5.3	0.13	40%



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Oklahoma ›	938	24	+199%	542	14	+78%	5.3	0.13	40%
Texas ›	5,128	18	+186%	3,912	13	+70%	28.6	0.10	43%

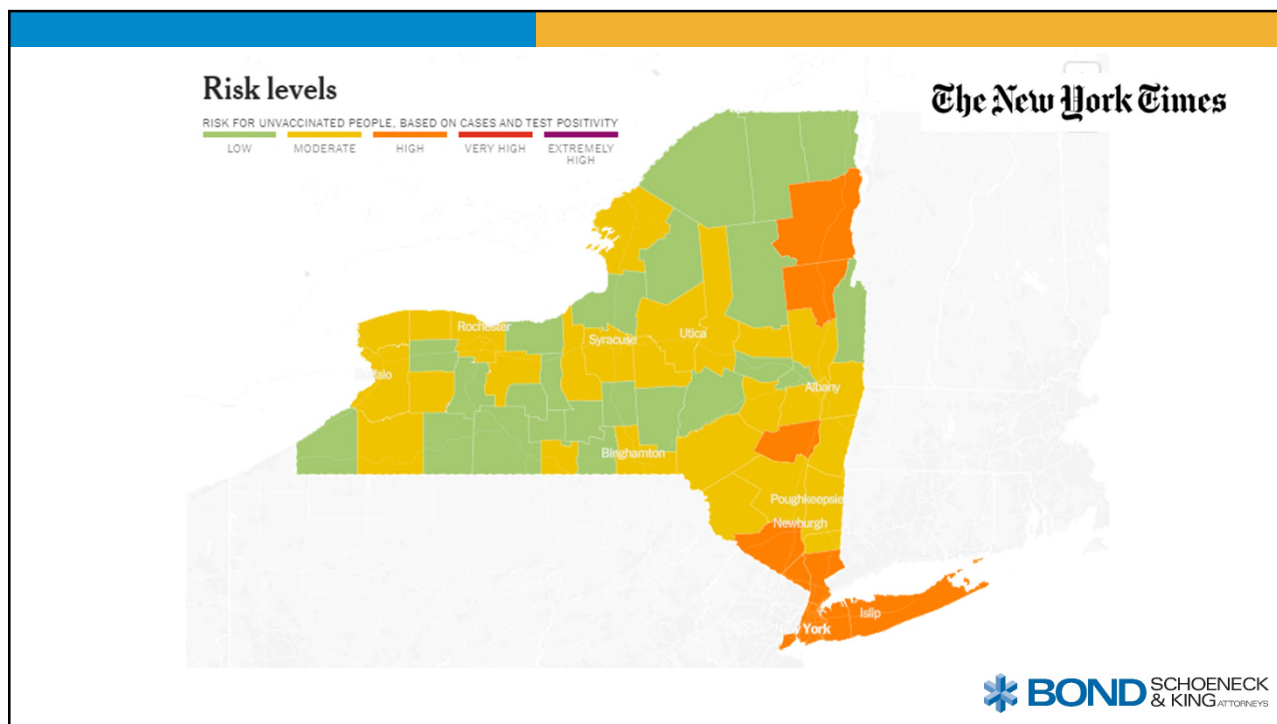


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United States	51,939	16	+170%	30,475	9	+58%	269.0	0.08	49%
Vermont ›	18	3	+232%	1	<1	-73%	0.1	0.02	67%
Massachusetts ›	415	6	+320%	124	2	+17%	3.7	0.05	63%
Maine ›	61	5	+326%	41	3	-6%	2.1	0.16	63%
Connecticut ›	195	5	+176%	96	3	+52%	0.6	0.02	63%
Rhode Island ›	68	6	+289%	71	7	-4%	0.4	0.04	61%
Maryland ›	251	4	+197%	299	5	+7%	3.7	0.06	58%
New Hampshire ›	35	3	+60%	29	2	+51%	0.6	0.04	58%
New Jersey ›	683	8	+159%	392	4	+18%	5.1	0.06	57%
Guam	3	2	-59%	—	—	—	0.1	0.08	57%
Washington ›	868	11	+133%	520	7	+11%	4.4	0.06	57%



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Vaccination Progress

- All New Yorkers:
 - 56% fully vaccinated
 - 62% one dose
- 18 and older:
 - 68% fully vaccinated
 - 74% one dose

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State Vaccination Efforts

And the remaining 25 ZIP codes (21%) are scattered across the state...

ZIP Code	County	Region	ZIP Code	County	Region
12058	Greene	Capital Region	10930	Orange	Mid-Hudson
12083	Greene	Capital Region	10940	Orange	Mid-Hudson
12158	Albany	Capital Region	10595	Westchester	Mid-Hudson
12815	Warren	Capital Region	10704	Westchester	Mid-Hudson
13131	Oswego	Central New York	10992	Orange	Mid-Hudson
13040	Cortland	Central New York	10980	Rockland	Mid-Hudson
14608	Monroe	Finger Lakes	10547	Westchester	Mid-Hudson
10705	Westchester	Mid-Hudson	13308	Oneida	Mohawk Valley
10703	Westchester	Mid-Hudson	12883	Essex	North Country
10507	Westchester	Mid-Hudson	13733	Chenango	Southern Tier
12540	Dutchess	Mid-Hudson	14215	Erie	Western New York
10986	Rockland	Mid-Hudson	14770	Cattaraugus	Western New York
10993	Rockland	Mid-Hudson			

- State to target low vaccination zip codes by partnering with non-profits and advocacy groups.
- 79% of the low vaccination rate zip codes are in New York City and Long Island.



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New York City “Vaccine” Mandate

- By mid-September, all NYC municipal employees must be vaccinated or be tested weekly.
 - Low rates of vaccination in NYPD, Corrections, and FDNY.
 - Applies to teachers.



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The Governor's Woes

- DOJ will not open a civil rights investigation into New York's state-run nursing homes throughout COVID.
- What's left?
 - FBI/U.S. Attorney's Office – intentional cover-up of nursing home deaths.
 - Attorney General – sexual harassment allegations + more
 - Assembly impeachment investigation
- News will likely be coming soon.



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Tale of Two Delays: Rental Relief and Marijuana

- NY is the only state that has not distributed ANY money from the federal relief fund for tenants and landlords (\$2.4 billion allocated)
 - Governor – NY will be current with payments by August 31
- Office of Cannabis Management, Cannabis Control Board – no nominations, no appointees.
 - Governor's spokesperson: "We agree there's a lot of unfinished business with the Senate, and we're ready to submit our nominations, and we hope they reconvene and act on these and our MTA legislation and nominations."



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Student Loan Reimbursement Programs

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Wage and Hour Compliance Issues Arising with Remote Work

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From the Bond “Mail Bag” (including HERO Act Compliance Issues)

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Update from Albany

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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](#).



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The information in this presentation is intended as general background.

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