




**Coronavirus:**  
Update and Discussion on Continuing Legal  
and Practical Issues Related to COVID-19

A Bond Webinar Series  
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## Introduction



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## Overview of High Profile COVID Cases & Status of Federal Liability Protection



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## Update from Albany

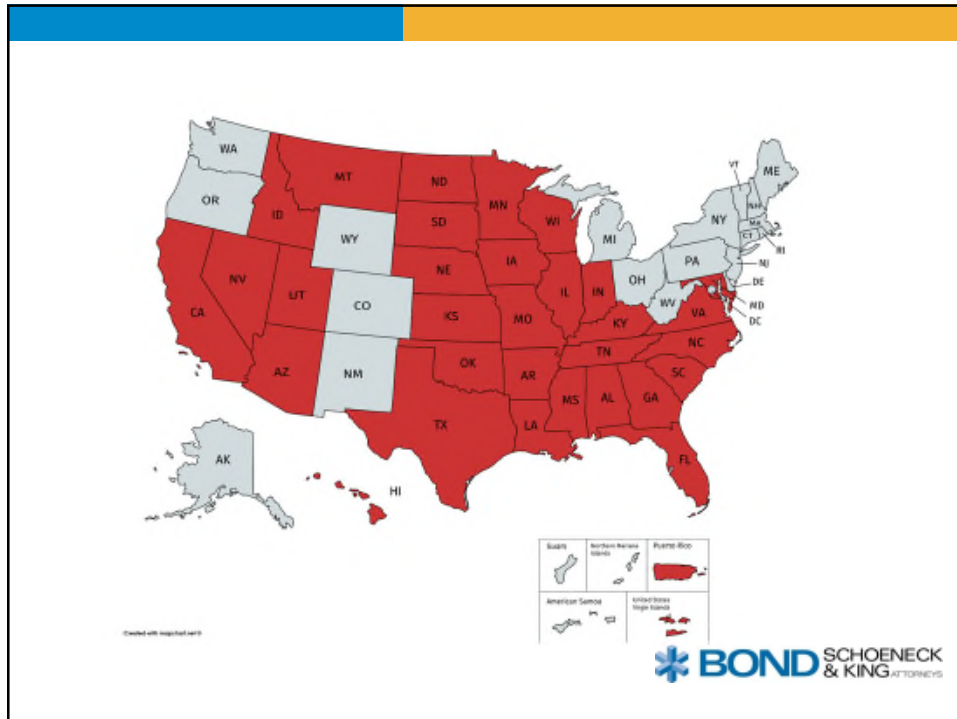


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## DiMartile v. Cuomo

- Plaintiffs: wedding venues that are also restaurants
- Preliminary injunction granted – gathering restriction of 50 people not to apply in this situation
- Likely to be appealed



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## Occupancy Update: ESD FAQs

<https://esd.ny.gov/nyforward-faq>

1. Determine the square footage in each area.
2. Determine the Uniform Code’s classification of the areas.



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**TABLE 1004.5  
MAXIMUM FLOOR AREA ALLOWANCES PER OCCUPANT**

FUNCTION OF SPACE	OCCUPANT LOAD FACTOR
Accessory storage areas, mechanical equipment room	300 gross
Agricultural building	300 gross
Aircraft hangars	500 gross
Airport terminal	
Baggage claim	20 gross
Baggage handling	300 gross
Concourse	100 gross
Waiting areas	15 gross
Assembly	
Gaming floors (keno, slots, etc.)	11 gross
Exhibit gallery and museum	30 net
Assembly with fixed seats	See Section 1004.6
Assembly without fixed seats	
Concentrated (chairs only—not fixed)	7 net
Standing space	5 net
Unconcentrated (tables and chairs)	15 net



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## Occupancy Update: ESD FAQs

3. Determine the “occupant load factor” for those areas. The “occupant load factor” is defined as the allowable floor area in square feet per occupant. The occupant load factor changes based on the relevant classification of the area.
  - Business Group B has a 150-occupant load factor.
4. Divide the square footage by the relevant occupant load.
  - The occupancy level for a business with 10,000 square feet would equal 10,000/150, or 66 people.
5. Multiply that number by 50%.



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## Paid Sick Leave Issues (ESL and PSL)



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## NYPSL Recap

- Accrual begins 9/30/2020; Use begins 1/1/21

Private Employer Size	PSL Required
4 or fewer employees (net income \$1M or less)	40 hours of <u>un</u> paid sick time
4 or fewer employees (net income <u>greater than</u> \$1M)	40 hours of paid sick time
5-99 employees	40 hours of paid sick time
100 or more employees	56 hours of paid sick time

- Wide range of qualifying conditions / circumstances
- No exclusion for part-time or salaried, exempt employees
- Can be “front end” loaded or accrued (1 hour of NYPSL / 30 hours worked)



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## NYPSL Recap (Cont.)

- Mandatory annual roll-over, but capped usage
  - Under 100 employees → 40 hours / year
  - 100 or more employees → 56 hours / year
- Must track accruals and usage
- Must provide summary of leave accrued within 3 days of request
- No payout required at separation or retirement
- Post-leave job restoration
- Anti-discrimination / Anti-retaliation protections



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## What to do now for NYPSL?

- Step 1: Inform and educate leadership on impending NYPSL requirements
- Step 2: Gather and review all leave policies (and any divergent offer letters or employment agreements)
- Step 3: Work with legal counsel to identify and draft any necessary leave policy revisions
- Step 4: Establish and implement NYPSL record-keeping system
- Step 5: Train supervisors on NYPSL requirements and new policy provisions
- Step 6: Publish and distribute new policy provisions to employees



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## What to do now for NYPSL? (Cont.)

- Step 2½: If applicable, evaluate CBA terms and assess with legal counsel other action(s) that may be necessary



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## NYPSL FAQs

- What if my time-off policy already provides enough hours of paid leave?
- Do we have to track usage by exempt employees?
- Are casual or temporary workers covered?
- How much paid leave does a part-time employee receive?
- Are student workers covered at colleges & universities?
- How do I count the number of employees?
- Will NYS provide any guidance?



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### COVID Litigation – Overview of High Profile COVID Cases & Status of Federal Liability Protection

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