

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
- COVID-19 Updates

Kristen Thorsness– (12:05PM-12:15PM)

- Title IX and Transgender Athletes

Nihla Sikkander – (12:15PM-12:25PM)

- What to Expect When Your Employee is Expecting...

Seth Gilbertson – (12:25PM-12:30PM)

- Public Employee Speech in Higher Education

G. Oberfield – (12:45PM)

- Questions / Wrap Up

COVID-19 – Time to Worry, Again?

Source: *New York Times*

- COVID is spreading, again...
- ...But how bad is it?
- Nearly 700 new cases reported in NYC in August, alone
 - “The seven-day average of total cases, which includes confirmed and probable cases, was 672 on Aug. 14, compared to 289 on May 16.”
- Previous summer spikes were more pronounced.
- Hospitalizations and deaths are *not* rising in pronounced fashion.
- Updated vaccines expected by late September 2023.
 - *Expectation it will become a once-annual vaccination, much like influenza.*



Title IX and Transgender Athletes



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What to Expect When Your Employee is Expecting . . .



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Contents

- Federal Protections
- Pregnant Workers Fairness Act (PWFA)
- Proposed PWFA Regulations
- The Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act)
- New York



Federal Protections

- Title VII of the Civil Rights Act of 1964
- Americans with Disabilities Act (ADA)
- Pregnancy Workers Fairness Act (PWFA)
- Family and Medical Leave Act (FMLA)
- Pump at Work Protections under the Fair Labor Standards Act (FLSA)

Pregnant Workers Fairness Act

- Effective June 27, 2023
- Covered “employer” – at least 15 employees
- Requires “reasonable accommodation” of “known limitations related to pregnancy, childbirth or related medical conditions.”
- “Undue hardship” exception
- Employers cannot
 - Require acceptance of accommodation without first discussing with employee
 - Deny employment based on need for accommodation
 - Require leave if another effective accommodation is available
 - Retaliate for opposing PWFA discrimination or participating in related proceedings

Proposed PWFA Regulations

- Opened for public comment on August 11, 2023
- The EEOC must implement final regulations by December 29, 2023
- Clarifies:
 - Known Limitations
 - Pregnancy, Childbirth, or Related Medical Conditions
 - Qualified Employees
 - Interim Accommodations
 - Predictable Assessments
 - Employer Requests for Documentation...and much more!

Providing Urgent Maternal Protections (“PUMP”)

- Signed December 29, 2022
- Extends protections for nursing employees
- For one year after birth, must provide a reasonable break for an employee to express breast milk each time the employee has a need to express
- Compensable time?
 - Must be completely relieved from duty or paid for the break time
 - If employer provides paid breaks, must pay nursing employees in same manner that other employees are paid for break time
 - Employees are entitled to space to express, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public

Applicable New York Law: Nursing Mothers in the Workplace Act

- Effective June 7, 2023
- Section 206-c of the NYS Labor Law
- Employer is required to provide reasonable unpaid break time or allow employees to use rest periods or meal breaks to express milk as often as the employee reasonably has need to
- The law allocates these protections for nursing employees for up to three years following childbirth
- NYSDOL has issued a written policy that must be provided to all employees upon hire, annually, and upon return to work after childbirth
- Prohibition on retaliation

Lactation Room

- Employers must already provide lactation room or other location
- Within 5 business days of request, employer must designate a room for breaks:
 - Close proximity to work area and free from intrusion
 - Well lit and shielded from view
 - A chair, a working surface, access to clean running water and an electrical outlet (if work site has electricity)
- The room may not be a bathroom or toilet stall

Takeaways

- **R** – Review Policies and Forms
- **I** – Implement
- **S** – Stay Consistent
- **E** – Educate and Train your Supervisors

Public Employee Speech Regulation in Higher Education



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Background

From Keyishian

“Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a ***special concern*** of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.”

To Pickering

“The problem in any case is to arrive at ***a balance*** between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the state, as an employer, in promoting the efficiency of the public services it performs through its employees.”

Garcetti and Progeny

“When public employees make statements ***pursuant to their official duties***, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline”

- “We need not, and for that reason do not, decide whether the analysis we conduct today would apply in the same manner to a case involving speech related to scholarship or teaching.”
- Fourth, Fifth, Sixth and Ninth circuits have recognized some scholarship and teaching exception to *Garcetti*

Current State of the Law

- Porter v. Board of Trustees of North Carolina State University
(4th Cir. 2023)
 - “This Court has repeatedly recognized, the Garcetti rule does not extend to speech by public university faculty members, acting in their official capacity, that is related to scholarship or teaching.”
- What about the Second Circuit? SCOTUS?
- If not *Garcetti*, what rule applies?
 - Back to Pickering/Connick Balancing?

Your Questions



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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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