

2024

BUSINESS IN 2023

WEEKLY WEBINAR SERIES

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Introduction



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TODAY'S AGENDA

Kristen Smith – (12:00PM-12:05PM)

- Introduction / Agenda

Kathleen McGraw– (12:05PM-12:15PM)

- Proposed Legislation to Broaden the General Jurisdiction of New York Courts Over Non-New York Corporations

Subhash Viswanathan – (12:15PM-12:25PM)

- Meal Period Requirements

Seth Gilbertson – (12:25PM-12:35PM)

- Defending Borrower Defense Claims

Kristen Smith – (12:35PM – 12:45PM)

- Best Practices for Temporary Employee Staffing Agreements

Proposed Legislation to Broaden the General Jurisdiction of New York Courts Over Non-New York Corporations



Kathleen H. McGraw

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Meal Period Requirements



Subhash Viswanathan

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Meal Period Requirements Under New York Law

- New York Labor Law Section 162 – Statutory Requirements
 - Shifts of more than six hours
 - Factory employees vs. employees of mercantile or other establishments
 - Noonday meal period – between 11:00 a.m. and 2:00 p.m.
 - Shifts starting between 1:00 p.m. and 6:00 a.m. – midway between the beginning and end of the shift
 - Second meal period – shifts starting before 11:00 a.m. and ending later than 7:00 p.m.
 - Gives Commissioner of Labor discretion to permit shorter meal periods than the meal periods required by statute

Meal Period Requirements Under New York Law

- New York State Department of Labor Guidelines
 - 30-minute meal periods permitted for all employees without applying for a variance
 - Meal period requirements apply to ALL employees, including employees exempt from overtime requirements
 - One-employee shift exception
 - Employee waivers of meal period requirements allowed under limited circumstances
 - Cannot require meal periods to be taken at desk or work station, but can require employee to remain on work premises

Meal Period Requirements Under New York Law

- Recordkeeping Issues
 - Clock-Out/Clock-In
 - E-mails or other electronic records showing start/end times of meal periods
 - Written acknowledgments on time sheets – daily or weekly
 - Automatic meal period deductions
 - Written policy
 - Training for employees
 - Procedure for overriding the meal period deduction

Meal Period Requirements Under New York Law

- Enforcement and Penalties
 - Six-year statute of limitations
 - Compliance order
 - Back pay
 - 100% liquidated damages
 - Attorneys' fees
 - Interest
 - Civil penalties for repeat or egregious offenders

Defending Borrower Defense Claims



Seth F. Gilbertson

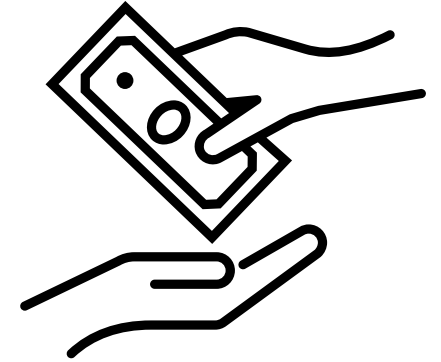
Senior Counsel

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The Student Loan Landscape

- 45 million Americans owe a collective 1.6 trillion
 - Roughly the GDP of Brazil or Australia
 - 40% of loans held by individuals with no degree
- Relief is a central Biden Administration policy objective
 - New Federal Programs
 - Forgiveness?
 - Revamped REPAYE
 - Borrower defense & closed institution rulemaking
 - Very Active Investigations and Enforcement
- Historic low levels of confidence in high education institutions



What is Borrower Defense?

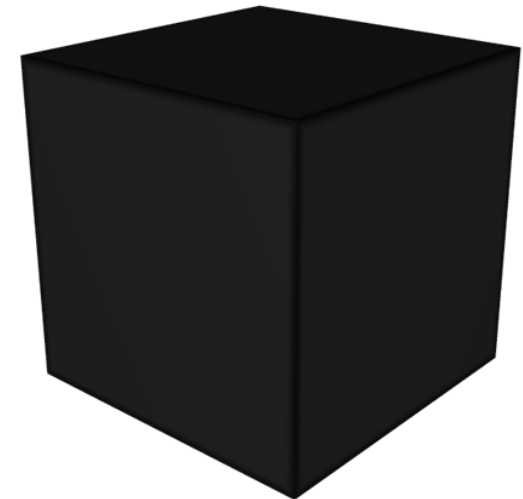
- Federal law/regulation that allows student borrowers to seek forgiveness for their student loans if they were “defrauded” by their college, university, or career school.
- When the U.S. Department of Education (“DOE”) approves a borrower defense claim, the borrower may receive loan discharge and a refund of payments previously made on the loan(s).
- Under certain circumstances, DOE may then recoup those funds from the institution.
- Borrower defense has been part of the Higher Education Act for many years, but has recently undergone significant changes due to rulemaking and litigation.

Current Developments

- Sweet v. Cardona
 - Settlement in place
- New regulations went into effect July 1, 2023
 - Goal was to make process easier
- Career Colleges & Schools of Texas v. U.S. Department of Education
 - Nationwide injunction by Fifth Circuit
- Recent flood of claims received by colleges and universities

Process for Claim Evaluation

- Borrower Application
- Institutional Response
- Decision by U.S. Department of Education
 - What standard?
 - 2016/19 regulations
 - *Sweet* settlement?
 - 2023 regulations?
 - Timeline?
- Appeal/challenge
- Recoupment Action
 - Hearing
 - May apply different standard than claim evaluation



Why You Should Respond

- DOE adjudicates BDR claims using materials submitted as part of the application, evidence in DOE's possession, evidence provided by the institution, and any other relevant information.
- The consequences of an adverse finding are potentially severe
- The evaluation process and criteria are opaque
- You need to preserve your legal defenses
- If the institution does not respond, DOE will *presume* that the institution does not contest the claim

What To Do Now

- Designated a point-person
- **Collect documents**
- Track claims
- **Engage counsel**
- Draft and submit responses
- Watch & Wait



Best Practices for Temporary Employee Staffing Agreements



Kristen E. Smith

Member

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Temporary Employee Staffing Agreements

- Joint Employment Risk
- Allocation of Duties and Responsibilities
 - Employment Authorization
 - Screening
 - Training
 - Supervision
 - Safety
 - Health Benefits (ACA Employer Mandate Compliance)
- Duration Limits

Temporary Employee Staffing Agreements

- Legal Compliance
 - EEO & Leave Laws
 - Immigration
 - Records Inspection
- Insurance Coverage
 - Which types and amounts?
 - EPLI
- Indemnification
 - Unilateral or Mutual?
- Limitation on Liability

Temporary Employee Staffing Agreements

- Billing
 - Sign-off on Time Sheets
 - Warranty
 - Overtime Pay
 - Legally Mandated Paid Leave
- Conversion Fees
- Confidentiality
- Intellectual Property Ownership

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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It is not to be considered as legal advice.
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