


2022
BUSINESS IN 2021
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Introduction



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 **BOND** SCHOENECK
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Important HERO Act Developments



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Update from Albany



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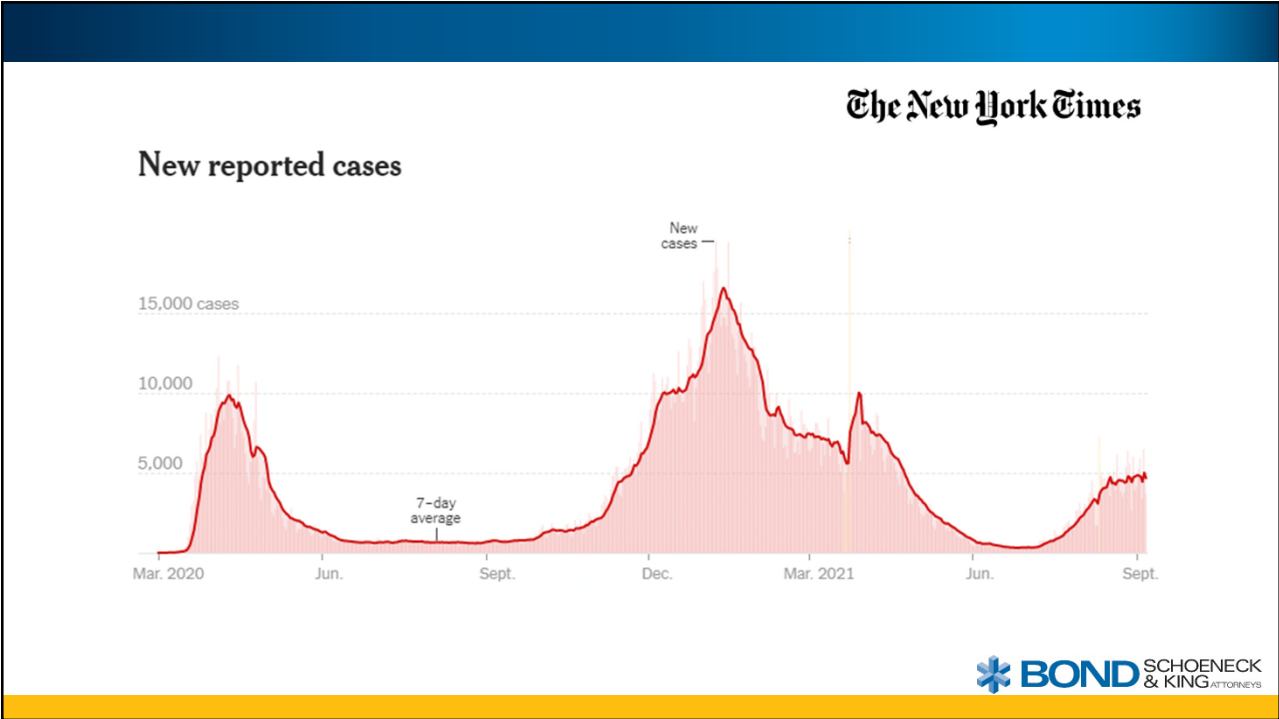
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WHAT A WEEK, HUH?

Tuesday
- LEMON, IT'S WEDNESDAY.

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	DAILY AVG. ON AUG. 30	14-DAY CHANGE
Cases	4,736	+6%
Tests	105,819	Flat
Hospitalized	2,684	+29%
Deaths	25	+32%

	DAILY AVG. ON SEPT. 6	14-DAY CHANGE
Cases	4,685	+4%
Tests	116,714	+6%
Hospitalized	2,790	+23%
Deaths	31	+34%


[About this data](#)



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Vaccination progress

- All New Yorkers:
 - 61% fully vaccinated
 - 68% one dose
- 12 and older:
 - 70% fully vaccinated
 - 79% one dose



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Schools



KATHY HOCHUL
Governor

Department of Health

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

LISA PINO, M.A., J.D.
Executive Deputy Commissioner

**INTERIM NYSDOH GUIDANCE FOR CLASSROOM INSTRUCTION IN P-12 SCHOOLS
DURING THE 2021-2022 ACADEMIC YEAR**

September 2, 2021



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Schools

1. All schools should review and adopt all aspects of the Schools Guidance developed by the Centers for Disease Control & Prevention (CDC), available [here](#). Consistent with the CDC guidance, schools/districts have the authority to decide how to implement the CDC guidance based on local conditions, needs, and input from their Local Health Department (LHD). **Ultimately, the decision to adopt certain mitigation measures will reside with the local community based on local circumstances, unless otherwise required in this document or other relevant guidance, regulations, or orders.**



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Schools

- Masks for all indoors, unless eating, singing, drinking, or playing a wind instrument.
- Physical distancing: strongly recommend 3 feet distance, 6 feet is optimal.

Schools

- Quarantine and Close Contacts:
 - Close contact: Anyone within 6 feet of an infected person for **a cumulative total of 15 minutes or more over a 24 hour period.**
 - BUT: CDC specifies that masked **students** who were within 3-6 feet of an infected student is **not** a close contact.
 - Fully vaccinated people do not need to quarantine (but should be tested within 3-5 days after exposure) unless they develop symptoms.

Schools

- All with new/worsening symptoms of COVID-19 must be excluded from school, regardless of vaccination status. May return either:
 - (a) after 10 days from symptom onset (and remain fever free for 24 hours);
 - (b) provide a negative COVID-19 test.
- Testing:
 - Screening: staff and teachers must be tested weekly if they are unvaccinated; schools must offer weekly testing to unvaccinated students in areas identified by the CDC as having moderate, substantial, or high transmission rates.
 - After exposure: diagnostic testing must be provided for all exposed.



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Extraordinary Legislative Session

- Extension of commercial and residential eviction moratorium until January 15, 2022
 - New measures landlords can take to contest
- Cannabis Nominations:
 - Tremaine Wright – Chair of Cannabis Control Board
 - Christopher Alexander – Executive Director of the Office of Cannabis Management



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Extraordinary Legislative Session

- Open Meeting Law:
 - Effective immediately, virtual public meetings are allowed again.
 - In effect until January 15, 2022.

SEPTEMBER 2, 2021 | Albany, NY

**Governor Hochul Declares State of Emergency
in Response to Record-Breaking Flooding as a
Result of Tropical Depression Ida**

Health Care Providers: Vaccine Mandate

- Further guidance is forthcoming re: who must comply.
- **No religious exemption.**
 - **Precedent:** Public Health Law requires vaccination for measles, no religious exemption.

SEPTEMBER 6, 2021 | Albany, NY

Governor Kathy Hochul Announces Designation of COVID-19 as an Airborne Infectious Disease Under New York State's HERO Act

CORONAVIRUS

PUBLIC SAFETY

HEALTH

HERO Act Activation

- <https://dol.ny.gov/ny-hero-act>



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Employee Benefits Issues Implicated by Premium Differential COVID-19 Vaccination Incentive Programs



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Legal Framework

- Delta Airlines surcharge announcement
- Generally, group health plans and insurers are prohibited from using health factors to discriminate among similarly situated individuals
 - Vaccination status is the health factor
 - Wellness programs are an exception to the general rule
- Wellness programs that provide for premium differentials implicate a myriad of legal issues, including issues under:
 - The Health Insurance Portability and Accountability Act (“HIPAA”);
 - The Americans with Disabilities Act (“ADA”);
 - The Genetic Information Nondiscrimination Act (“GINA”); and
 - The Patient Protection and Affordable Care Act (“ACA”)

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HIPAA Nondiscrimination Requirements

- COVID-19 vaccination incentive programs are likely classified as activity-only, health-contingent wellness programs
- Activity-only, health-contingent wellness programs are subject to stringent requirements under HIPAA, including:
 - Incentive Limitations: Generally, cannot exceed 30% of the total cost of coverage under the employer’s health insurance plan
 - Reasonable Alternative Standard: Similar to the ADA’s reasonable accommodation requirement, requires that a reasonable alternative standard (or waiver of the standard) be provided to employees for whom it is unreasonably difficult due to a medical condition to satisfy the standard or for whom it is medically inadvisable to satisfy the standard

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HIPAA Nondiscrimination Requirements ctd.

- In addition to the incentive limitation and reasonable alternative standard requirements, the HIPAA rules also impose the following requirements on wellness programs:
 - Frequency of reward;
 - Reasonable design;
 - Uniform availability; and
 - Notice of availability

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ADA, GINA, and ACA Considerations

- ADA and GINA incentive limits
 - According to the EEOC, under the ADA, vaccine incentives are permissible so long as the incentive is “not so substantial as to be coercive”
 - Lack of guidance regarding what this limit means
 - Exception: According to the EEOC, the ADA and GINA incentive limits do not apply if the vaccine is administered by a third-party provider that is not contracted by the employer
- Other ADA considerations
 - Reasonable accommodation analysis
 - Confidentiality of medical information
- Wellness programs that are structured to provide premium differentials implicate ACA affordability issues

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Takeaways

- COVID-19 vaccination incentive programs that impose premium differentials on vaccinated and unvaccinated employees are permissible so long as the applicable wellness requirements are met
- Such programs can likely be structured to avoid the more restrictive ADA and GINA incentive limits
 - HIPAA incentive limits will apply regardless

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Unemployment Insurance Update



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Important HERO Act Development

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