

2024

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# Introduction



## Peter A. Jones

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# Managing the Struggling Employee:

Mental and Emotional Health and the Law

## Labor and Employment Law Fall 2023 Breakfast Briefing

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# TODAY'S AGENDA

**Peter Jones – (12:00 PM-12:05 PM)**

- Introduction / Agenda

**Rob Manfred – (12:05 PM-12:15 PM)**

- Governor Hochul Signs New State Law Banning Captive Audience Meetings

**Nick Jacobson – (12:15 PM-12:30 PM)**

- Paid Family Leave Discrimination & Retaliation Claims

**James Lauria – (12:30 PM – 12:45 PM)**

- The Corporate Transparency Act & The New York LLC Transparency Act

# Governor Hochul Signs New State Law Banning Captive Audience Meetings



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# Prohibition on Captive Audience Meetings

- On September 6, 2023, Governor Hochul signed a bill amending Section 201-d of the New York Labor Law, which effectively prohibits employers from forcing employees to sit through “captive audience meetings”
- Section 201-d should be a familiar statute → provides protections to employees based on an individual’s (i) political activities outside of work; (ii) legal use of consumable products; (iii) recreational activities (including marijuana use); and (iv) membership in a union.

# Prohibition on Captive Audience Meetings

- Now prohibits employers from taking adverse action against an employee based on an individual's refusal to:
  - Attend an employer-sponsored meeting with the employer or its agent, representative or designee, the primary purpose of which is to communicate the employer's opinion concerning religious or political matters; or
  - Listen to speech or view communications, the primary purpose of which is to communicate the employer's opinion concerning religious or political matters.

# Prohibition on Captive Audience Meetings

- Political matters → Matters relating to elections for political office, political parties, legislation, regulation, and the decision to support any political party or political, civic, community, fraternal or **labor organization**
- Religious matters → Matters relating to religious affiliation and practice and the decision to join or support any religious organization or association



# Prohibition on Captive Audience Meetings

- Does not prohibit:
  - An employer communicating information the employer is required by law to communicate;
  - An employer communicating information that is necessary for employees to perform their job duties;
  - A higher education institution from meeting with or participating in any communications with its employees that are part of coursework, any symposia or an academic program at such institution;
  - Casual conversations between employees or between an employee and an employer representative provided participation in the conversation is not required; or
  - A requirement limited to the employer's managerial and supervisory employees.

# Prohibition on Captive Audience Meetings

- Every employer must post a sign in every workplace at the location or locations where notices to employees are normally posted to inform employees of their rights under this law
- The new law takes effect **immediately**
- What to do now?

# Paid Family Leave Discrimination & Retaliation Claims



**Nicholas P. Jacobson**

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# New York Paid Family Leave

- Most private sector employees are eligible for New York Paid Family Leave
- Enacted in 2016 to provide paid leave for employees to bond with newly born, adopted or fostered children, to care for covered family members with serious health conditions, or to assist covered family members who are deployed to military service
- Covered employees receive up to 67% of their weekly wage up to a maximum of \$1,131.08 (increasing to \$1,151.16 in 2024)

# PFL Retaliation Claims

- N.Y. Workers' Compensation Law §§ 203-a and 203-b prohibit retaliation against employees for utilizing PFL and establish their right to reinstatement to the position they held before taking leave or a comparable position
- Employees who are denied reinstatement or otherwise retaliated against can bring a claim against their employer pursuant to N.Y. Workers' Compensation Law § 120
- PFL retaliation claims are resolved administratively through the NYS Workers' Compensation Board

# Anatomy of a PFL Retaliation Case

- Employee makes a “Reinstatement Request” through the WCB (Form PFL-DC-119) seeking:
  - Reinstatement to job after termination;
  - Return to hours worked before taking leave;
  - Return to same job duties as before taking leave; or
  - Reinstatement of benefits enjoyed before taking leave.
- Employer has 30 days to respond to the Reinstatement Request

## Anatomy of a PFL Retaliation Case (cont.)

- If the employer does not respond or the employee is not satisfied with the employers' response, he or she may file a Paid Family Leave Retaliation Complaint (Form PFL-DC-120) within 2 years of (1) the employer's response, or (2) 30 days after the reinstatement request was made
- If the employee files a complaint, the employer will receive a Notice of Paid Family Leave Discrimination/Retaliation Complaint (Form PFL-DC-129) and will have 30 days to file a response (Form PFL-DC-130)

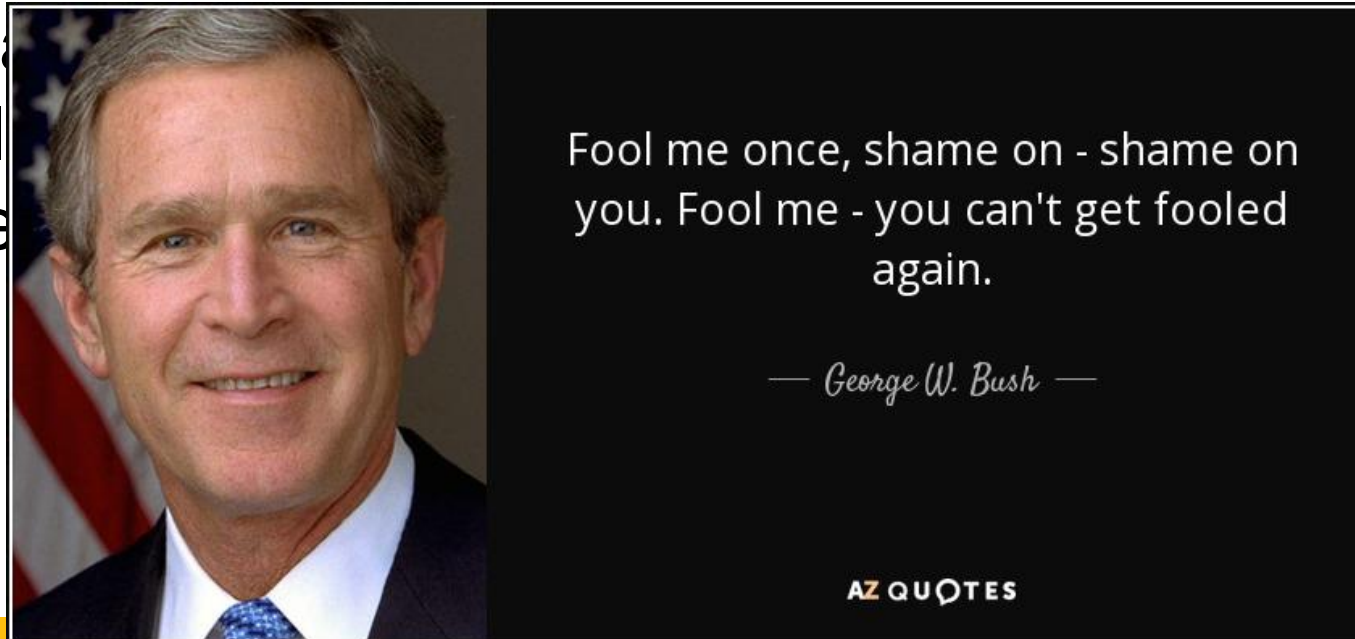
## Anatomy of a PFL Retaliation Case (cont.)

- Claims proceed virtually before an Administrative Law Judge through essentially the same process as a Workers' Compensation Retaliation case
- The Notice of Paid Family Leave Hearing notices a preliminary hearing to discuss:
  - Potential resolution;
  - Scheduling of administrative trial; and
  - Witnesses and exhibits for trial
- Communications and submissions handled via email



# Things to Note

- If the employee was ineligible to receive family leave benefits, that “may serve as a basis to disallow a discrimination or retaliation claim”
- Do not stress over E-Case registration
- ALL appeals must be filed with the hearing commission office – specifically with the hearing commission office – call to check



# The Corporate Transparency Act & The New York LLC Transparency Act



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# Federal Corporate Transparency Act

- Passed in 2021, to take effect for new and existing entities in 2024.
- New government database aimed at deterring money laundering, fraud and financial terrorism.
- Existing Entities – One year to file appropriate reports.
- New Entities – 30 days to file.
- Exemptions exist for certain larger operating companies, churches, nonprofits and securities brokers.
- Reporting centers around disclosing an entity’s “beneficial owners”.
- Civil and potentially criminal penalties will exist for violations.

# Reporting Companies and Beneficial Ownership

- Unless an exemption is met, reporting companies are entities that require some kind of state registration for legal formation.
- Reporting requirements include information on the entity itself, the applicant, and all beneficial owners.
- Beneficial owners have “substantial control” over the reporting entity.
- Includes managers and 25% or more equity owners.
- Reporting information includes date of birth, legal name, addresses and some kind of personal identifying number (passport or driver’s license info).

# NY LLC Transparency Act

- Not yet signed by the Governor into law.
- Specifically stated goal to address the widespread anonymous ownership of property in the state.
- Includes reporting requirements for out-of-state entities that are “doing business” in New York.
- Becomes effective one year after it becomes law.
- Follows the reporting requirements of the CTA (beneficial ownership).
- Main Differences – Public database for certain information and only applies to LLCs.

# Answering Some Potential Questions

- Would the new transparency laws apply to entities formed for the purpose of owning real estate in NY?
- Does the law apply retroactively to existing entities?
- Are there exceptions to the public disclosure of beneficial ownership information in NY? What information will become public ally available?
- What about the issue of “doing business” in a state?
- Do I have to make separate filings/reports?
- What are the penalties for violations?

# 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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