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Your Host



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TODAY'S AGENDA

Kerry Langan – (12 p.m.)

- Welcome and agenda

Elizabeth Heifetz – (12 – 12: 10 p.m.)

- H-1B Updates

Kristen Smith – (12:10 – 12:20 p.m.)

- Leaves of Absence as a Reasonable Accommodation

Adam Mastroleo – (12:20 – 12:30 p.m.)

- Independent Contractor Reporting Requirement
- Increase to NYS Unemployment Insurance Benefits

Kerry Langan – (12:30 p.m.)

- Questions

H-1B Updates



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Leaves of Absence as a Reasonable Accommodation



Kristen Smith

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TRUE or FALSE?

Once an employee exhausts their twelve weeks of FMLA eligibility, if they are still disabled and cannot work, it is perfectly legal to terminate their employment.

Unpaid Leave as a Reasonable Accommodation

- For disabled employees, must analyze request for additional unpaid leave after FMLA expires as a request for a reasonable accommodation under the ADA and NYSHRL.
- Additional finite period of leave may be a reasonable accommodation, depending on the length of time, and provided the employee will be able to perform the position once they return.
- Request for an indefinite leave of absence is almost always unreasonable

**How much unpaid leave time is
too much time?**

Torres v. N.Y.C. Dep't of Educ., 2d Circuit (2022)

- Holding: No reasonable fact finder could conclude that the Department of Education had an obligation to hold open an approved transfer request for a year while the employee took a yearlong leave of absence as reasonable accommodation.
- Footnote:
 - “We do not decide whether a school-year-long unpaid leave of absence can constitute a reasonable accommodation under the ADA. This Court has not squarely articulated when, if ever, a leave of absence for a finite period might qualify as a reasonable accommodation, but we have noted that the idea of unpaid leave is a troublesome problem, in part because of the oxymoronic anomaly it harbors—the idea that allowing disabled employee to leave a job allows him to perform that job's functions.”

DeAngelo v. MAXIMUS/NY Medicaid Choice (SDNY, 2022)

- Doctor's note: "Patient was seen and evaluated in my office today. She is to remain out of work for next 6 weeks."
- Court's holding:
 - A **six-week** leave of absence is not a reasonable accommodation **after the employee has already been on leave for a year** and had no basis for when they would be able to resume the functions of their job.
 - A leave of absence for a finite period of time may be reasonable accommodation if an employee can show the leave will enable the employee to perform the essential functions of their job.

Sears-Barnett v. Syracuse Cmty. Health Ctr., Inc. (N.D.N.Y. 2021)

- While a leave of absence may be reasonable accommodation, it is ***too much*** to ask an employer to hold a position open for ***over a year and a half*** when the employee gave no indication on her rehabilitation progress.

Cayetano v. Fed. Express Corp. (S.D.N.Y. 2022)

- “Courts generally find that a request for leave is unreasonable as a matter of law only where the leave is for an extremely long period of time—exceeding a year at minimum—or when it is clear that even when the employee returns from such leave, they would be unqualified to perform the essential functions of their role.”
- A leave of absence for ***six months*** after which the employee would have regained the ability to perform the essential functions of their job ***is not per se unreasonable***.

**What does a request for an
indefinite leave sound like?**

Kruly v. Akoustis Techs., Inc. (W.D.N.Y. 2023)

- Plaintiff originally stated that the leave would last about 3 months “**give or take**” and that she “**wouldn’t dare guess**” at a return date.
- The court reasoned that this request was unreasonable because it was for an indefinite leave of absence due to the plaintiff’s failure to provide assurances of when she would return.
- Employer held position open for 3.5 months before replacing plaintiff.
- At some point, plaintiff provided a more exact return date. Factual dispute over whether this was before or after replacement was hired. Summary judgment denied.

Cavienss v. Norwalk Transit (D.Conn. 2024)

- Plaintiff requested to take a “***brief period of leave*** to seek behavioral or therapeutic training” to deal with Tourette’s syndrome.
- A “brief period” was enough to make the request finite for the purposes of a motion to dismiss, even in the absence of a specific period of time.

DeAngelo v. MAXIMUS/NY Medicaid Choice (SDNY, 2022)

- “Where previous requests for leave do not result in the employee's return, the employer, without more, has no reason to believe that another leave would do the trick, and in those circumstances the latest request amount[s] to a request for an indefinite leave, which is an unreasonable accommodation.”

Key Takeaways

- Any bright line rule that employees will be terminated after a certain amount of unpaid leave is problematic.
- Requests for leave beyond 12 weeks is extremely fact sensitive.
- Even leaves of one year could be found reasonable and legally required.
- Important to meticulously document communications with employee regarding their ability to return to work, especially repeated extensions of leave.

Independent Contractor Reporting Requirement and Increase to NYS Unemployment Insurance Benefits



Adam Mastroleo

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Increase in Unemployment Benefits

- October 1, 2025
 - UI benefits increase to a maximum of \$869 per week (up 72% from \$504)
 - NYS used tax revenues to pay off its UT Trust Fund debt (almost \$7 billion), which allowed the State to substantially increase UI benefits
 - *Nonprofit institutions who have elected New York's UI "benefit reimbursement" option should carefully evaluate claims history and plan for increased costs.

Independent Contractor Reporting Requirement

- New York Tax Law Section 171-h
 - Employers are required to report newly hired employees within 20 calendar days of hiring through New York's New Hire Online Reporting Center
 - "Employers" include any entity that meets the federal definition of "employer" under the Federal IRS Code
 - "Employees" include independent contractors under an independent contractor arrangement with contracts in excess of \$2,500

Independent Contractor Reporting Requirement

- The New Hire Online Reporting Center portal will prompt employers to provide all required identifying information, including name, address, SSN, hire date, employer information and dependent health insurance availability.
- Reporting must be done within 20 calendar days of hiring. Two monthly reports may be submitted if needed, spaced 12 to 16 days apart.
- Penalties for failure to file timely reports are \$20 per individual not reported and \$20 per failure to file complete information or a false or incomplete report

Independent Contractor Reporting Requirement

- Potential Action Steps:
 - Establish controls to identify when a contractor's agreement crosses the \$2,500 threshold
 - Update onboarding process to capture all required identifiers for contractor reporting
 - Train HR, procurement and/or payroll teams on the online reporting obligations



Best Practices for Avoiding Liability in Hiring and Termination

Labor and Employment Law Fall 2025 Breakfast Briefing

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Binghamton • October 30

Buffalo • October 16

Corning • September 16

Long Island • October 9

New York City • October 23

Rochester • September 18

Saratoga Springs • October 21

Syracuse • October 8

Utica • October 14

Westchester • September 30

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Questions



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H-1B Updates

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Leaves of Absence as a Reasonable Accommodation

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Independent Contractor Reporting Requirement Increase to NYS Unemployment Insurance Benefits

Adam Mastroleo, amastroleo@bsk.com

Sexual Harassment Prevention Training

To combat harassment in the workplace, every New York State employer must provide harassment prevention training for all employees annually.

For more information on Bond's online sexual harassment training [click here](#) or email bondonline@bsk.com

Thank You

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It is not to be considered as legal advice.
Laws can change often, and information may become outdated.

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