

A hand in a dark suit jacket is shown from the wrist up, pointing upwards with the index finger. The years 2021, 2022, 2023, 2024, and 2025 are overlaid on the hand, with 2024 being the largest and most prominent. The background is a blurred outdoor scene with trees and a bright sky.

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TODAY'S AGENDA

Kristen Smith – (12:00PM-12:05PM)

- Introduction

Daniel J. Nugent – (12:05PM-12:15PM)

- DOL Guidance Regarding Cybersecurity for Employee Benefit Plans

Connor Johnson – (12:15 PM-12:25PM)

- New Requirements for Ex Officio Student Members of Boards of Education

Aarti Chandan – (12:25PM-12:35PM)

- Ninth Circuit Rules De Minimis Doctrine Applies to Overtime Claims

Katherine Hajjar – (12:35PM-12:45PM)

- NYS Student Lifeline Act

DOL Guidance Regarding Cybersecurity for Employee Benefit Plans



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Overview of Recent Guidance

- September 6, 2024 - U.S. DOL issues Press Release and Compliance Assistance Release No. 2024-01
 - Builds upon guidance issued by the DOL's Employee Benefits Security Administration in April 2021
 - Confirms that the 2021 guidance generally applies to all employee benefit plans, including health and welfare plans
 - Some believed 2021 guidance only applied to retirement plans
 - Provides limited updates to the three topics addressed by the 2021 guidance

Review of 2021 Guidance

- 2021 Guidance – Cybersecurity Best Practices – Focused on 3 Topics
- First Topic: Hiring Service Providers (addressed to ERISA Plan Fiduciaries)
 - ERISA Plan Fiduciaries must act prudently when selecting/retaining service providers
 - DOL recommended that Plan Sponsors require their vendors to implement/maintain satisfactory security systems to guard against attacks and prevent potential breaches
 - DOL offered a number of suggested best practices
 - Evaluate security standards, practices, and policies and review independent audit results of these security systems to verify their sufficiency and compare to industry standards
 - Review details regarding prior incidents and the response to those attacks

Review of 2021 Guidance Ctd.

- Second Topic: Cybersecurity Program Best Practices (addressed to ERISA Plan Vendors and Plan Fiduciaries selecting/monitoring Vendors)
 - A list of best practices for employee benefit plans, their recordkeepers and other service providers to follow, including:
 - Maintaining a formal well documented cybersecurity program
 - Conducting prudent annual risk assessments
 - Conducting periodic cybersecurity awareness training
- Third Topic: Online Security Tips (addressed to ERISA Plan Participants)
 - Reflects that participants/beneficiaries also play a large role in cybersecurity
 - Utilize strong and unique passwords
 - Add multi-factor authentication to log-ins
 - Regularly monitor accounts

2024 Guidance Takeaways

- Be aware of 2021 and 2024 guidance even though couched as “best practices”
 - DOL refers to this guidance during investigations – questioning plans if there is compliance with this guidance
 - DOL may view this guidance as establishing minimum standards

2024 Guidance Takeaways (cont'd)

- Cybersecurity of Employee Benefit Plans Continues to be a Top Priority for the DOL – Quotes from the 2024 Guidance
 - “All ERISA covered-plans need to implement appropriate best practices to help protect participants and their beneficiaries from cybercrime and emerging threats. These updates remind plan sponsors and fiduciaries of the critical importance of safeguarding job-based benefits and personal information.”
 - “Without sufficient protections, digital participant and assets information may be vulnerable to the internal and external risks of computer-related crimes and losses. Federal regulations require plan fiduciaries to take appropriate precautions to mitigate these risk.”
 - “The Employee Benefits Security Administration believes cybersecurity is a great concern for all employee benefit plans and we continue to investigate potential ERISA violations related to the issue.”

New Requirements for Ex Officio Student Members of Boards of Education



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Amendment to Bill 9018-A

- Purpose:
 - To provide an opportunity for students to build skills and habits of civic engagement;
 - To provide a voice in their districts' policies and operations.

Basic Overview

- New Requirements for Ex Officio Student Members of Board of Education
 - Applies to school districts that operate a high school and BOCES.
 - These districts shall:
 - Establish procedures to designate **at least** one high school student as ex officio non-voting member(s) of their board of education
 - Effective July 1, 2025

Impact of the New Law

- Expands pool of eligible students to now include **all students who have attended the high school for at least one-year prior to their appointment to the board.**
- Examples of Ex Officio Students:
 - Duly elected student president of the high school;
 - Duly elected by the student body;
 - Student selected by the high school student government;
 - Student Selected by the High School principal, Superintendent or School Board.

Scope of Experience for Students

- Student Member(s) will be allowed to:
 - Sit with the board at all public meetings and hearings;
 - May be permitted to participate in other activities and responsibilities (board's discretion).

Scope of Experience for Students

- Student Member(s) will not be allowed to:
 - Attend executive sessions or any non-public meetings or hearings;
 - Receive compensation;
 - Vote.

Ninth Circuit Rules De Minimis Doctrine Applies to Overtime Claims



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General Overview

- What is the “de minimis” doctrine?
- Ninth Circuit decision

De Minimis Doctrine

- De minimis is a legal doctrine by which a court refuses to consider trifling (or minimal) matters
- In the context of Labor and Employment, specifically wage and hour claims, the de minimis doctrine permits employers to disregard, for purposes of the FLSA, otherwise compensable work when the matter in issue concerns only a few seconds or minutes of work beyond the scheduled work hours

Ninth Circuit Decision in *Conexx*

- The U.S. Court of Appeals for the Ninth Circuit issued an opinion in *Cariene Cadena v. Customer Connexx LLC* on July 10, 2024, reversing the U.S. District Court for the District of Nevada's summary judgment ruling in favor of employer Customer Connexx (Connexx)
- Holding: (1) the de minimis doctrine remains applicable to workers' claims for overtime wages under 29 U.S.C. 207; and (2) triable issues of material fact remained as to whether the time claimed by Connexx employees was de minimis

Background of *Conexx*

- The cases involves a Nevada call center whose workers alleged that Conexx violated the FLSA by failing to pay employees overtime wages for time spent booting up and shutting down their computers each day
- On a prior appeal, the Ninth Circuit reversed the district court's earlier grant of summary judgment for the employer, Connexx

Conexx Con't

- The plaintiffs appealed a second time, arguing that the de minimis rule was no longer good law after the Supreme Court's decision in *Sandifer*
- In *Sandifer*, the Supreme Court held that the de minimis doctrine did not apply to a provision of the FLSA concerning the time spent changing clothes or washing

Conexx Holding

- The Ninth Circuit evaluated whether the time at issue (the time employees spent booting up their computers) was de minimis by applying the three-factor test set up in *Lindow v. United States*, 738 F.2d 1057, 1062 (9th Cir. 1984)
- The three-factor test analyzes: (1) the regularity of the work, (2) the aggregate amount of time at issue, and (3) the practical administrative difficulty of recording the time

Potential Implications

- Employers must bear in mind that several of the factors considered by the court in this case could apply in many call center environments, and several other contexts
- This decision underscores the importance of accurately recording and compensating all time employees spend on job functions, including preparatory activities such as booting up a computer

NYS Student Lifeline Act



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New York State Student Lifeline Act

- Student Lifeline Act amends New York State Education Law – effective July 1, 2025.
- Requires degree-granting higher education institutions **educate students, faculty, and staff**, re: State’s 9-8-8 Suicide and Crisis Lifeline
- Must:
 1. Share resources that describe **when** to dial or text 9-8-8 if they or someone they know are in crisis; AND
 2. Print information about 9-8-8 and mental health/substance abuse services **on student ID cards**
 - Applies to student ID cards that are “issued, modified, altered or amended on or after” July 1, 2025.

If institution does not issue ID cards to students, this info must be shared annually in another manner.

Questions?



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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

New York Employment Law: The Essential Guide

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