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Your Host



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TODAY'S AGENDA

Gabe Oberfield – (12:00PM-12:10PM)

- Intros / Agenda

Jeff Gleason – (12:10PM-12:20PM)

- Update on Casino Gaming in New York State

John Sweeney – (12:20PM-12:30PM)

- Issues at the Intersection of Workers' Compensation and Mental Health

Liz Heifetz – (12:30PM-12:40PM)

- Immigration Law and the Threat of a Government Shutdown

G. Oberfield – (12:40PM-12:45PM)

- Questions / Wrap Up

Thank you...

...to September 2023 guest hosts



Adam Mastroleo



Pete Jones



NYS COVID Update

New York State Officially Repeals the COVID-19 Vaccine Mandate for Health Care Workers

- October 4, 2023 (tomorrow)
 - COVID-19 vaccine mandate for health care workers in New York will officially be repealed.
- September 18, 2023
 - New York State Department of Health (DOH) submitted a Notice of Adoption to repeal 10 N.Y.C.R.R. 2.61
 - **This ‘emergency’ regulation required covered health care employers to ensure personnel were fully vaccinated against COVID-19.**



Update on Casino Gaming in New York State



Jeffrey P. Gleason

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First Things First



Happy Birthday, GFLB!

- NYS Fiscal Year 2023 Budget accelerated the timeline for issuance of three downstate casino licenses authorized by 2013 referendum
 - “Downstate” means the counties of Putnam, Rockland, Westchester, Bronx, New York, Richmond, Kings, Queens, Nassau, and Suffolk
- Gaming Facility Location Board formed – NYS Gaming Commission appointed three-member panel on October 3, 2022

Off to the Races or False Start?

- GFLB issued Request for Applications January 3, 2023
- Required potential applicants to submit questions concerning the RFA by February 3, 2023
- GFLB, however, did not provide responses to the first round of questions until August 30, 2023
- This is definitely NOT “fetch”

So What Do We Know?

- Licensing Fees and Taxes
 - Similar to the process for mobile sports betting operators, the Gaming Commission has established minimum amounts for license fees (\$500 million) and tax rates (25% for slot revenue, 10% for all other gross gaming revenue), but applicants may propose a higher license fee and/or tax rate(s).
- License Term
 - The previously-announced license term is 10 years, but the Board's responses indicate that an applicant may propose a longer license term, particularly if a proposed capital investment requires a specific term to be a viable project.

So What Do We Know?

- Supplemental Materials
 - “Provided that the Applicant has demonstrated a good-faith effort to submit a full and complete Application, staff will notify Applicants on a rolling basis as deficiencies are discovered and determinations are made.”
- Public Disclosure
 - All applications, supplements, and associated materials will be treated as public records in accordance with New York State Freedom of Information Law

So What Do We Know?

- Revenue Impact
 - The Board will evaluate how applicants propose to advance the following objectives:
 - Economic Activity and Business Development (70%)
 - Local Impact Siting (10%)
 - Workforce Enhancement (10%)
 - Diversity Framework (10%)

Application Requirements

- Per the RFA, an application will not be reviewed unless:
 - The applicable Community Advisory Committee (“CAC”) has first approved the applicant’s application by a two-thirds vote;
 - The applicant has presented evidence of compliance and approval with all required state and local zoning requirements; and
 - The applicant has paid a \$1 million nonrefundable application fee.

Application Requirements

- There is little known about the CACs, their composition, requirements and processes.
 - For NYC the CAC will include appointees from Gov. Hochul and Mayor Eric Adams as well as the sitting state senator, state assembly member, city council member, and the appropriate borough president.
 - Outside of NYC, the CAC will include the governor's appointee, the appropriate county executive, the sitting state senator and assembly member, and the municipality's highest elected official.

What's Next?

- GFLB has adjusted the Stage 1 schedule, but...

RFA issued	January 3, 2023
Applicants' first set of questions due by 4:00 p.m. EST	February 3, 2023
Board responses to first set of questions	August 30, 2023
Applicants' second set of questions due by 4:00 p.m. EST	October 6, 2023
Board responses to second set of questions	To be announced
Return Date: Applications due by 4 p.m. EDT	30 Days from the Board's response to the second set of questions
CAC process begins	
Applicant submits revisions/updates based on CAC suggested changes (if applicable)	To be announced
CAC vote deadline	To be announced
Applicant submits proposal to applicable zoning authorities	To be announced



Anticipated Applicants

- Empire City Casino (MGM) – Yonkers
- Resorts World NYC (Genting Group) – Jamaica, Queens
- Related Companies/Wynn Resorts – Hudson Yards
- SL Green Realty Corp/Caesars Entertainment – Times Square
- Thor Equities/Chickasaw Nation – Coney Island
- Las Vegas Sands – Nassau Coliseum
- Hudson's Bay Company – Saks Fifth Avenue
- Soloviev Group/Mohegan Sun – Midtown East/UN
- Larry Silverstein/Watche Manoukian – Midtown West
- Steve Cohen/Hard Rock – Willets Point
- Bally's – Trump Golf Links at Ferry Point

Mental Injuries under the Workers' Compensation Law



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History

The Workers' Compensation Law has long recognized mental injuries, **provided that**, they were the consequence of a **physical** injury.

It was necessary to have some initial physical injury. (e.g., an employee unable to work as the result of a severe back injury develops depression).

Solely Mental Injuries

- Court of Appeals (1975) creates a new category: mental injury without any physical component.
- A reaction to an extraordinary event could result in compensable mental injury.
- Witness to suicide at work.

General Rule

- Injuries which are solely mental must result from an unusually stressful event, or series of events.
- Ordinary stress in the workplace is not sufficient.
- An employee claiming injury from “excessive workload,” for example, would have to show that their work was greater than others similarly employed.

Unusually Stressful

- Examples would be witnessing a life threatening event (car crash, fire, explosion).
- Fear of physical injury.
- Extreme threats or verbal abuse.

Exception for First Responders

- Certain “first responders” (fire fighters, police officers, emergency medical technicians) are not subject to the general rule.
- These individual need not show that the stressful event is extraordinary.
- Because they routinely witness severe trauma and life threatening situations, they need not point to any extraordinary event.

Exception for Personnel Decisions

- Mental injuries are not recognized as compensable if they result from certain lawful personnel decisions.
- These include disciplinary actions, work evaluations, job transfers, demotions, or terminations.
- Even if one of these action causes a mental injury, the employee is not entitled to compensation.

Immigration and Compliance Considerations in the Event of Government Shutdown



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Key Considerations

- Department of Labor– Office of Labor Certification
 - Disabling of FLAG and PERM systems
 - No LCAs, or PWDs
 - “Non-Essential Functions”
- USCIS
 - Possible Green card suspensions
 - Possible Nonimmigrant work visa suspension (DOL connected visas)
 - Program suspension (E-Verify, Conrad 30 J-1 Doctors, Non-Minister Religious Workers)
- Customs and Border Patrol (CBP)
 - Port Entry Filings suspended
 - Migrant processing

Continued...

- Department of State

- State Department's visa adjudication and consular services are largely fee-funded and should remain operational during any government shutdown.
- However, if there are insufficient fees to support consular services at a particular consulate or embassy, the post may limit services only to diplomatic visas and adjudication of standard applications only in “life or death” emergency situations.

Takeaways: Anticipate Delays and Plan Ahead

Likely to be impacted	Unlikely to be impacted
Key DOL filings <ul style="list-style-type: none"> – New applications for LCA, PERM, and PWD – Pending or adjudicated applications for LCA, PERM, and PWD 	U.S. visa and passport operations
Certain USCIS programs <ul style="list-style-type: none"> – E-Verify – Conrad 30 J-1 Doctors – Non-Minister Religious Workers 	EB-5 Immigrant Investor Regional Center Program
Certain DOL-connected visas <ul style="list-style-type: none"> – H-1B – E-3 – EB-3 – EB-2 	Select petitions and filings <ul style="list-style-type: none"> – EB-1A – EB-1B – EB-1C – AOS – Green Cards
Applications directly filed at U.S. ports of entry	Most other CBP operations

Your Questions



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Managing the Struggling Employee:

Mental and Emotional Health and the Law

Labor and Employment Law Fall 2023 Breakfast Briefing

Albany • September 19

Binghamton • September 14

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Long Island • October 17

New York City • October 19

Rochester • September 26

Saratoga Springs • October 10

Syracuse • October 5

Utica • October 12

Watertown • October 24

Westchester • October 27

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October is National Cybersecurity Awareness Month



#SecureOurWorld

Update on Casino Gaming in New York State

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John Sweeney, jsweeney@bsk.com

Immigration and Compliance Considerations in the Event of Government Shutdown

Liz Heifetz, eheifetz@bsk.com

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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