

2023

BUSINESS IN 2022

WEEKLY WEBINAR SERIES

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2021

2020

2019

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**Introduction, COVID and Other Public Health Updates,
Healthcare Worker Bonus/Education Portal Updates**



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TODAY'S AGENDA

Gabe Oberfield – (12:00PM-12:10PM)

- Intros / agenda
- COVID and other public health updates
- Healthcare Worker Bonus – education portal updates

Barbara Lee – (12:10PM-12:20PM)

- Cannabis on Campus and Personnel Implications

Michael Donlon (12:20PM-12:30PM)

- SEC Announces New Disclosure Requirements: Pay versus Performance

Sam Dobre (12:30PM-12:40PM)

- Appellate Division's Interpretation of New York City's Freelance Law

G. Oberfield – (12:40-12:45PM)

- SCOTUS preview
- Open questions and final remarks



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COVID Infection Trends & Information

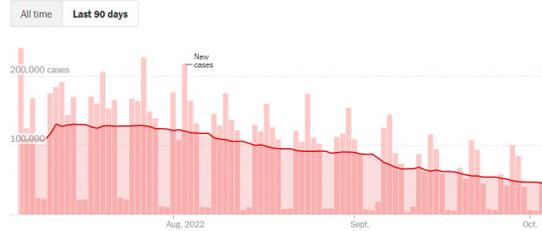


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Today's COVID Picture, Nationally

Source: New York Times

New reported cases



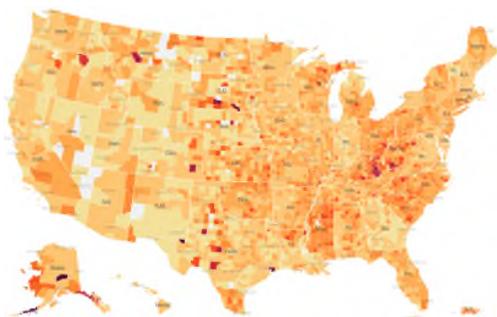
Key metric: 24-percent drop in cases nationally over the last 14 days



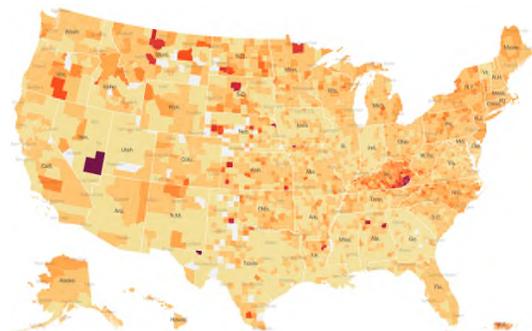
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Today's COVID Hotspots

Source: New York Times



As of September 20, 2022



October 4, 2022
The downward trend continues...

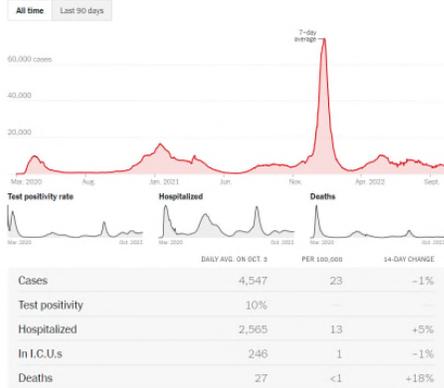


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Today's COVID Picture, in New York State

Sources: New York Times

New reported cases



- Daily averages leveling out
- Factors to watch:
 - Omicron booster uptake lagging
 - Expectation that seasonal flu will be circulating



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Two-Week Differentials in New York

Source: New York Times

September 20, 2022

October 4, 2022

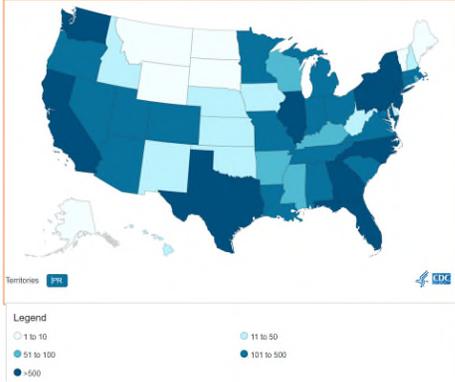
	CASES DAILY AVG. 100,000	PER 100,000	14-DAY CHANGE	TEST POSITIVITY	HOSPITALIZED AVG. PER 100,000	14-DAY CHANGE	DEATHS DAILY AVG. PER 100,000	PER 100,000		CASES DAILY AVG. 100,000	PER 100,000	14-DAY CHANGE	TEST POSITIVITY	HOSPITALIZED AVG. PER 100,000	14-DAY CHANGE	DEATHS DAILY AVG. PER 100,000	PER 100,000
New York	4,576	24	+42%	10%	12	-7%	22.7	0.12	New York	4,547	23	-1%	10%	13	+5%	26.9	0.14
Fulton >	19	36	+58%	23%	6	-11%	0.1	0.27	Fulton >	20	37	+3%	25%	11	+93%	0	—
Franklin >	17	33	+98%	12%	6	—	0	—	Oswego >	42	35	+11%	18%	14	+25%	0.1	0.09
Oswego >	37	32	+42%	17%	11	-9%	0.3	0.26	Warren >	21	32	+33%	10%	12	+12%	<0.1	0.12
Jefferson >	32	29	+50%	9%	7	-24%	0	—	Clinton >	26	32	+28%	23%	30	+65%	<0.1	0.10
Putnam >	28	29	+52%	15%	9	-8%	0.1	0.15	Montgomery >	16	32	+30%	32%	7	+33%	0.1	0.20
Suffolk >	422	29	+23%	10%	16	-9%	1.1	0.08	Jefferson >	33	30	+3%	9%	9	+29%	<0.1	0.07
Cortland >	13	27	+49%	17%	15	+10%	0	—	Cayuga >	22	29	+29%	16%	14	+26%	0.1	0.15
Nassau >	366	27	+12%	11%	24	-10%	1.0	0.07	Orange >	104	27	+19%	14%	15	+53%	0.3	0.07
Tioga >	13	26	+24%	15%	21	+28%	0	—	Suffolk >	400	27	-5%	10%	15	-6%	0.7	0.05
Onondaga >	121	26	+50%	13%	11	-13%	0.4	0.09	Onondaga >	124	27	+3%	14%	15	+34%	0.6	0.13



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Monkeypox and Polio

Sources: Centers for Disease Control and Prevention (CDC), New York Times, New York State Dept. of Health



26K confirmed cases across US – but rates of infection are dropping

Why Polio, Once Eliminated, Is Testing N.Y. Health Officials

Health officials are facing a number of obstacles to containing polio as it continues to circulate in New York State and threatens to become endemic.



A pop-up vaccination clinic for the polio vaccine was opened in Rockland County after a case was discovered there. View 3 Blue for The New York Times

Community spread observed downstate: Sullivan and Orange, Sullivan and Rockland counties and in New York City.

What to Know | Introduction | Background | Surveillance | County Vaccination Status | ZIP Code Vaccination Status

Polio in New York State

- A CASE OF PARALYTIC POLIO IN ROCKLAND COUNTY:** On July 21, 2022, the New York State Department of Health (NYS DOH) and the Rockland County Department of Health (RCDCH) reported the death of a case of paralytic polio in an unvaccinated young patient in Rockland County. The case was identified by NY State DOH through a routine surveillance activity for polio in New York State. The patient was a 10-year-old child who had been vaccinated against polio in New York State.
- WASTEWATER SURVEILLANCE TO IDENTIFY THE VIRUS IN COMMUNITIES:** NY DOH has initiated wastewater surveillance in several communities in New York State to identify the source of the virus. This includes testing of wastewater samples from Rockland County, Orange County, Sullivan County, and in samples collected from New York City and Herk County. All samples collected are analyzed for the presence of poliovirus. The results of the surveillance will be reported to the public as they become available.
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What is polio?
Polio is a debilitating and life-threatening disease. A case of polio can affect the brain and spinal cord, polio can cause paralysis or even death. This makes polio very dangerous, especially for New Yorkers and children who are unvaccinated or not up to date with their polio immunizations.
There is no cure for polio, but disease, including paralysis, is preventable through safe and effective vaccination. IPV—the only vaccine available in the U.S.—is safe, and contains no live virus. It protects 99%–100 percent of people against disease who receive all recommended doses.



Catastrophic Storms

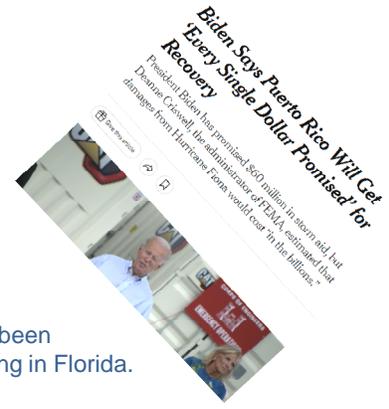
Source: New York Times



Aftermath of Hurricane Ian
Photo credit: NYT

Bond clients and friends have been touched by the storm – including in Florida.

We stand with you while recovery progresses.



NYS Healthcare and Mental Hygiene Worker Bonus Program Updates

Source: New York State Dept. of Health



- 'Vesting Period Two' is open – and closes on 10/31/22
- Providers in education:
 - Per DOH's earlier-issued HWB FAQ:
 - "...Education and state-operated facilities ... will be eligible in the fall for the bonus program...."
 - "For school districts, charter schools, nonpublic schools, approved preschool programs for students with disabilities, BOCES, and private institutions of higher education, the healthcare worker bonus portal **will open on October 1, 2022.**"
- **Additional agency guidance expected:**
 - Please refer to our prior posts for background information.
 - Bond will assess expected updating information (e.g., from NYSED) as soon as we have it.



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Cannabis on Campus and Personnel Implications



Barbara A. Lee

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Cannabis Vocabulary

- Cannabis: plant genus that produces 3 species of flowering plants (sativa, indica and ruderalis)
- Marijuana: general term for female (flower producing) cannabis plants
- Tetrahydrocannabinol (THC): main psychoactive chemical found in marijuana (produces a user's "high")
- Hemp: product derived from male cannabis plants; contains less than 0.3% THC

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Federal Prohibitions on Drugs on Campus

- Controlled Substance Act (CSA) prohibits the sale or possession of Schedule I Drugs
 - methamphetamine, heroin, cocaine, cocaine base, PCP, LSD, fentanyl, fentanyl analogue, and marijuana
- Drug-Free Schools and Communities Act Amendments of 1989
 - requires schools, colleges, and universities to implement and enforce drug and alcohol prevention programs and policies as a condition of eligibility to receive federal funds and assistance, including Title IV federal student aid funds

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Cannabis and Curriculum

- Some colleges and universities offer degree or certificate programs in cannabis studies
 - The science of cannabis
 - The business of cannabis
- Even in states that have decriminalized the possession of cannabis, federal law prohibits the use of cannabis with >0.3% tetrahydrocannabinol (THC) on campus or in private laboratories without a federal license
- Hemp, which has less than 0.3% THC, is excluded from the list of Schedule I drugs and therefore may be used in research

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Cannabis and Research

- The Drug Enforcement Administration (DEA), a unit of the U.S. Department of Justice, determines the extent to which marijuana may be used in research.
- The DEA controls who may grow marijuana, requires licensed growers to sell their product to the DEA, and requires organizations that wish to use marijuana for research to purchase the marijuana from the DEA.
- These requirements apply in all U.S. states, even those that have legalized the possession and sale of cannabis.

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Cannabis and Employee Issues

- DFSCA and the Drug Free Workplace Act require colleges to have policies prohibiting cannabis possession and use on campus
- New York law prohibits employers from discriminating against, terminating and/or refusing to hire individuals because of their use of recreational marijuana outside of work
- Employees in safety-sensitive jobs (such as bus drivers) may undergo testing if they appear impaired
- While federal disability law does not require employers to permit medical marijuana as a reasonable accommodation, state law may differ

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CBD on Campus

- CBD is derived from hemp and is legal in all 50 states IF it contains less than 0.3% THC.
- CBD production is not regulated by the Food & Drug Administration (FDA) and scientific tests have shown that many samples have more than 0.3% THC (which violates the DFSCA)
- NCAA rules prohibit use of CBD, even though it is legal. If student-athletes use CBD that contains >0.3% THC, they may fail a drug test and be dismissed from the team.
- CBD is not regulated by the FDA and thus is not a drug—no need to agree to reasonable accommodation for CBD use.

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SEC Announces New Disclosure Requirements: Pay versus Performance



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Rule-Making History

- July 2010: Dodd-Frank Wall Street Reform and Consumer Protection Act enacted; included § 953(a) that required the SEC to adopt regulations requiring public companies to disclose its “pay versus performance.”
- April 2015: SEC releases proposed regulations; comment period followed
- February to March 2022: SEC re-opens comment period on 2015 proposed regulations
- August 25, 2022: Final rules released
- Effective for Upcoming 2023 Proxy Statement: New disclosures required for proxy statements attributable to fiscal years ending on or after December 16, 2022



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Overview of Disclosure Requirements

- Location: Required for all proxy statements; however, may be included in the Compensation Discussion & Analysis (CD&A) or elsewhere
- Tabular Disclosure: New table required including the following items for the last 5 fiscal years (subject to an initial transition period):
 - CEO Summary Compensation Table (SCT) total and compensation actually paid;
 - Average non-CEO named executive officer (NEO) SCT total and compensation actually paid;
 - Company total shareholder return (TSR);
 - Peer group TSR;
 - Company net income; and
 - Another company-selected financial performance measure



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Overview of Disclosure Requirements

- Explanation: Must include either narrative or graphical explanation / description of the following relationships:
 - CEO and average NEO compensation actually paid to company and peer group TSR;
 - CEO and average NEO compensation actually paid to company net income; and
 - CEO and average NEO compensation actually paid to additional company-selected financial performance measure
- List of Performance Measures: Must include an un-ranked list of the company's most important financial performance measures used during the covered fiscal year to link pay and performance (must be at least 3 but not more than 7 measures)



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Tabular Disclosure

- Pay vs. Performance Table: The table below shows the expected tabular disclosure formatting.

Year	Summary Compensation Table Total for PEO	Compensation Actually Paid to PEO	Average Summary Compensation Table Total for Non-PEO NEOs	Average Compensation Actually Paid to Non-PEO NEOs	Value of Initial Fixed \$100 Investment Based On:		Net Income	[Company Selected Measure]
					Total Shareholder Return	Peer Group Total Shareholder Return		
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
Y1								
Y2								
Y3								
Y4								
Y5								



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Narrative / Graphical Explanation

- Comparison between Compensation and Each Performance Measure: Must provide a clear description of the performance measure as compared to compensation actually paid, in narrative or graphical form, or combination of the two
- Sample Explanations:
 - A graph providing compensation actually paid and change in the financial performance measure(s) on parallel axes and plotting compensation and such measure(s) over the required time period.
 - A narrative or tabular disclosure showing the percentage change over each year of the required time period in both compensation actually paid and the financial performance measure(s) together with a brief discussion of how those changes are related.



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List of Performance Measures

- Must provide an un-ranked list of the most important financial performance measures used to link compensation actually paid to performance
 - 3 to 7 Performance Measures: Must include at least three and up to seven most important financial performance measures; company-selected performance measure from table must be on the list
 - GAAP reconciliation required for any non-GAAP measures
 - Most Recent Year Only: Determined with respect to only the most recent completed fiscal year
 - Non-Financial Measures Permitted: May include non-financial performance measures in list if measures are among the most important performance measures and at least 3 (or, if fewer, all) financial performance measures are included in the list
 - Cross-Reference Permitted: May cross-reference to other disclosures (e.g., CD&A) that describe the processes and calculations



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Smaller Reporting Companies (SRCs)

- Consistent with an SRC's existing scaled executive compensation disclosure requirements, an SRC's pay versus performance disclosure requirements are modified as follows:
 - SRCs can present three, instead of five, fiscal years of disclosure in the Pay Versus Performance Table.
 - The transition period allows SRCs to provide two years of data, instead of three, in the first applicable filing after the final rules become effective.
 - SRCs are not required to disclose amounts related to pensions for purposes of disclosing executive compensation actually paid.



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Smaller Reporting Companies (SRCs)

- Scaled disclosure requirements (continued) :
 - SRCs are not required to present peer group Total Shareholder Return.
 - SRCs can omit the tabular list of the three to seven most important financial performance measures used by the company to link compensation actually paid for the most recently completed fiscal year to the company's performance.
 - SRCs are not required to provide disclosure in SEC Interactive XBRL format until the third filing in which the SRC provides pay versus performance disclosure.



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Action Items

- Calculate Compensation Actually Paid:
 - Engage pension plan actuaries and accountants overseeing equity award valuations to help with adjustments to SCT compensation totals
- Determine TSR Peer Group:
 - Review and compare TSR performance graph and CD&A peer groups to select peer group
 - Engage compensation committee and compensation consultant to make final determination
- Identify Company-Selected and Most Important Performance Measures:
 - Engage compensation committee and compensation consultant to identify potential company- selected performance measure to be included in table and list of most important performance measures



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Action Items

- Prepare / Review Sample Graphical or Narrative Disclosures:
 - Review prior year figures and prepare sample graphical and narrative disclosures showing the relationship between compensation actually paid and TSR, peer group TSR, net income, and company-selected performance measure
- Determine Location of Disclosure:
 - If included in CD&A, disclosure must be certified by the compensation committee



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Appellate Division's Interpretation of NYC's Freelance Law



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New York City's Freelance Law

- What is the Freelance Isn't Free Act?
- What is a "Freelance Worker"?
- What companies are impacted by FIFA as a "Hiring Party"?
- Recommendations and Key Takeaways



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SCOTUS Preview



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U.S. Supreme Court Commences Its New Term

Sources: National Public Radio, New York Times, Politico.com, BBC.com



Ketanji Brown Jackson
Associate Justice of the Supreme Court
Photo: NPR.org

- Associate Justice Ketanji Brown Jackson hears first oral arguments
 - Justice Jackson replaced Justice Stephen G. Breyer, who retired earlier this year
 - Reporting from the October 3, 2022, proceeding (involving environmental law issues) suggests Justice Jackson was an active questioner
- Key issues on the docket:
 - College admissions and affirmative action
 - Election law
 - Free speech issues
 - Artistic expression and 'fair use'
 - Animal rights



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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](#).



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Thank You

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