



**Coronavirus:**  
Update and Discussion on Continuing Legal  
and Practical Issues Related to COVID-19

A Bond Webinar Series  
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1

## Introduction



**Peter A. Jones**  
Deputy Chair, Labor & Employment  
pjones@bsk.com  
Syracuse, NY



2

## Pandemic Planning for Public Employers



### **Christopher T. Kurtz**

Member  
ckurtz@bsk.com  
Garden City, NY



3

## School Reopening Update



### **Bethany A. Centrone**

Member  
bcentrone@bsk.com  
Rochester, NY



4

## Update from Albany



### **Caitlin A. Anderson**

Associate  
canderson@bsk.com  
Albany, NY



5


## Executive Order 202.67

- Extends over 30 other Executive Orders
- Tolling of statute of limitations for civil cases to end on November 3.
- Motor vehicle registrations must be up to date by November 3.



6

Region	Testing/Tracing Targets		New Infections		Severity of Infection	Hospital Capacity	
	Maintain 30 per 1,000 Diagnostic Tests	Maintain Required Case and Contact Tracing Capacity	% Positive Tests per Day (7-Day Rolling Avg)	New Cases per 100K (7-Day Rolling Avg)	Gross New Hospitalizations per 100K (7-Day Rolling Avg)	Share of Total Hospital Beds % Available (7-Day Rolling Avg)	Share of ICU Beds % Available (7-Day Rolling Avg)
STATEWIDE	105,129 / 19,542	9,628	1.2%	6.62	0.46	25%	37%
Capital Region	5,682 / 1,085	278	0.7%	3.77	0.20	27%	41%
Central New York	4,927 / 775	458	0.8%	5.20	0.53	30%	38%
Finger Lakes	5,317 / 1,203	468	0.7%	2.97	0.30	35%	56%
Long Island	13,618 / 2,839	1,308	1.1%	5.30	0.28	23%	27%
Mid-Hudson	11,057 / 2,322	1,456	2.3%	10.74	0.71	31%	52%
Mohawk Valley	3,041 / 485	139	0.5%	2.91	0.24	41%	45%
New York City	40,378 / 8,399	4,648	1.3%	6.49	0.53	19%	25%
North Country	2,079 / 419	12	0.3%	1.26	0.14	42%	67%
Southern Tier	11,864 / 633	114	1.1%	19.77	0.77	42%	42%
Western New York	7,167 / 1,381	747	1.2%	6.34	0.42	33%	55%



7

## NYC

- Approximately 100 public schools and 200 private schools closing to in-person learning today within 9 zip codes in NYC.
- Non-essential businesses may close, but no details yet.

8

### Issues to Solve

Local ZIP codes not ideal line measure spread / clusters – they are arbitrary lines - sometimes too inclusive and sometimes not inclusive enough. No other government entity uses only ZIP code data to make open/closing decisions.

**No cluster**

**Cluster**

**11210 – East Midwood, Brooklyn**

9

10

## OSHA Requirements for Recording vs. Reporting COVID-19 Illnesses



### Steven J. Ricca

Member  
sricca@bsk.com  
Buffalo, NY



11

- When is COVID-19 a recordable illness (29 CFR 1904)
- When is a COVID-19 illness work-related?
  - OSHA's 5.19.2020 Revised Enforcement Guidance (Effective 5.26)
- Reporting Fatalities and Hospitalizations (20 CFR 1904.39)



12

## Litigation Update – A Review of Recent Cases



### Richard L. Weber

Member  
rweber@bsk.com  
Syracuse, NY



13

## Recent Challenges to New York State COVID-19 Restrictions

- As of September 29, 2020, at least fifty-three (53) different lawsuits on file that challenge one or more COVID-19 related restrictions – many more expected.
- Common themes in challenge lawsuits:
  - Arbitrary and/or unsupported restrictions
  - Differential treatment for individuals / businesses that are similarly situated
  - Agency issuing the restriction exceeded its authority
  - Constitutional arguments concerning due process, equal protection of the law, etc...
  - “Changed circumstances” warrants lifting of restrictions (ex: “New York flattened the curve”).



14

## Challenges to COVID-19 Restrictions:

- *Sportsmen’s Tavern LLC v. New York State Liquor Authority* (Supreme Court, Erie County, September 30, 2020)
  - Challenge to SLA ban on advertising and selling tickets to live music acts at bars and taverns
  - Complaint filed
  - *Held*: Prohibition found to be unconstitutional (at least as to this Plaintiff)
  - *BUT*: May apply only to that individual plaintiff; still need to follow state and local COVID-19 safety guidelines and protocols.
  - Consistent *in part* with a separate decision issued a week earlier in SDNY, which enjoined a ban on “incidental” music at such venues but did *not* enjoin restriction of “advertised or ticketed” shows, or “cover charges”.



15

## Challenge to COVID-19 Restrictions:

- *Humphrey v. Cuomo et al* (Supreme Court, Niagara County, September 28, 2020)
  - Newly filed class-action lawsuit seeking to enjoin enforcement of shutdown orders concerning High School Football
  - Argues the restrictions implemented to “flatten the curve” were successful, that Syracuse University and SUNY-Buffalo are playing football, that “the high contact sport of high school soccer” is moving forward, and that Fall high school football is proceeding in 36 other states despite the pandemic.
  - Legal Theories: violation of procedural due process, violation of “equal protection” rights, and “tortious interference with economic advantage” (i.e. New York high school players may lose opportunities to play high-level NCAA football with scholarships)



16



## COVID Exposure FAQs – What Do We Do Now?



### Andrew D. Bobrek

Member  
abobrek@bsk.com  
Syracuse, NY



17

## Employee COVID-19 Testing & Exposure FAQs

- What should I do if an employee reports a sore throat and headache at work?
  - CDC: COVID-19 Symptoms
- What if an employee tests positive for COVID-19?
- What if an employee reports that her husband just tested positive for COVID-19?
- What if an employee refuses medical care or a COVID-19 test?
- What if I received several texts from workers that an employee is repeatedly not wearing a mask in common areas?



May 31, 2020  
Interim Guidance for Public and Private Employees Returning to Work Following COVID-19 Infection or Exposure

<https://tinyurl.com/yabhs9g5>



<https://tinyurl.com/yy8xltnt>



18

### Pandemic Planning for Public Employers

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### Update from Albany

Caiti Anderson, [canderson@bsk.com](mailto:canderson@bsk.com)

### OSHA Update – COVID Developments

Steve Ricca, [srcicca@bsk.com](mailto:srcicca@bsk.com)

### Litigation Update – A Review of Recent Cases

Rick Weber, [rweber@bsk.com](mailto:rweber@bsk.com)

### COVID Exposure FAQs – What Do We Do Now?

Andy Bobrek, [abobrek@bsk.com](mailto:abobrek@bsk.com)



19

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20