

2024

BUSINESS IN 2023

WEEKLY WEBINAR SERIES

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Your Host



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TODAY'S AGENDA

Gabe Oberfield – (12:00PM-12:05PM)

- Intros / Agenda

Amber Lawyer – (12:05PM-12:15PM)

- Delaware Joins the Consumer Protection Bandwagon

Sandra Casey – (12:15PM-12:25PM)

- The Gainful Employment Rule

Karl Deuble – (12:25PM-12:35PM)

- Fair or Foul? NYS Court of Appeals Says Case of Injured High School Baseball Player Must Go to Trial

Camisha Parkins (Supervised by Mallory Campbell) – (12:35PM-12:45PM)

- Amendments to NYC's Earned Safe and Sick Time Act

G. Oberfield – (12:45PM)

- Questions / Wrap Up

Delaware Joins the Consumer Protection Bandwagon



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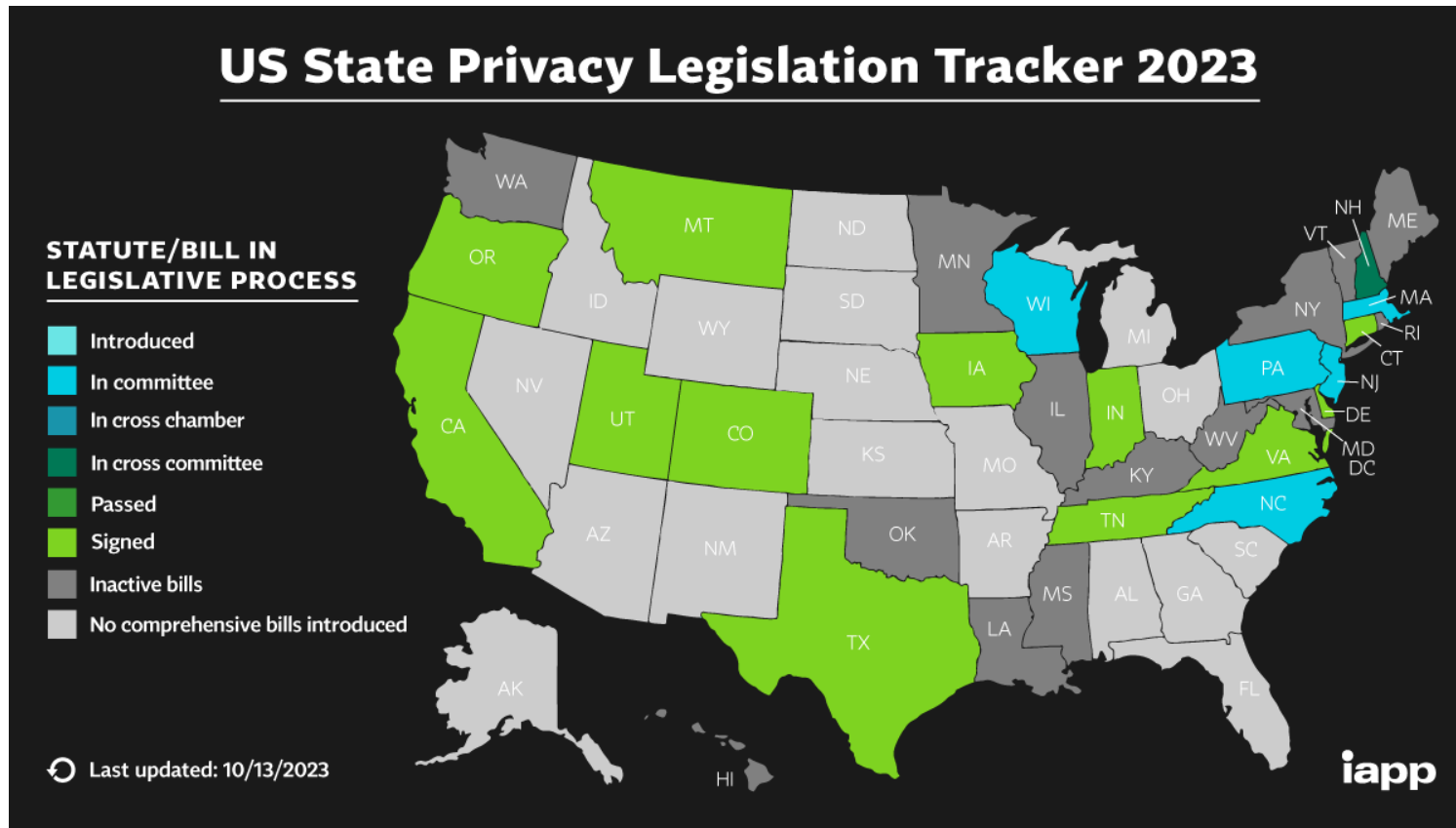
Syracuse, NY

Cybersecurity Awareness Month

- Bond celebrates the 20th Annual Cybersecurity Awareness Month
- This year's theme is "Secure Our World"
- Check out our podcast episode: bit.ly/31vEx8d
- Check out our latest articles:
 - FTC Holds Corporate Executive Personally Liable for Cybersecurity Failures
 - Blackbaud Settles Multistate Data Breach Investigation for Nearly \$50 Million
 - The 20th Annual Cybersecurity Awareness Month



US Data Privacy Update



Enacted Laws

- California (effective Jan. 1, 2020, amended and effective Jan. 1, 2023)
- Colorado (effective July 1, 2023)
- Connecticut (effective July 1, 2023)
- **Delaware (effective Jan. 1, 2025)**
- Indiana (effective Jan 1, 2026)
- Iowa (effective Jan. 1, 2025)
- Montana (effective Oct. 1, 2024)
- Oregon (effective July 1, 2024)
- Tennessee (effective July 1, 2025)
- Texas (effective July 1, 2024)
- Utah (effective Dec. 31, 2023)
- Virginia (effective Jan. 1, 2023)

Delaware Personal Data Privacy Act

- Applies to entities that conduct business in DE or produce products or services that target DE residents and during the previous calendar year:
 - (1) controlled or processed at least 35,000 Delaware consumers' personal data, excluding personal data controlled or processed solely for the purpose of completing a payment transaction; or
 - (2) controlled or processed at least 10,000 Delaware consumers' personal data and derived more than 20% of their gross revenue from the sale of personal data.
- Effective Jan. 1, 2025
- No revenue threshold
- Nonprofit organizations are subject to the consumer protection law with limited exemptions **
- Consumer is a resident of DE
 - Excludes individuals acting in a commercial or employment context

Consumer Rights

- Right to Access
- Right to Correct
- Right to Delete
- Right to Obtain a Copy of Personal Data
- Right to Third Parties
- Right to Opt-Out of Processing for:
 - Targeted Advertising
 - Personal Data Sales
 - Profiling
- Personal Data
- Sensitive Data
- Enhanced protections for children
- 60-day cure period

What does this mean for your business?

- Determine applicability
- Create/update policies
- Create consumer request mechanism
- Conduct a data audit/risk assessment
- Establish cybersecurity measures necessary to comply with the law

The Gainful Employment Rule



Sandra M. Casey

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Gainful Employment Rules

- The U.S. Department of Education (“Department”) established and amended regulations related to gainful employment (GE) “to address ongoing concerns about educational programs designed to prepare students for gainful employment in a recognized occupation,” but, according to the Department, “leave them with unaffordable student loan debt in relation to their earnings, or with no gain in earnings compared to others with no more than a high school education.”

<https://www.federalregister.gov/documents/2023/10/10/2023-20385/financial-value-transparency-and-gainful-employment>

What Are GE Programs?

- Proprietary school programs that provide undergraduate or graduate training that prepares students for gainful employment in a recognized occupation; or
- Programs at other non-profit or public institutions that provide at least a one-academic-year training program that leads to a certificate, or other nondegree recognized credential, and prepares students for gainful employment in a recognized occupation. 34 CFR § 668.8 (c) & (d).
- The Department estimates there are 32,000 such programs that enroll about 2.9 million students who receive Title IV, HEA aid (e.g., Direct Loans or Pell grants) each year. The GE programs represent about 20% of the more than 155,000 Title IV eligible programs, and about 15% of approximately 19.3 million Title IV, HEA supported students each year.

GE Accountability Metrics

- Under the GE program accountability framework, the Department assesses whether career programs meet the statutory requirement of preparing students for gainful employment in a recognized occupation using two separate and independent metrics:
 - A debt-to-earnings rate that compares the median annual payments on loan debt borrowed for the program to the median earnings of its Federally aided graduates. For a program to pass, its graduates' debt payments must be no more than 8% of annual earnings or 20% of discretionary earnings, which is defined as annual earnings minus 150% of the Federal poverty guideline for a single individual (about \$21,870 in 2023).
 - A new earnings premium test that measures whether the typical graduate from a program who received Federal aid is earning at least as much as a typical high school graduate in the labor force (i.e., either working or unemployed) in their State between the ages of 25 and 34. This is equal to roughly \$25,000 nationally but varies across States.

Debt to Earnings Ratio

- *The Department's philosophy...*
 - The debt-to-earnings rates (D/E) measure loan affordability: the share of borrowers' annual earnings that need to be devoted to making student loan payments. The Department estimates that borrowers in programs with unaffordable debt are 25% more likely to default on their student loans compared to borrowers in programs with passing D/E rates.
 - The D/E rates also help identify programs where taxpayers are likely to bear the costs of Federal loans. Since borrowers can repay their loans as a fraction of their discretionary earnings for a fixed number of years under income driven repayment plans (IDR), when debt is high relative to earnings, borrowers will be less likely to repay their full balances, according to the Department.

The Earnings Premium

- *The Department's philosophy...*
 - The earnings premium (EP) captures the extent to which postsecondary programs enhance a student's earnings potential relative to not pursuing a college credential at all. The vast majority of students cite improved earnings or job prospects as among the most important reasons they choose whether and where to attend college, and the earnings premium measures whether programs are meeting that basic expectation. In the GE framework, it provides added protection to students, including those who take on small amounts of loans but who have earnings so low that even low levels of debt payments are unaffordable.
 - Among individuals with at least some college experience, rates of material hardship (e.g., experiencing food insecurity or being behind on bills) are more than double for individuals with annual income below that of the median high school graduate in their State compared to those with income above that threshold.

Impact of Failing Either Metric

- GE programs that fail either metric in a single year will be required to provide warnings to current and prospective students that the programs could be at risk of ineligibility for the Title IV, HEA Federal student aid programs in subsequent years.
- Programs that fail the same metric in two of three consecutive years will not be eligible to participate in Federal student aid.
- Cannot regain eligibility for three years for ineligible programs or substantially similar ones.

New Financial Value Transparency (“FVT”)

- The final regulation also establishes a new framework, which according to the Department of Education, will enhance transparency by providing information about financial costs and benefits to students at nearly all academic programs at postsecondary institutions that are eligible to participate in Title IV.

Department Determines Metrics

- Under the FVT, the Department will determine the D/E and EP metrics based upon information the institution must report to the Department starting in July 2024.
- Beginning in 2026, the Department will host a new program information website that will publish these metrics for all academic programs at institutions along with other information the institution has reported on, including standardized information about program costs (including tuition and fees, books, and supplies), non-Federal grant aid, loan burden (including both private and Federal loans), earnings of completers, and applicable occupational and licensing requirements.
- This website will give students and families a personalized estimate of what they'll pay out-of-pocket to earn credentials in specific postsecondary programs. Institutions must prominently display on its website a link to the Department's website.

Acknowledgement of High Debt Burden in Certificate and Graduate Programs Before Enrolling

- The FVT mandates affirmative steps be taken for prospective students at institutions with failing D/E rates. Specifically, those institutions must obtain prospective students' acknowledgement that they have seen the financial information on the website, including a plain language description of the fact that the program leaves its graduates with high debt burdens, before the student can enroll in the program. These requirements will apply to prospective students at **certificate and graduate degree programs**. The Department chose to exclude undergraduate degree programs from this provision in the final rule to better target the acknowledgment requirements to programs to which students tend to directly apply.

Start Gathering Information Now

- The information that must be provided in July 2024 is set forth in 34 CFR § 668.408 and includes not only program data, such as program accreditation and licensing requirements, to name just a few, but detailed student level data as well. For example, each student's cost of attendance, annual allowance for books, equipment, supplies, food and housing.
<https://www.federalregister.gov/documents/2023/10/10/2023-20385/financial-value-transparency-and-gainful-employment>
- The information that must be provided has a look back of six years or two years, depending on certain conditions. The Department will issue further detailed guidance.

Fair or Foul? NYS Court of Appeals Says Case of Injured High School Baseball Player Must Go to Trial



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Amendments to NYC's Earned Safe and Sick Time Act

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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

Buffalo • October 3

Corning • September 21

Ithaca • September 28

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

Learn more at bsk.com/events





October is National Cybersecurity Awareness Month



#SecureOurWorld

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Amendments to NYC's Earned Safe and Sick Time Act

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Supervised by Mallory Campbell, mcampbell@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.
Laws can change often, and information may become outdated.

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