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1

Introduction



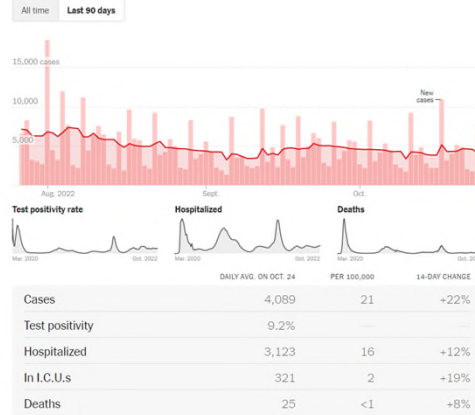
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2

Current COVID Data in New York

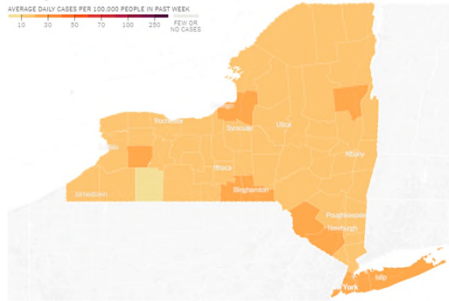
New reported cases



3

Current COVID Data in New York

Hot spots



	CASES DAILY AVG.	PER 100,000	14-DAY CHANGE	TEST POSITIVITY	HOSPITALIZED AVG. PER 100,000	14-DAY CHANGE	DEATHS DAILY AVG.	PER 100,000
New York	4,089	21	+22%	9%	16	+12%	24.7	0.13
Warren >	18	28	-2%	13%	14	-6%	0.4	0.67
New York City >	2,065	25	+8%	9%	15	+4%	13.6	0.16
Tioga >	12	25	+6%	15%	12	-50%	0	—
Wyoming >	10	24	+39%	14%	11	-14%	<0.1	0.18
Oswego >	28	24	-30%	16%	23	+37%	0.1	0.11
Nassau >	307	23	+3%	9%	37	+21%	0.9	0.07
Sullivan >	16	22	-20%	11%	3	-85%	0.3	0.40
Orange >	84	22	-15%	12%	8	-40%	0.5	0.12
Suffolk >	319	22	-8%	9%	15	-14%	2.3	0.15
Broome >	40	21	-25%	13%	12	-57%	0.3	0.16



4

Tax Issues for Telecommuting Workers



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5

Recent Discrimination Litigation Update



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6

Sexual Orientation & Gender Identity Discrimination

Bostock v. Clayton County, U.S. Supreme Court, June 15, 2020

- Landmark decision
- Held that an employer violates Title VII prohibition of sex discrimination by firing an individual for being homosexual or being a transgender person.



7

Sexual Orientation & Gender Identity Discrimination

- EEOC Guidance, June 15, 2021 – Explains EEOC Interpretation of *Bostock* Decision
 - Unlawful to prohibit transgender employee from dressing consistent with their gender identity
 - Unlawful to deny equal access to restrooms corresponding with a transgender employee's gender identity
 - Repeated intentional use of the wrong pronoun of a transgender employee may be unlawful gender-based harassment



8

Sexual Orientation & Gender Identity Discrimination

- Health & Human Services, Office of Civil Rights Guidance, March 2, 2022
 - Denial/restriction of gender affirming health care on the basis of gender identity is sex discrimination
 - Issued in response to Texas Governor's directive to its state Dep't of Family & Protective Services to investigate gender affirming surgeries for minors



9

State of Texas v. EEOC, N.D. Tex., October 1, 2022

- Texas Challenged EEOC and HHS Guidance
 - Filed in September 2021, Amended in March 2022
- Court granted Texas summary judgement, declared guidance unlawful
 - Vacated guidance on nationwide basis



10

State of Texas v. EEOC, N.D. Tex., October 1, 2022

Was *Bostock* ruling limited to discrimination based on homosexual or transgender **status**, or does it extend to correlated **conduct**?

- EEOC: Status and conduct are “inextricably intertwined”
- Court: Disagreed with EEOC; *Bostock* is limited to status discrimination, not conduct
 - *Bostock* does not extend to dress, restrooms, pronouns or medical care
 - Future cases must decide whether this conduct is prohibited by Title VII



11

Limited Practical Implication

- New York already prohibits discrimination on the basis of sexual orientation and gender identity, including associated conduct
- EEOC will likely continue to take the *enforcement* position that Title VII extends to correlated conduct & seek to extend law through litigation
- Regardless of your state, best practice to treat transgender and LGBTQ+ employees with equality in the workplace



12

Proposed Independent Contractor Rule



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13

Economic Realities Test

- (1) the degree of an employer's control over the manner of work performed;
- (2) the worker's opportunity for profit or loss depending on their managerial skill;
- (3) the worker's investment in equipment or materials or employment of others;
- (4) whether the work performed required special skills;
- (5) the permanency of the working relationship; and
- (6) whether the services rendered were integral to the employer's business



14

Recent NY SHIELD Act Enforcement



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15

SHIELD Act Scope

- The SHIELD Act expanded (in October 2019) data security and breach notification requirements to cover any business that collects private data of New York residents, not just companies that conduct business in the state.
 - Must implement reasonable administrative, technical and physical safeguards (effective March 2020).
 - Includes consumer notice requirements for data breaches.



16

Examples of Reasonable Safeguards

Administrative Safeguards:

- Develop a written security program
- Identify internal and external security risks
- Train employees in best security program practices

Technical Safeguards:

- Conduct a formal risk assessment
- Assess information processing and storage risks

Physical Safeguards:

- Detect and respond to physical intrusions
- Implement a data retention and deletion policy
- Provide anti-malware protection
- Threat monitoring (EDR or SIEM)



17

Data Breach Reporting Requirement

- The SHIELD Act defines a security breach as any “access” to computerized data that compromises the confidentiality, security, or integrity of New York residents’ electronic private data.
 - Private Data includes social security number, driver’s license number, account number, or credit or debit card number in combination with any required security code, biometric information, and username/email address and password credentials.
- The SHIELD Act requires that a person or business notify affected consumers following the discovery of a data breach affecting New York residents’ private information.
 - The disclosure must be made in the most expedient time possible. The law requires notice to the Attorney General’s office, New York Department of State and the New York State Police.



18

Attorney General Enforcement

- New York residents have no private right of action.
- Attorney General can seek damages - actual costs or losses incurred by a person entitled to a data breach notice, including consequential financial losses.
- If court determines entity knowingly or recklessly violated the notice requirement, penalty of \$5,000 - \$20,000, per failed notification – not to exceed \$250,000.



19

Enforcement: EyeMed, Inc.

- EyeMed suffered a data breach in 2020 when cybercriminals gained access to an EyeMed email account containing sensitive emails with attachments dating back six years.
 - Information compromised included names, addresses, social security numbers and insurance account numbers.
- The New York Attorney General investigated EyeMed's cybersecurity practices.
 - Resulted in a settlement requiring EyeMed to pay New York State \$600,000 for SHIELD Act violations.



20

Enforcement: Wegmans Food Markets, Inc.

- Wegmans was under scrutiny from the New York Attorney General for “poor cybersecurity systems and practices.”
 - Included unsecured cloud storage containers; possessing customers’ sensitive personal information without a reasonable business purpose; and not regularly conducting security testing of cloud assets.
- Compromised data included customer names, email addresses, mailing addresses, drivers’ license numbers, and login credentials for Wegmans accounts.
 - Resulted in a settlement requiring Wegmans to pay New York State \$400,000 for SHIELD Act violations.



21

Enforcement: Carnival Corporation

- The New York Attorney General investigated Carnival, along with 45 other state attorneys general, for a 2019 data breach.
 - An unauthorized actor gained access to employee email accounts resulting in access to New York resident’s personal information.
- Carnival agreed to strengthen its security and breach response continuing to undergo independent information security assessments.
 - Resulted in a settlement requiring Carnival to pay New York State \$1.25 million for various violations, including the SHIELD Act.



22

Enforcement: Zoetop

- Zoetop, the parent company behind online fashion retailers SHEIN and ROMWE, failed to properly inform customers of a data breach that impacted millions of users.
 - Failed to safeguard consumers' information before it suffered a data breach.
 - Neglected to take action to protect the impacted accounts after the breach.
 - Downplayed the extent of the cyberattack to customers.

Resulted in a settlement requiring Zoetop to pay New York State \$1.9 million for various violations, including SHIELD Act.



23

Steps Towards SHIELD Act Compliance

- Implement a documented security plan, Conduct a risk assessment, Practice data restriction.
- Safeguards identified are a good baseline, but not necessarily sufficient security;
 - Compliance ≠ Secure
- Understand the nature of the information collected and its use.
- New York State website regarding new security threats:
<https://its.ny.gov/ciso/advisories>



24

Introduction

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Recent NY SHIELD Act Enforcement

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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](#).



25

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26