

2024

# BUSINESS IN 2023

WEEKLY WEBINAR SERIES

2022

2021

2020



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& KING ATTORNEYS

# Your Host



## **Gabriel S. Oberfield**

Senior Counsel

[goberfield@bsk.com](mailto:goberfield@bsk.com)

New York, NY

# TODAY'S AGENDA

**Gabe Oberfield – (12:00PM-12:05PM)**

- Intros / Agenda

**Seth Gilbertson – (12:05PM-12:15PM)**

- Managing Controversy and Crisis In the Workplace and Campus

**Karl Deuble – (12:15PM-12:25PM)**

- The COVID Tolling Window for Personal Injury Cases Has Closed

**Emily Fallon (12:25PM-12:35PM)**

- Commissioner of Education's Determination of the Use of Biometric Technology in Schools

**G. Oberfield – (12:35PM-12:45PM)**

- Questions / Wrap Up

# Managing Controversy and Crisis In the Workplace and Campus



**Seth F. Gilbertson**

Senior

[sgilbertson@bsk.com](mailto:sgilbertson@bsk.com)

Buffalo, NY

# Public vs. Private

- “Free Speech” and the First Amendment
  - Limits public employers’ ability to respond to speech
    - Prior restraints
    - Retaliation
  - Does not apply to private employers
- Policy and contractual limitations
  - Collective Bargaining Agreements
  - Mission and values (e.g., academic freedom)
  - Procedural protections (handbook)

# Speech By the Employer

- What Can You Say?
  - Mission & Values
  - Effects On Your Organization
- What Can't You Say?
  - Discriminatory Statements/Impacts
  - Restrictions on Labor/Organizing Rights
- What Should You Say?
  - Who Should Say It?



# Responding to Employee Speech

- Speaking as individual or as employee?
  - Robust ability to control speech as an employee
  - Limited ability to control speech in private sphere
    - Look to effects on organization and workplace
      - Discrimination
      - Publicity
      - Collegiality
- Policy & Contractual Rights
  - Content
  - Procedure





# Responding to Student Speech

- Public vs. Private
  - Public governed by First Amendment
  - Private governed by Code of Conduct
- Both Aim to Prevent Harassment & True Threats
- Educational vs. Punitive Responses
  - Punitive response heavily scrutinized
  - Even some educational responses may be impermissible





# Lessons Learned

- Take a long view and aim for consistency
- Focus on issues that implicate mission and/or core values
- Provide clear guidelines
  - Balance the *rights* of individuals to participate in public discussions of social and political issues with recognition that employees have responsibilities as representatives of the organization
  - Set the expectation that speech must be responsible, professional, and consistent with the values of the organization
    - Be clear that employees must avoid language, claims, charges or slogans that threaten, injure or vilify individuals or groups

# The COVID Tolling Window for Personal Injury Cases Has Closed



**Karl Z. Deuble**

Associate

kdeuble@bsk.com

Rochester, NY

# Statutes of Limitations

- Time limit to bring legal actions
- The time limits are determined by statute
- Different depending on the jurisdiction and the type of legal claim

# Personal Injury Cases in New York

- 3 years from the accrual date
- Accrual date is the date of injury
- Slip and fall today 11/14/23 – The plaintiff has until 11/14/26 to file their claim in New York court

# Governor Cuomo's Executive Orders

- As with everything in life, COVID-19 changed the world of statutes of limitations.
- On March 20, 2020, Gov. Andrew Cuomo signed Executive Order No. 202.8 (9 NYCRR 8.202.8).

# Subsequent Litigation

- “Suspension” vs. “Toll” of statute of limitations



# Appellate Division Rulings

- Uniformly held that Gov. Cuomo's orders were a toll
  - *Murphy v. Harris*, 210 A.D.3d 410 (1st Dep't 2022)
  - *McLaughlin v. Snowlift, Inc.*, 214 A.D.3d 720 (2d Dep't 2023)
  - *Roach v. Cornell University*, 207 A.D.3d 931 (3d Dep't 2022)
  - *Santiago v. State*, 218 A.D.3d 1268 (4th Dep't 2023).
- Example:
  - Injury in June 2020
  - Normally would have until June 2023
  - But, because of toll, 3-year clock did not start until November 4, 2020

# The Extended Window is now Closed

- We are now outside three years from the end of Gov. Cuomo's executive orders
- Businesses no longer have to worry about personal injury claims that accrued during the window because injured parties can no longer take advantage of the extended time to file

# Final Warnings

- Not every claim has a three-year statute of limitations period
- Some legal claims have a longer period to file and can still take advantage of the toll
- Questions or Concerns? Contact a Bond Attorney

# Commission of Education's Determination of the Use of Biometric Technology in Schools



**Emily A. Fallon**

Associate

[efallon@bsk.com](mailto:efallon@bsk.com)

Garden City, NY

# New York State Technology Law Section 106-b

- Took effect on December 22, 2020
  - Prohibited all school districts from using any biometric technology for any purpose other than as required under the Education Law or for identification purposes upon consent.
    - Including software with fingerprint or facial recognition capabilities.
  - Was to remain in effect until at least July 1, 2022 or unless otherwise authorized by the Commissioner of Education.

## September 27, 2023 Determination

- The New York State Commissioner of Education issued a determination:
  - (1) Prohibiting the use of facial recognition technology in all schools; and
  - (2) Permitting the use of other types of biometric technology in schools provided schools consider “various factors.”



# Facial Recognition Technology is Prohibited in All Schools

- The Commissioner reviewed recommendations of the Use of Biometric Identifying Technology in Schools Report.
  - Prepared by the NYS Office of Technology Services
  - Considers privacy implications of collecting, storing, and/or sharing biometric information of students, teachers, school personnel and the general public while on school property.
  - Identified high rates of “false positives”
    - Facial recognition technology disproportionately relayed inaccurate readings of people of color, nonbinary and transgender people, women, the elderly and children.
  - Legal implications of this technology creating risks under FERPA

# Facial Recognition Technology is Prohibited in All Schools

- Schools that have already purchased facial recognition technology using Smart School Bonds Act funds before December 20, 2020 must discontinue and certify that such use has been discontinued.
  - Schools that purchased facial recognition technology after December 20, 2020 will not be reimbursed with Smart Schools Bond Act funds.

# Permitted Uses of Biometric Technology

- The benefits of certain types of biometric technology outweighs most privacy concerns.
  - i.e., fingerprint scanning
- Schools maintain the ability to decide whether to use biometric identification technology other than facial recognition so long as they weigh privacy implications, impact on civil rights, parental input, and effectiveness.

# Key Takeaways

- The practical impact of this technology in schools is dependent on its use and intended result.
  - Different uses creates different legal concerns
    - School security
    - Employee time keeping purposes

If schools intend to implement some type of biometric identification technology, they should review all existing privacy and security policies and collective bargaining agreements to avoid any risk of litigation.

# Your Questions



## **Gabriel S. Oberfield**

Senior Counsel

[goberfield@bsk.com](mailto:goberfield@bsk.com)

New York, NY



# **Bond & OMIG's Director of the Bureau of Compliance to Assess Early Implementation Compliance Program Standards**

*Part 2 of a Multi-Part Series*

**Thursday, November 16**  
**1 - 2 p.m. | Zoom Webinar**

Register at <https://www.bsk.com/omig111623>



## Managing Controversy and Crisis In the Workplace and Campus

Seth Gilbertson, [sgilbertson@bsk.com](mailto:sgilbertson@bsk.com)

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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](#).

# Thank You

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