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TODAY'S AGENDA

Gabe Oberfield – (12:00PM-12:10PM)

- **Intros / Agenda**
- **General Election Updates**

Michael S. Kratochvil (attorney trainee, under supervision) – (12:10PM-12:20PM)

- **National Labor Relations Board Stepping Up Penalties for Unfair Labor Practices**

Julia O'Sullivan – (12:20PM-12:30PM)

- **EPA Finalizes Its Environmental Justice Action Plan**

G. Oberfield – (12:30PM-12:40PM)

- **COVID Updates**
- **Healthcare Worker Bonus Updates**

G. Oberfield – (12:40-12:45PM)

- **Fielding Open Questions and Final Remarks**

Election Roundup



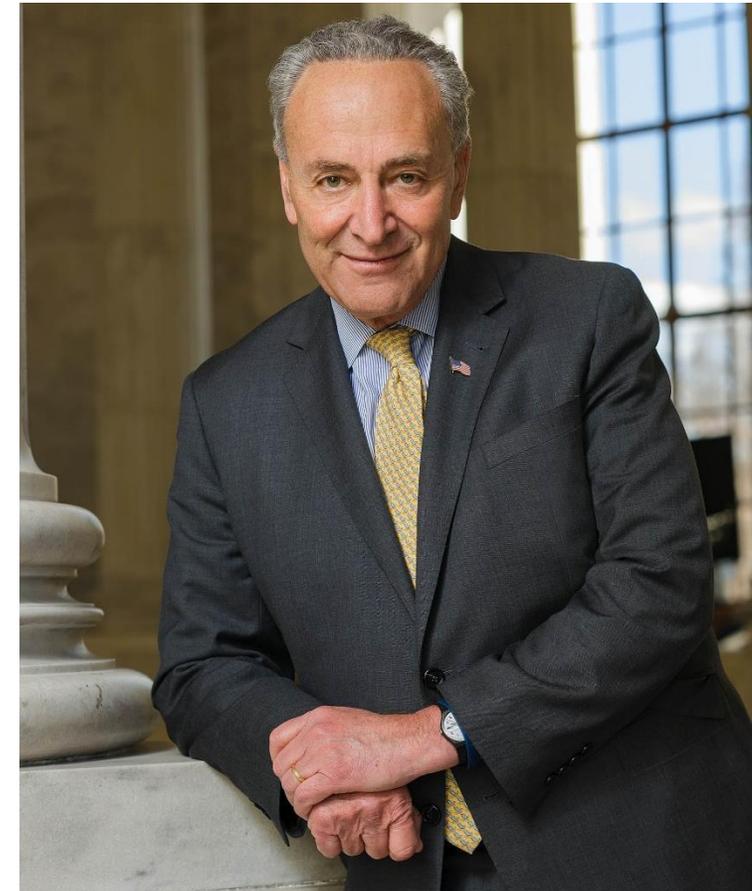
The National Picture

Sources: [Senate.gov](https://www.senate.gov), [House.gov](https://www.house.gov)



Rep. Kevin McCarthy -- Credit: U.S. Congress

- Historically strong showing by Democrats during a midterm
- U.S. Senate remains in Democratic hands
 - December 2022 Georgia runoff between Sen. Raphael Warnock and Herschel Walker will not affect outcome
- U.S. House of Representatives is expected to shift to Republican control
 - Speaker Nancy Pelosi will step down
 - Rep. Kevin McCarthy (current minority leader) is a potential front-runner to assume Speaker role
 - Negotiations underway



Sen. Chuck Schumer – Credit: Jeff McEvoy (U.S. Senate)

New York Governor's Race

Sources: [Politico.com](#), [Governor.ny.gov](#), [Zeldin.house.gov](#), [City & State](#)

- Governor Kathy Hochul elected to a full term – first woman elected outright to the office in State history
- Race proved to be far closer than had been expected – particularly with strong Democratic majorities across the State
- Rep. Lee Zeldin ran competitively across New York State – and the race is being held up as a model for Republicans across the country
 - Rep. Zeldin considering next roles
 - Key issues included public safety and expansive government



New York – A Relative Red Wave

Source: Associated Press

NY District	Winner	Party	Total Votes	Percentage	Reporting Status
NY 1	Nicholas LaLota	Republican Party	173,275	55.9%	95% reporting
NY 2	Andrew Garbarino	Republican Party	148,654	61%	95% reporting
NY 3	George Santos	Republican Party	142,673	54.1%	96% reporting
NY 4	Anthony D'Esposito	Republican Party	139,063	51.9%	96% reporting
NY 5	Gregory Meeks	Democratic Party	97,981	75.2%	95% reporting
NY 6	Grace Meng	Democratic Party	79,506	63.3%	95% reporting
NY 7	Nydia Velazquez	Democratic Party	111,968	80.5%	95% reporting
NY 8	Hakeem Jeffries	Democratic Party	93,295	72.4%	95% reporting
NY 9	Yvette Clarke	Democratic Party	111,162	82.2%	95% reporting
NY 10	Daniel Goldman	Democratic Party	149,261	83.9%	95% reporting
NY 11	Nicole Malliotakis	Republican Party	113,485	62.1%	95% reporting
NY 12	Jerrold Nadler	Democratic Party	186,357	81.7%	95% reporting

NY District	Winner	Party	Total Votes	Percentage	Reporting Status
NY 13	Adriano Espaillat	Democratic Party	0	0%	0% reporting
NY 14	Alexandria Ocasio-Cortez	Democratic Party	78,788	70.6%	95% reporting
NY 15	Ritchie Torres	Democratic Party	72,610	82.6%	95% reporting
NY 16	Jamaal Bowman	Democratic Party	131,550	64.2%	96% reporting
NY 17	Michael Lawler	Republican Party	141,788	50.4%	96% reporting
NY 18	Pat Ryan	Democratic Party	131,474	50.4%	95% reporting
NY 19	Marcus Molinaro	Republican Party	142,923	51.1%	96% reporting
NY 20	Paul Tonko	Democratic Party	157,991	55%	95% reporting
NY 21	Elise Stefanik	Republican Party	165,634	59.4%	96% reporting
NY 22	Brandon Williams	Republican Party	133,032	50.8%	97% reporting
NY 23	Nick Langworthy	Republican Party	189,725	65%	96% reporting
NY 24	Claudia Tenney	Republican Party	181,569	66.4%	96% reporting
NY 25	Joseph Morelle	Democratic Party	148,681	53.6%	95% reporting
NY 26	Brian Higgins	Democratic Party	154,477	63.9%	96% reporting

- New York State's House results were an outlier nationally – particularly given retained seats across the country that contributed to historic Federal midterm

New York – Key Races

Source: City & State, New York Times

17th Congressional District



Rockland County, northern Westchester County, Putnam County and parts of Dutchess County



From left to right: Sean Patrick Maloney (D, WFP), Mike Lawler (R, C) / U.S. House; Randy Monceaux

11th Congressional District



Staten Island, southwestern Brooklyn



From left to right: Nicole Malliotakis (R, C), Max Rose (D) / U.S. House; Eric Connolly/U.S. House Office of Photography

Current member: Nicole Malliotakis (R)

- Rep. Sean Patrick Maloney, DNCC Chair, ousted by Mike Lawler
- Rep. Nicole Malliotakis retains seat handily
- Marcus Molinaro (former gubernatorial candidate) is a winner in the 19th
- Rep. Claudia Tenney performs well

New York – Dems Retooling?

Credits: *New York Times* and *Congress.gov*



Rep. Mondaire Jones: Credit: [House.gov](#)



Rep. Carolyn Maloney: Credit: [House.gov](#)

New York Loses House Seat After Coming Up 89 People Short on Census

New population figures released on Monday confirmed that after the latest census, New York would lose a congressional seat, but only by the narrowest of margins.



- Questions concerning 'down-ballot' strategy
 - Reproductive rights vs. public safety
- Jay Jacobs's leadership under scrutiny
 - Calls for resignation as Chair of the State Democratic party, including through letter co-signed by key State lawmakers
 - Gov. Hochul reiterates support for Jacobs
- Many tracing back to:
 - The 2020 census results (leading to reduction of House seat in NY), and
 - The subsequent redistricting map that was overturned, leading to atypical races across the state:
 - Rep. Mondaire Jones ceding to Rep. Sean Maloney
 - Rep. Carolyn Maloney vs. Rep. Nadler

NLRB Stepping Up Penalties for Unfair Labor Practices



Michael S. Kratochvil

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* Michael is an attorney trainee and the comments he is presenting are in the context of supervision of Bond attorney Sam Dobre.

Traditional Remedies Under NLRA

- (i) Reinstatement
- (ii) Backpay
- (iii) Injunctions
- (iv) Posting of Board Notices

Consequential Damages Awards

- First consequential damages award in an NLRB case issued in June 2022.
- “Make-whole” remedy: seeks to restore parties to position they were before the harm occurred.
- June 2022 award was reduced in September 2022 from \$13 million to under \$500,000.
- The use of consequential damages as a remedy was not challenged, and notably was issued against a Union.
- Employees and employers likely now equipped with a new, costly remedy.

Other Proposed Changes to Remedies

- **Discrimination Cases**
 - Consequential damages and front pay, on top of backpay
- **Charges Involving Undocumented Workers**
 - Seeking to prevent unjust enrichment from unlawful treatment of undocumented workers
- **Union Organizing Drives**
 - Attempting to disincentivize employers' influence in elections
- **Unlawful Failures to Bargain**
 - Seeking to further encourage and facilitate collective bargaining
- **Board Notices**
 - Distributing notices through text messages and postings on social media

EPA Finalizes Its Environmental Justice Action Plan



Julia A. O'Sullivan

Associate

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Executive Orders



EO 13985

- January 20, 2021
- Established that it was a policy of the Biden Administration that the Federal Government should advance equity for all.



EO 14008

- March 16, 2021
- Directed federal agencies to incorporate this policy into their mission and practices.

Tasks



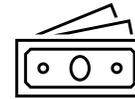
Close the gap

Analysis showed that closing racial gaps in wages, housing credit, lending opportunities, and access to higher education would lead to trillions of dollars in gross domestic product in the American economy over the next 5 years.



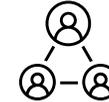
Target audience

Historically Underserved Communities: The EOs seek to advance equity across the federal government in order to create opportunities for historically underserved communities.



Resources

The Director of the Office of Management and Budget, in partnership with the heads of agencies, was tasked with allocating federal resources in a manner that increases investment in underserved communities.



Engagement

Agencies were tasked with consulting with members of communities that have been historically underrepresented

Some EJAP Components

Compliance Network

- Strengthen Compliance with “cornerstone” environmental statutes, such as RCRA.
- Increase communication avenues in impacted communities
- Incorporation of EJ analysis into projects which receive EPA funding.

Clean Air Act Risk Management

- The EJAP proposes drafting and finalizing revisions to the Clean Air Act Risk Management Plan

Potential Benefits

- EO 14008 mandates that at least 40% of the benefits of certain federal programs flow to EJ communities
- The Office of Resource Conservation and Recovery is tasked with coordinating and prioritizing direct and indirect benefits to underserved communities.

Future Impacts

- The EJAP leaves some uncertainty as to how, and what extent, the regulated community will be impacted.
- It is clear that additional grant opportunities and increased community participation will result.

COVID and Health Care Worker Bonus Updates



Gabriel S. Oberfield

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Public Health Emergency to Continue into Spring

Sources: Politico & Washington Post

- Biden administration did not issue promised 60-day notice this week to end PHE (deadline of 11/11/22)
- Expected consequently that PHE will continue until mid-April 2023
 - PHE has been extended in 90-day intervals since 2020 – and is presently set to expire 1/11/23
 - Anticipation of potential upticks during the winter months, compounded by flu and other respiratory illness
- Efforts underway in Congress during ‘lame duck’ session to advance c. \$10B in COVID-19 funding, per reports in the Washington Post concerning Biden Administration’s pending request



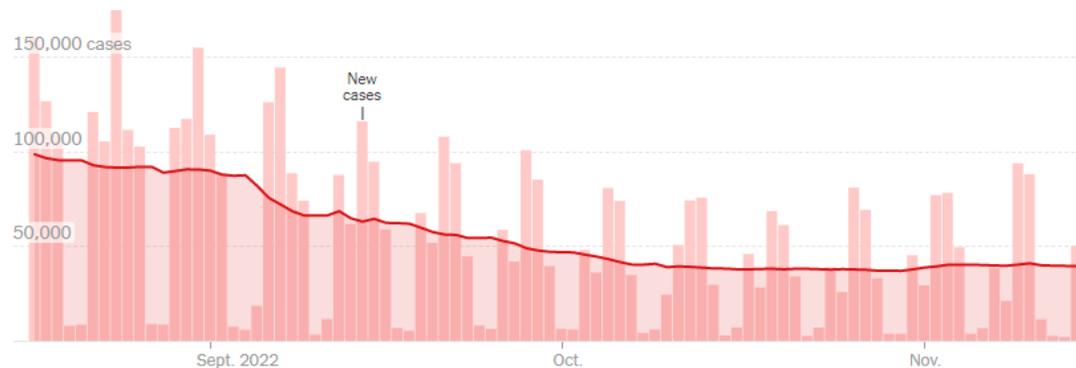
President Joe Biden (credit, Getty Images / The White House)

Today's COVID Picture, Nationally

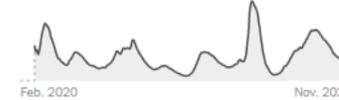
Source: New York Times

New reported cases

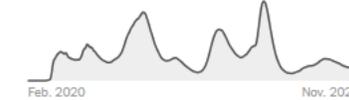
All time Last 90 days



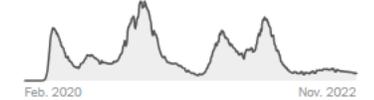
Test positivity rate



Hospitalized



Deaths



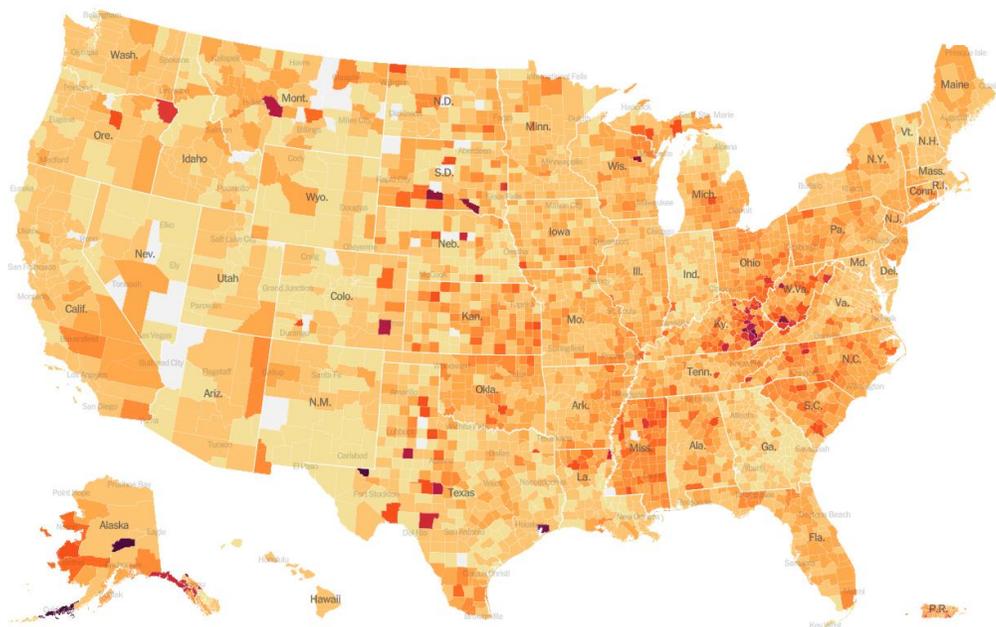
	DAILY AVG. ON NOV. 14	PER 100,000	14-DAY CHANGE
Cases	39,349	12	+4%
Test positivity	8.4%	—	—
Hospitalized	27,662	8	+1%
In I.C.U.s	3,164	<1	+1%
Deaths	302	<1	-13%

[About this data](#)

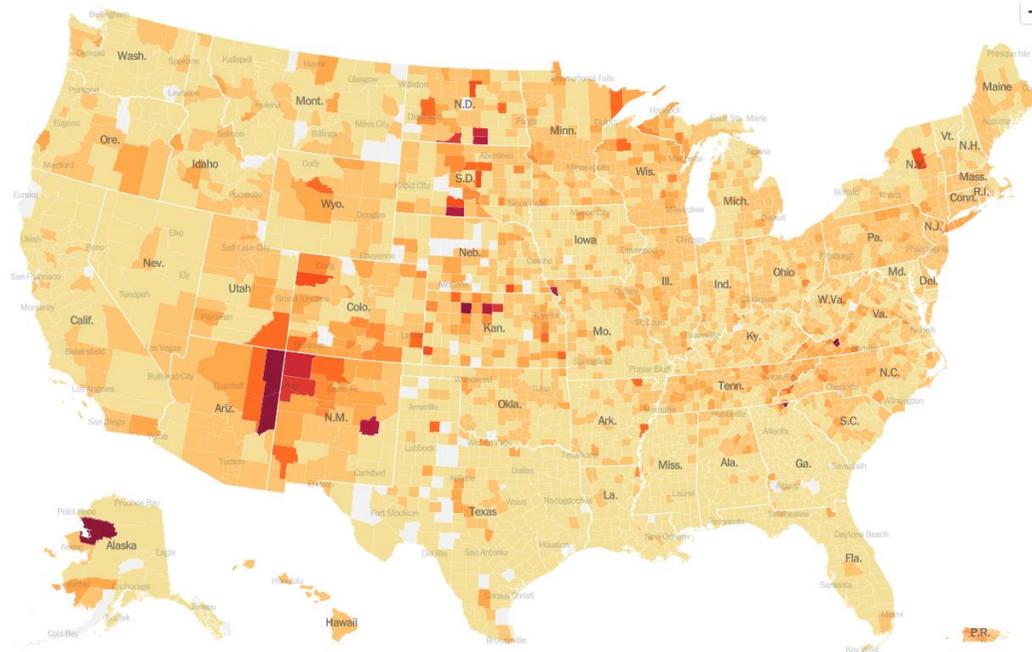
Slight uptick of reported case rate (4 percent over two weeks)

Today's COVID Hotspots – Versus mid-Sept. 2022

Source: New York Times



As of September 20, 2022

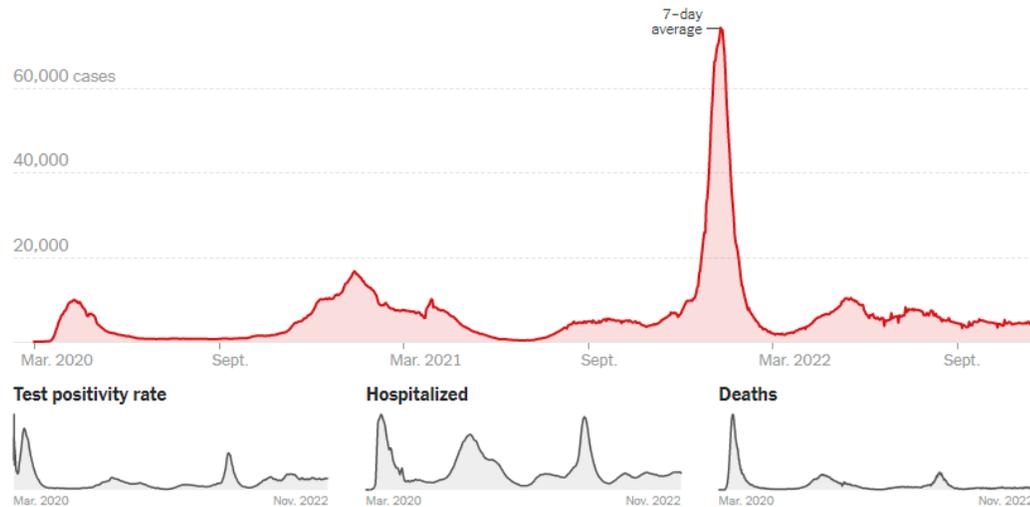


November 15, 2022

*Substantial drops overall...
but intensity in southwest and in upstate NY*

Today's COVID Picture, in New York State

Sources: New York Times



	DAILY AVG. ON NOV. 14	PER 100,000	14-DAY CHANGE
Cases	4,244	22	-5%
Test positivity	10%	—	—
Hospitalized	3,046	16	-4%
In I.C.U.s	306	2	Flat
Deaths	17	<1	-44%

- Daily averages generally leveling out
- Factors to watch:
 - Omicron booster uptake still lagging – although Moderna reports this week of high efficacy
 - Seasonal flu and Respiratory Syncytial Virus (RSV) are circulating –
 - particularly affecting children and older adults

Two-Month Differentials in New York

Source: New York Times

September 20, 2022

November 15, 2022

	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	4,576	24	+42%	10%	12	-7%	22.7	0.12
Fulton ›	19	36	+58%	23%	6	-11%	0.1	0.27
Franklin ›	17	33	+98%	12%	6	—	0	—
Oswego ›	37	32	+42%	17%	11	-9%	0.3	0.26
Jefferson ›	32	29	+50%	9%	7	-24%	0	—
Putnam ›	28	29	+52%	15%	9	-8%	0.1	0.15
Suffolk ›	422	29	+23%	10%	16	-9%	1.1	0.08
Cortland ›	13	27	+49%	17%	15	+10%	0	—
Nassau ›	366	27	+12%	11%	24	-10%	1.0	0.07
Tioga ›	13	26	+24%	15%	21	+28%	0	—
Onondaga ›	121	26	+50%	13%	11	-13%	0.4	0.09

	CASES DAILY AVG.	PER 100,000	14-DAY CHANGE	TEST POSITIVITY	HOSPITALIZED AVG. PER 100,000	14-DAY CHANGE
New York	4,244	22	-5%	10%	16	-4%
Hamilton ›	2	52	+167%	—	11	-35%
New York City ›	2,573	31	+8%	11%	18	+10%
Nassau ›	334	25	-5%	—	35	-5%
Sullivan ›	17	23	-9%	—	15	+5%
Suffolk ›	318	22	-1%	—	18	+2%
Chemung ›	16	19	-28%	—	24	-1%
Westchester ›	173	18	-6%	—	18	-5%
Rockland ›	58	18	-11%	—	11	-3%
Orange ›	68	18	-20%	—	14	+3%
Warren ›	10	16	-23%	—	14	-9%

NYS Healthcare and Mental Hygiene Worker Bonus Program Updates

Source: New York State Dept. of Health

New York State Health Care and Mental Hygiene Worker Bonus (HWB) Program



[HWB Program Portal](#) [Eligible Worker Titles](#) [Frequently Asked Questions \(FAQ\)](#)

Program Information

New York's essential front line health care and mental hygiene workers have seen us through a once-in-a-century public health crisis and turned our state into a model for battling and beating COVID-19.

To attract talented people into the profession at a time of such significant strain, while also retaining those who have been working so tirelessly these past two years, we must recognize the efforts of our health care and mental hygiene workforce and reward them financially for their service. To do so, as part of the Fiscal Year 2023 New York State Executive Budget legislation, \$1.2 billion in funding has been allocated for the payment of bonuses for certain frontline healthcare workers.

Located within [Part ZZ of Chapter 56 of the Laws of 2022](#), the HWB provision allows for the payment of bonuses to "recruit, retain, and reward health care and mental hygiene workers" meeting specified eligibility requirements. Bonus amounts will be commensurate with the number of hours worked by eligible workers covered by the HWB Program during designated vesting periods for up to a total of \$3,000 per covered worker.

The official New York State press release can be found at the following link: [Governor Hochul Launches Health Care Worker Bonus Program](#).

“Important Announcement Regarding October 31, 2022 Submission Date:

- “In order to allow appropriate time for all Employers to submit claims for Vesting Period 1 and 2, **the Department will keep the Healthcare Worker Bonus (HWB) Portal open to claims submissions until November 30.**
- “Qualified Employers can continue to submit claims for eligible employees during this time.
- Please be advised that, in accordance with SOS § 367-w(4)(f), claims submitted after October 31, 2022 for Vesting Period 1 and 2 are technically late for filing purposes.
- “The Department is aware of several technical issues during the initial submission periods for Vesting Periods 1 and 2 that impeded the ability of certain Qualified Employers to submit claims.
- “All Employers should document and retain information regarding the reason for any late submission for audits and investigation purposes relating to the submission of claims for the HWB Program.”

General Background – Some Reminders

- Health Care Worker Bonus Program (“HWB”)
- State funded program created as part of NYS 22-23 Budget – c. \$1.2 Billion set aside for bonuses for front-line healthcare and mental hygiene workers in an effort to **“recruit, retain, and reward health care and mental hygiene workers”**
- Eligible employees may receive up to \$3,000 total in bonus payments
 - Amount depends on hours eligible employee worked during vesting period



Bonus Amounts

- Qualified employees who work at least 20 hours but no more than 30 hours per week are eligible for a bonus of \$500;
- Qualified employees who work at least 30 hours but no more than 35 hours per week are eligible for a bonus of \$1,000; and
- Qualified employees who work at least 35 hours per week are eligible for a bonus of \$1,500.

*A qualified employee is eligible for up to two vesting periods per employer.

**The maximum any employee may receive is \$3,000.

What We Know – 11.15.2022

- NYSDOH periodically issues guidance on program which can be available here:
https://www.health.ny.gov/health_care/medicaid/providers/hwb_program/
 - Last updates: 11/4/22
- Content concerning educational providers only recently (October 2022, in separate tranches) has been incorporated.
- Deadline extended to 11/30/22

The screenshot shows the Department of Health website page for the NYS Health Care Worker Bonus (HWB) Program FAQs. The page is titled "NYS Health Care Worker Bonus (HWB) Program FAQs" and includes a breadcrumb trail: "You are Here: Home Page > NYS HWB Program > NYS Health Care Worker Bonus (HWB) Program FAQs". The page is last updated on 11/4/2022, with updates highlighted in yellow. A link is provided for the FAQs in Portable Document Format (PDF). The page features a navigation menu with categories: General, Attestation, Eligibility (Qualified Employers), Education Sector Employers, Tax Questions, Payment Issuance, Eligibility (Employees), Portal Registration and Claims Submission, and Employee Separation. The page also includes a sidebar with links to Medicaid Home, How to Apply, Information for Members, Providers, Local Departments of Social Service (LDSS), Health Plans, Managed Care, Child Health Plus, Integrated Care for Dual Eligibles, Medicaid Data and Reports, Medicaid Update, Medicaid Redesign Team (MRT), Medicaid Finance and Rate Setting, and Archive. There are also social media links for Facebook, Instagram, and Twitter, and a "Follow NYS Medicaid" button. A "Questions" section is visible at the bottom, with a link to "HOW DO I APPLY FOR MEDICAID?" and a note that you can apply for Medicaid in any one of the following ways.

Time to Make Your Voices Heard

- Signaling from Governor's Office...
 - *Most access issues purportedly have been resolved – and covered employers now can log into the HWB portal to enter data*
 - ***We look forward to hearing from you concerning your experiences***
 - ***Now is the time to raise questions / identify barriers before the 11/30/22 revised deadline***
- Save the Date
 - Monday, November 21, 2022 (tentatively 1PM)
 - *Bond Attorneys S. Gilbertson and G. Oberfield will be presenting on more technical aspects pertinent to Institutes of Higher Education – through the Commission on Independent Colleges & Universities (CICU)*
- Here to Help...
 - Bond continues to be available to troubleshoot on behalf of employer clients – in healthcare, higher education, etc.
 - *Please contact the Bond attorney with whom you work most closely*



Questions?



Gabriel S. Oberfield

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Introduction

Gabriel Oberfield, goberfield@bsk.com

NLRB Stepping Up Penalties for Unfair Labor Practice Charges

Michael Kratochvil, mkratochvil@bsk.com

*Michael is an attorney trainee and the comments he is presenting are in the context of supervision of Bond attorney Sam Dobre.

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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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It is not to be considered as legal advice.
Laws can change often, and information may become outdated.

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