

2024

BUSINESS IN 2023

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Introduction



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TODAY'S AGENDA

Kristen Smith – (12:00PM-12:05PM)

- Intros / Agenda

Mark Berman – (12:05PM-12:15PM)

- The Legal Ethics of ChatGPT

Brendan Goodwine – (12:15PM-12:25PM)

- New NYS Labor Law: Protecting Intellectual Property

Theresa Rusnak (12:25PM-12:35PM)

- Workplace Safety Partnership between OSHA and NLRB

Kristen Smith – (12:35PM-12:45PM)

- Notable Recent Decisions Regarding Service and Support Animals

The Legal Ethics of ChatGPT



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New NYS Labor Law: Protecting Intellectual Property



Brendan J. Goodwine

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N.Y. Lab. Law § 203-F

- Senate Bill S5640 signed into law September 15, 2023
- Justification:

Overly broad contracts can rob employees of their intellectual property. Research has shown that stronger IP protections for workers both protect employees' and increase incentives for innovation. Moreover, economists have linked better IP protection for employees to more efficient firms and increased economic growth. The reasons are clear; these clauses prevent employees from trying new ideas that can one day turn into new businesses. Other employees leave for jurisdictions with these protections, like California. California implemented this protection in 2011, and it has not impeded the growth of its tech sector. This law brings overdue protections to New Yorkers.

N.Y. Lab. Law § 203-F

- **1.** Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:
 - **(a)** relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or
 - **(b)** result from any work performed by the employee for the employer.
- **2.** To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision one of this section, such provision is against the public policy of this state and shall be unenforceable.

N.Y. Lab. Law § 203-F

Qualifying Provision:

- Employee
- Shall assign or offer to assign
- Any rights in an invention
- To employer

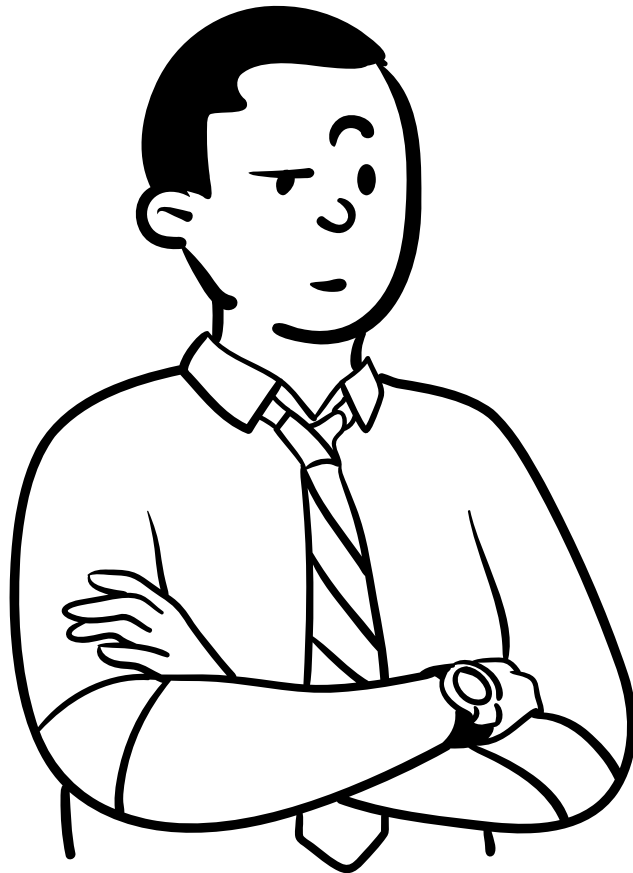
Provision does **not** apply to the following types of inventions b/c of § 203-F:

- Developed entirely on employee's own time
- Developed without using employer's property*

Except an employer **can** require employee to assign or offer to assign rights if:

- Invention relates to the employer's business
- Invention relates to the employer's actual or "demonstrably anticipated" R&D
- "results from" any work performed by the employee for the employer

Key Takeaways



- **Are your IP provisions still enforceable?**
 - Do you have IP provisions?

- **Are your employment agreements (as a whole) still enforceable?**
 - Do you have a severability clause?

- **Do your employment agreements adequately protect your business's confidential and/or proprietary information?**
 - “employer's equipment, supplies, facilities, or trade secret information”

Workplace Safety Partnership between OSHA and NLRB



Theresa E. Rusnak

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Memorandum of Understanding

- On October 31, 2023, the Occupational Safety and Health Administration and the National Labor Relations Board announced that they had entered into a memorandum of understanding (“MOU”) with one another.
- The purpose is to “strengthen the agencies’ partnership to promote safe and healthy workplaces through protecting worker voice.”
- This comes as part of a series of MOU’s between NLRB and other agencies, like DOL Wage and Hour Division

Memorandum of Understanding

- OSHA: Federal agency dedicated to ensuring worker safety at worksites across the country
 - OSHA has jurisdiction over the enforcement of dozens of laws
 - They can perform inspections, and issue fines and penalties
- NLRB: Federal agency protecting the rights of private sector employees to join together, with or without a union, to improve their wages, hours and working conditions

Memorandum of Understanding

- There has been an increase in both NLRB and OSHA activity under the Biden administration
- Both agencies are able to investigate and enforce penalties for retaliation claims
 - Both the NLRA and the OSH Act protect employees' right to complain to management about unsafe or unhealthful working conditions

Memorandum of Understanding

- Protocols for Exchanges of Information
 - OSHA providing potential victims of unfair labor practices with the NLRB's contact information,
 - OSHA likewise advising such individuals who file time-barred Section 11(c) complaints that they may still file a charge with the NLRB for six months, and
 - NLRB sharing information with OSHA regarding workers who are currently or likely exposed to health or safety hazards, or to suspected violations of OSHA regulations, and encouraging those workers to contact OSHA promptly.

Memorandum of Understanding

- MOU envisions opportunities for OSHA and NLRB to work together on inspections and investigations, and to confer as to appropriate jurisdiction
- The agencies will also engage in joint public engagement, outreach, and education
- The agencies will train each others' personnel

Memorandum of Understanding

- MOU takes effect immediately and expires in 5 years
- Employers should expect that a NLRB investigation could turn into an OSHA investigation, and vice versa
 - This is particularly relevant when inspections are conducted by OSHA, and the union's rights to have someone accompany the inspector
- Employers need to be prepared for what happens when a federal agency shows up at the door.

Notable Recent Decisions Regarding Service and Support Animals



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Your Questions



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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.
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