



2022

BUSINESS IN 2021

WEEKLY WEBINAR SERIES

 **BOND** SCHOENECK
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Introduction



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 **BOND** SCHOENECK
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School Law Update



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Recent School Updates –Open Meetings Law

- Documents that will be acted on or considered by a school district’s Board of Education must be made available “to the extent practicable” at least 24 hours prior to the meeting at which the document will be discussed



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Recent School Updates –Open Meetings Law

- Public bodies post minutes of their meetings online within two weeks of a regularly scheduled meeting, and within one week of an executive session. Acceptable “minutes” are unabridged video and audio recordings or unabridged transcripts.



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Recent School Updates –Open Meetings Law

- Note: There is no legal mandate that minutes be prepared during an executive session unless formal action is taken during the executive session through a vote of the Board.
- Various interpretations of Education Law §1708(3) stand for the proposition that except in situations in which action during a closed session is required by statute, school boards generally are legally prohibited from taking action during an executive session.
- Exception: vote on probable cause for 3020-a teacher discipline



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Recent School Updates – School Elections

- The definition of “illness” for purposes of requesting an absentee ballot shall include, but not be limited to, instances where a voter is unable to appear personally at the polling place because there is a risk of contracting or spreading a disease that may cause illness to the voter or other members of the public
- Repealed January 1, 2022
- Stay tuned for May 2022 election!



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Recent School Updates – School Elections

- For common, union free and central school districts the number of signatures required will be the greater of 25 or 2% of the number voters who voted in the 2019 annual election (Educ. Law § 2018(a), (c));
- For small city school districts 50 signatures (Educ. Law § 2608(1));
- In Rochester City School District 300 signatures (Educ. Law § 2553(9)(c));
- In Buffalo City School District 300 signatures for both the sub-districts and the at-large seats (Educ. Law § 2553(10)(d)).
- Repealed December 31, 2021



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2021 Legal Updates – Public Comment

- Regulating conduct during public comment at Board meetings
- Open Meetings Law does not require public comment, but Committee on Open Government “strongly encourages” municipal entities to provide opportunities for public comment
- Boards may adopt policies setting forth reasonable expectations for participation in public comment



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2021 Legal Updates – Public Comment

- Conduct expectations
- Time limits for participation (both for individual comments and for entire period)
- Topics permitted to be discussed (including prohibitions on student/personnel-related topics)
- Protocols for public comment (signing up in advance, etc.)
- Consequences for failure to follow published rules
- Residency requirement?



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2021 Legal Updates – BOE Member Removal

- Appeal of Rivers, 60 Ed Dept Rep, Dec. No. 17,989 (2021). Board discussed the town’s request to use school facilities for a camp in executive session. Board member shared the information disclosed in executive session.
- Board of Education removed board member for willfully disclosing information obtained in executive session
- Commissioner of Education reversed the removal on the grounds that the information discussed in executive session was not confidential as a matter of law



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Electronic Monitoring Law – What Employers Need to Know



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Addition to New York's Civil Rights Law

- Effective May 7, 2022
- Requires employers to provide notice to employees “upon hiring” if they “monitor or otherwise intercept[] telephone conversations or transmissions, or internet access or usage of or by an employee by any electronic device or system”
- Employers must also post the notice of electronic monitoring in a “conspicuous place which is readily available for viewing by its employees who are subject to electronic monitoring”



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Notice Required

- The notice must be provided “in writing, in an electronic record, or in another form”
- Employees must “be advised that any and all telephone conversations or transmissions, electronic mail or transmissions, or internet access or usage by an employee by any electronic device or system, including but not limited to the use of a computer, telephone, wire, radio or electromagnetic, photoelectronic or photo-optical systems may be subject to monitoring at any and all times and by any lawful means
- Must also be “acknowledged by the employee either in writing or electronically”



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Enforcement

- The statute does not create a private right of action for employees
- Instead, it provides for enforcement by the New York State Attorney General
- Employers may be fined up to:
 - \$500 for the first violation;
 - \$1,000 for the second violation; and
 - \$3,000 for the third violation and each subsequent violation
- Important note: It is not clear whether the failure to notify each individual employee would constitute a separate violation



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Things to Note

- While the law contains a posting requirement, it does not require employers to provide notice individually to each existing employee or to obtain acknowledgments from them
- This requirement does not just apply where the employer is supplying the device; notice is required where employers use personal devices to transmit e-mail through a corporate server or access the internet through the employer's connection



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Things to Note, Cont.

- Electronic monitoring by video surveillance and location tracking do not appear to be covered by the law
- The law does not require employers to provide notice of processes that manage the type or volume of email, telephone or internet usage or that are performed solely for the purposes of computer maintenance or protection
- If the notification is contained in an employee handbook, there should be an acknowledgement specific to the notice



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Considerations for Employers

- Should employers provide notice to existing employees?
- Should employers provide more specific notice regarding what electronic monitoring they actually engage in?



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Updated EEOC COVID Guidance



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EEOC COVID-19 Technical Assistance

- Has been updated 20 times during the Pandemic
- Contains 13 separate sections
- Most recent update on November 17, 2021



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EEOC COVID-19 Technical Assistance

- Section on Retaliation and Interference most recently updated
- Do job applicants and employees (including former employees) have protections from retaliation for exercising EEO rights in connection with COVID-19?
- What are some examples of employee activities that are protected from employer retaliation?
 - Filing a charge, complaint, or lawsuit, regardless of merit
 - Reporting alleged EEO violations or answering questions during an employer investigation
 - Requesting accommodation of a disability (potentially including a pregnancy-related medical condition) or a religious belief, practice, or observance regardless of whether the request is granted or denied



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EEOC COVID-19 Technical Assistance

- When is an employer action based on an employee's EEO activity serious enough to be unlawful retaliation?
 - Might include actions such as denial of promotion or job benefits, non-hire, suspension, discharge, work-related threats, warnings, negative or lowered evaluations, or transfers to less desirable work or work locations
 - Retaliation could also include an action that has no tangible effect on employment, or even an action that takes place only outside of work, if it might deter a reasonable person from exercising EEO rights
- Does this mean that an employer can never take action against someone who has engaged in EEO activity?
- Does the law provide any additional protections to safeguard ADA rights?



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EEOC COVID-19 Technical Assistance (10/25)

- Does an employer have to accept an employee's assertion of a religious objection to a COVID-19 vaccination at face value? May the employer ask for additional information?
- How does an employer show that it would be an "undue hardship" to accommodate an employee's request for religious accommodation?
- If an employer grants some employees a religious accommodation from a COVID-19 vaccination requirement because of sincerely held religious beliefs, does it have to grant the requests of all employees who seek an accommodation because of sincerely held religious beliefs?
- Must an employer provide the religious accommodation preferred by an employee if there are other possible accommodations that also are effective in eliminating the religious conflict and do not cause an undue hardship under Title VII?



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The General Counsel Corner



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Update from Albany



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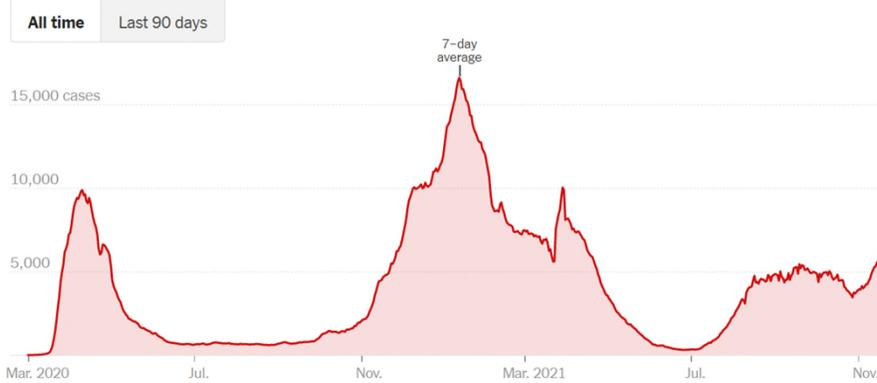
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The New York Times

New reported cases



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	DAILY AVG. ON NOV. 15	14-DAY CHANGE
Cases	5,519	+42%
Tests	136,828	+2%
Hospitalized	2,048	-12%
Deaths	33	-4%

	DAILY AVG. ON NOV. 22	14-DAY CHANGE
Cases	6,639	+56%
Tests	144,096	+12%
Hospitalized	2,631	+17%
Deaths	33	-1%

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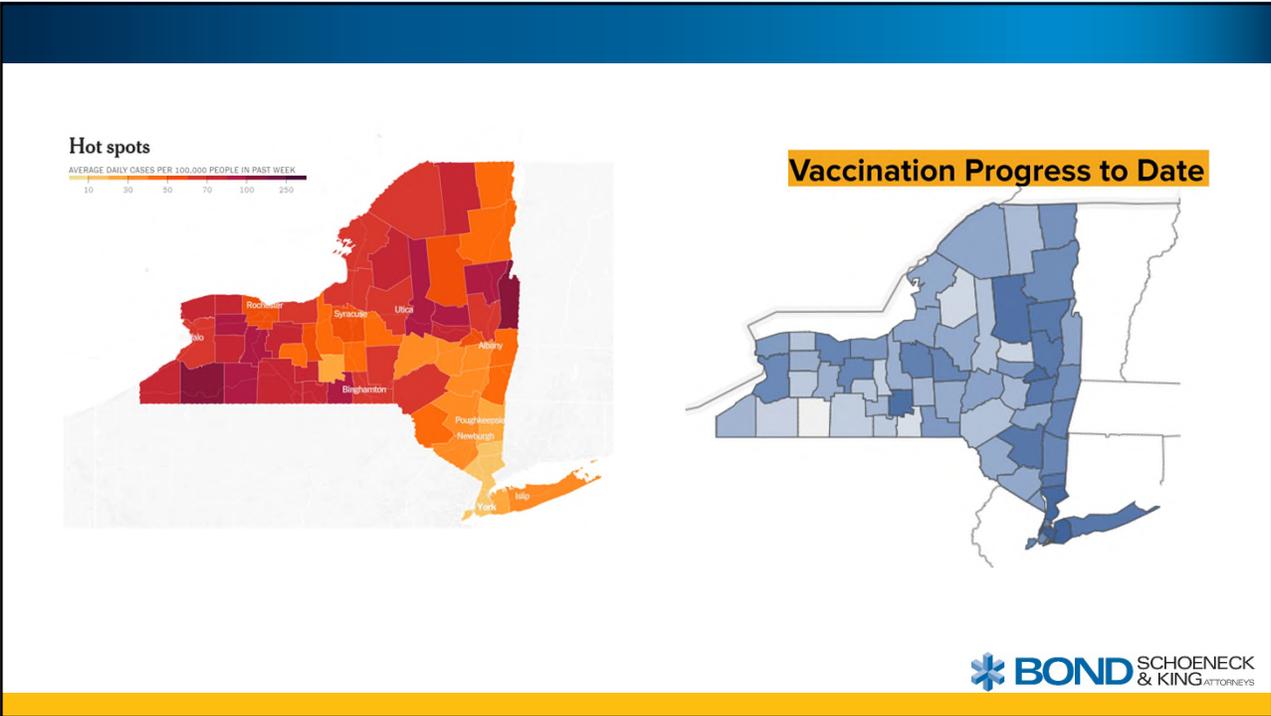
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Vaccination progress

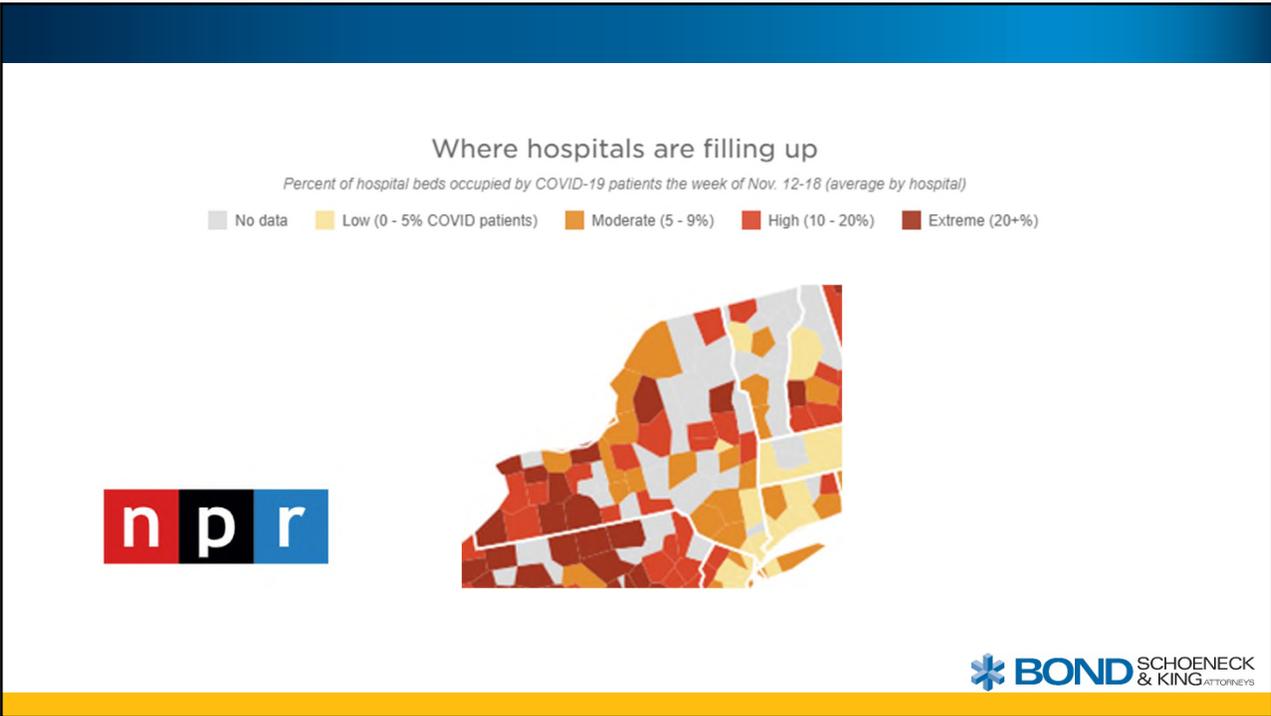
- All New Yorkers:
 - 68% fully vaccinated
 - 77% one dose
- 12 and older:
 - 79% fully vaccinated
 - 89% one dose

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Erie County

- Effective **today** at 6 a.m., masks must be worn in indoor public places, including:
 - Bars/restaurants
 - Grocery and all other stores
 - Theatres
 - Barber shops/beauty parlors
 - Gyms/fitness centers
 - Entertainment venues
 - Hotels, banks, **all places open to the public**

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Erie County

- Will be reassessed on December 13 (or earlier if conditions require an earlier implementation).
 - At that point, Erie County could enter Phase 2: **Vaccination Mandate for indoor dining, bars, and entertainment venues.**
 - Phase 3: capacity restrictions for all public locations
 - Phase 4: shutdowns

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Erie County Quarantine Changes

- Unvaccinated people exposed to COVID may test out of quarantine if:
 - They remain asymptomatic.
 - They receive a COVID-19 test at least five days after the last exposure and such test is negative.
 - Cannot be an at-home test.
- Can leave quarantine after seven full days (i.e., day 8) following the exposure.
 - Recent change in CDC guidance

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Booster Shot News

- FDA and CDC have approved booster shots for all adults:
 - Pfizer and Moderna: Need to have received final shot at least six months ago
 - Johnson & Johnson: Two months ago
- Mix and match allowed

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School Law Update

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Updated EEOC COVID Guidance

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The General Counsel Corner

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Update from Albany

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