

2024

BUSINESS IN 2023

WEEKLY WEBINAR SERIES

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Your Host



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TODAY'S AGENDA

Gabe Oberfield – (12:00PM-12:05PM)

- Intros / Agenda

Alyson Mathews -- (12:05PM-12:10PM)

- Labor-Relating Legislation Signed by Gov. Hochul

Natalie Vogel, with Roger Bearden – (12:10PM-12:20PM)

- The Clean Slate Act and Its Effects on the Workforce

Michael Donlon – (12:20PM-12:30PM)

- SEC Regulatory Updates

Jennifer Tsyn – (12:30PM-12:40PM)

- NYS Liquor Authority's Online Permit System Encountering Issues

Paige Carey (12:40PM-12:45PM)

- Weight and Height Discrimination Bill Goes into Effect in NYC

G. Oberfield (12:45PM)

- Closing Remarks

Labor-Relating Legislation Signed by Gov. Hochul



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Workers' Rights Legislation

- S.5495/A.6806 Provides for the Continuation of State Health Benefit Plans for Certain Survivors of State Employees
- S.5487/A.6856 Provides Protection to Employees in the Case of Abolition or Reduction of Non-Competitive or Labor Class Positions in the State

Workers' Rights Legislation

- S.6477/A.7157 Directs Employers to Provide the Home Address of Employees of a Bargaining Unit to the Employee Organization
- S.6491/A.6866 Closes a Loophole for Arbitrations Between Public Employers and Employees When Delivering an Award

The Clean Slate Act and Its Effects on the Workforce



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Clean Slate Act

- On November 16, 2023, Gov. Hochul signed Clean Slate Act
 - Goes into effect November 16, 2024
- The Act seals an individual's NY criminal records after a period of time from the end of their sentence
 - 3 years for misdemeanors and 8 for felonies
 - Resets if an individual is convicted of another crime or violates probation or parole
 - Does not seal sex crimes or Class A felonies (except those related to drug possession)

Implications for Employers

- During the hiring process, if an applicant's record is sealed, they can truthfully say they do not have a conviction record
- Employers cannot ask about sealed convictions during the hiring process
- Employers must continue to follow existing New York laws related to hiring individuals with criminal backgrounds
 - Article 23-A of the New York State Correction Law
 - New York City Fair Chance Act

Additional Reporting Obligations Under Clean Slate Act

- If unsealed criminal records are received by an employer from a request for conviction history, the employer must:
 - Furnish a copy of the records received to the employee and/or applicant
 - Provide a copy of Article 23-A of the NYS Correction Law
 - Provide a notice to the employee and/or applicant of their right to correct any incorrect information

Consideration for Healthcare and Human Services Providers

- The Clean Slate Act preserves access to criminal records where federal and state statutes have previously required employers to screen potential employees to protect vulnerable populations
- As part of a statutorily authorized screening, employers will be able to access criminal records that were sealed under the Clean Slate Act

Takeaways

- Review and update any policies related to hiring, background screening, use of conviction records and nondiscrimination policies
- Train employees on policies and the law
- Consult with legal counsel prior to making employment decisions based on an individual's criminal history

SEC Regulatory Updates



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2023 SEC Regulatory Agenda

On June 13, 2023, the U.S. Office of Information and Regulatory Affairs released the Securities and Exchange Commission spring 2023 regulatory agenda.

The Agenda listed rules the SEC plans to finalize through April 2024 as well as upcoming rule proposals the SEC is considering introducing on a similar timeline.

This update focuses on the SEC's new rules that impact public company disclosure requirements.

Cybersecurity Risk Governance

- The SEC released its final rule on Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure on July 26, 2023.
 - Cyber incident reporting
 - Cyber risk management and strategy
 - Cyber governance

Cyber Incident Reporting

- Report “material” cybersecurity incidents on a Form 8-K within four business days of materiality determination.
- Describe the nature, scope, and timing of the incident and the material impact or reasonably likely material impact on the registrant. To the extent required information is not determined or is unavailable at the time of the filing, the 8-K should include disclosure of this fact, and the 8-K should be later amended when the information is determined or becomes available.

Cyber risk management and strategy

- Describe the company's process, if any, for assessing, identifying, and managing material risks from cybersecurity threats, including:
 - whether cybersecurity is part of the overall risk management program, engages consultants, auditors or other third parties, and processes to oversee and identify risks from use of third-parties;
 - whether and how any risks from cybersecurity threats have materially affected or are reasonably likely to materially affect the registrant's business strategy, results of operations, or financial condition.

Cyber governance

- Describe the company's governance of cybersecurity risks as it relates to:
 - The board's oversight of cybersecurity risk, including identification of any board committee or subcommittee responsible for oversight and the process by which they are informed about cyber risks.
 - Management's role and expertise in assessing and managing material cybersecurity risk and implementing cybersecurity policies, procedures and strategies.
 - Specific disclosure of any management positions or committees responsible for assessing and managing cyber risks, including discussion of their relevant expertise.

Cybersecurity Risk Governance

- Effective dates:
 - The material incident disclosure requirements become effective on or after December 18, 2023 (smaller reporting companies have a 180-day deferral).
 - Disclosures for risk management, strategy and governance become effective for all registrants for fiscal years ending on or after December 15, 2023.

Share Repurchase Disclosure Modernization

- The SEC released its final Share Repurchase Disclosure Modernization rules on May 3, 2023.
- The new rules reflect a more moderate version of the proposed rules, which called for the creation of a new SEC form to be filed within one business day after any issuer repurchase of shares.
- The rules as adopted require disclosure about daily repurchases on a quarterly basis for U.S. companies and foreign private issuers, and on a semi-annual basis for closed-end funds.

Share Repurchase Disclosure Modernization

- Tabular disclosure of daily repurchase activity – The table must be filed on a quarterly basis in an exhibit to the Form 10-Q and Form 10-K
- Narrative disclosure regarding an issuer's repurchase programs and practices
- Checkbox disclosure regarding the trading of Section 16 officers or directors
- Quarterly disclosure regarding the adoption and termination of 10b5-1 trading arrangements

Share Repurchase Disclosure Modernization

- Compliance Dates
 - Domestic issuers will be required to include the quantitative data as an exhibit to their Forms 10-Q and 10-K and provide the narrative disclosure in their Forms 10-Q and 10-K beginning with the first filing that covers the first full fiscal quarter beginning on or after October 1, 2023.
- Breaking News!
 - On November 22, 2023, the SEC announced that it had issued an order postponing the effective date of the Share Repurchase Disclosure Modernization rule and, as a result, the rule is stayed pending further SEC action.

Modernization of Beneficial Ownership Reporting

- On October 10, 2023, the SEC adopted certain of its proposed changes to the rules governing beneficial ownership reporting under Sections 13(d) and 13(g) of the Securities Exchange Act of 1934, as amended, and issued guidance in lieu of adopting certain other proposed rules.
- These amount to the most significant changes in beneficial ownership filing requirements in approximately the last 50 years.

Modernization of Beneficial Ownership Reporting

- Revised deadlines for initial filings
 - Schedule 13D: within five business days (rather than 10 calendar days) after crossing the 5% beneficial ownership threshold or losing eligibility to file on Schedule 13G
 - Schedule 13G:
 - For “Passive Investors,” five business days after crossing the 5% threshold;
 - For “Qualified Institutional Investors” and “Exempt Investors,” within 45 days after the end of the calendar quarter in which they cross the 5% threshold; or
 - Additionally for Qualified Institutional Investors, five business days after the end of the month in which they cross the 10% threshold

Modernization of Beneficial Ownership Reporting

- Revised deadlines for amendments:
 - Schedule 13D amendments: within two business days (rather than “promptly”) after a material change
 - Schedule 13G amendments:
 - For Passive Investors, within two business days of crossing the 10% threshold (or any later deviation by more than 5 percentage points);
 - For Qualified Institutional Investors, within five business days after the end of the month in which the 10% threshold is crossed (or any later deviation by more than 5 percentage points); or
 - For all Schedule 13G filers, within 45 days after the end of the calendar quarter in which a material change occurs

Modernization of Beneficial Ownership Reporting

- Compliance Deadlines:
 - On February 5, 2024, the amendments will be effective and compliance will be required, including compliance with the revised Schedule 13D filing deadline, except as noted below:
 - September 30, 2024: compliance with the revised Schedule 13G filing deadlines
 - December 18, 2024. compliance with the structured data requirement for Schedules 13D and 13G

Clawbacks

- On June 9, 2023, the SEC approved the new listing standards proposed by NYSE and Nasdaq, which require listed companies to adopt a written clawback policy; failure to do so, or to enforce any required clawback, could result in delisting from the stock exchange.
- The new clawback listing standards become effective for incentive compensation received on or after October 2, 2023, and listed companies are required to adopt a compliant clawback policy by December 1, 2023.

NYS Liquor Authority's Online Permit System Encountering Issues



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Weight and Height Discrimination Bill Goes into Effect in NYC



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Timeline

- May 11, 2023
 - New York City Counsel passed a bill adding height and weight to the New York City Human Rights Law's ("NYCHRL") protected categories
- May 26, 2023
 - New York City Mayor Adams signed the bill into law
- **Last Wednesday, November 22, 2023**
 - Law went into effect

Broad Prohibition

- Height and weight discrimination is now prohibited in employment, housing and public accommodations under the NYCHRL

Exemptions

- Employment & Public Accommodation:
 - (A) required by federal, state, or local law or regulation, or
 - (B) permitted by regulation adopted by the commission identifying particular jobs or categories of jobs for which
 - (i) a person's height or weight could prevent performing the essential requisites of the job, and
 - (ii) the commission has not found alternative action that covered entities could reasonably take to allow persons who do not meet the height or weight criteria to perform the essential requisites of the job or category of jobs, or
 - (C) permitted by regulation adopted by the commission identifying particular jobs or categories of jobs for which consideration of height or weight criteria is reasonably necessary for the execution of the normal operations of such covered entity.
- Housing = no exemption

Affirmative Defenses

- Employment & Public Accommodation:
 - (1) a person's height or weight prevents the person from performing the essential requisites of the job, and there is no alternative action the covered entity could reasonably take that would allow the person to perform the essential requisites of the job
 - (2) the covered entity's decision based on height or weight criteria is reasonably necessary for the execution of the normal operations of such covered entity.
- Housing = no affirmative defense

Caveat

- The law does not “prevent a covered entity from offering incentives that support weight management as part of a voluntary wellness program.”

Best Practice Going Forward

- Policy and handbook update
- Clarify business needs for positions with height and/or weight criteria
- Similar pending New York State legislation

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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