

BUSINESS IN

2022

WEEKLY WEBINAR SERIES

2023

2021

2020

2019



BOND

**SCHOENECK
& KING** ATTORNEYS

Your Host



Gabriel S. Oberfield

Senior Counsel

goberfield@bsk.com

New York, NY

TODAY'S AGENDA

Gabe Oberfield – (12:00PM-12:10PM)

- Intros / Agenda
- Bill Signings of Note

Stephanie Fedorka – (12:10PM-12:15PM)

- Amendments to NYLL 215 - Prohibitions of Retaliation for Lawful Absences

Tim McMahon – (12:15PM-12:25PM)

- What Litigants Need to Know About Summary Judgment Now

Delaney Knapp and Shannon Knapp (12:25PM-12:35PM)

- Tax, Fundraising and Privacy Laws and Launching Your Nonprofit Website

G. Oberfield – (12:35PM-12:45PM)

- Healthcare Worker Bonus Updates
- COVID-19 / Public Health Updates
- Fielding Open Questions and Final Remarks

Bill Signings Picking Up

Sources: Politico.com, City and State, Office of the Governor

NOVEMBER 23, 2022 | Albany, NY

Governor Hochul Signs Legislation to Protect Patients with Medical Debt

HEALTH

LEGISLATION

Legislation (S.6522A/A.7363A) Protects Patients Facing Steep Medical Bills from Certain Penalties Against Their Wages or Property

Part of 2022 State of the State Goal to Protect New York's Consumers and Improve Financial Health

[Traducción al español](#)

Governor Kathy Hochul today signed legislation (S.6522A/A.7363A) to protect patients facing steep medical bills that can lead to wage garnishment or liens against their property.

- Governor Hochul has until the close of the year to sign bills approved by legislature and delivered for her signature
 - Zealous advocacy underway ... and the clock is ticking
- Some recent bills signed into law include:
 - Ban on certain garnishment activities / property liens in connection with healthcare debt,
 - N-PCL Modernization Act – streamlining various nonprofit reporting and transparency requirements,
 - Clarifications on healthcare ‘informed consent’ standards, &
 - Amendments to NYLL 215.

Bill Signings Picking Up

Sources: Politico.com, City and State, Office of the Governor

Post-election, it's veto season for Kathy Hochul

The New York governor has vetoed 39 bills aimed at creating commissions and task forces because of their financial impact.



The governor has begun to make calls on laws passed during the 2022 legislative session. MIKE GROLL/OFFICE OF GOVERNOR KATHY HOCHUL

By SHANTEL DESTRA

NOVEMBER 26, 2022
01:46 PM ET



While hundreds of bills passed both the state Senate and Assembly months ago, many are still waiting for their fate to be determined by Gov. Kathy Hochul before the official end of the legislative session at the end of the year. With the stress of the gubernatorial election behind her, the governor has been busy reviewing bills and delivering vetoes left and right.

POLICY

NEW YORK STATE

Hochul recently vetoed 39 bills that would have created commissions and task forces to address various issues impacting the state – including acts that would establish a [gambling](#) advisory council, a [fentanyl abuse and overdose](#) prevention task force, a joint commission on [affordable housing](#) and a [group home families](#) working group. Supporters of some of the popular vetoed bills are not happy with the governor's decision, NY1 reported.

Credit: City and State

- Some reports concerning Governor's reluctance to approve commissions or deliberative bodies (e.g., task forces) to study issues –
 - Generally due to cited fiscal effects
 - Bodies vetoed involve healthcare, gambling, etc.
 - More bill signings, vetoes, etc. in the coming weeks.

Amendments to NYLL 215 – Prohibitions of Retaliation for Lawful Absences



Stephanie H. Fedorka

Associate

sfedorka@bsk.com

Syracuse, NY

Amendments to NYLL § 215

- Senate Bill S1958A signed by Gov. Hochul on November 21
 - Becomes effective 90 days → **February 19, 2023**
- NYLL § 215 → Anti-retaliation provisions of NY Labor Law
 - Makes it unlawful for employer to discharge, penalize, or in any manner discriminate or retaliate against an employee for:
 - Making complaint about possible labor law violation to NYSDOL or anyone
 - Providing information to NYSDOL
 - Testifying in an investigation or other proceeding under NYLL
 - Exercising rights protected under NYLL
 - Causing employer to receive adverse determination from NYSDOL

What's New...

- The amendments are intended to “clarify” that employees cannot be discharged, threatened, penalized, or in any other manner discriminated or retaliated against for using any “legally protected absence pursuant to federal, local, or state law.”
- ***“Assessing any demerit, occurrence, any other point, or deductions from an allotted bank of time, which subjects or could subject an employee to disciplinary action, which may include but not be limited to failure to receive a promotion or loss of pay”*** would constitute such unlawful retaliation, discrimination, or penalty under NYLL § 215

Potential Impact for Employers

- Calls into question any “no fault” or points-based attendance policies particularly those that take any absence into account (as opposed to not counting such lawful absences)
- Potential impact on attendance-based bonuses based on the “loss of pay” language in the amendments

Penalties for Violations of NYLL § 215

- First offense → Assessment of penalty from \$1,000 to \$10,000
- Second offense → Assessment of penalty from \$1,000 to \$20,000
- Back pay
- Liquidated damages
- Reinstatement
- Front pay
- Any other appropriate relief
- Private right of action (2 year SOL)
- Attorneys' fees and reasonable costs
- Violation → *Any employer or his or her agent, or the officer or agent of any corporation, partnership, or limited liability company, or any other person who violates subdivision one of this section shall be guilty of a class B misdemeanor.*

What Should Employers Do

- Review attendance policies/leave policies
 - Revise accordingly
 - Educate decisionmakers (refresh training) regarding unlawful retaliation
- Consult legal regarding policies that may be implicated by amendments, or before taking action against employees based on attendance when employee has taken legally entitled leave/absence under federal, state, local law (even in part)
- Stay tuned for any further guidance from NYSDOL on amendments (but don't hold your breath!)

What Litigants Need to Know About Summary Judgment Now



Timothy N. McMahon

Senior Counsel

tmcmahon@bsk.com

Syracuse, NY

Tax, Fundraising and Privacy Laws and Launching Your Nonprofit Website



Delaney M. Knapp

Associate
dknapp@bsk.com
Albany, NY



Shannon A. Knapp

Associate
sknapp@bsk.com
Syracuse, NY

- Launching a website is one of the most exciting steps in setting up a new nonprofit. But the launch also presents some big questions:
 - What organizational information can or should be made public or kept confidential?
 - Do we have to register our nonprofit somewhere before we can start fundraising?
 - Should we be worrying about cybersecurity and privacy law compliance?
- We've assembled answers to these and other common legal questions we hear from nonprofits when they are creating or updating their websites.

1. Can we put our bylaws on our website? Are we required to?

- Yes, you can, although you don't have to, at least in New York
- Many organizations choose to upload copies of their bylaws and other key documents (e.g., certificate of incorporation, conflict of interest and whistleblower policies) to their websites
- No new risk or confidentiality concerns
- Demonstrate commitment to transparency
- Instill confidence in its governance and leadership

2. How about our Form 990 tax returns? Is it safe to publish them?

- Yes, you can publish them, and yes, it is “safe” – in the sense that it isn’t creating any new risk.
- Publicly available – IRS website, AG Charities Bureau website, Guidestar, etc.
- Provides donors and stakeholders with information which may inform their giving decisions or generate interest in collaborative partnerships or projects.

3. Do we need to register our organization before raising funds?

- Nonprofit websites typically offer options for making charitable contributions, including the use of “donate now” apps or links to third-party fundraising platforms.
- Charitable solicitation laws are state laws, and each state has its own specific requirements for when registration is required. However, most states require nonprofits to register with a regulatory agency (in New York, this is the Charities Bureau) before fundraising from donors in the state, regardless of whether the fundraising is done in person, by mail or online.
- If your nonprofit is soliciting contributions online, it should begin tracking receipt of donations by state and should be working with its counsel to determine when donations from a given state are approaching a threshold where registration is required or appropriate.

4. What information should we include about being a 501(c)(3)? Is there any required language?

- 501(c)(3) determination letter - Confirms for donors that their donations are tax deductible.
- There is no *required* language but using the correct terminology will provide clarity for donors and other visitors to your website and avoid creating inaccurate expectations. Here is an example of the information that you can include:
 - *“Newco Nonprofit has been recognized by the Internal Revenue Service as exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. Your contribution to NewCo Nonprofit may be tax deductible. Talk to your tax advisor about whether you can claim a deduction for your gift.”*
- Note that this language is *not* a substitute for the donor acknowledgement letter required under federal tax laws.

5. What should we say while our 501(c)(3) application is pending with the IRS?

- We commonly recommend refraining from soliciting charitable contributions while your exemption application is pending.
- Exemption effective retroactive to the date of your organization's formation (ensuring that any donations that you have received in the interim are tax deductible)
- Sometimes things can go wrong – for example, the IRS post-formation filing deadline for retroactive exemption can be missed, or the IRS can take the position that your organization's purposes do not qualify as exempt under Code Section 501(c)(3).
- In New York, Charities Bureau registration can now be completed prior to receiving 501(c)(3) exemption, but you should confirm that is the case in all states in which you plan to solicit contributions.

OK, but people are beating down the door to give us money!

- We get it! But we nonetheless recommend exploring other options in situations like these when feasible.
- A fiscal sponsorship is a contractual arrangement involving an established 501(c)(3) nonprofit which provides its tax-exemption, charities registration and other benefits to another entity (in this case, your organization) to empower it to carry out its mission.
 - During this time period, the fiscal sponsor can receive and administer charitable contributions on behalf of your organization until your nonprofit is able to do so lawfully on its own.

6. How much information can we supply about our Board leadership?

- We recommend using ordinary safe practices when it comes to sharing personal information online, but ultimately you should include what you think will be most impactful.
- Names, titles and sometimes contact information or photographs of directors, officers and executive staff.
- Personalize the mission and activities of the organization, highlight the experience of its leadership, and instill a sense of accessibility to those individuals managing and operating your organization.

7. What is a privacy policy, and do we need one?

- A “privacy policy” is a document that describes an organization’s general practices concerning the personal information that it obtains in the course of its operations. These policies help website visitors understand what is happening with their personal information.
- Privacy policies have become increasingly important for nonprofits due to the proliferation of privacy laws, as well as the indication by the Federal Trade Commission (FTC) and other enforcement agencies that it is best practice to include privacy policies and similar notices on websites.
- Furthermore, consumer expectations (including donor expectations) regarding personal data privacy are rising in the wake of high-profile data breaches in both the for profit and nonprofit sectors. A privacy policy is an important tool to build trust and transparency with your stakeholders, donors and other visitors to your website.
- Privacy policies should be customized for each organization and site based on the specific data practices that are occurring.

8. What about “Terms of Use”?

- A website "terms of use" (sometimes referred to as “terms of services” or “terms and conditions”) is intended to be a legally binding contract between a website’s owner and the website’s users.
- Establishing terms of use allows organizations to outline rules and regulations for website visitors. It also provides protection for organizations by limiting liability and providing recourse in case of misuse of the website or the information that it provides.
- Like a privacy policy, a terms of use needs to be customized for each organization and site.

9. What should we do about protecting our information?

- Beyond privacy policies and terms of use, an organization must make sure it has internal mechanisms in place to protect any information it collects, especially personally identifiable information. This includes, for example, cybersecurity safeguards, internal policies and procedures concerning data retention and destruction, data breach response and vendor due diligence. Failure to have proper internal mechanisms in place can lead to costly data breaches and litigation.
- Vendor due diligence is also of particular importance. Whenever possible, your nonprofit should ensure that the technology vendors it uses, including your website developer, have proper cybersecurity and data privacy practices and insurances in place, and that your contract with them adequately covers the associated risks.
 - These efforts are just as important as your organization's internal protection mechanisms.

10. What else do we need to know?

- When launching your website, it is important to determine what, if any, laws affect the website, any personal information or donations collected, website accessibility, etc.
- There are numerous different regulatory frameworks or laws, including, but not limited to, state unfair and deceptive business practice laws, FTC best practices, the European Union General Data Protection Regulation (GDPR), the recently passed Colorado Privacy Law and the California Online Privacy Protection Act (CalOPPA) that require certain documentation or compliance efforts for organizations concerning data privacy and websites generally.

Healthcare Worker Bonus Program Updates



Gabriel S. Oberfield

Senior Counsel

goberfield@bsk.com

New York, NY

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.”

New Developments – Stay Tuned

Important Announcement Regarding Expansion of the Bonus Program (November 17, 2022)

Following review and approval by the New York State Director of the Budget, the Healthcare Worker Bonus (HWB) Program has been expanded to include additional titles and eligible provider types. However, qualified employers should **NOT** yet submit the employees that are now eligible under this expansion. Additional details on this expansion can be found on the [HWB Program Expansion Notice](#) page.

- In connection with the Mid-Year Update to the FY '23 Enacted Budget Financial Plan (11/14/22), the Healthcare Worker Bonus (HWB) Program was expanded:
 - *Additional titles and eligible provider types*
- Qualified employers should **NOT** yet submit the employees that are now eligible under this expansion.
 - *There will be a separate window for this*

New Developments – Stay Tuned



- New Qualified Employers
 - ‘Frontline’ category expanded to include health homes and supportive housing
- New Employee Types
 - Health home managers and certified first responders
 - “All Other Health Care Support Workers”
 - now *a/so* applicable to work in ‘O’ agency settings, assisted living and hospice
 - New Titles:
 - Security guards, peace officers
- Portal to open in December 2022 for these employer / employee types

Time to Dot the 'I's and Cross the T's

- 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.*



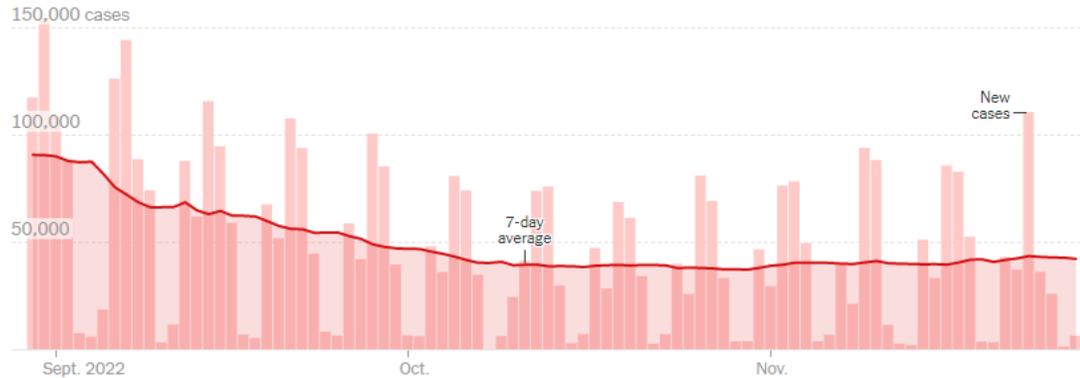
COVID Infection Trends & Information

Today's COVID Picture, Nationally

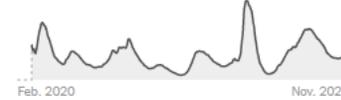
Source: New York Times

New reported cases

All time Last 90 days



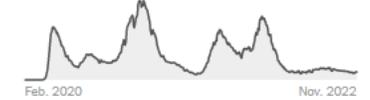
Test positivity rate



Hospitalized



Deaths

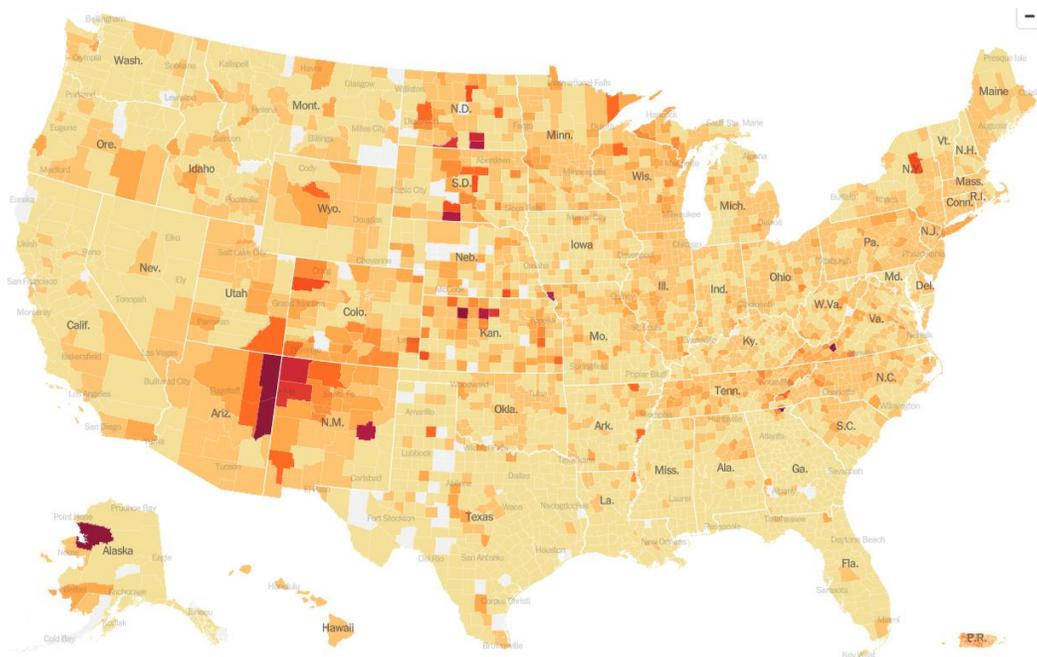


	DAILY AVG. ON NOV. 27	PER 100,000	14-DAY CHANGE
Cases	41,997	13	+6%
Test positivity	10%	—	+18%
Hospitalized	28,833	9	+3%
In I.C.U.s	3,474	1	+8%
Deaths	330	<1	+4%

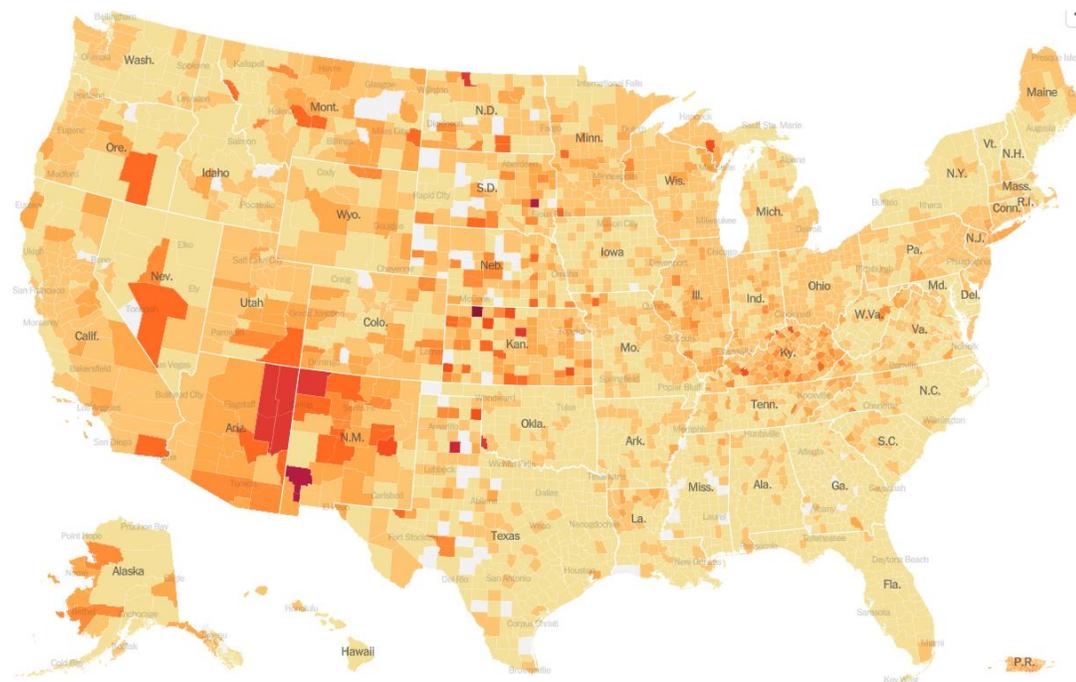
Slight uptick of reported case rate (6 percent over two weeks)

COVID Hotspots – The Two-Week Difference

Source: New York Times



As of November 15, 2022



As of November 29, 2022
Areas of concentration generally unchanged

Your Questions



Gabriel S. Oberfield

Senior Counsel

goberfield@bsk.com

New York, NY

Introduction

Gabriel Oberfield, goberfield@bsk.com

Amendments to NYLL 215 – Prohibitions of Retaliation for Lawful Absences

Stephanie Fedorka, sfedorka@bsk.com

What Litigants Need to Know About Summary Judgment Now

Timothy McMahon, tmcmahon@bsk.com

Tax, Fundraising and Privacy Laws and Launching Your Nonprofit Website

Delaney Knapp, dknapp@bsk.com

Shannon Knapp, sknapp@bsk.com

Healthcare Worker Bonus Program Updates

Gabriel Oberfield, goberfield@bsk.com

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

The information in this presentation is intended as general background information.
It is not to be considered as legal advice.
Laws can change often, and information may become outdated.

All rights reserved.

This presentation may not be reprinted or duplicated in any form without the express written authorization of Bond, Schoeneck & King PLLC.