

2024

BUSINESS IN 2023

WEEKLY WEBINAR SERIES

2022

2021

2020



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Your Host



Gabriel S. Oberfield

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TODAY'S AGENDA

Gabe Oberfield – (12:00PM-12:05PM)

- Intros / Agenda

Adam Mastroleo – (12:05PM-12:10PM)

- Settlement Agreement Rules and General Obligations Law, Section 5-336

Tom Eron – (12:10PM-12:20PM)

- NLRB Decision concerning *Tesla* and Its Implications

Erin Torcello – (12:20PM-12:30PM)

- NLRB General Counsel Memo concerning *Cemex*, and Its Effects

Victoria Okraszewski (Supervised by Mario Ayoub and G. Oberfield) – (12:30PM-12:40PM)

- Updates on Cybersecurity in the Healthcare Industry

G. Oberfield (12:45PM)

- Holiday Schedule
- Closing Remarks

Amendments to General Obligations Law Affecting Certain Non-Disclosure Provisions



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General Obligations Law Section 5-336

- Applies to:
 - Settlement agreements relating to any “claim” involving discrimination, **harassment or retaliation** in violation of laws prohibiting discrimination, **harassment or retaliation**
- Prohibits:
 - Including any term or condition that would prevent the disclosure of the underlying facts and circumstances to the claim, UNLESS the condition of confidentiality is the complainant’s preference

General Obligations Law Section 5-336

- Conditions:
 - Must be in writing (State guidance says a separate agreement)
 - Complainant must have **UP TO** 21 days to consider the term or condition
 - Complainant can revoke the agreement within 7 days of execution
 - Term is void if it prohibits or restricts the complainant from:
 - Initiating, testifying, assisting, complying with a subpoena or participating in an investigation conducted by federal or state agency; or
 - Filing or disclosing any facts necessary to receive unemployment, Medicaid or other public benefits

General Obligations Law Section 5-336

- Conditions (Cont'd):
 - Release of claims is unenforceable if the agreement:
 - Requires the complainant to pay liquidated damages for a violation of a nondisclosure clause or non-disparagement clause;
 - Requires the complainant to forfeit all or part of the consideration for the agreement, for violation of a non-disclosure clause or non-disparagement clause; or
 - Contains or requires any affirmative statement, assertion or disclaimer by the complainant that the complainant was not in fact subject to unlawful discrimination, including discriminatory harassment or retaliation

Miscellaneous

- Limitations found in General Obligations Law Section 5-336 are also found in Civil Practice Law and Rules Section 5003-b
- Employer can initiate the process by suggesting a term of confidentiality, so long as the statutory process is followed
- Two agreements are required: (1) memorializing the preference and (2) whatever documents incorporate that preferred term or condition

HR Bootcamp for Healthcare Employers

Complimentary Webinar Series

Healthcare Staffing Crisis – Legal Issues Associated with Hiring and Staffing

Thursday, December 14, 2023 | Noon - 12:45 p.m. via Zoom

- Clinical Staffing Plans – Where Are We?
- Mandatory Overtime – Labor Law 167, CBA provisions and Staffing Needs
- Avoiding Discrimination Claims in Hiring

Register: www.bsk.com/hrbootcampforhealthcareemployers

The Tesla NLRB Decision and Its Implications



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The NLRB General Counsel Memo re: Cemex, and Its Effects



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Cybersecurity in the Healthcare Industry



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Cyberattacks on the Healthcare Industry

- The healthcare industry is susceptible to cyberattacks due to its size, technological dependence, and vast amount of sensitive data.
- The Office for Civil Rights (OCR) reported that there has been a 93 percent increase in data breaches in the healthcare industry from 2018 to 2022. During 2023, there has been roughly 500 data breaches reported to the OCR.
- Nearly 89 million individuals have had their personal information compromised so far this year.
- As a result of an attack, elective surgeries, outpatient appointments and other services can be suspended, and emergency rooms can be shut down.
 - During ransomware attacks on hospitals, mortality rate for patients rise from 20 to 35 percent.

Ardent Health Services

- On Thanksgiving, Ardent Health Services (Ardent) experienced a ransomware attack that impacted 30 of its hospitals.
- In response to the threat, Ardent took its network offline and suspended access to its information technology applications for all users. All non-urgent elective surgeries were canceled and will be rescheduled after Ardent's network is restored.
- On December 6, Ardent has since restored access to its electronic medical record system and other business systems. Additionally, many of Ardent's emergency rooms have moved off divert status.

Fresenius Medical Care

- On December 6, German dialysis company, Fresenius Medical Care, reported a breach at one of its U.S. subsidiaries, Cardiovascular Consultants, Ltd.
- Medical records belonging to 500,000 patients and guarantors as well as personnel records for 200 staff members were compromised.
- These individuals resided across the US, US territories, and four countries.

Cybersecurity and Infrastructure Technology Security Agency (CISA) Guidelines

- Provides recommendations and best practices to combat cyberattacks in the Healthcare and Public Health (HPH) Sector.
- The CISA Mitigation Guide provides three strategies to counteract cyberattacks:
 - Asset Management and Security;
 - Identity Management and Device Security; and
 - Vulnerability, Patch, and Configuration Management.

Regulatory Action: Department of Human Health and Services (HHS)

- HHS published a concept paper that focuses on strengthening resilience for hospitals, patients, and communities threatened by cyberattacks.
- HHS' plan builds on the Biden Administration's National Cybersecurity Strategy.
- The paper focuses on four primary goals:
 - Establish voluntary cybersecurity performance goals for the healthcare sector;
 - Provide resources to incentivize and implement these cybersecurity practices;
 - Includes two programs:
 - An upfront investments program
 - An incentives program (i.e., reimbursement)
 - Implement an HHS-wide strategy to support greater enforcement and accountability; and
 - Expand and mature the one-stop shop within HHS for cybersecurity.

Regulatory Action: New York State

- NY Governor Kathy Hochul proposed cybersecurity regulations for hospitals operating in New York State.
- The purpose of the regulations is to help hospitals within NYS implement policies and procedures to safeguard health care systems.
- Governor Hochul's FY24 budget includes \$500 million in funding that healthcare facilities can use to upgrade their technology systems to comport with the proposed regulations.
- The proposed regulations were reviewed by the Public Health and Health Planning Council and published in the State Register on December 6. Before being adopted, the proposed regulations are subject to a public comment period.
- If adopted, NYS hospitals will have one year to implement and comply with the requirements.

Your Questions



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2023 Year in Review: December 19

- Be sure to tune in Tuesday, December 19 for our weekly Tuesday webinar for a special Year in Review episode where Bond attorneys [Peter Jones](#) and [Hannah Redmond](#) will recap some of the major business and legal developments of 2023 and their implications for the new year.

Business in 2024

- Our weekly Tuesday series will continue into 2024 and will feature updates from Bond attorneys on:
 - Key developments out of Albany
 - Employment regulation trends
 - DEI policies and initiatives
 - Notable litigation trends
 - Special school and higher education issues
 - Cybersecurity and data privacy updates

Holiday Season Tuesday Webinar Schedule

December 19, 2023

- Join Us for a Special Episode: 2023 Year in Review

December 26, 2023 & January 2, 2024

- Holiday Break: No Presentations

January 9, 2024

- Join Us for a Special Episode: 2024 The Year Ahead

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Cybersecurity in the Healthcare Industry

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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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