Your Host

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TODAY'S AGENDA

Gabe Oberfield – (12:00PM-12:05PM)

• Agenda

Camisha Parkins – (12:05PM-12:10PM)

• Updates to Workplace Violence Presentation of 9/10/24

Mario Ayoub – (12:10PM-12:20PM)

• Navigating the Acceptable Use of AI in the Workplace

Kyle Ritchie – (12:20PM-12:30PM)

• *House*: Current Status and Next Steps

Emily Fallon – (12:30PM-12:40PM)

• The Implications of A Public Officers' Law Amendment

Allison Gabala – (12:40PM-12:50PM)

• Recent Per- and Polyfluoroalkyl Substances (PFAS) Developments

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Retail Worker Safety Act

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Retail Worker Safety Act

- Amends New York Labor Law to add section 27-e
  - Effective **June 2, 2025**

- Statewide legislation

- Intended to protect retail workers at a wide range of small to large-scale retailers from workplace violence

Coverage

- Covered employers include "any person, entity, business, corporation, partnership, limited liability company, or an association employing **at least ten retail employees**."

- The retail employees must work in a **retail store** that "sells consumer commodities."
  - Excludes retailers who primarily "sell food for consumption on the premises"
  - Excludes employers of the state, any political subdivision of the state, a public authority, or any other governmental agency or instrumentality

- DOL will release a guidance document which we expect will address most questions related to the Act's coverage.

Retail Worker Safety Act: Requirements

- Workplace Violence Prevention Policy
  - Effective **June 2, 2025**
  - Applies to all covered employers
- Workplace Violence Prevention Training Program
  - Effective **June 2, 2025**
  - Employers with at least 50 retail employees must provide workplace violence prevention training to all retail employees <u>upon hire and on an annual basis</u> thereafter.
  - Employers with fewer than 50 retail employees must provide workplace violence prevention training to all retail employees <u>upon hire and once every two years</u> thereafter.
  - The following notices must be provided at the annual or bi-annual training:
    - A notice containing the retail workplace violence prevention policy
    - A notice containing the information presented at the workplace violence prevention training program
- Retail Worker Requests for Assistance – Silent Response button
  - Effective **January 1, 2027**
  - Applies to covered employers with 500 or more retail employees **statewide**

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Takeaways

- No immediate action is required!

- Bond will provide further information about the applicability of this new legislation once guidance is published to the DOL website.

- DOL will publish a model workplace prevention policy and model workplace violence prevention training program that employers may adopt in their workplaces.

Navigating the Acceptable Use of AI in the Workplace

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What is Artificial Intelligence?

- AI simulates human intelligence by leveraging computer processing power and programing to make decisions based on large quantities of data.

- **Machine Learning:** Supervised AI models that are designed to adapt to new additions to structured data sets and user inputs. (Amazon product suggestions, Netflix content suggestions)

- **Deep Learning:** A more advanced subset of machine learning that does not rely on structured or labeled data sets. Deep learning can "read" images, unstructured text, and other forms of data that are not contained within a neat dataset. (Google photo search, generative AI)

- **Generative AI:** Deep-learning models that can generate high-quality text, images, and other content based on the data they were trained on. (ChatGPT, Google Gemini (previously known as Bard))

What is Artificial Intelligence?

Learn Patterns

The model ingests a high volume of data to identify trends, patterns and relationships.

Make Predictions

The model will extrapolate based on identified trends to predict certain conditions not contemplated in the original data set.

Perform Task

These predictions can be leveraged by human operators to perform a variety of tasks covering a wide range of industries from predicting investment portfolio performance to diagnosing cancer.

Main Drivers of the Development of AI

- **Cloud Computing:** On-demand delivery of computer resource systems, such as data storage, analytics, and networking over the internet.

- **Mobile Technology and Social Media:** Smartphones and social media have led to a substantial increase of data being available.

- **Internet of Things (IoT):** Generates the data that is used in AI models.

- **Privacy Enhancing Technologies (PETs) and Blockchain:**
  - PETs: Can support data protection and security concerns
  - Blockchain technology: Trusted interface for secured transactions

- **Computer Vision, AR/VR, and the Metaverse:** New technologies that shape the digital landscape of AI and Data Science.

Common Tools available to the public

- **ChatGPT:** End users can use the model to perform various tasks such as generate and brainstorm ideas, act as a personal assistant, explain complicated topics in layman's terms, coding, and writing assistance.

- **Elon's Gen-AI Chatbot Grok:** This model has "real-time access" to information on the social media platform, X. According to Musk, Grok is able to answer mathematical queries, among many other requests ChatGPT can perform.

- **DALL-E:** The model enables end users to create images with text to graphic prompts. For example, you can ask the model to create an image of a banana riding a unicycle.

- **Google's Gemini:** The model can help end users write blog posts, generate ideas, and answer questions with facts or opinions.

Benefits of Using AI in the Workplace

- AI can provide writing assistance through proofreading, document organization, and identifying gaps in analyses and documents.

- AI can help with research. AI can synthesize lengthy materials, provide recommendations based on research results, and explain complicated principles in layman's terms.

- AI systems can process and analyze data efficiently, with high accuracy, thus minimizing the risks of human error. Additionally, using AI improves due diligence when reviewing relevant information and potential risks in contracts, financial statements, and other documents.

Common Risks Associated with AI

- **Accuracy –** is the model producing reliable results?
- **Bias** – is the model disparately impacting an individual, protected class, or other group?
- **Transparency** – is the model capable of being audited and supervised?
- **Privacy** – is the model operating within the scope of consumer consent?
- **Security** – is the model's data protected with administrative, physical, and technical safeguards?
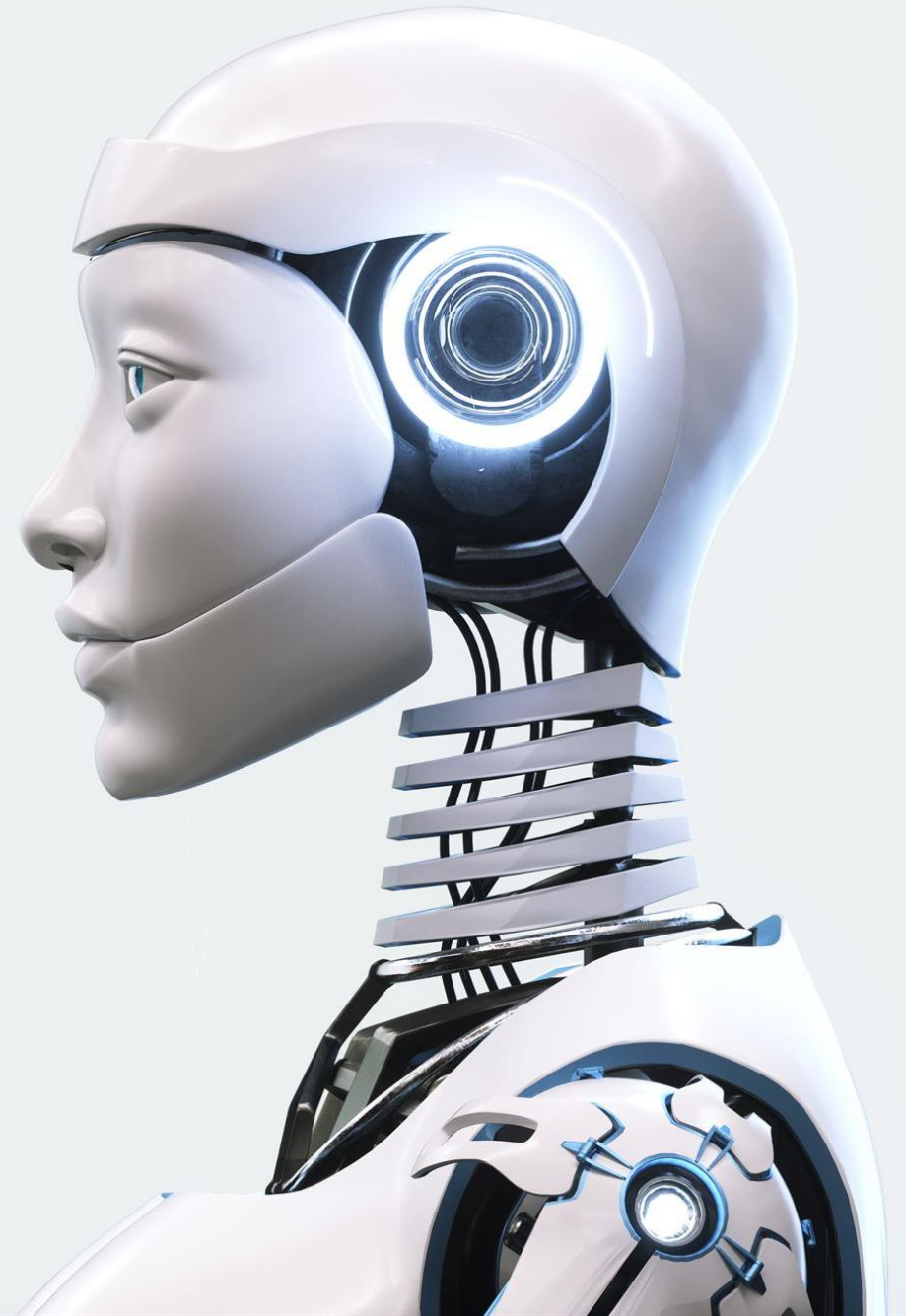
Building an AI Acceptable Use Policy

- Provide guidance on the proper use of generative AI chatbots and/or tools. The policy should caution employees about the security, data integrity, data ownership, and accuracy concerns when using AI.

- Employees should be required to seek permission from the CIO, CISO and/or General Counsel of the company prior to using and/or installing any generative AI tool.

- If permitted to use the AI tool, any passwords used to access you company's email or network should not be used to access any AI tool.

- Employees are responsible for the accuracy and ethical use of generative AI-tools. All final work product must be based on the employee's judgment and analysis.

Building an AI Acceptable Use Policy (Cont'd)

- The Policy should outline permissible and impermissible uses of generative AI tools.

- **Permitted Uses:**
  - For general knowledge questions meant to enhance your understanding of a work-related topic.
  - To brainstorm ideas related to projects on which you are working.
  - To create formulas for Excel spreadsheets or similar programs.
  - To draft an email or letter.
  - To summarize online research or to create outlines for content projects to assist in full coverage of a topic. Only content written by employees should be included in a final product.

- **Impermissible Uses:**
  - Using any unedited, unapproved, and/or unanalyzed text created by an AI chatbot in final work products of any kind.
  - Copying and pasting, typing, or in any way submitting company or client content or data of any kind into the AI chatbot.
  - Failing to properly cite an AI chatbot when used as a resource.

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Building an AI Acceptable Use Policy (Cont'd)

- To use generative AI chatbots for work purposes, all personnel – even the most senior decisionmakers must attend a training session.

- The policy should outline ethical use of AI and be clearly mapped to existing codes of conduct.

- The use of AI tools must also be in compliance with the company's other policies, client-specific requirements, and legal requirements, where applicable.

AI Tool Evaluation

- Security analysis

- Practical use analysis – Demo the products

- Align with outside counsel guidelines

- Efficiency/productivity analysis

House – Current Status and Next Steps

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House Litigation Basics

- Class = 14,500 Division I student-athletes (June 2016-November 2023)
- Plaintiffs sued for money they should have received for commercial use of their name, image and likeness (NIL)
- Anti-Trust
- Defendants – NCAA, Big Ten, Pac 12, SEC, ACC and Big 12

House Settlement Agreement

- $2.78 billion to Plaintiff class
- Compensation Model for athletes going forward (est. $20-22 million per school per year) from broadcast disbursements, other fundraising, etc.
- Scholarships are in addition to the annual cap amount.
- Third-party NIL compensation not included in compensation cap
  - NIL compensation must be for legitimate business purposes and fair market value
  - NIL clearinghouse to help enforce provisions

House Settlement – What it does not address!

- Employment Status of Student-Athletes
  - *Dartmouth/NLRB* – private institutions
  - *Johnson v. NCAA* – <u>all</u> student-athletes are employees?
  - *USC/NLRB* – seeks to establish employee status for football, men's and women's basketball
- Prize Money/Amateurism
  - *Brantmeier*
- *Fontenot v. NCAA* – other anti-trust cases against the NCAA!
- Application of Title IX to NIL payments under the settlement

September 5, 2024 – *House* Settlement Hearing

- Judge Wilken <u>declines</u> to grant preliminary approval.
- Concerned with:
  - Impact on NIL opportunities and NIL market
  - Effect on future athletes not yet part of the class
  - Effect on Collectives and requirement for "valid business purpose"
    - Seeks to eliminate payments for recruiting purposes
- Gave parties 3 weeks to figure it out – next hearing is September 26, 2024

Amendment to Section 87 of the Public Officers Law

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What is FOIL?

- **FOIL is a New York State law that gives the public a right to access government <u>records</u> to promote transparency and accountability within government.**
- FOIL requires governmental agencies to:
  - Enact rules and regulations governing the availability of records;
  - To maintain certain records; and
  - <u>To make all records available for public inspection and copying except those specifically defined in statutory exceptions.</u>
- FOIL can be found in the New York Public Officers Law Sections 84-90.

Policy and Rules

- What is a "record"?
  - Any information "kept, held, filed produced, or reproduced by, with or for an agency or the state legislature, in any physical form whatsoever."
    - **Includes Employee Personnel Files and Disciplinary Records**
- Public Employers must have written rules and regulations pertaining to the availability of records, including but not limited to:
  - The times and places records are available;
  - The persons from whom records may be obtained (e.g., the Records Access Officer); and
  - Fees for copies of records

Amendment to Section 87 of the Public Officers Law

- Signed by Gov. Hochul on September 4, 2024
  - Effective immediately—meaning that Public Employers must comply when in receipt of a FOIL request for disciplinary records **now.**
- Public Employers now have an affirmative obligation to notify an employee whose disciplinary records have been requested as part of a FOIL request.
  - "All agencies subject to the requirements of [the Public Officers Law] shall **develop a policy** regarding providing notification to public employees in the event that the agency is responding to a request for such employee's disciplinary records."

Amendment to Section 87 of the Public Officers Law

- Requires that Public Employers develop a policy which creates a notification procedure for when an employee's disciplinary records are requested through FOIL
  - Some aspects of the policy may be subject to bargaining if you have employees represented by a Union.
    - *i.e.,* amount of notice required after receipt of FOIL request
      - *How many days?*
    - Typically, records must be produced in response to a FOIL request within 20 days.
      - Public Employers need to consider what is an appropriate time frame for notification to the relevant employee while also being able to produce the requested records within the 20 day window.

Forever Chemicals Overview

- Per- and polyfluoroalkyl substances (PFAS)
- Thousands of different PFAS compounds
- Widely used in consumer, commercial and industrial products
- "Forever Chemicals" because they break down very slowly over time

PRODUCTS THAT CONTAIN PFAS

Pesticides · Stain Resistant Products · Firefighting Foams · Microwave Popcorn Bags · Eye Makeup · Pizza Boxes · Paints, Sealants and Varnishes · Cleaning Products · Nail Polish · Dental Floss · Non-stick Cookware · Water Resistant Clothing · Shampoo · Candy Wrappers · Fast Food Packaging/Wrappers

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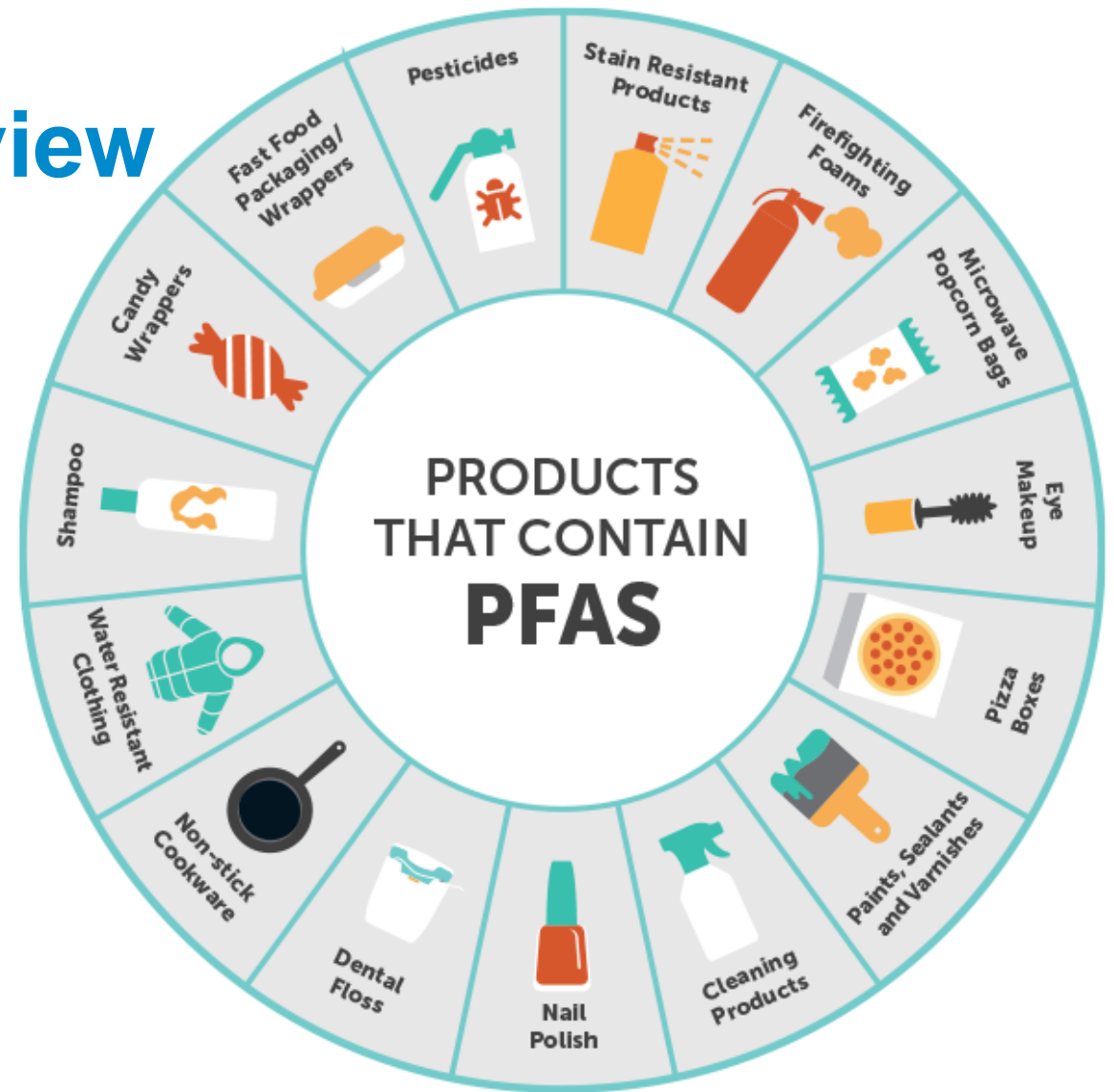
Federal Requirements

Compound	MCLG (Goal)	MCL (enforceable)	CERCLA
PFOA	Zero	4.0 ppt	Hazardous substance
PFOS	Zero	4.0 ppt	Hazardous substance
PFHxS	10 ppt	10 ppt	No Designation
PFNA	10 ppt	10 ppt	No Designation
Gen X Chemicals	10 ppt	10 ppt	No Designation
Mixtures containing two or more of PFHxS, PFNA, HFPO-DA, and PFBS	1 (unitless)	1 (unitless)	No Designation

State Requirements – Soil Cleanup

Guidance Values for Anticipated Site Use	PFOA (ppm)	PFOS (ppm)
Unrestricted	0.00066	0.00088
Residential	0.0066	0.0088
Restricted-Residential	0.033	0.044
Commercial	0.5	0.44
Industrial	0.6	0.44
Protection of Groundwater	0.0008	0.002
Protection of Ecological Resources	0.57	0.0087

Looking Forward

- Additional Regulations
  - Clean Air Act Petition Sent to EPA
- Expanded Monitoring Requirements
- Inclusion of PFAS in Permitting
- Additional Litigation
- Replacement Products in the Supply Chain

- **BE PROACTIVE!!**

Questions?

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Recent Per- and Polyfluoroalkyl Substances (PFAS) Developments
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Sexual Harassment Prevention Training

To combat harassment in the workplace, every New York State employer must provide harassment prevention training for all employees annually.

For more information on Bond's online sexual harassment training click here or email bondonline@bsk.com

New York Employment Law: The Essential Guide

Purchase through Amazon **here**.

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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.

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