



2025

BUSINESS IN 2024

WEEKLY WEBINAR SERIES



BOND SCHOENECK
& KING ATTORNEYS

Your Host



Kristen E. Smith

Member

ksmith@bsk.com

Syracuse, NY

The Pregnant Worker:

What to Expect When an Employee is Expecting

Labor and Employment Law Fall 2024 Breakfast Briefing

Albany • October 31

Binghamton • September 17

Buffalo • October 3

Corning • September 26

Ithaca • September 24

Melville • October 1

New York City • September 25

Rochester • September 19

Saratoga Springs • October 23

Syracuse • October 10

Utica • October 15

Watertown • October 24

Westchester • October 10

Learn more at bsk.com/events



BOND SCHOENECK
& KING ATTORNEYS



TODAY'S AGENDA

Kristen Smith – (12:00PM-12:05PM)

- Introduction

Hannah Redmond– (12:05PM-12:15PM)

- Freelance Isn't Free Act (FIFA)

Colin Leonard– (12:15 PM-12:25PM)

- Political Speech in the Workplace, Part 2: Considerations for Public & Non-Profit Workplaces

Suba Viswanathan– (12:25PM-12:35PM)

- Recordkeeping Obligations Under the FLSA and New York Labor Law

Nicholas Jacobson– (12:35PM-12:45PM)

- September 2024 Litigation Update

Freelance Isn't Free Act (FIFA)



Hannah K. Redmond

Associate

hredmond@bsk.com

Syracuse, NY

Freelance Isn't Free Act

- Article 44-A of the General Business Law
 - Effective **August 28, 2024**
- Statewide legislation
- Modeled after NYC's similar law
- Intended to provide recourse to freelance workers experiencing wage theft and help ensure they receive timely payment for services performed

Coverage

- Freelance Worker – “any natural person or organization composed of no more than one natural person, . . . that is hired or retained as an independent contractor by a hiring party to provide services in exchange for an amount equal to or greater than eight hundred dollars, either by itself or when aggregated with all contracts for services between the same hiring party and freelance worker during the immediately preceding one hundred twenty days.”
 - Excludes attorneys, licensed medical professionals, construction contractors, and certain sales representatives (as defined by NYLL 191-a)
- Hiring Party – “any person who retains a freelance worker to provide any service,” except local, state, and federal governments

Written Contract

- Requires a written contract between the hiring party and freelance worker
- Contracts must include:
 - parties' names and mailing addresses
 - an itemization of all services to be provided by the freelance worker, the value of services, and the rate and method of compensation;
 - the date when payment is due or the mechanism by which the due date for payment will be determined; and
 - the date by which the freelance worker must provide a list of services rendered under the contract in order to ensure timely payment.
- DOL Model Contract: <https://dol.ny.gov/system/files/documents/2024/08/freelance-worker-agreement.pdf>

Written Contract

- Rights provided under the Act may not be waived by contract
- The hiring party must provide a copy of the written contract to the freelance worker
- Both parties must retain a copy
 - 6-year retention period for hiring parties
- Upon request, contracts must be made available to the Attorney General

Timely Payment

- Requires timely payment:
 - Payment on or before the date payment is due under the terms of the contract

OR

- Within 30 days of completion of the freelance worker's services, if the contract does not state a due date

Discrimination & Retaliation Prohibited

- The Act prohibits discrimination and retaliation against freelance workers who exercise or attempt to exercise their rights under the Act

Enforcement

- The Attorney General is authorized to:
 - investigate alleged violations of the Act
 - provide appropriate remedies
 - bring actions on behalf of the State to enjoin a hiring party from violating the Act
 - obtain restitution for affected freelance workers

Penalties

- In a civil action brought by the Attorney General, civil penalties may be assessed against a hiring party
 - \$1,000 – first violation
 - \$2,000 – second violation
 - \$3,000 – third or subsequent violation

 - Up to \$25,000 where there is evidence of a pattern of practice of violations
- Damages available to a plaintiff depend on the nature of their claim
 - Include damages, injunctive relief, civil penalties, attorneys' fees, costs

Private Right of Action

- The Act creates a private right of action
- Statute of limitations depends on nature of alleged violation:

Violation	Statute of Limitations
Written contract requirement	2 years
Timely payment requirement	6 years
Anti-discrimination/Anti-retaliation provisions	6 years

Takeaways

- Review processes for engaging freelance workers and independent contractors
- Familiarize yourself with the written contract and timely payment requirements and begin taking steps to comply

Political Speech in the Workplace, Part 2: Considerations for Public & Non-Profit Workplaces



Colin M. Leonard

Member

cleonard@bsk.com

Syracuse, NY

Political Speech – Public Sector

- Public Employer – dual roles
 - Employer
 - Government regulator

Political Speech – Public Sector

- Public Employee – dual roles
 - Employee
 - Citizen

Political Speech – Public Sector

- *Pickering v. Board of Education*, 391 U.S. 563 (1968) & *Connick v. Myers*, 461 U.S. 138 (1983)
 - **Rule:** First Amendment protects public employees from retaliation where their speech relates to a matter of **public concern** and the public interest in protecting the speech **outweighs** the government's interest in operating effectively and efficiently

Political Speech – Public Sector

- *Garcetti v. Ceballos*, 547 U.S. 410 (2006)
 - Speech made pursuant to an employee’s official duties – not protected
 - Speech relating to a matter of “political, social or other concern to the community” – may be protected

Political Speech – Public Sector

- New York Labor Law § 201-d
 - Prohibits employers from discriminating against employees for “off-duty” legal political activities and recreational activities (See New York Labor Law § 201-d(2)(a), (c))
- “Political activities”
 - (i) running for public office,
 - (ii) campaigning for a candidate for public office, or
 - (iii) participating in fund-raising activities for the benefit of a candidate, political party or political advocacy group
- “Recreational activities”
 - Any lawful, leisure-time activity, for which the employee receives no compensation and which is generally engaged in for recreational purposes, including but not limited to sports, games, hobbies, exercise, reading and the viewing of television, movies and similar material

Political Speech – Public Sector

- New York Labor Law § 201-d
 - Protects an employee from discrimination/retaliation due to “membership in a union” or exercise of any rights protected under the Taylor Law

Political Speech – Public Sector

- New York Labor Law § 201-d – **2023 Amendment**
 - Prohibits discrimination/retaliation against an employee due to:
 - “an individual’s refusal to (i) attend an employer-sponsored meeting with the employer or its agent, representative or designee, the primary purpose of which is to communicate the employer’s opinion concerning religious or **political matters**; or (ii) listen to speech or view communications, the primary purpose of which is to communicate the employer’s opinion concerning religious or **political matters.**”
 - “**political matters**” – shall mean matters relating to elections for political office, political parties, legislation, regulation and the decision to join or support any political party or political, civic, community, fraternal or labor organization.”

Political Speech: Nonprofits & Lobbying

- Federal, New York State and New York City laws regulate lobbying activities by nonprofits
- In New York, nonprofits must register and disclose lobbying activities that exceed \$5,000.

Political Speech: Nonprofits & Lobbying

- What is lobbying?
 - In NYS, lobbying is defined as an attempt to influence:
 - Legislation (including the introduction of legislation);
 - Agency rules, regulations, actions that have the force of law, procurement and ratemaking
 - Approval or veto of any legislation by the governor
 - Executive orders

Political Speech: Nonprofits & Lobbying

- Nonprofit Policy
 - Provide for restrictions on lobbying/speech activities by employees
 - Require disclosure that individual is speaking in his/her personal capacity and not on behalf of the nonprofit employer

Recordkeeping Obligations Under the FLSA and New York Labor Law



Suba Viswanathan

Member

suba@bsk.com

Syracuse, NY

Fair Labor Standards Act

- Non-Exempt and Exempt Employees
 - Full name
 - Home address
 - Date of birth, if under 19
 - Sex and occupation
 - Time of day and day of week on which the workweek begins
 - Total wages paid each pay period
 - Date of payment and the pay period covered by the payment

Fair Labor Standards Act

- Non-Exempt Employees Only
 - Regular hourly pay rate for any workweek in which overtime compensation is due
 - Basis on which wages are paid (e.g., hourly, weekly, piecework)
 - Hours worked each workday and total hours worked each workweek
 - Total straight-time earnings
 - Total premium pay for overtime hours

Fair Labor Standards Act

- Tipped Employees With Tip Credit Taken
 - A notation on pay records identifying each employee whose wage is determined in part by tips
 - Weekly or monthly amount reported by the employee to the employer of tips received
 - Amount per hour taken as a tip credit
 - Hours worked each workday in any occupation in which the employee does not receive tips, and total straight-time payment for those hours
 - Hours worked each workday in occupations in which the employee receives tips, and total straight-time earnings for such hours

Fair Labor Standards Act

- Tip-Pooling or Tip-Sharing Arrangements (Even if No Tip Credit is Taken)
 - A notation on pay records identifying each employee who receives tips
 - Weekly or monthly amount reported by the employee to the employer of tips received

New York Labor Law

- Acknowledgment of Wage Theft Prevention Act Forms
- Payroll Records
 - Hours worked
 - Rate or rates of pay
 - Basis of payment (i.e., hourly, weekly, piecework)
 - Deductions
 - Allowances claimed as part of the minimum wage
 - Amount of sick leave provided
 - Prevailing wage supplements (if applicable)
 - Net wages

New York Labor Law

- Payroll Records (Additional Requirements for Non-Exempt Employees)
 - Regular hourly rate or rates of pay
 - Overtime rate or rates of pay
 - Number of regular hours worked
 - Number of overtime hours worked

Time Period for Retention

- Federal Law
 - Payroll records – three years
 - Hours worked records – two years
- New York Law
 - All records must be retained for six years

Form of Records

- No prescribed format
- Electronic records are sufficient
 - Should be in a form that can either be produced electronically, by converting to pdf format, or by printing out
- Don't rely exclusively on third-party payroll providers to comply with recordkeeping requirements

Meal Period Recordkeeping

- Recordkeeping Issues
 - Clock-Out/Clock-In
 - E-mails or other electronic records showing start/end times of meal periods
 - Written acknowledgments on time sheets – daily or weekly
 - Automatic meal period deductions
 - Written policy
 - Training for employees
 - Procedure for overriding the meal period deduction

Consequences of Failure to Retain Required Records

- Failure to Provide WTPA Notice
 - \$50 per day up to \$5,000 per employee, plus costs and attorneys' fees
 - Affirmative defense available – employer made complete and timely payment of all wages due
- Civil Penalties
 - Up to \$1,000 for first offense
 - Up to \$2,000 for second offense
 - Up to \$3,000 for third offense
- Most Serious Consequence
 - Adverse Inference/Shifting of Burden of Proof

September 2024 Litigation Update



Nicholas P. Jacobson

Member

njacobson@bsk.com

Rochester, NY

New York's Concealed Carry Improvement Act

- In *New York State Rifle & Pistol Association, Inc. v. Bruen*, the Supreme Court invalidated New York's requirement that individuals demonstrate "proper cause" to obtain a permit to conceal and carry a firearm outside their home or business
- On July 1, 2022, Gov. Hochul signed the CCIA, which prohibits individuals from carrying firearms in "sensitive locations" and "restricted areas"

Concealed Carry Improvement Act, cont.

- “Sensitive locations” include:
 - Government buildings, healthcare facilities, religious institutions, casinos, libraries, public parks, schools, or colleges, and on public transportation and anywhere licensed to serve alcohol or cannabis
- “Restricted areas” are defined as:
 - Private property where the owner has not posted clear and conspicuous signage indicating that the possession of firearms is permitted

Antonyuk v. Hocol, 639 F.Supp.232 (N.D.N.Y 2022)

- CCIA immediately challenged in federal court on constitutional grounds
- District Court granted a temporary restraining order substantially limiting enforcement of the CCIA
 - Enjoined enforcement of restrictions on possession of firearms in many sensitive locations: (1) places or vehicles used for public transportation; (2) places of entertainment, amusement, or where alcohol is served; (3) Times Square; and (4) other sensitive locations
 - Allowed enforcement with respect to (1) government buildings; (2) places of worship or religious observance (except those charged with keeping the peace); (3) schools, colleges, educational facilities (except summer camps); and (4) gatherings of individuals to express right to protest or assemble
 - Also enjoined enforcement of prohibition of firearms in “restricted areas”

***Antonyuk v. Chiumento*, 89 F.4th 271 (2d Cir. 2023)**

- Reversed District Court's decision and allowed enforcement of prohibitions on firearm possession in healthcare and drug treatment centers, parks and zoos, bars, and theaters and conference centers
- Affirmed District Court injunction on enforcement of prohibition of firearms in places of worship and restricted areas

United States v. Rahimi, 144 S.Ct. 1889 (June 21, 2024)

- Man subject to order of protection was convicted for violation of law prohibiting possession of firearms by individuals subject to domestic violence protective orders
- 5th Circuit, applying *Bruen*, found that law was not constitutional because the restriction was not consistent with other historical restrictions on firearm possession
- Supreme Court overruled 8-1
 - Held that courts must decide “whether the new law is ‘relevantly similar’ to laws that our tradition is understood to permit, applying faithfully the balance struck by the founding generation to modern circumstances”
 - Law at issue was constitutional because it was consistent with historical restrictions preventing misuse of firearms

Antonyuk Remanded to Second Circuit

- In light of its decision in *Rahimi*, SCOTUS vacated and remanded *Antonyuk* and Second Circuit will have to reconsider its decision
- Does not appear to have vacated Second Circuit stay of portions of District Court decision
 - NYAG James – “The law is still in effect, including the sensitive locations provision, and will be re-litigated in the Second Circuit.”

Takeaways:

- Restricted areas – enforcement of restriction still enjoined
 - Property owners should consider posting signs if they wish to communicate to individuals that firearm possession is prohibited on the property
- Enforcement of prohibition still in effect with respect to many “sensitive locations,” however enforcement enjoined with respect to places of worship for individuals charged with protecting peace
- Significant uncertainty as to final outcome
 - Only certainty is that there will be more changes

Questions?



Kristen E. Smith

Member

ksmith@bsk.com

Syracuse, NY

Freelance Isn't Free Act (FIFA)

Hannah Redmond, hredmond@bsk.com

Political Speech in the Workplace, Part 2: Considerations for Public & Non-Profit Workplaces

Colin Leonard, cleonard@bsk.com

Recordkeeping Obligations Under the FLSA and New York Labor Law

Suba Viswanathan, suba@bsk.com

September 2024 Litigation Update

Nick Jacobson, njacobson@bsk.com

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](#).

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.