

A hand in a dark suit jacket is shown from the wrist up, pointing upwards with the index finger. Overlaid on the hand are the years 2021, 2022, 2023, 2024, and 2025 in a white, sans-serif font. The year 2024 is the largest and most prominent, with a bright lens flare effect on the number 4. The background is a blurred outdoor scene with greenery and a building.

BUSINESS IN 2024

WEEKLY WEBINAR SERIES

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Your Host



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TODAY'S AGENDA

Gabe Oberfield – (12:00PM-12:05PM)

- Agenda

Michael Collins – (12:05PM-12:15PM)

- Updated Whistleblower Standards Affect the Workplace

Nick Jacobson – (12:15PM-12:25PM)

- Updates on New and Impactful Litigation

Mara Afzali – (12:25PM-12:35PM)

- New Standards for Notaries – What's Important to Know

Devin Karas – (12:35PM-12:45PM)

- What's New in ERISA

G. Oberfield – (12:45PM)

- Questions / Wrap Up

Updated Whistleblower Standards Affect the Workplace



Michael Collins

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Updates on New and Impactful Litigation



Nick Jacobson

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Su v. Bevins & Sons, Inc., 2024 WL 2059333 (D. Vt. May 7, 2024)

- Employee had dispute with owner over payment of overtime hours and threatened to make a complaint to the labor board
- Owner fired him and employee made a complaint as threatened
- After an investigation, the employer paid roughly \$20,000 in back wages to employees and an additional \$25,000 to the employee who made the complaint for unlawful discharge
- The DOL issued a press release covering the unpaid wages and unlawful termination which was reported on the news

Su, cont.

- After seeing the news story, the owner posted on social media, stating, in part: “All we are going to say is please google the disgruntled employee whom was fired and contributed to the story Riley Bockus (his word and character will be seen).”
 - A commenter then posted a screenshot of a Google search indicating that the former employee engaged in criminal activity
- The DOL then brought an action on behalf of the former employee for retaliation based on the post
- The employer moved to dismiss under the First Amendment

Su, Cont.

- Court held that “employer statements designed to punish or otherwise unlawfully influence employees are generally not subject to First Amendment Protection”
- It further noted that post-employment retaliation can be found under “relatively narrow” circumstances, including post-employment disparagement
- The DOL accordingly stated a claim because the owner’s post-employment disparagement of the former employee, while true, could reasonably dissuade an employee from making or supporting a similar complaint

Su, Cont.

- Takeaways:
 - Just because something is true, and therefore not libelous or slanderous, does not mean it isn't actionable
 - Actions of employees could be imputed to the employer
 - Employers have the potential to be sued for retaliation based on actions that occur after employment was terminated
 - Does not have to be as serious as the post in *Su*:
 - *Oram v. SoulCycle, LLC* – “Defendant’s refusal to allow Plaintiff and his counsel on SoulCycle premises” could constitute an adverse retaliatory action

***Chanicka v. JetBlue Airways Corporation*, 243 F.Supp.3d 356 (E.D.N.Y. 2017)**

- Employee was granted intermittent FMLA leave to care for her mother and son
- Employer hired third-party to administer its FMLA leave program
- Third-party administrator implemented new call-in process that required employees utilizing intermittent FMLA to call the administrator in addition to calling their manager
- Employee was disciplined for failing to follow the new procedure
- After being disciplined, she correctly followed the procedure, but the third-party administrator made several mistakes documenting her absences

Chanicka, cont.

- Employee was terminated for FMLA abuse
- She sued: (1) her employer for FMLA violations; and (2) the third-party administrator for tortious interference with business relations
- The third-party administrator moved to dismiss the claim against it, and got out successfully
- The employer settled for an undisclosed amount

Chanicka, cont.

- Lessons to take away:
 - Employers are only protected from liquidated damages where they **reasonably rely** in good faith on decisions made by the third-party administrator
 - If the third-party administrator makes a mistake, the employer is still on the hook for:
 - Any wages, salary, employment benefits, or other compensation denied or lost;
 - In a case in which wages, salary, employment benefits, or other compensation have not been denied or lost to the employee, any actual monetary losses sustained by the employee; and
 - Reasonable attorney's fee, reasonable expert witness fees, and other costs of the action.
 - Plus – potential for equitable relief including employment, reinstatement, and promotion

New Standards for Notaries – What's Important to Know



Mara Afzali

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Changes to Notary Requirements for Affidavits and Sworn Documents in Civil Cases

- Effective January 1, 2024
- Permits any person in a civil action to submit an affirmation in lieu of a notarized affidavit
- NY joins over 20 other states that have eliminated similar notary requirements

Old Rule - CPLR 2106

Effective: October 25, 2023

McKinney's CPLR Rule 2106

Rule 2106. Affirmation of truth of statement

Currentness

<[As amended by L.2023, c. 585, § 1. See, also, Rule 2106 as amended by another act.]>

(a) The statement of an attorney admitted to practice in the courts of the state, or of a health care practitioner licensed, certified, or authorized under title eight of the education law to practice in the state, who is not a party to an action, when subscribed and affirmed by him or her to be true under the penalties of perjury, may be served or filed in the action in lieu of and with the same force and effect as an affidavit.

(b) The statement of any person, when that person is physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States, subscribed and affirmed by that person to be true under the penalties of perjury, may be used in an action in lieu of and with the same force and effect as an affidavit. Such affirmation shall be in substantially the following form:

I affirm this ___ day of _____, ____, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

(Signature)

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New Rule – CPLR 2106 (Amended)

Effective: January 1, 2024

McKinney's CPLR Rule 2106

Rule 2106. Affirmation of truth of statement

Currentness

<[As amended by L.2023, c. 559, § 1. See, also, Rule 2106 as amended by another act.]>

The statement of any person wherever made, subscribed and affirmed by that person to be true under the penalties of perjury, may be used in an action in New York in lieu of and with the same force and effect as an affidavit. Such affirmation shall be in substantially the following form:

I affirm this ___ day of _____, _____, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

(Signature)

Take Aways

- Does not eliminate the need for notary in all contexts
 - Only applies in NY Courts
 - Lack of clarity with respect to application
 - Other procedural rules
 - Other types of documents
- When in doubt, notarize!

What's New in ERISA



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Your Questions



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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

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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