

A hand in a dark suit jacket is shown from the wrist up, pointing upwards with the index finger. The years 2021, 2022, 2023, 2024, and 2025 are overlaid on the hand, with 2024 being the largest and most prominent. The background is a blurred outdoor scene with greenery.

BUSINESS IN 2024

WEEKLY WEBINAR SERIES



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TODAY'S AGENDA

Gabe Oberfield – (12:00PM-12:05PM)

- Agenda

Camisha Parkins – (12:05PM-12:15PM)

- Governor Hochul Signs Violence Prevention Bill into Law

Kristy Weglarz – (12:15PM-12:25PM)

- The Corporate Transparency Act: Deadline Approaching for Entities Formed Prior to 2024

Sam Knice – (12:25PM-12:35PM)

- Court Indicates There Is No Standing for Technical Violations for Failure to Provide Wage Notices and Wage State

Alyssa Christian – (12:35PM-12:45PM)

- Federal Trade Commission Announces Final Rule Banning Fake Reviews and Testimonials

G. Oberfield – (12:45PM)

- Questions / Wrap Up

Governor Hochul Signs Violence Prevention Bill into Law



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The Corporate Transparency Act: Deadline Approaching for Entities Formed Prior to 2024



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Corporate Transparency Act

Purpose: To prevent individuals from using shell companies to hide illegal activities including money laundering, the financing of terrorism, human and drug trafficking and securities fraud.

Reporting Requirements: Companies must submit a Beneficial Ownership Information Report to the Financial Crimes Enforcement Network (FinCEN).

- Formed before January 1, 2024, have until **January 1, 2025**
- Formed in 2024, have **90 calendar days** from formation
- Formed on or after January 1, 2025, will have **30 calendar days** from formation

What to Report

Reporting Company: Company name, principal place of business address, EIN, trade names (if any), state of formation.

Beneficial Owners: Any individual who, directly or indirectly:

- (i) has “substantial control” over the reporting company; or
- (ii) owns or controls 25% or more of the ownership interests of the reporting company.

Beneficial Owners must report: legal name, date of birth, residential address, personal identifying number and image of a passport or driver’s license.

**An individual may use a FinCen ID.*

Company Applicant

Applicable to reporting companies formed in **2024 or after**.

The Company Applicant can be **up to two** individuals for each reporting company:

1. the person who physically files the formation document and
2. the person who oversees or directs the filing process.

E.g., An attorney oversaw and instructed her paralegal to file an LLC's formation documents with the Secretary of State for a client. Both the attorney and the paralegal are company applicants in this case.

23 Exemptions

- | | | |
|---|--|--|
| <ol style="list-style-type: none">1. Securities Reporting Issuer2. Governmental Authority3. Bank4. Credit Union5. Depository Institution Holding Company6. Money Services Business7. Broker or Dealer in Securities8. Securities Exchange or Clearing Agency9. Other Exchange Act Registered Entities | <ol style="list-style-type: none">10. Investment Company or Investment Adviser11. Venture Capital Fund Adviser12. Insurance Company13. State-Licensed Insurance Producer14. Commodity Exchange Act Registered Entity15. Accounting Firm16. Public Utility17. Financial Market Utility | <ol style="list-style-type: none">18. Pooled Investment Vehicle19. Tax-Exempt Entity20. Entity Assisting a Tax-Exempt Entity21. Large Operating Company22. Subsidiary (owned by certain exempt entities)23. Inactive Entity (inactive for a specified period) |
|---|--|--|

**Specific qualifying criteria apply to each exemption.*

Preparing for January 1, 2025

For non-exempt entities formed prior to 2024, BOI reports must be filed **no later than January 1, 2025**.

Starting January 1, 2025, BOI reports for entities formed in 2025 and on must be filed **within 30 calendar days** of formation.

Court Indicates There Is No Standing for Technical Violations for Failure to Provide Wage Notices and Wage State



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NYS Wage Theft Protection Act (the “Wage Act”)

- The Wage Act, which took effect on April 9, 2011, amended NY Labor Law Section 195, requiring employers to give written “wage notices” to each new hire.
 - The notice shall include pay rates; how the employee is paid; regular payday; official name of the employer; address & phone number of employer’s main office; etc.
- The Wage Act also requires employers to provide employees with “wage statements” each payday.
 - The wage statement shall include a listing of gross and net wages and deductions; the dates of work covered by the wage payment; and so on.

Damages

- Failure to comply with the Wage Act can lead to hefty civil claims and fines that can add up quickly.
- Specifically, Section 198 of the NY Labor Law states that employers who do not provide their employees with a wage notice within 10 business days of their start date face damages of up to \$50 for each workday that the violation occurred, up to a maximum of \$5,000 per employee. Likewise, an employee who does not receive compliant wage statements with each payment of wages may recover up to \$250 for each day that the violation occurred or continued to occur, also capped at \$5,000 per employee.
- Therefore, mere technical violations of the Wage Act could lead to damages of up to \$10,000 per employee — and that is not including costs and reasonable attorneys' fees that could also potentially be recovered.

String of 2022 Decisions

- Judge Pamela Chen of the United States District Court of the Eastern District of New York issued three decisions on consecutive days in March 2022 that make it more challenging for plaintiffs to recover damages for technical violations of the law.
- These decisions bode well for employers.

Francisco v. NY Tex Care, Inc., 2022 WL 900603 **(E.D.N.Y. Mar. 28, 2022)**

- Plaintiff brought a putative class action against Defendants, alleging they failed to provide employees with wage and hour notices upon hire or when they received raises, and that wage statements for each pay period did not include Defendants' phone number, deductions, or gross wages, as is legally required.
- “While those may be technical violations of the NYLL, neither Plaintiff nor the record demonstrate how those technical violations led to either a tangible injury or something akin to a traditional cause of action, and the Supreme Court has made clear that a statutory violation alone, without a tangible injury or close parallel to a traditional cause of action, does not constitute an injury that can be recognized by the federal courts.” (Citing *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2205 (2021)).
- Therefore, Plaintiff lacked standing to bring these claims.

Wang v. XBB, Inc., 2022 WL 912592 (E.D.N.Y. Mar. 29, 2022)

- Plaintiff alleged, among other things, that Defendants failed to provide her with required wage notices under the NYLL.
- Although the evidence established by a preponderance that Defendants failed to provide Plaintiff with these required notices, Plaintiff lacked standing to recover on those claims because “based on the record before the Court, it is not clear that [failure to provide Plaintiff with notices] led to an ‘injury’ that can be recognized by a federal court.”
 - Plaintiff has not linked any injury-in fact to this failure to provide statutory notices, and, therefore, lacks standing on this claim.
- “Technical statutory violations that do not lead ‘to either a tangible injury or something akin to a traditional cause of action,’ cannot confer Article III standing in federal court.” (Citing *TransUnion*).

Sevilla v. House of Salads One LLC, 2022 WL 954740 **(E.D.N.Y. Mar. 30, 2022)**

- A group of employees brought claims on behalf of a putative class alleging that their employer failed to provide the required wage notice and wage statements. They sought the maximum damages allowable by law.
- Although this was true, Judge Chen again held that these employees could not maintain these claims, as they lacked Article III standing.

Guthrie v. Rainbow Fencing Inc., 2023 WL 2206568 (E.D.N.Y. Feb. 24, 2023)

- Plaintiff again alleged that Defendants failed to provide wage notices or wage statements.
- The Supreme Court has construed Article III standing to require that plaintiffs must allege facts showing that they “have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.”
 - An injury in fact, sufficient to confer standing is “an invasion of a legally protected interest” that is “concrete and particularized” and “actual or imminent, not conjectural or hypothetical.”
- Plaintiff argued that he had standing because there is an “informational inquiry” that can establish concrete harm.
 - Plaintiff's objections describe various circumstances in which the lack of wage notices and wage statements can lead to injuries to an employee, such as an employee's ability to seek relief for violations they may not have information about, or an employee's lack of proper documentation to apply for public benefits.
- The Court agreed that these were *possible injuries* an employee could face, but Plaintiff himself did not link any injury-in-fact that he personally experienced to Defendants’ failure to provide statutory notices. Plaintiff, therefore, lacked Article III standing to assert this claim.

Significance of These Decisions

- In light of Judge Chen’s rulings, it becomes clear that potential plaintiffs in New York should bring Wage Act claims in **state court** on an **individual** basis.
- **However**, the Second Circuit did not entirely close the door on hearing Wage Act cases. It did not rule that Wage Act claims could never be brought in federal court—there is a way that such a case could satisfy the standing requirement and, therefore, be heard in federal court.
 - See, e.g., *Marine v. Vieja Quisqueya Restaurant Corp.*, 2022 WL 17820084 (E.D.N.Y. Sept 8, 2022).

Federal Trade Commission Announces Final Rule Banning Fake Reviews and Testimonials



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Trade Regulation Rule on the Use of Consumer Reviews and Testimonials

- 16 CFR Part 465
- Takes effect October 21, 2024
- Defines, with specificity, acts or practices in or affecting commerce that are unfair or deceptive within the meaning of the FTC Act, 15 U.S.C. 45(a)(1), which declares unfair and deceptive practices to be unlawful.

The Problem of Fake Reviews

- Consumer reliance on reviews and social media is growing.
- With this, the misuse of reviews is also growing.
- This Rule is supported by the big players.
 - Google has reported to have removed over 115 million policy violating reviews, many before they were even posted.
 - Similarly, TripAdvisor's Transparency Report indicated that 1.3 million reviews were removed for being false or misleading.
- Now, the FTC has some teeth to combat this as well.

Unlawful Practices Covered

1. Fake reviews
2. The practice of buying and giving incentives for reviews *conditioned on the sentiment of the review*
3. Reviews by company insiders or relatives
4. The creation of separate company-controlled websites that appear independent to review one's own product or negatively review a competitor's products or services
5. The improper display of reviews or the suppression of negative reviews
6. Sale and misuse of false indicators of social media influence for commercial purposes

Questions?



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The Pregnant Worker:

What to Expect When an Employee is Expecting

Labor and Employment Law Fall 2024 Breakfast Briefing

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Binghamton • September 17

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Corning • September 26

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Melville • October 1

New York City • September 25

Rochester • September 19

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Syracuse • October 10

Utica • October 15

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Westchester • October 10

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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](#).

Thank You

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It is not to be considered as legal advice.
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