



# This Week in New York

Covering New York State and City Government

A Publication of Pitta Bishop & Del Giorno LLC

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## *In the News – New York State*



### **NYS Department of Labor Issues Guidance on US Supreme Court Janus Decision**

***Guidance Outlines Rights of Public Sector Employers and Employees Regarding Collective Bargaining and Union Membership in Wake of Supreme Court Decision***

Governor Andrew M. Cuomo this week directed the New York State Department of Labor to issue [guidance](#) on the recent *Janus* decision. On June 27, 2018, the Supreme Court of the United States issued a decision in *Janus v. AFSCME Council 31* that overturned decades of established law related to a public sector union's right to collect agency fees from non-union members.

According to the Governor, New York employees and employers alike have had many questions about what has actually changed in the wake of the decision. The guidance clarifies that the decision did not change or affect many of the rights of employees and obligations of employers.

The guidance explains that the only change under *Janus* is that public employers may not deduct agency fees from a nonmember's wages, nor may a union otherwise collect agency fees from a nonmember, without the nonmember employee's affirmative consent. All other rights and obligations of public sector employers and employees under state law remain unchanged.

For example, according to the Governor, unions have, in the past, presented dues deduction cards, or other similar evidence of union membership such as membership lists, to public employers and those employers previously collected union dues from its employees on that basis. The decision in *Janus* does not require a union to obtain new dues deduction cards or obtain other evidence of union membership or remove a public employer's obligation to collect dues from members of a union. Public employee unions are not required to produce dues authorizations cards for members from whom the employer has previously deducted dues.

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"The Supreme Court's Janus decision is a direct attack on organized labor, and as long as I am Governor of New York, we will do everything in our power to protect union members and support the labor movement," Governor Cuomo said. "This guidance will inform employers of their obligations and employees of their rights so they know they remain protected under state law."



The Department of Labor is posting the information publicly and sending to all public employers, including local governments, public hospitals, school districts and colleges.

"While I vehemently disagree with the court's decision in this case, it is important that all New York's employers and workers understand how this impacts them," said New York State Commissioner of Labor Roberta Reardon. "New York is and always has been, a union state. We have the highest rate of union membership in the country - more than double the national rate, and our strong support of the labor movement will continue despite attacks from the federal level."

Previously, Governor Cuomo signed an [Executive Order](#) to protect union members from harassment and intimidation, which was the first state action taken in response to the Supreme Court's Janus decision. The Executive Order prohibits State entities from disclosing personal contact information for state employees amid reports of individuals and organizations harassing union members or prospective union members.

Pitta LLP Partner Barry Saltzman was interviewed recently by Joe Piscopo on AM 970 on the Janus decision. The interview is attached for your reference.

## *In the News – New York City*



## **Lorraine Grillo to Head NYC Department of Design and Construction**

Mayor de Blasio this week appointed Lorraine Grillo as Commissioner of the Department of Design and Construction. Commissioner Grillo will also continue on in her post as the President and CEO of the New York City School Construction Authority.

"Lorraine Grillo is universally admired as someone who gets it done. She's proven it with 75,000 new schools seats and now she is going to prove it on our streets and public buildings," said Mayor de Blasio. "I also want to thank Ana for her service as interim commissioner and am delighted she's taking new leadership at the DEP."

Commissioner Grillo began her career at the New York City School Construction Authority over 24 years ago as a Community Relations specialist. In 2010, Grillo took over as Acting President and CEO of the SCA. In February 2014, Mayor de Blasio reappointed her to head the SCA - making her the longest serving SCA president.

Under her leadership, the SCA has successfully completed over \$25 billion of construction, produced over 75,000 new school seats, and completed thousands of capital improvement projects in existing school buildings.

“I have long admired Lorraine Grillo and consider her to be a truly outstanding public servant. DDC needs strong leadership and I look forward to seeing what Lorraine and the new First Deputy Commissioner Jamie Torres Springer can do together,” said Speaker Corey Johnson.

In addition, the Mayor also announced the appointment of Jamie Torres Springer as First Deputy Commissioner at DDC. He has previously served as the lead consultant for the preparation of the Mayor’s OneNYC infrastructure plan and served as the Deputy Director of the Special Initiative for Rebuilding and Resiliency as part of the recovery efforts from Hurricane Sandy. Also, Ana Barrio will become Deputy Commissioner of DEP’s Bureau of Engineering Design & Construction.



## De Blasio Administration Launches Freight NYC: \$100M Plan to Modernize NYC’s Freight Distribution

The de Blasio Administration unveiled Freight NYC, a \$100 million plan to overhaul the city’s freight distribution systems, including the City’s maritime and rail assets, and create new distribution facilities.

“Freight NYC is an investment in our city’s future,” said Mayor de Blasio. “By modernizing our approach to shipping, we will create thousands of good-paying while keeping our streets safer and cleaner.”

Currently, the City depends on marine, rail and highway infrastructure and relies upon trucks to move nearly 90% of freight. As the City’s population continues to grow and consumers increasingly demand near-instant deliveries, local freight volumes will grow an estimated 68% by 2045. This challenge is particularly acute in the “last mile” of distribution, in which trucks bring goods from port facilities and central warehouses, often located in neighboring states.

The Freight NYC plan leverages three strategies to strengthen the City’s freight distribution industry:

### **Investing in Multimodal Infrastructure**

Working with the Port Authority of NY & NJ, the City will invest in marine terminals and barging operations, and support the modernization and expansion of rail lines and freight facilities, creating approximately 900 jobs. Highlights of these efforts include:

- Developing a barge terminal to serve the Hunts Point Food Distribution Center in the Bronx, allowing produce and other food products to reach Hunts Point by water, rather than by truck.

- Constructing a barge terminal at the South Brooklyn Marine Terminal in Sunset Park to connect Brooklyn's consumer base to the new barge network.
- Reactivating underutilized rail lines by constructing new transload facilities within the existing rights-of-way and new passing lanes to alleviate track congestion.

### **Creating New Freight Distribution Hubs**

Through public-private partnerships, the City will develop new distribution, warehousing and transload facilities to meet increasing demand. This will help ensure the City can sustain the demands of its growing population, while creating secondary pathways to move goods in the event of adverse climate impact and other major disruptions. Highlights of these efforts include:

- NYCEDC today will release a request for proposal (RFP) for a private partner to build an Urban Distribution Center at the Brooklyn Army Terminal that is at least 500,000 square feet, estimated to create 500 jobs in Sunset Park.
- NYCEDC will release an RFP next week for a 4-acre site near JFK Airport to develop an air cargo and distribution facility that will help meet the needs of current businesses while ensuring the efficient flow of airport goods and maintaining JFK's position as a leading international freight destination

### **Promoting the Use of Clean Trucks, Reinforcing 2015 Clean Fleet Goals**

The City, led by the New York City Department of Transportation, will encourage the deployment of cutting-edge and emission-free trucks on city streets for last mile delivery, which will help advance the Mayor's goal of reducing 80% of gas emissions by 2050. Highlights of these efforts include:

- Supporting the expansion of the NYCDOT's Hunts Point Clean Trucks Program to other truck hubs and Industrial Business Zones. The program offers a rebate to applicants that replace, retrofit, or retire older, heavy-polluting diesel trucks.
- Supporting the development of clean fuel infrastructure in freight hubs, including sites for compressed natural gas and electric charging, while promoting truck safety measures to help meet NYCDOT's Vision Zero goals.
- Piloting initiatives for tenants in City-owned properties to green their own supply chains through logistics consolidation, carbon-neutral shipping, and use of clean vehicles

According to the Mayor, Freight NYC compliments NYCDOT's Smart Truck Management Plan, which DOT will release later this year to guide shorter-term freight planning and management, focusing more directly on improving the effectiveness of the 90 percent of goods that move by truck in New York City.



## Bills Approved by the Council

**Introduction 157-C**, sponsored by Council Member Antonio Reynoso, would reduce the permitted capacity of putrescible solid waste, containing organic matter, and non-putrescible solid waste for each transfer station in these overburdened districts. The permitted capacity for transfer stations in community district one in Brooklyn would be reduced by 50% and the permitted capacity in community districts one and two in the Bronx, and 12 in Queens would be reduced by 33%.

**Introduction 399-B**, sponsored by Council Member Paul Vallone, would require Department for the Aging (DFTA) to annually report to the Speaker, post on its website, and provide data about the participants, programming, services, costs, and budgets of each of DFTA's 249 senior centers.

**Introduction 411-A**, sponsored by Council Member Margaret Chin, would require the Department of Health and Mental Hygiene (DOHMH) to conduct health inspections at senior centers and social adult day cares (SADCs) that are considered food service establishments under the New York City health code.

**Introduction 510-A**, sponsored by Council Member Rory Lancman, would require bail bond businesses to conspicuously post signage designed by the Department of Consumer Affairs ("DCA"). The sign will disclose: (1) the maximum premium or compensation that can be charged for giving bail bond or depositing money or property as bail; (2) that such premium or compensation represents the maximum amounts, excluding collateral, that a bail bond agent can charge for services; and (3) that a consumer may make a complaint to DCA or the relevant state agencies if such premium or compensation charged is in conflict with the State's insurance law.

**Introduction 724-A**, sponsored by Speaker Corey Johnson, would require bail bond businesses to provide consumers with a "consumer bill of rights" prior to entering a contract and to post signage at the place of business.

**Introduction 741-A**, sponsored by Speaker Corey Johnson, would prohibit the city from collecting revenue and require the city to provide telephone services for incarcerated individuals making domestic calls at no cost or to those incarcerated and the recipients of those calls.

**Introduction 779-A**, sponsored by Council Member Donovan Richards, would require the Department of Correction (DOC) to issue quarterly reports on the use of devices capable of administering an electric shock.

**Introduction 981-A**, sponsored by Council Members Carlina Rivera, Laurie Cumbo and Speaker Corey Johnson, would require that online short-term rental platforms that provide booking services for a fee disclose certain information about those transactions to the City's Office of Special Enforcement.

## **Briefs**

### **NYS Initiative to Strengthen Election Cyber Security**

The State Board of Elections (NYSBOE) will begin its initiative to shore the state's statewide election cyber security infrastructure. The State will solicit contracts in the next few days for three independent services for County Boards of Elections, including: 1) cyber security risk assessments; 2) enhanced intrusion detection devices; and 3) managed security services. The State's Secure Election Center, managed by the State Board of Elections, will also provide statewide, uniform cyber security training to all state and county election officials and staff prior to the Midterm Elections.

#### **Comprehensive Risk Assessment for all County Boards of Election**

The State Board of Elections will contract for professional services to conduct a comprehensive, uniform and verified risk assessment at every County Board of Elections. This contract will provide a uniform and verified third party risk assessment to ascertain a security baseline for our the State's elections infrastructure.

#### **Enhanced Intrusion Detection Systems & Managed Security Services for County Boards**

Additionally, the State Board of Elections will contract for a vendor to provide enhanced intrusion detection systems and managed security services for all the County Boards of Elections.

#### **Cyber Security Training Program**

The Secure Elections Center, housed in NYSBOE, will provide uniform online technical training courses and security awareness programs to all state and county election officials and staff. These web-based trainings will be provided prior to the 2018 Midterm Elections.

### **NYS DFS Issues Final Life Insurance & Annuity Consumer "Best Interest" Standard**

New York State Department of Financial Services (DFS) has issued a final regulation adopting a "best interest" standard for those licensed to sell life insurance and annuity products to protect New York State consumers from conflicted advice. The new regulation requires insurers to establish standards and procedures to supervise broker recommendations so that any transaction is in the best interest of the consumer and appropriately addresses the insurance needs and financial objectives of the consumer at the time of the transaction.

A transaction is considered in the "best interest" of a consumer when it is in "furtherance of a consumer's needs and objectives and where only the interests of the consumer are considered in making the recommendation." A producer's financial compensation or incentives may not influence the recommendation. Insurers would also be required to develop and maintain procedures to prevent financial exploitation of consumers.

## NYS Workers' Compensation Rates to Decrease 11.7%

The New York State Department of Financial Services approved the State Workers' Compensation Rating Board request for a decrease of 11.7% in the overall loss cost level in New York State, effective October 1, 2018. This approval represents the third straight year that the Department approved the loss cost change recommended by the Rating Board's Actuarial Committee. Loss costs by classification will be published in a subsequent bulletin and posted on the Rating Board's website on or before August 1, 2018.

## NYC Charter Revision Commission Releases Preliminary Report

The New York City Charter Revision Commission this week released its Preliminary Staff Report following hearings across all five boroughs. The recommendations will serve as a guide for the Commission as it reviews the Charter and develops final ballot proposals to be decided by voters at this November's general election. Recommendations broadly fall into five policy areas: campaign finance, municipal elections, civic engagement, community boards and redistricting.

Commission staff recommended the following:

- **Campaign Finance:** Staff recommends that the Commission strongly consider developing a ballot proposal to reduce contribution limits, strengthen public financing, and increase the cap on public matching funds.
- **Municipal Elections:** Staff recommends that the Commission continue to study and review a variety of proposals to increase voter participation, with particular attention given to instant runoff voting and increased language assistance services. Staff also recommends that the Commission consider reforms that promote civic engagement as a means of increasing voter participation.
- **Civic Engagement:** Staff recommends that the Commission further study ways to strengthen the City's efforts to engage its residents in civic activities, including through possibly establishing a new entity or office charged with that purpose. Staff recommends that the Commission solicit further input on: (1) how such an entity or office could support, supplement, or coordinate the City's existing efforts in this area, including the recently announced DemocracyNYC initiative; (2) how such an entity or office could facilitate the expansion of participatory budgeting; (3) where such an entity or office should be situated; and (4) whether such an entity or office should have an independent, non-partisan or other structure.
- **Community Boards:** Staff recommends that the Commission further consider proposals to (1) impose term limits for Community Board Members as a method to increase diversity; (2) standardize and enhance the appointment process; (3) provide additional support and resources to Community Boards, particularly in the context of urban planning; and (4) adopt methods to ensure that Community Boards are representative of the communities that they serve.

- **The Districting Process (Redistricting):** Staff notes the complexity of this issue and recommends continued study of: (1) procedures to address the effects of the districting process on the voting power of racial and ethnic minority groups, such as providing for an additional review and analysis of proposed lines by an independent expert, or other changes that are reflective of the important public policy goals underlying the Voting Rights Act and the former DOJ pre-clearance process; (2) alterations to the structure of the Districting Commission to promote its independence and reduce the influence of elected officials; and (3) strategies to counteract the negative effects of an undercount in the next census on the districting process.

## Michigan Prevailing Wage Law Repealed

Michigan legislature recently (June 6<sup>th</sup>) voted to repeal the state's 53-year old prevailing wage law. Michigan's law required workers on state-financed public works projects to be paid union scale, thus eliminating a nonunion contractor race to the bottom on wages. Governor Rick Snyder, despite voicing opposition to the repeal, was not required to sign the measure as it was brought through the initiative process, which renders legislative action veto proof when valid voter signatures are obtained. The nonunion Associated Builders and Contractors of Michigan spent more than \$1.3 million to collect signatures. Michigan continues a wave of states repealing prevailing wage laws, including Arkansas, Kentucky, West Virginia, and Indiana in the last few years.

## Coming Up

### New York State

*Monday August 13<sup>th</sup>*

**To examine the Minority and Women-Owned Business Enterprises program.**

Joint Senate Standing Committee on Labor, and Committee on Economic Development, Symposium Hall, Binghamton University, Center of Excellence Building, 85 Murray Hill Road, Vestal, 1 p.m.

### New York City

*There are no meetings scheduled the week of July 23<sup>rd</sup>*

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