

## FEATURED PRESENTERS

**RACHEL DEMAREST GOLD, ESQ.**

PARTNER, ABRAMS FENSTERMAN

**MAYA K. PETROCELLI, ESQ.**

PARTNER, ABRAMS FENSTERMAN

**MELANIE I. WIENER, ESQ.**

PARTNER, ABRAMS FENSTERMAN

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# Women and The New Worker Protection Laws

New York Building Congress  
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Abrams, Fensterman, Fensterman, Eisman,  
Formato, Ferrara, Wolf & Carone LLP

## Rachel Demarest Gold

*Partner, Labor and Employment, Criminal, and Government Affairs groups*

- Rachel is a partner at Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP in the Employment law, Criminal law and Government Affairs groups.
- Formerly a prosecutor in the Office of Attorney General Andrew Cuomo, Rachel led the development of a new labor crimes unit in response to the state legislature's passage of several laws creating criminality in the exploitation of workers and theft on government contracts that mandate specific pay rates. Rachel developed an accredited CLE on the subject which she has presented statewide. She has also addressed groups throughout the State on employer compliance, and government incentives and assistance for employers.
- When Andrew Cuomo was elected Governor, Rachel went with his Administration where she became Special Counsel for Labor as well as the Deputy Commissioner for Legislation, Policy, and Federal Affairs at the New York State Department of Labor.
- In addition to her outstanding work in the employment law field, Rachel has a long history of civic service. Former positions include: President, DUMBO Neighborhood Association; Chair, Independent Neighborhood Democrats Executive Board; Member, Brooklyn Bridge Park Local Development Corporation Board; and Member, Atlantic Yards Community Development Corporation Board. She was honored by the Carroll Gardens Association with their Public Service Award. Rachel currently volunteers her time serving as State Chair of the New York State Women's Equality Party.
- A graduate of Brooklyn Law School, where she was President of the Student Bar Association and a Notes and Comments Editor for the Brooklyn Journal of International Law, Rachel has been a litigator for over 20 years.



# Melanie I. Wiener

*Partner, Commercial & Civil Litigation practice groups*

- Melanie is a partner at Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP in the Commercial Litigation practice group.
- Melanie's practice focuses on insurance defense and personal injury, but she also has experience handling civil and health care litigation. Ms. Wiener is responsible for all aspects of litigation including trials, hearings, depositions, oral argument, mediations and arbitrations.
- Prior to joining Abrams Fensterman, Melanie worked at a firm in Garden City, NY, gaining experience in numerous areas of law, including civil litigation, personal injury, real estate transactions, and estate planning.
- Melanie has been selected as a "Super Lawyers Rising Star" in New York Health Care Law from 2014-2016 and in New York Business Litigation from 2017-2018.
- A graduate of Hofstra University Law School and Ithica College, Melanie has been in practice for over 10 years.



# Maya K. Petrocelli

*Partner, Commercial & Civil Litigation practice groups*

- Maya is a partner at Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP in the Commercial and Civil Litigation practice groups.
- Maya has successfully represented clients in all phases of complex commercial litigation handling a wide range of commercial matters involving breach of contract, commercial real estate, and Article 78 proceedings. She has represented clients involved in variety of insurance defense cases involving construction accidents and related New York State Labor Law claims, premises liability, commercial vehicle accidents, and related breach of contract and indemnification issues, as well as coverage issues. She has handled numerous high exposure cases, as well as complex multi-carrier litigations involving additional insured and insurer obligations.
- Maya has counseled clients in the legal aspects of forming and running a successful business within the creative community. Her experience includes business formation and governance, drafting agreements, and handling employment matters for clients in the fashion and music industry. She has lectured on various topics involving litigation including Article 78 proceedings and RPTL §421-a tax exemption issues.
- Maya is an active member of the Columbian Lawyers Association of Brooklyn, Brooklyn Women's Bar Association, and the Brooklyn Bar Association and was named a New York Metro Super Lawyers "Rising Star" in Civil Litigation in 2018.
- A graduate of Suffolk University Law School, she was a member of the National Trial Team, ranked 1st in New England and served as the President of the Latin American Law Students Association.



# Women in the Workforce

- Of the 123 million women age 16 years and over in the U.S., 72 million, or **58.6 percent**, were labor force participants—working or looking for work. Women comprised **47 percent** of the total U.S. labor force. Women are projected to account for **51 percent** of the increase in total labor force growth between 2008 and 2018.

# Women in the Workforce

- There are 74.6 million women in the civilian labor force.
- Almost 47 percent of U.S. workers are women.
- More than 39 percent of women work in occupations where women make up at least three-quarters of the workforce.
- Women own close to 10 million businesses, accounting for \$1.4 trillion in receipts.
- Female veterans tend to continue their service in the labor force: About 3 out of 10 serve their country as government workers.

# Women in the Workforce

- Women's participation in the U.S. labor force has [climbed](#) since WWII: from 32.7 percent in 1948 to 56.8 percent in 2016.
- The proportion of women with college degrees in the labor force has almost [quadrupled](#) since 1970. More than 40 percent of women in the labor force had college degrees in 2016, compared with 11 percent in 1970.
- The range of occupations women workers hold has also expanded, with women making notable gains in professional and managerial occupations. In 2016, more than [one in three](#) lawyers was a woman compared to fewer than 1 in 10 in 1974.



# Women in the Workforce

- [Seventy percent](#) of mothers with children under 18 participate in the labor force, with over 75 percent employed full-time.
- Mothers are the primary or sole earners for [40 percent](#) of households with children under 18 today, compared with 11 percent in 1960.
- Unpredictable work schedules and a lack of paid time off can be particularly problematic for parents juggling work and caregiving responsibilities, yet mothers' share of the three low-wage, high-growth jobs was 29 percent in 2016—1.8 times larger than their share of the overall workforce (16 percent).

# Employee Scheduling

- NYC Predictive Scheduling
  - Effective 11/26/2017
    - Fast Food Regulations
      - New hire scheduling notice
      - 14 days notice of shifts; notice requirements
      - Posting of available shifts
      - Spread of hours (11 in the City under this rule)
    - Retail Regulations
      - 72 hours notice of schedule and any shift additions or cancellations
      - No call-in shifts
- NYS Call-In Pay Regulations

# Women in the Workforce

- Women are more likely than men to stop working to care for elderly family members
- Only 19 percent of food preparation and serving workers and 25 percent of personal care and service workers had access to paid sick days.

# Paid Time Off

- NYC Earned Safe and Sick Time
  - Took effect 5/5/18
  - 5 or more employees
  - Expansion of sick time to “safe time”
  - Must notify employees of rights
- NYS Paid Family Leave
  - Took effect 1/1/18
  - All employers

YEAR	WEEKS OF LEAVE	BENEFIT
2018	8 weeks	50% of employee's AWW, up to 50% of SAWW
2019	10 weeks	55% of employee's AWW, up to 55% of SAWW
2020	10 weeks	60% of employee's AWW, up to 60% of SAWW
2021	12 weeks	67% of employee's AWW, up to 67% of SAWW

# Women in the Workforce

- In 2016, women made up nearly two-thirds of the nearly 24 million workers in low-wage jobs (defined as jobs that typically pay \$11.50 per hour or less), though they make up slightly less than half (47 percent) of the workforce as a whole.
- Women overall accounted for 83 percent of the workforce among the three low-wage, high-growth jobs (personal care aides, food preparation/serving workers, and home health aides).
- 3 of the top 5 occupations expected to see the most growth in the next decade are female-dominated and low-wage.

# Women in the Workforce

- In 2017, personal care aides typically made \$11.11 per hour or about \$23,100 a year for full-time work. Home health aides typically made \$11.16 per hour, which translates to about \$23,200 per year. Combined food preparation and serving workers typically made \$9.70 per hour or close to \$20,200 annually.
- More than one in six women working in the three low-wage, high-growth jobs in 2016 had incomes below the federal poverty line.

# Minimum Wage

## General Minimum Wage Rate Schedule

Location	12/31/16	12/31/17	12/31/18	12/31/19	12/31/20	2021*
NYC - Large Employers (of 11 or more)	\$11.00	\$13.00	\$15.00			
NYC - Small Employers (10 or less)	\$10.50	\$12.00	\$13.50	\$15.00		
Long Island & Westchester	\$10.00	\$11.00	\$12.00	\$13.00	\$14.00	\$15.00
Remainder of New York State	\$9.70	\$10.40	\$11.10	\$11.80	\$12.50	*

# The “Tip Credit” Issue

- An allowance for the amount of tips earned by an employee that the law allows an employer to take as a credit against the minimum wage requirements for that industry.
- 71.1% of waiters are women
- State holding hearings ordered by Governor in January 2018



# Women in the Workforce

- Women's labor market outcomes—and in particular their earnings—do not yet equal those of men, even though women's educational attainment has surpassed that of men.
- Almost 60% of women would earn more if they were paid the same as men with equivalent levels of education and work hours

# The Hiring Process

- NYC: Salary History Inquiries Forbidden
  - NYCHRL amended eff. 10-31-2017
- NYS: Legislation proposed by M/A Crespo
  - Passed Assembly 3 times
  - Same-as in Senate: Carlucci
    - Died then referred to Labor
- Cannot ask about Criminal History
  - NYC and NYS Human Rights Law

# Harassment: New State Requirements

- State bid requirements;
- Arbitration clauses prohibited;
- No government payment of judgements;
- Special requirements for confidentiality in settlement agreements;
- Adopting a model policy;
- Annual training of all employees meeting or exceeding minimum standards

# Harassment: New State Law Requirements

SubPart	Topic	Issue	Effective Date
A	Statement on Sexual Harassment in Bids	Requires all state contractors to submit an affirmation that they have a sexual harassment policy and that they have trained all of their employees.	1/1/2019
B	Mandatory Arbitration for Sexual Harassment	Prohibits employers from using a mandatory arbitration provision in an employment contract in relation to sexual harassment.	90 Days After Enactment (3/30/2018): <b>06/28/2018</b>
C	Reimbursement for Public Sexual Harassment Judgments	Requires officers and employees of the state or any public entity to reimburse the state for any state or public payment made upon a judgement of intentional wrongdoing related to sexual harassment.	Immediately
D	NDA's	Ensures that nondisclosure agreements can only be used when the condition of confidentiality is the explicit preference of the victim.	90 Days After Enactment (3/30/2018): <b>06/28/2018</b>
E	DOL & DHR Model Policy	Add new Labor Law Section 201-g: DOL & DHR are required to create a model sexual harassment policy for employers to meet or exceed, guidance on how to implement the policy, and a training program to prevent sexual harassment in the workplace.	180 Days After Enactment (3/30/2018): <b>09/26/2018</b>
F	Sexual Harassment for Non-Employees	Amend the executive law to protect contractors, subcontractors, vendors, consultants or others providing services in the workplace from sexual harassment in the workplace.	Immediately

# Harassment: New State Compliance & Training Requirements

- Mandates include both a *written policy* and interactive, *annual training* for every employee
- Training SHALL include:
  - An explanation of Sexual Harassment
  - Examples of Unlawful Conduct
  - Information on state and federal laws, including all remedies available to victims
  - Information on “all rights of redress” and all venues available to victims
  - Responsibilities of Supervisors

# Harassment: New State Compliance & Training Requirements

## Written Policy Mandate

All employers must have a written policy which *shall* :

- Prohibit Harassment
- Provide Examples
- Include federal and state statutes
- Include remedies available
- Note that there may be local laws governing the issue
- Include a complaint form
- Provide a procedure for timely and confidential investigation
- Include information on all forums available to victims
- Include two (2) specific provisions that should be quoted verbatim as "clear statements"

# Harassment: New State Compliance & Training Requirements

- There are two (2) statements that must be included in all employers' sexual harassment policies:
  - 1. *Sexual harassment is considered a form of misconduct {and} sanctions will be enforced against individuals engaging in sexual harassment and against supervisory and managerial personnel who knowingly allow such behavior to continue..*
  - 2. *Retaliation against individuals who complain of sexual harassment or who testify or assist in any proceeding under the law is unlawful.*

# Harassment: New NYC Laws

- 11 bills – passed by Council; Mayor signed 5/9/2018
- Provisions affecting private employers :
  - Poster for employee common areas and distribution of information sheets – ***Effective 9/6/18***
  - Training mandate for all employees (with 15+ employees) – ***Effective 4/1/19***
  - Expansion of sexual harassment provisions to ALL employers (was 4+) - Extend City Human Rights Law SOL from 1 to 3 years - ***IMMEDIATELY***



# Harassment: New NYC Laws

- Effective 4/1/19
- Training for all employees of employers with 15 or more employees
  - Must be interactive (but not live)
  - Training *shall include*:
    - An explanation that sexual harassment is a form of unlawful discrimination under local law.
    - A statement that sexual harassment is a form of unlawful discrimination under state and federal law.
    - A description of sexual harassment, with examples.
    - An internal complaint process.
    - An explanation of the NYCCHR, NYSDHR, and EEOC processes, including contact information.
    - The prohibition against retaliation, pursuant to NYC Administrative Code.
    - Information concerning bystander intervention, including but not limited to any resources that explain how to engage
    - Specific responsibilities of supervisors and managers regarding prevention, retaliation, and measures they may take to address complaints.

# Independent Contractors and Exempt Workers

- NYS Standards and Definitions
  - Commercial Goods Transportation Fair Play Act
  - Construction Industry Fair Play Act
  - Individual industry guidelines (Newspaper deliveries, e.g.)
- Federal Standards and Definitions
  - IRS, FLSA, and the *Saleem* case
- USDOL Regulations 2016

# Independent Contractors and Exempt Workers

## Minimum Exempt Weekly Salary

Date	Large NYC Employers (11 or more employees)	Small NYC Employers (10 or fewer employees)
12/31/16	\$825.00/week	\$787.50/week
12/31/17	\$975.00/week	\$900.00/week
12/31/18	\$1,125.00/week	\$1,012.50/week
12/31/19		\$1,125.00/week

Date	Downstate – Nassau, Suffolk, and Westchester Counties	Remainder of New York State
12/31/16	\$750.00/week	\$727.50/week
12/31/17	\$825.00/week	\$780.00/week
12/31/18	\$900.00/week	\$832.00/week
12/31/19	\$975.00/week	\$885.00/week
12/31/20	\$1,050.00/week	\$937.50/week
12/31/21	\$1,125.00/week	

*Please note that these are threshold salaries only. Employees must, IN ADDITION TO MAKING AT LEAST THE AMOUNT NOTED, meet the criteria regarding either the Administrative, Executive, or Professional exemption.*



# QUESTIONS ? ? ? ?

Rachel Demarest Gold, Esq.

[rgold@abramslaw.com](mailto:rgold@abramslaw.com)

1 MetroTech Center, Suite 1701  
Brooklyn, New York 11021  
718-215-5300

Maya K. Petrocelli, Esq.

[mpetrocelli@abramslaw.com](mailto:mpetrocelli@abramslaw.com)

1 MetroTech Center, Suite 1701  
Brooklyn, New York 11021  
718-215-5300

Melanie I. Wiener, Esq.

[mwiener@abramslaw.com](mailto:mwiener@abramslaw.com)

1 MetroTech Center, Suite 1701  
Brooklyn, New York 11021  
718-215-5300

Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf & Carone, LLP

3 Dakota Drive, Suite 300  
Lake Success, New York 11042  
516-328-2300

488 Madison Avenue, 23<sup>rd</sup> Floor  
New York, New York 10022  
212-279-9200



1 MetroTech Center, Suite 1701  
Brooklyn, New York 11021  
718-215-5300

160 Linden Oaks, Suite E  
Rochester, New York 14625  
585-218-9999

## FEATURED PRESENTERS

**RACHEL DEMAREST GOLD, ESQ.**

PARTNER, ABRAMS FENSTERMAN

**MAYA K. PETROCELLI, ESQ.**

PARTNER, ABRAMS FENSTERMAN

**MELANIE I. WIENER, ESQ.**

PARTNER, ABRAMS FENSTERMAN

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