

# AG James goes after New York Sports Club, which is still charging members

By Rob Abruzzese  
Brooklynagle.com

Attorney General Letitia James announced on Friday that her office has joined in a multistate coalition of attorneys general that is demanding immediate changes at the New York Sports Club, which has been accused of continuing to charge clients despite all its gyms being closed.

"As the COVID-19 pandemic has plunged our country into an unprecedented public health crisis, businesses have shuttered their doors, leaving millions without a paycheck and scraping to get by," said Attorney General James. "While the closure of all New York Sports Club facilities may have also placed a strain on the company, its financial straits do not relieve NYSC of its obligation to follow the law."

"New Yorkers have enough to worry about and should not be forced to pay for services NYSC is no longer providing," she continued. "If NYSC refuses to do the right thing voluntarily, I will not hesitate to take every legal step necessary to protect New Yorkers from NYSC's unlawful conduct and get their money back."

All gyms across the state have been legally closed since Gov. Andrew Cuomo ordered all health clubs to close on March 16 in an effort to stop the spread of the coronavirus.



**Attorney General Letitia James' office is targeting New York Sports Club after the gym has been accused by members of shady tactics to keep charging them.** Eagle file photos by Rob Abruzzese

While most health clubs decided to freeze memberships at no cost to gym-goers, NYSC allegedly refused to do the same and continued to charge members. Customers who demanded their accounts with the gym closed were allegedly hit with fines and fees for cancelling their memberships early.

The social media is filled with accounts of people com-

plaining about NYSC's alleged tactics in recent weeks. On March 17, user "DutchyKills" posted that they were charged \$15 to freeze their membership. On Friday, April 3, user "opetroulas" reported that after they had their bank place a block on charges to NYSC, the gym got around that by charging their card from a different merchant.

"Two days ago (a 30 days since my last charge from NYSC), a charge showed up on my card from TMPL for the same amount as my monthly membership," opetroulas wrote. "Doing some googling shows that this is some other gym in midtown and their website redirects to NYSC."

The letter sent by James and other attorneys general to Town Sports International Holdings, the NYSC's parent company, demands that the sports club immediately implement a member freeze at no cost and honor cancellations without fees. They also demand that they clearly and unambiguously communicate its policies to members.

The AG's Office has also encouraged any New Yorkers who feel that they have been unlawfully charged to file a complaint with the Consumer Frauds and Protection Bureau. They also encourage people to contact their bank to stop automatic payments to NYSC.

## LEGAL UPDATES

### New Developments For Employers During COVID-19

Today marks the end of two weeks that most businesses in New York have been closed, their workers home — some furloughed, some laid off. At first, Unemployment Insurance was the only option for getting workers paid. Then the State paid leave law offered some limited benefits. This week, the federal CARES Act — the Coronavirus Aid, Relief, and Economic Security Act — took effect and offers both benefits and burdens for employers. Here are a few things that you should know.

#### SOME RELIEF FOR EMPLOYERS

Let's start with the relief the new law offers. It comes in the form of SBA guaranteed loans, forgiven for up to 8 weeks of wages and selected other expenses. For businesses with 500 or fewer workers which were established prior to February 15, 2020, loans of 2.5 times your average monthly payroll, up to \$10 million, are available.

The loans are available to a wide range of businesses, including self-employed individuals, who maintain certain staffing and wage levels. The unforgiven portion of the loan will be financed at 1% over 2 years.

The pot, however, is limited and being serviced on a first come, first served basis.

Rules and regulations have been coming fast and furious, and in some cases appear inconsistent. Just last night Treasury changed the interest rate for the 3<sup>rd</sup> time since the law was passed last week.

Today is the first day to file for the federal Payroll Protection Program loans and what is happening is predictably chaotic. Many banks have decided that they will only process loans for existing customers. And, while the law provides for forgiveness, it delegates the authority to decide whether borrowers have met that criteria, to the banks rather than leaving it with the Agency. Business owners who take these loans must be meticulous in their bean-counting and record keeping.

In addition to the Payroll Protection loans, SBA has available the Economic Injury Disaster Loans which offers businesses up to \$2 million. The loans offer "grants" up to \$10,000, available immediately, which do not need to be repaid if you are ultimately not approved for the loan.

The SBA's Emergency EIDL is processed directly by the SBA, and can be applied for on-line. These loans are also limited to businesses with 500 or fewer employees, can be used for ordinary operating expenses, and are financed at 3.75% over 30 years. Nonprofit organizations can borrow at 2.75%.

#### SOME NEW BURDENS

In addition to offering employers financial assistance this week, the Federal Government made every employee in the country effected by COVID-19 eligible for paid leave. While it will cost employers now, the law provides for it to be reimbursed through tax credits next year. Here is what you must provide to your workers.

#### Paid Sick Leave

As of Wednesday, April 1, all businesses with 500 or fewer employees must provide 10 days (80 hours) of paid sick leave for COVID-related absences. This is on top of: the State requirements;



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an employee's banked time; and any time they have already taken for these reasons, if any of those apply to your business.

The definition of employee is broad. It includes employees on leave; temporary employees who are jointly employed by you and another employer; and day laborers supplied by a temporary agency. The law expires December 31, 2020.

The five reasons that qualify for the leave are: quarantine or isolation order; advice by healthcare provider; experiencing symptoms and seeking diagnosis; caring for someone in above categories; and childcare because schools closed and (or care provider unavailable).

Workers must be paid their full salary for the number of hours that they work in a typical two-week period, including overtime, if they are home for reasons 1, 2, or 3, up to \$511 per day and \$5,110 in the aggregate over the 2-week period. Workers must be paid at two-thirds their regular rate for childcare or care of others capped at \$200 per day; \$2,000 in the aggregate.

#### Emergency FMLA+

In addition to paid sick leave, the new federal law provides paid Family Medical Leave Act leave for workers who must care for minor children because schools are closed or because their childcare provider is unable to work because they are effected by COVID-19.

For employees who have been with you at least 30 days, you must offer an additional 10 weeks leave at 67% of the worker's salary, capped at \$200 per day; \$2,000 in the aggregate.

In the event that a worker qualifies for leave under more than one category, or on more than one occasion, they are only entitled to a total of 12 weeks paid, job-protected, leave.

#### WHAT TO WATCH FOR

Recognizing that providing this leave might jeopardize the financial viability of many small businesses, the leave law includes a provision to exempt them. The USDOL issued guidance this week on what will exempt a business and how they will need to prove that they qualify for it. The exemption applies to businesses with fewer than 50 employees, and we will elaborate more on that in the coming days and weeks.

We will also keep you posted right here on loan program details and developments, and how your fellow Brooklyn business owners are living with the new provisions. In the meantime, please let us know if you have any questions or topics you think employers want to know more about by emailing us. Stay healthy.

## Video depositions via Zoom

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"Everytime you come into a room, click on those three dots and rename yourself and position your webcam so that people can see you," Minervini added. "Maybe even move the laptop back a bit."

They then started to get into more technical aspects of using Zoom for depositions with a focus on how to share exhibits with opposing counsel.

They explained that exhibits can be sent in several ways. The easiest is to physically mail or email copies of the exhibits before the start of the deposition. Lawyers can also share their screens to display exhibits, or even send files through Zoom itself. They also showed how to mark exhibits using the program.

"Instead of sending them all to the agency ahead of time, we recommend that you exchange them on the fly by yourself," Hoorwitz said. "The reason we suggest that is because it gives you flexibility. Maybe you decide during the deposition that you don't want to introduce certain

exhibits. That might depend on the momentum of your case. Organization ahead of time is critical. You create a folder on your desktop with all of your exhibits ready to go."

Minervini explained that it is important for lawyers to be as familiar with the program as possible so that they might be able to explain it to their clients if necessary. He suggested that lawyers start with depositions that only have one or two exhibits to make things easier on themselves.

"My suggestion is to be able to not start with your most complex cases," Minervini said. "It's important that you not be afraid to ask the witness or counsel, hey I can't see you too well. Can you move."

Hoorwitz and Minervini said that, especially at first, lawyers need to be patient with the process and even help each other out. Collegiality is key to getting this implemented as fast as possible, they said.

"We need to assist our adversaries to get online," Hoorwitz said. "Without that

happening, we're not going to get a deposition done, and we're not going to get the transcript completed. We need to help each other. I'm not saying help them with the case, help them with the technology. Get them through to the point of conversation. Then you can butt heads."

After a lawyer in the group asked about doing a video "read on" in order to have the videos admissible as evidence in the court, Hoorwitz explained that they should treat it similarly to any video deposition.

"The videographer would be involved, would be in the deposition with you, would read the statement, and this would capture exactly what a videographer would capture," he said. "It takes a little bit of discussion. It's not just 'turn the video on,' and it's 100 percent admissible in court."

Hoorwitz and Minervini told members of the BBA that they should run some mock depositions to get up to speed and even offered to help them with mock depositions if needed.

## PUBLIC AUCTION NOTICES

### PAWNBROKER AUCTION SALES

S. PRICE, AUCTIONEER OF THE JEWELRY AUCTION MARKET OF AMERICA, INC., SELL AT BELOW LISTED ADDRESSES AT 9 A.M. ALL UNREDEEMED PLEDGES FOR THE FOLLOWING PAWNBROKERS INCLUDING ALL HOLDOVERS FROM PREVIOUS SALES:  
APR. 14/20 - WM. J. O'NEILL SALES EX. CO., INC., 1 E. MAIN ST., PATCHOQUE, NY, FROM 509689 OF JUL. 17, 2019 TO 510754 OF SEPT. 12, 2019.

### PAWNBROKER AUCTION SALES

S. PRICE, AUCTIONEER OF THE JEWELRY AUCTION MARKET OF AMERICA, INC., SELL AT 21 W. 47TH ST., MAN., AT 9 A.M. ALL UNREDEEMED PLEDGES FOR THE FOLLOWING PAWNBROKERS INCLUDING ALL HOLDOVERS FROM PREVIOUS SALES:  
APR. 7/20 - MODELL COLLATERAL LOANS, INC., 21 W.

47TH ST., MAN., FROM 307798 OF MAY 8, 2019 TO 312609 OF NOV. 30, 2019.

APR. 7/20 - MODELL COLLATERAL LOANS, INC., 308 ATLANTIC AVE., BROOKLYN, FROM 276985 OF APR. 16, 2019 TO 278824 OF NOV. 30, 2019.

APR. 7/20 - MODELL COLLATERAL LOANS, INC., 1736 PITKIN AVE., BROOKLYN, FROM 547553 OF SEPT. 29, 2017 TO 563362 OF NOV. 30, 2019.

APR. 7/20 - MODELL COLLATERAL LOANS, INC., 8413 5TH AVE., BROOKLYN, FROM 561787 OF NOV. 20, 2018 TO 565613 OF NOV. 30, 2019.

APR. 7/20 - MODELL COLLATERAL LOANS, INC., 116-17 JAMAICA AVE., RICHMOND HILL, FROM 102778 OF JULY 8, 2011 TO 119515 OF NOV. 30, 2019.

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