

COUNSELORS AT LAW

# Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP

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P R E S E N T S

## The COUNSELOR

### NEW WAGE AND EMPLOYMENT LAWS WILL IMPACT YOUR BUSINESS

There are a number of new employment and wage laws which can have a substantial effect on your business. These include new Federal Regulations concerning overtime eligibility of salaried employees; New York State laws concerning minimum wage and paid family leave; and new EEOC penalties. These new laws and regulations can be very dangerous to businesses that do not have a plan for their implementation and compliance.

#### New Federal Overtime Regulations

On May 24th, 2016, the U.S. Department of Labor updated their overtime rules. The regulations raise the salary threshold eligibility for managers, administrative assistants and other salaried employees from \$455/week (\$23,660 yr.) to \$913/week (\$47,476 yr.). If an employee does not meet this threshold, as well as other requirements, employers must pay that employee on an hourly basis, including time-and-a-half after 40 hours. The new rules will impact approximately 278,000 New York workers. Overall the rule will impact the wages of 4.2 million Americans. These new regulations become effective December 1, 2016.

In response to the new overtime rule employers must decide if they will either; a) Raise salaried workers' salaries above the new \$47,476.00 threshold; b) revert the salaried employee back to an hourly rate and pay time-and-a-half for overtime work or; c) limit workers' hours to 40 hours per week.

#### IN THIS ISSUE

##### COVER

New Wage and Employment Laws Will Impact Your Business

PAGE 2

Awards, Presentations & Events

PAGE 3

Successful Lawyers, Successful Clients

BACK COVER

Awards, Presentations & Events (cont.)



Gregory S. Lisi, Esq.



Landon Dais, Esq.

Failure to follow the new regulations will violate the federal law. Wage and Hour infractions can be very expensive for your business as the penalties can be 2 or 3 times the wages owed. Therefore, it is imperative to protect your company as quickly as possible. Your company should evaluate your current payroll to see how the new rules will impact your overhead and payroll structure. Salaried employees should be monitored to ensure the company is complying with the new rules.

#### New York State Passes \$15 Minimum Wage Plan

After much debate and lobbying, New York State passed an incremental minimum wage increase that will eventually reach \$15.00 an hour. The incremental increases differ depending on where your business is located.

- For workers in New York City employed by a business with 11 employees or more, the minimum wage will increase to \$11.00 on January 1,

2017, then another \$1.50 each year after, reaching \$15.00 on December 31, 2019.

- For workers in New York City employed by smaller business, up to ten (10) employees, the minimum wage will increase to \$10.50 on January 1, 2017, then another \$1.50 each year after, reaching \$15.00 on December 31, 2019.

- For workers in Nassau, Suffolk, and Westchester counties, the minimum wage will increase to \$10.00 on January 1, 2017, then \$1.00 each year after, reaching \$15.00 on December 31, 2021.

- For workers in the rest of the state, the minimum wage will increase to \$9.70 on January 1, 2017, then another \$0.70 each year after until reaching \$12.50 on December 31, 2020 – after which will continue to increase to \$15.00 on an indexed schedule to be set by the Director of the Division of Budget in consultation with the Department of Labor.

It is estimated that more than 2.3 million people will be impacted by the increases to the minimum wage and your business must be ready for the increases.

#### EEOC Raises the Penalties for Failing to Post Proper Notice

Under Title VII, every employer, employment agency, labor organization, and joint labor-management committee controlling an apprenticeship or other training program covered by the EEO requirements must post notices describing the right to be free of discrimination and harassment in the workplace. The notices must be posted in a prominent and accessible place where notices to employees, applicants, and union members are customarily maintained. The notice requirements in Title VII are incorporated by reference in the ADA and GINA. On June 1, 2016, the U.S. Equal Employment Opportunity Commission increased the maximum penalty for employers that violate notice posting provisions of Title VII and other statutes from \$210 to \$525 per violation.

#### New York State Will Require Twelve Weeks of Paid Family Leave

New York State passed a 12 Week Paid Family Leave Act. When fully phased-in, employees will be eligible for 12 weeks of paid family leave when caring for an infant, a family member with a serious health condition or to relieve family pressures when someone is called to active military service. Starting on January 1, 2018, employees will be



L-R Jean Kelly, Executive Director, The INN and Jeffrey D. Forchelli, Esq., 2016 INNkeepers Ball Honoree.

eligible for 8 weeks of paid leave, earning 50% of their weekly pay (capped at 50% of the statewide average weekly pay). The number of weeks of leave and amount of pay increases yearly until, by 2021, employees will be eligible for the full 12 weeks of paid leave, earning 67% of their weekly pay (capped at 67% of the statewide average weekly pay). The Governor has said that this program will be funded entirely through a nominal payroll deduction on employees, so its costs will not negatively impact businesses bottom lines.

However, there is no guidance yet as to how this will be implemented. Employees are eligible to participate after having worked for their employer for six months. This is not a leave program for the employee personally, but to care for their family. However, please be mindful of New York City's Paid Earned Sick Time Leave Act, which dictates that an employer must provide a minimum of 40 hours of paid sick leave to any full-time employee who works at least 80 hours in a calendar year within New York City. A part-time

employee who works at least 80 hours in a calendar year within New York City. A part-time worker accrues paid leave at the rate of one hour for every 30 hours worked until the amount equals 40 hours.

Protecting your company from unnecessary legal action is always a sound strategy. At Forchelli, Deegan, Schwartz, Mineo & Terrana, our goal is to ensure our clients are well informed about new laws that will impact their business. If you have any question about the new labor and employment laws, please do not hesitate to contact our office.

## Media Mentions

*The Firm and its attorneys have been recognized in several leading publications recently, including:*

*Long Island Business News:*

**Joseph P. Asselta** was interviewed for the article, "Indemnification Agreements protect Owners, Contractors." **Gregory S. Lisi** was interviewed for the Who's Who in Labor Law special section. **Danielle Tricolla** and **John P. Bues** were spotlighted as "Ones to Watch."

*Newsday*

**Judy Simoncic** was quoted for her representation of client Benchmark Senior Living. **Daniel P. Deegan** was quoted in the article, "Amazon to Lease Facility in Bethpage as Distribution Center."

*The Suffolk Lawyer* published **James C. Ricca** and **Lindsay Mesh's** co-authored article, "Law: Is Dodd-Frank Working?".

*The Nassau Lawyer* published **Michael A. Ciaffa's** article "When May Courts Enjoin Business Disparagement?"

**Daniel P. Deegan** was interviewed for *The Real Deal* magazine's Long Island Market Report. He discussed transit-oriented development projects on Long Island.



*SuperLawyers Magazine* listed the **Firm's** 2015 SuperLawyers and Rising Stars in the special womens edition: **Kathleen Deegan Dickson**, **Mary E. Mongioi**, **Andrea Tsoukalas**, **Stephanie M. Alberts**, **Danielle B. Gatto**, and **Allison W. Rosenzweig**.

*New York Real Estate Journal:*

**Kathleen Deegan Dickson's** article, "Real Estate Due Diligence – Non Conforming Uses," was published. **Danielle Tricolla** was spotlighted in the *Daily Recap* e-newsletter.

**Douglas W. Atkins**, **Robert Moy**, **Lindsay Mesh**, **Landon C. Dais** and **Dana Y. Lee** were spotlighted in the Professional Profiles section.

**Joseph V. Cuomo** and **Allison W. Rosenzweig's** co-authored article, "Private Label Agreements: No More Low Brand Store Brands," was published by *Law360*.

## Awards, Presentations & Events



**Douglas W. Atkins** was honored by *Long Island Business News* with the 40 Under 40 - Class of 2015 award.



**Dana Y. Lee** was honored by the *Queens Courier* with the 40 Stars Under 40 award.



**Landon C. Dais** was honored by Touro College Jacob D. Fuchsberg Law Center as a Pro Bono Attorney of the Year.

**Anthony V. Curto** and **Dan Deegan** were among the panelists at the Inn of Court CLE program titled, "Marijuana and the Law – Potpourri." **Russell G. Tisman** organized and moderated the program.

**Dan Deegan** was a panelist at the Long Island Commercial Real Estate Expo's (LICREE) Tax Incentives & Grants breakfast panel. **Aaron Gershonowitz** spoke on the Environmental Contamination panel.

**Kathleen Deegan Dickson** and **Robert B. Moy** were panelists at the Asian American Bar Association and the Asian Real Estate Association seminar titled, "The Latest Asian Real Estate Projects in Queens and Beyond."

**Peter B. Skelos** was a panelist at the recent National Arbitration and Mediation (NAM) CLE titled, "Mediating Construction Defect Claims."

**John V. Terrana** presented a seminar titled, "How to Appeal Your Real Estate Tax Assessment," hosted by the Nassau County Bar Association.

**Robert L. Renda**, in conjunction with the Nassau County Bar Association, presented on challenging real estate tax assessments, real property tax exemptions, and other topics at the Uniondale Public Library.

## Banking and Finance

**James C. Ricca** negotiated and closed on behalf of New York Community Bank a \$22,000,000 mortgage loan secured by a 304-unit apartment building located in Westchester County.

**James C. Ricca** and **Daniel S. Dornfeld** with assistance from the Town of Hempstead Industrial Development Agency, navigated a complex leasehold structure and closed a \$5,500,000 leasehold mortgage loan secured by a commercial office building located in Uniondale.

**James C. Ricca** and **Lindsay E. Mesh** negotiated and closed a \$9,000,000 mortgage loan secured by an eight building apartment complex located in Bohemia, NY.

**Lindsay E. Mesh** on behalf of Valley National Bank, negotiated and closed nine mortgage loans secured by nine residential properties in Nassau and Suffolk counties owned by a not-for-profit agency that assists individuals with special needs.

**John P. Bues** represented New York Community Bank in closing three mortgage loans with the same affiliated entities secured by three multifamily properties in the Bronx, in the total amount of \$16,837,500.

**Steve Gaebler** and **Lindsay Mesh** represented HSBC Bank USA on various loans, including a \$7,800,000 acquisition loan for the purchase of an industrial building in Queens County involving New York City IDA assistance and negotiation with the New York Economic Development Authority to obtain certain relief from a covenant containing a right of reversion. The representation also involved a \$7,000,000 line of credit with an affiliated borrower. The second phase of the transaction is a contemplated \$15,500,000 construction loan for the purpose of constructing a 75,000 square foot facility.

**Steve Gaebler** and **Lindsay Mesh** represented Citibank, N.A. in connection with various loans including a first and second mortgage loans totaling \$4,185,000 for the purpose of acquiring and renovating a 107,000 square-foot building in Monmouth County involving assistance of the Small Business Administration (SBA) and Regional Business Assistance Corporation.

**Steve Gaebler** represented Citibank in the conversion of a \$19,000,000 building loan to a permanent loan. The building loan had been negotiated by Steve Gaebler and used by the borrower for the purpose of constructing a 201,000 square foot warehouse and distribution facility.

**Steve Gaebler** represented TD Bank in connection with a \$3,940,000 mortgage loan involving an interest rate swap for the purpose of acquiring an industrial building to be used for the borrower's business, along with a \$1,600,000 term loan and \$500,000 line of credit to the affiliated borrowers.

## Corporate

The Firm's "Long Island General Counsel Network," managed by **Joseph V. Cuomo**, cohosted with the Association of Corporate Counsel (ACC), a networking event at The Space in Westbury. More than 40 attendees enjoyed cocktails and a venue tour from Firm client The Space.

## Litigation

**Richard A. Blumberg** and **Danielle B. Gatto** defeated an application for a preliminary injunction that would have barred the issuance of a building permit to a client. The suit was brought in the Nassau County Supreme Court by a neighbor of the client. The neighbor alleged that she acquired a portion of the client's property through adverse possession and claimed that the proposed construction on the client's property obstructed her ownership rights. In opposing the application, Mr. Blumberg and Ms. Gatto argued that the neighbor failed to establish that she was likely to succeed on her adverse possession claim because, among other things, the neighbor failed to demonstrate that her alleged use of the property was exclusive.

**Judy L. Simoncic**, **Richard A. Blumberg** and **Danielle B. Gatto** defeated a prescriptive easement claim brought in the Nassau County Supreme Court against our client. In a pre-discovery motion for summary judgment to dismiss the complaint, Ms. Simoncic, Mr. Blumberg and Ms. Gatto argued that the individuals had permission to use the property and thus lacked the hostility element necessary to establish a prescriptive easement. Less than one week after the motion papers were submitted, the Court ruled in our client's favor by dismissing the individuals' complaint in its entirety and ruling that no prescriptive easement existed across our client's property.

## Real Estate/ Land Use & Zoning

**The Firm** and its clients received multiple awards at the 2016 *Long Island Business News* Real Estate Awards including:

- Top Commercial Development Project & Public/Private Partnership** award for Dealertrack, North Hills
- Top Smart Growth Project** award for Cornerstone, Farmingdale
- Top Hospitality Project** award for Roslyn O-S Hotel Partners

**Kathleen Deegan Dickson** recently received the following approvals for various clients:

- Site plan approval from the Riverhead Planning Board for 46 workforce artists' apartments and studio space in downtown Riverhead.
- Conditional use permits and parking variances from the Town of North Hempstead for a gourmet deli in Greenvale and two new restaurants in Carle Place.
- Change of zone to permit construction of 76-unit affordable senior housing units in New Cassel.
- Change of zone to permit the construction of 101 units of affordable housing in Freeport, to replace an existing public housing apartment building which had been badly storm-damaged, with a new, state-of-the-art, storm-resistant building.

## Tax Certiorari

**John V. Terrana** and **Robert L. Renda** represented the owner of a regional shopping center in negotiations with the Nassau County Assessment Review Commission. After rigorous negotiations, Mr. Terrana and Mr. Renda were able to persuade the Commission that the shopping center should be valued utilizing market data instead of relying solely on the property's actual financial performance. As a result, Mr. Terrana and Mr. Renda were able to obtain approximately \$1,000,000 in tax savings/refunds for the client.

**Douglas W. Atkins** handled the representation of a national corporation's pursuit of lower property tax for a golf course and catering hall. On behalf of the client, the firm filed for administrative and judicial reductions. The case was moving towards trial and Mr. Atkins secured a specialty appraisal as evidence. After pre-trial negotiations, the matter was resolved with over \$500,000 in refunds and savings for the client.

**Warren Arthur** and **Nicole Forchelli** represented the operator of a skilled nursing facility in Nassau County. By researching Medicaid reimbursement rates, market leases and real estate trends, Mr. Arthur and Ms. Forchelli were able to establish that the facility was being over-charged substantially on its property tax bill. The result was refunds and savings in excess of \$150,000 for the client.

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## AWARDS, PRESENTATIONS & EVENTS (CONT.)



**Brian R. Sahn** was recognized by *Long Island Pulse* magazine with the 2016 Legal Eagle award in Real Estate.



L to R: Hon. Gail Prudenti, Danielle B. Gatto, Andrea Tsoukalas & Peter B. Skelos.

First Annual Long Island Outstanding Women in Law luncheon. Honorees included: **Mary E. Mongioi, Andrea Tsoukalas, Stephanie M. Alberts,** and **Danielle B. Gatto.**



L to R: Gregory S. Lisi, James C. Ricca and NCBA Vice President Steven Leventhal.

The **Firm** was honored by the Nassau County Bar Association (NCBA) at the second annual Pro Bono Awards. **Gregory S. Lisi** is both an NCBA board member and event committee member.