

New York Employers Must Take Action to Comply with the HERO Act

July 9, 2021

New York recently enacted the New York Health and Essential Rights Act (the “HERO Act”) to help reduce the spread of airborne infectious diseases, including COVID-19. New York employers must prepare to comply with various health and safety standards under the new law. All private employers—regardless of size or industry—must adopt airborne infectious disease exposure plans by **August 5, 2021**. Additionally, employers with 10 or more employees must allow for the creation of joint employer-employee workplace safety committees as of **November 1, 2021**.

Infectious Disease Exposure Plan Adoption and Posting Requirements. The HERO Act tasked the New York State Department of Labor (“NYSDOL”) to consult with the New York State Department of Health (“NYSDOL”) to develop an [airborne infectious disease exposure prevention standard](#) and [model plan](#), including industry-specific standards. The NYSDOL published the standard, model plan and industry-specific plans on July 6, 2021, thus triggering a 30-day period for employers to adopt a plan. In addition to a general plan template, industry-specific plans are now available for the following industries: [agriculture](#), [construction](#), [delivery services](#), [domestic workers](#), [emergency response](#), [food services](#), [manufacturing and industry](#), [personal services](#), [private education](#), [private transportation](#) and [retail](#). The NYSDOL’s model protocols and plan components are very similar to the industry-specific guidelines that New York State mandated during the COVID-19 pandemic.

Employers’ plans must only be activated when an airborne infectious disease is designated by the New York State Commissioner of Health as a highly contagious communicable disease that presents a serious risk of harm to the public health. ***As of the date of this update, there is no current requirement to activate the plans.***

New York employers must take steps now to:

- **Adopt an airborne infectious disease exposure plan by August 5, 2021.** Employers may choose to adopt the NYSDOL model plan. Alternatively, employers may adopt their own plan that matches or exceeds the NYSDOL standard. However, if employers adopt their own plan, they must do so with the meaningful participation

of their employees or through an agreement with a collective bargaining representative, if there is one. The template plan covers requirements for health screenings, face coverings and other personal protective equipment, social distancing and heightened cleaning and disinfecting procedures.

- **Distribute the plan to existing employees.** An employer's plan must be distributed to existing employees in English (or the employee's main language if the employer developed a plan in that language) by **September 5, 2021**.
- **Provide the plan to new employees at the time of hire.** Employers should include a copy of the plan in the onboarding materials for new employees.
- **Post the plan in the workplace.** The plan must be posted at the worksite and incorporated into an employee handbook (if there is one). Employers should consider posting the plan on bulletin boards and on company intranet sites as well as attaching them as appendices to employee handbooks.
- **Make the plan available.** The plan must be made available, upon request, to all employees and independent contractors, employee representatives, collective bargaining representatives, and the New York State Commissioner of Health.
- **Keep the plan updated.** An employer must review and update the plan when necessary to reflect new or modified employee assignments as well as tasks and procedures that affect occupational exposure.

Steps Employers Must Take if Plans Are Activated. In the event the New York State Commissioner of Health designates a contagious communicable disease as a risk of harm to public health, the employer must:

- **Review and update the exposure prevention plan.** The plan must be updated and finalized based on current available information and requirements.
- **Distribute the plan to employees.** When the plan is activated, employers must once again provide each employee with a copy of the plan, post a copy in a visible and prominent location at the worksite (except if the worksite is a vehicle), and ensure a copy is accessible to employees during all shifts.
- **Conduct a verbal review of the plan with employees.** Employers must review the plan with employees, whether in a well-ventilated room or remotely.

-
- **Designate one or more supervisory employees to enforce compliance.** A member of management must be assigned to oversee implementation of the plan and other applicable federal, state and local guidance.
 - **Regularly check for updated information and guidance.** Controls and the plan should be regularly updated in accordance with guidance from the NYSDOH or the CDC.
 - **Be careful not to discriminate or retaliate against employees who exercise their rights under the HERO Act and the employer’s plan.** Employers are prohibited from discriminating or retaliating against employees for exercising their rights under the new law, including, but not limited to, reporting violations of the plan or law to their employer, the government, public officer or elected official. Employees are also protected if they refuse to work when they have a reasonable good faith belief that there is unreasonable risk of exposure to the airborne disease because of working conditions that are inconsistent with applicable laws or government orders; provided that someone notified the employer of the inconsistent working conditions and the employer failed to cure the conditions, or the employer had or should have had reason to know about the inconsistent working conditions and maintained them.

Joint Workplace Committees. Employers with 10 or more employees must permit employees to form employer-employee workplace safety committees as of **November 1, 2021**. The committee’s role will be limited to reviewing and raising occupational health and safety concerns related to the HERO Act. Committee members also must be allowed to participate in government-site visits related to workplace health and safety standards and to attend committee meetings and relevant trainings. The NYSDOL has not yet issued any guidance, rules or regulations regarding the safety committee requirements of the HERO Act.

* * *

Please do not hesitate to contact us with any questions.

NEW YORK



Jyotin Hamid
jhamid@debevoise.com



Tricia Bozyk Sherno
tbsherno@debevoise.com