

ALERTS

Update on NY HERO Act

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As we have previously written [here](#) and [here](#), the New York Health and Essential Rights Act (“HERO Act”) was signed into law to combat the spread of airborne infectious diseases in the workplace. On July 6, 2021, the New York State Department of Labor (“DOL”) published on its website a model airborne infectious disease exposure prevention plan, prevention standards and industry-specific airborne infectious disease prevention plans 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. This publication triggers employers’ obligations under the HERO Act to adopt, post and disseminate prevention plans.

What Employers Need to Know

Under the HERO Act, employers are required to adopt airborne infectious disease prevention plans by Aug. 5, 2021. Employers may satisfy this requirement by adopting the DOL’s model prevention plan or, if applicable, the model standard relevant to their industry. Alternatively, employers may adopt an alternative prevention plan that meets the DOL’s minimum requirements, provided that the employer develops such plan with its collective bargaining representative, if any, or with the “meaningful participation” of its employees.

Once an employer has adopted a prevention plan, it has 30 days (no later than Sept. 4, 2021, depending on the date of adoption) to provide a copy of its prevention plan to all of its employees in writing in English and in the language identified by each employee as his or her primary language.

“Employees” is broadly defined to include all full and part-time employees, independent contractors, workers hired through a staffing agency, domestic workers, home care and personal care workers, day laborers, etc. Copies of the employer’s prevention plan must be provided to new employees upon their hiring and must be made available upon request. The prevention plan must also be posted in a visible and prominent location within each worksite. If an employer provides an employment manual or handbook to its employees, a copy of its prevention plan must be included in such manual or handbook.

Although employers must adopt prevention plans by Aug. 5, 2021, they are not required to comply with, or enforce the terms of, their prevention plans until 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. At this time, no such designation has been made.

As always, if you have any specific questions about the HERO Act or how it impacts your organization, you should contact your SRZ attorney.

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