

ALERTS

NY HERO Act: Update to Model Plan

September 28, 2021

Earlier this month, SRZ issued an *Alert* advising that, in light of the New York State Commissioner of Health's Sept. 6, 2021 designation of COVID-19 as "a highly contagious communicable disease that presents a serious risk of harm to the public health" under the New York Health and Essential Rights Act of 2021 ("HERO Act"), employers were required to "promptly" implement and enforce their airborne infectious disease exposure prevention plans. Many employers adopted the New York State Department of Labor's ("DOL") Model Airborne Infectious Disease Exposure Prevention Plan ("Model Plan"), which, among other things, set forth requirements concerning face coverings and social distancing in the workplace regardless of vaccination-status. On Sept. 23, 2021, the DOL updated its Model Plan to amend these particular requirements.

Amended Rules for Masks and Social Distancing in the Workplace

The Model Plan was revised to permit voluntary mask-wearing in workplaces where *all individuals* are fully vaccinated. More specifically, the Model Plan now provides: "[APPLICABLE FOR WORKPLACES where all individuals on premises, including but not limited to employees, are fully vaccinated – defined as having completed a federally authorized or approved vaccination series for an airborne infectious disease designated as a highly contagious communicable disease that presents a serious risk of harm to the public health (as is currently the case for COVID-19, pursuant to the Commissioner of Health's designation)]. Appropriate face coverings are recommended, but not required, consistent with State Department of Health and the Centers for Disease Control and

Prevention applicable guidance, as of Sept. 16, 2021.” For all other workplaces, employees are required to wear appropriate face coverings in accordance with guidance from the New York State Department of Health or the Centers for Disease Control and Prevention, as applicable.

The Model Plan’s requirements concerning social distancing were also amended. Whereas the previous iteration of the Model Plan advised that “unnecessary gatherings” should be avoided and that employees must “use a face covering when physical distance cannot be maintained,” the updated Model Plan now provides only that “physical distancing will be used, to the extent feasible, as advised by guidance from State Department of Health or the Centers for Disease Control and Prevention, as applicable.”

What Employers Should Do Now

Employers may, if they prefer the revised Model Plan over its predecessor, “update” their airborne infectious disease exposure prevention plans to reflect the updated Model Plan. While there currently is no specific guidance on updating prevention plans aside from the DOL’s FAQ Guidance that advises employers to regularly review and update their prevention plans, employers should, after updating their plans, promptly post the revised prevention plan in the workplace, update employee handbooks to include the revised plan, if applicable, and inform employees of the change to the prevention plan alongside a copy of the updated plan.

Please be advised that if you adopted an “alternative” airborne infectious disease exposure prevention plan (i.e., any plan other than the Model Plan), these changes may not affect you because you must continue to adhere to the specific terms of your adopted plan, including with respect to wearing masks and social distancing in the workplace (provided the minimum standards set forth in the DOL’s Airborne Infectious Disease Exposure Prevention Standard are met).

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

Authored by Mark E. Brossman, Ronald E. Richman, Max Garfield, Scott A. Gold, Donna K. Lazarus and Abdulrahman Alwattar.

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Related People



**Mark
Brossman**

Partner
New York



**Ronald
Richman**

Partner
New York



**Max
Garfield**

Partner
New York



**Scott
Gold**

Special Counsel
New York



**Donna
Lazarus**

Partner
New York



**Abdulrahman
Alwattar**

Associate
New York

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