

ALERTS

Current State of COVID-19 Protocols for Employers

March 29, 2022

New York COVID-19 Updates

End of COVID-19 Designation Under the New York State HERO Act

On March 17, 2022, the New York State Commissioner of Health ended the designation of COVID-19 as an airborne infectious disease that presents a serious risk of harm to the public health under the New York Health and Essential Rights Act (“HERO Act”). Although New York employers are no longer required to implement or enforce their airborne infectious disease exposure prevention plan (“Prevention Plan”), employers must continue to comply with other requirements under the HERO Act. Employers must routinely review and update their Prevention Plan to incorporate information, guidance, and requirements issued by federal, state, and local governments. Employers must continue to ensure that each employee was given a copy of the Prevention Plan within thirty (30) days after it was created, including to new employees upon hiring, in English and in the language identified by each employee as his or her primary language. While employers are not currently obligated to re-circulate their Prevention Plan to each employee every time the Prevention Plan is updated, employers must continue to ensure that the most updated version of their Prevention Plan is included in their employee handbooks or manuals and posted in a visible and prominent location within their work sites. The HERO Act’s workplace safety committee provision (described in a previous *SRZ Alert*) remains unchanged and in effect. More information about the HERO Act’s

requirements can be found in the New York State Department of Labor's FAQ.

New York's Mask and Vaccine Mandates

New York State lifted its Determination on Indoor Masking ("Mask Mandate") on Feb. 10, 2022, thereby eliminating the requirement for individuals to wear a mask or provide proof of vaccination to enter indoor public places. Masks continue to be required for all healthcare settings regulated by the Department of Health and related state agencies.[1] More information about New York State's lifting of the Mask Mandate can be found in a previous *SRZ Alert*.

New York City's COVID-19 vaccine mandate for private-sector workers (the "NYC Vaccine Mandate") remains in effect. The NYC Vaccine Mandate, detailed in a previous *SRZ Alert*, requires employers to: (i) prohibit unvaccinated workers from entering their workspaces, with limited exceptions, and (ii) obtain and confidentially maintain records of COVID-19 vaccinations for each of their workers.

New York State lifted its statewide mask requirement and made masks optional for public and non-public schools and daycare programs on Mar. 2, 2022, and on March 7, 2022, New York City lifted its mask requirement for New York City public school students five (5) years old and older. On March 22, 2022, Mayor Eric Adams announced that he plans to make masks optional for children two (2) to four (4) years old in New York City public schools and daycare programs, effective Apr. 4, 2022.

Federal COVID-19 Update

OSHA

On Jan. 26, 2022, the Occupational Health and Safety Administration ("OSHA") withdrew its COVID-19 Vaccination and Testing Emergency Temporary Standard ("ETS") for employers with 100 or more employees (the ETS is described in a previous *SRZ Alert*). Additionally, on Dec. 27, 2021, OSHA released a statement announcing that it is (i) withdrawing the non-recordkeeping requirements of a separate COVID-19 Healthcare ETS for healthcare workers, and (ii) planning to issue a final rule on protecting healthcare workers from COVID-19.[2] Otherwise, there are currently no binding federal COVID-19 protocols for most employers.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

[1] Masks continue to be required in public transit and transportation hubs, nursing homes, adult care facilities, correctional facilities, detention centers, homeless shelters and domestic violence shelters.

[2] On March 22, 2022, OSHA began seeking comments to be submitted online by April 22, 2022, and by a public hearing on April 27, 2022.

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