

HERO ACT AMENDMENTS SIGNED INTO LAW – A MINOR REPRIEVE FOR NEW YORK EMPLOYERS

Hodgson Russ Labor & Employment Alert
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As we previously reported [here](#), Governor Cuomo signed the New York Health and Essential Rights Act (“HERO Act”) into law on May 5, 2021. The HERO Act adds two new sections to the New York Labor Law:

- Section 218-b, which requires employers to establish prevention plans for airborne infectious diseases; and
- Section 27-d, which requires employers to allow employees to form “workplace safety committees.”

When Governor Cuomo signed the HERO Act, he indicated that he had secured an agreement with the Legislature to amend the Act to, among other things, provide the Department of Labor (“DOL”) and employers with “a specific timeline and instructions for implementing the changes.” These amendments have now passed in both chambers of the Legislature, and Governor Cuomo signed them into law on June 14, 2021.

The amendments enact a number of positive changes to the HERO Act for employers, including the following:

- **The deadline for employers to adopt their airborne infectious disease exposure prevention plans has been delayed from June 4, 2021 to 30 days after DOL publishes the model plans.** This change is important given that the original deadline has passed and DOL has still not developed any model plans, leaving employers without much needed guidance on the appropriate contents of the plan. Once DOL publishes the model plans, employers will have 30 days to adopt their plans and another 30 days to distribute the plans to employees. Employers will also be required to distribute their adopted plans to newly hired employees at the time of hire and to all employees within 15 days after reopening after a period of closure due to airborne infectious disease.

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- **The worksites for which DOL must publish model plan(s), and for which employers must adopt plan(s), are now explicitly limited to those “over which an employer has the ability to exercise control.”** The amendments also clarify that covered worksites do not include telecommuting or telework sites over which the employer lacks the ability to exercise control or vehicles.
- **The remedies which employees can recover in a civil action under Section 218-b have been limited.** Specifically, while employees may still seek injunctive relief, costs, and reasonable attorneys’ fees for an employer’s violation of the airborne infectious disease exposure plan that could result in physical harm to the employee, the amendments removed a provision that would have allowed employees to recover liquidated damages of up to \$20,000 for such a violation.
- **The amendments also require employees to provide their employer with 30 days’ notice and an opportunity to cure the violation before filing a civil action under Section 218-b,** unless the “employee alleges with particularity that the employer has demonstrated an unwillingness to cure a violation in bad faith.” Employees must file such a civil action within six months of the date the employee had knowledge of the violation. Employees who file civil actions that are found by the court to be frivolous may be ordered to pay the costs and reasonable attorney’s fees incurred by the employer in the defense of the action.
- **The purview of workplace safety committees has been narrowed to more closely target issues related to workplace safety.** Specifically, the HERO Act originally allowed workplace safety committees to, among other identified tasks, “[r]eview any policy put into place in the workplace required by any provision of this chapter,” which could have been read to extend to any policy required by the New York Labor Law. That provision has now been modified to include only policies “put into place in the workplace required by any provision of this chapter relating to occupational safety and health.” The other tasks that workplace safety committees are entitled to undertake remain largely unchanged. The amendments do, however, clarify that employers are only required to permit one committee per worksite and do not need to allow another committee where one already exists.
- **The duration of workplace safety committee meetings and trainings has been limited.** Specifically, the amendments specify that the regularly scheduled quarterly meetings of the committee “shall last no longer than two hours.” These meetings still must occur during work hours. In addition, the training that safety committee members are entitled to attend, without loss of pay, has been limited to a duration of no more than four hours.

If you have any questions regarding the HERO Act and how it may impact your business, please contact [John Godwin](#) (716.848.1357), [Lura Bechtel](#) (416.595.2693), [Kinsey O’Brien](#) (716.848.1287), or any member of Hodgson Russ’s [Labor and Employment Practice](#).