

HERO ACT UPDATE: CRITICAL COMPLIANCE OBLIGATIONS FOR EMPLOYERS FOLLOWING NYSDOL'S PUBLICATION OF MODEL PLANS

Labor and Employment Alert
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As we previously reported [here](#) and [here](#), the New York Health and Essential Rights Act (“HERO Act”) was signed into law on May 5, 2021 and amended on June 14, 2021. The HERO Act added two new sections to the New York Labor Law:

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

Under Section 218-b, as amended, employers must adopt their exposure prevention plans within 30 days after the New York State Department of Labor (“NYSDOL”) publishes the model plans. On July 6, 2021, NYSDOL published the model plans, along with an “airborne infectious disease exposure prevention standard,” available at <https://dol.ny.gov/ny-hero-act>. The models include a “general” template along with eleven industry-specific templates 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.

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Each industry-specific model is designed to respond to the unique types of risks present at worksites customarily associated with each industry. Employers should immediately begin reviewing the model(s) applicable to their worksites, as **plans must be adopted by August 5, 2021**. Employers may adopt either the applicable model(s) or an alternative plan that meets the requirements of NYSDOL's standard – but, if the employer chooses to adopt an alternative plan, they must do so with “meaningful input” from employees on “all aspects” of the plan.

After the plan is adopted, employers have an additional 30 days to distribute the plan to all employees and independent contractors. Employers must also provide the plan to new employees and contractors upon hire. Such distribution must be done in English and the employee or contractor's primary language, if other than English, unless NYSDOL does not publish the model in the employee's primary language. Employers must also include the plan in the employee handbook (if one exists), and post it “in a visible and prominent location within each worksite.”

Finally, **employers are required to conduct a “verbal review”** that covers the existence, location, and terms of the plan, the circumstances under which it can be activated, the infectious disease standard, and employee rights under the HERO Act. This verbal review must be provided to all employees, but not to “any individuals working for staffing agencies” or “contractors or subcontractors on behalf of the employer at any individual work site.” According to NYSDOL's guidance, the review should be conducted “in a manner most suitable for the prevention of an airborne infectious disease, whether in person in a well-ventilated environment with appropriate face masks or personal protective equipment, or via audio or video conference technology.”

While employers must comply with all of the above “procedural” requirements, the substantive provisions of the plan will go into effect only during periods when the New York State Commissioner of Health designates an airborne infectious disease as a highly contagious communicable disease that presents a serious risk of harm to public health. There is currently no such designation in place. Employers should monitor developments from the Departments of Health and Labor and be prepared to activate their plans if a designation is made.

If you have any questions regarding the HERO Act and how it may impact your business, please contact [John Godwin](#) (716.848.1357), [Luisa Bostick](#) (716.848.1705), [Kinsey O'Brien](#) (716.848.1287), or any member of Hodgson Russ's [Labor and Employment Practice](#).