

NEW YORK EMPLOYERS NO LONGER REQUIRED TO ENFORCE HERO ACT EXPOSURE PREVENTION PLANS, AS COVID-19 DESIGNATION EXPIRES

Hodgson Russ Labor & Employment Alert
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As we previously reported [here](#), on September 6, 2021, the New York State Commissioner of Health (“Commissioner”) designated COVID-19 as a highly contagious communicable disease that presents a serious risk of harm to public health. As a result, New York employers were required to activate, comply with, and enforce their HERO Act Airborne Infectious Disease Exposure Prevention Plans (“Plans”) with respect to COVID-19.

The Commissioner extended the HERO Act designation a number of times since September. The most recent extension, announced on February 15, 2022, continued through March 17, 2022. Now, with the dramatic reduction in COVID-19 infection throughout New York State, the Commissioner allowed this designation to expire.

The New York State Department of Labor (“NYSDOL”) recently confirmed the expiration of the designation, and its impact on employers, on its [HERO Act webpage](#). Specifically, NYSDOL states:

On March 17, 2022, the designation of COVID-19 as an airborne infectious disease that presents a serious risk of harm to the public health under the HERO Act ended. Private sector employers are no longer required to implement their workforce safety plans.

Accordingly, New York employers are no longer required to enforce the substantive provisions of their Plans. However, the HERO Act remains law, and employers still must comply with its various procedural requirements. These include maintaining a Plan (albeit in inactive status) and distributing the Plan to new employees and contractors upon hire. In the event of a future designation, whether related to COVID-19 or another airborne infectious disease, employers must be prepared to reactivate and comply with their Plans.

While the expiration of the HERO Act designation in New York is a welcome sign, employers must still be mindful of any state or local pandemic-related restrictions that continue to apply to them. For example, employers subject to New York City’s private sector COVID-19 vaccine mandate must continue to comply with the

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mandate. Employers must also continue to comply with their obligations under the Occupational Safety and Health Act and should monitor the pandemic-related guidance issued by the federal Occupational Safety and Health Administration.

If you have any questions regarding HERO Act compliance and its impact on your business and workforce, please contact [Elizabeth McPhail](#) (716.848.1530), [Kinsey O'Brien](#) (716.848.1287), or any member of the Hodgson Russ [Labor & Employment](#) practice.