

NEW YORK HERO ACT AMENDED TO ENHANCE ENFORCEMENT PROVISIONS AND PENALTIES RELATED TO WORKPLACE SAFETY COMMITTEES

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New York Governor Kathy Hochul recently signed legislation to amend the Health and Essential Rights (“HERO”) Act’s workplace safety committee provision. This amendment creates a rigid deadline within which employers must respond to requests for committee recognition and establishes a per-day penalty for failure to meet this deadline.

As we previously reported (including [here](#) and [here](#)), the HERO Act was inspired by the COVID-19 pandemic and included two key provisions. The first provision requires employers to adopt and distribute airborne infectious disease exposure prevention plans and to activate and implement such plans at times when the New York Commissioner of Health has designated an airborne infectious disease as a highly contagious communicable disease that presents a serious risk of harm to public health. The designation of COVID-19 as such a disease expired as of March 17, 2022. Accordingly, employers must still maintain and distribute their plans in accordance with the HERO Act, but are not required to implement and enforce them at this time.

The second key provision of the HERO Act requires private employers with 10 or more employees to allow employees to form and join labor-management workplace safety committees. The new amendment to the HERO Act updates this provision to mandate that the employer recognize the establishment of a workplace safety committee within five (5) business days of receiving the written recognition request. This deadline is consistent with that suggested by the New York State Department of Labor (“NYSDOL”) in a set of proposed regulations, which NYSDOL has yet to finalize. We reported on this, and other details, of the proposed regulations [here](#).

The amendment also seeks to add proverbial teeth to the 5-day recognition deadline by providing for a civil penalty of \$50 per day until the employer remedies the violation. The amendment also makes clear that the New York Commissioner of Labor may order other appropriate relief, including injunctive relief, for violations of the HERO Act’s workplace safety committee requirements.

Attorneys

Luisa Bostick
Joseph Braccio
Glen Doherty
Asia Evans
Ryan Everhart
Peter Godfrey
John Godwin
Thomas Grenke
Charles H. Kaplan
Karl Kristoff
Christopher Massaroni
Elizabeth McPhail
Lindsay Menasco
Kinsey O'Brien
Jeffrey Swiatek
Michael Zahler

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These amendments took effect on December 28, 2022. Accordingly, employers should act swiftly if they receive a request for recognition of a workplace safety committee. Employers should also ensure that all supervisors are trained on and familiar with the HERO Act's requirements and their responsibility to promptly escalate any recognition request they may receive to the appropriate person(s) in leadership.

If you have questions about the amendment or employer obligations under the HERO Act, please contact [Glen Doherty](#) (518.433.2433), [Charles H. Kaplan](#) (646.218.7513), [Kinsey O'Brien](#) (716.848.1287), or any other member of our [Labor & Employment Practice](#).