

Employment & Labor Law Alert

July 2021

New NY HERO Act Standard and Model Plans Give Employers Road Map to Prevent Future Airborne Infectious Diseases

New York has followed up the enactment of the NY HERO Act, the first legislation of its kind in the nation that requires employers to create an enforceable plan to prevent airborne infectious diseases in the workplace, by issuing a written disease exposure prevention standard, a model prevention plan and industry-specific model plans.

Standard and Model Plans Posted

The New York State Department of Labor (NYSDOL) on July 7 posted a new Airborne Infectious Disease Exposure Prevention Standard, a [Model Airborne Infectious Disease Exposure Prevention Plan and 11 industry-specific model plans for the prevention of airborne infectious diseases](#).

The New York Health and Essential Rights Act, known as the NY HERO Act ([Senate Bill 1034-A/Assembly Bill 2681-B](#)), took effect on June 4. It mandates the development of model airborne infectious disease prevention standards, directs private-sector employers to adopt these standards or develop their own comprehensive airborne infectious disease exposure prevention plan, gives employees a voice in the development process and establishes penalties for violations. (Read our alert on the HERO Act [here](#).)

Employers must provide employees with a copy of their plan upon reopening after an airborne infectious disease closure, provide the plan to new employees upon hiring, post the plan in a prominent location and include it in the employee handbook, if the employer has one.



Commissioner Designation

Regardless of whether an employer adopts the state's model plan or drafts its own plan, the airborne infectious disease exposure prevention plans must be followed upon the announcement by the New York State Commissioner of Health that a highly contagious communicable disease poses a serious risk of harm to the public. Because no designation of such a threat is currently in place, employers have an obligation to have a plan but not to activate that plan. The NYSDOL standards and model plan are a road map for employers in the event of future airborne infectious disease crises.

In addition to the existing Nov. 1 deadline to establish a workplace health and safety committee (see below for details), the NYSDOL update triggers two statutory deadlines for employers to meet:

- **Aug. 6, 2021.** Within 30 days of the NYSDOL's publication, employers must either adopt the model standard applicable to their industry or create their own airborne disease prevention plan that meets or exceeds the minimum requirements of the law.

Attorney Advertising



LOS ANGELES
NEW YORK
CHICAGO
NASHVILLE

WASHINGTON, DC
SAN FRANCISCO
BEIJING
HONG KONG

loeb.com

- **Sept. 5, 2021.** Within 60 days of the NYSDOL's publication, employers must provide the adopted model or their own plan to their employees.

Airborne Infectious Disease Exposure Prevention Standard

In accordance with the [Airborne Infectious Disease Exposure Prevention Standard](#), employers must take the following measures:

- Establish a written exposure prevention plan designed to eliminate or minimize employee exposure to airborne infectious agents in the event of an outbreak of an airborne infectious disease.
- Review and update the exposure prevention plan whenever necessary to reflect new or modified tasks and procedures and to reflect new or modified employee assignments.
- Post a copy of the exposure prevention plan in a visible and prominent location at the work site (except when the work site is a vehicle).
- Make the exposure prevention plan available upon request to all employees, employee representatives, collective bargaining representatives, independent contractors, the Department of Labor and the Department of Health.

Any exposure prevention plan adopted by an employer shall contain exposure controls including:

- Health screenings
- Face coverings
- Physical distancing
- Hand hygiene facilities
- Cleaning and disinfection protocols
- Personal protective equipment and training, where necessary

Model Airborne Infectious Disease Exposure Prevention Plan

The state's [Model Airborne Infectious Disease Exposure Prevention Plan](#) outlines the following requirements to protect employees against exposure and disease during a designated airborne infectious disease outbreak:

- Designated supervisory employee responsibilities
- Minimum and advanced exposure controls
- Housekeeping requirements

- Response to an actual or suspected infection case at work
- Training and communication
- Plan evaluation
- Violation reporting and retaliation protections

Industry-Specific Plan Templates

Plan templates are also available 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](#).

The standard and model plans are available in English and will be available in Spanish. Employers are encouraged to check the [NY HERO Act](#) website for updates.

Workplace Health and Safety Committee

Although not impacted by the recently released standard and model plans, employers with at least 10 employees also must permit the creation of a joint employer-employee workplace health and safety committee for each work site as of Nov. 1. The committee must meet specific requirements for composition, control and authority. At least two-thirds of the committee must be nonsupervisory employees, and the committee co-chairs must be a supervisory and a nonsupervisory employee.

Workplace health and safety committees and their members are authorized to:

- Raise health and safety concerns, hazards, complaints and violations to the employer.
- Review any policy required by any provision of the NY HERO Act or any provision of the workers' compensation law and provide feedback on these policies.
- Review the adoption of any policy in response to any health or safety law, ordinance, rule, regulation, executive order or other related directive.
- Participate in any site visit by any governmental entity responsible for enforcing safety and health standards.

Employers must compensate committee members for their time attending committee meetings and health and safety training, up to two hours per quarter for committee meetings and four hours for trainings.

While the NY HERO Act does not expressly give the committee any enforcement authority, employers are required to respond to health and safety concerns, complaints or violations the committee brings to the employer's attention. Under the amended version of the act, signed into law by Gov. Cuomo on June 11, employers have 30 days to cure an alleged violation after notice by an employee (during which time no lawsuit related to the violation may be filed, unless the employer refuses).

Additional Requirements

Employers with unionized work sites have added requirements under the act. They may also negotiate a waiver of the act prevention plan requirements, but only through a provision in the collective bargaining agreement that expressly references the NY HERO Act.

Employers that fail to comply with the NY HERO Act may be assessed fines by the state. Employees also have a private right of action under the act.

Related Professionals

Ian Carleton Schaefer. ischaefer@loeb.com
Mark Goldberg. mgoldberg@loeb.com
Brian M. Hayes. bhayes@loeb.com

This is a publication of Loeb & Loeb and is intended to provide information on recent legal developments. This publication does not create or continue an attorney client relationship nor should it be construed as legal advice or an opinion on specific situations.

© 2021 Loeb & Loeb LLP. All rights reserved.
6699 REV1 07-19-2021