

Employment & Labor Law Alert

September 2021

New York Updates Workplace Guidance on Masks and Social Distancing

Updated Nov. 3, 2021: The New York State Commissioner of Health announced on Oct. 31 the [continued designation](#) of COVID-19 as a “highly contagious communicable disease” pursuant to the HERO Act through Dec. 15. According to the designation, the Commissioner “will review the level of transmission of COVID-19 in New York State and determine whether to continue this designation” at that time.

On the heels of [designating COVID-19](#) an airborne infectious disease under the New York Health and Essential Rights Act (NY HERO Act) earlier this month, New York has made adjustments slightly clarifying employer obligations. On Sept. 23, the New York State Department of Labor made two updates to its [model plan](#) on the [NY HERO Act website](#). The revisions loosen mask requirements for employees in those workplaces where all individuals on the premises, including but not limited to employees, are vaccinated. According to the revised model plan, face coverings are recommended, but not required, where everyone is known to be vaccinated in accordance with New York State Department of Health (NYSDOH) and Centers for Disease Control and Prevention (CDC) applicable guidance in effect as of Sept. 16. Mask wearing continues to be mandatory for what the model plan describes as “most workplaces,” pursuant to applicable NYSDOH and CDC guidance. The model plan also modified the language on social distancing to state: “Physical distancing will be used, to the extent feasible, as advised by guidance from State Department of Health or the Centers for Disease Control and Prevention, as applicable.”



New York’s guidance continues to be the [Reopening New York](#) information released back on May 19. That guidance states: “Businesses are authorized to require masks and six feet of social distancing for employees and/or patrons within their establishments OR adhere to [CDC guidance](#), which advises that fully vaccinated individuals do not need to wear masks or be socially distanced, but unvaccinated individuals must continue to [wear masks](#) and be socially distanced in most settings.” Employers should note that the CDC’s current guidance recommends that fully vaccinated people wear masks in public indoor settings in areas of substantial or high transmission and that [6-foot social distancing](#) be maintained with individuals outside the household.

Given the above changes to the model plan, we recommend that employers revise any previously implemented plans accordingly.

Finally, we note that the current NY HERO Act designation expires on Sept. 30. With just two days to go, it remains to be seen whether the NYSDOH commissioner will extend the NY HERO Act mandate.

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