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Labor & Employment Alert

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HERO Act update: New York employers must immediately implement their airborne infectious disease exposure prevention plan

By **Stephanie M. Caffera, Conor T. Tallet, and David A. Tauster**

Employers must act now to comply with HERO Act after health commissioner issues designation regarding COVID-19.



What's the Impact?

- / Start planning now to implement your airborne infectious disease exposure prevention plan, and consult with counsel to review additional obligations under the HERO Act's requirements
- / New York businesses should anticipate NYDOL publishing HERO Act-related regulations in the near future

On September 6, 2021, New York Governor Kathy Hochul officially announced that the Commissioner of Health has designated COVID-19 "a highly contagious communicable disease that presents a serious risk of harm to the public health," thereby triggering several employer requirements under the HERO Act.

As discussed in our [prior alerts](#), the HERO Act required all private employers to adopt an infectious disease exposure prevention plan by August 5, 2021. However, employers are not required to actually implement their plan under the Act unless and until "a highly contagious

communicable disease is designated by the Commissioner of Health as presenting a serious risk of harm to the public health[.]”

Now that the Commissioner of Health has issued this designation regarding COVID-19, employers are required to:

- / Immediately review their plan and update, if necessary, to ensure it incorporates any current information, guidance, or mandatory requirements issued by federal, state, or local governments
- / Finalize and promptly activate the exposure prevention plan
- / Conduct a “verbal review” of the plan with employees and provide each employee a copy of the exposure prevention plan in English or in the language identified as the primary language of such employee, as well as post the plan in a prominent location within the workplace
- / Ensure that the exposure prevention plan is effectively followed while the Commissioner of Health’s designation remains in effect (currently until September 30, 2021), including by continuously monitoring and maintaining exposure controls and checking for updated information and guidance
- / Designate one or more supervisory employees to enforce compliance with the exposure prevention plan, the New York Department of Labor standard, and any other federal, state, or local guidance
- / Retain any records of communications between an employer and an employee regarding a potential risk of exposure for two years following the conclusion of a designation by the Commissioner of Health

The Commissioner of Health’s COVID-19 designation currently remains in effect until September 30, 2021, but may be extended beyond that date. Additionally, while there currently are no state guidance or regulations related to the HERO Act or employer obligations thereunder, the New York Department of Labor has indicated on its website that it will be publishing HERO Act-related regulations in the future. Employers should remain in contact with counsel over the coming days and weeks to ensure that the implementation of their airborne infectious disease exposure prevention plans and additional obligations comply with the HERO Act’s requirements.

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