

There have been several recent significant updates to the HERO Act. These updates apply to both sections of the HERO Act - Section 1 Airborne Infectious Disease Exposure Prevention Plan and Section 2 HERO Act Workplace Safety Committee.

Updates to Section 1 of the HERO Act - Airborne Infectious Disease Exposure Prevention Plan

1. **NY State Commissioner of Health Extends Designation:** The NY State Commissioner of Health has extended the designation of COVID-19 as a “highly contagious communicable disease that presents a serious risk of harm to the public health” through October 31, 2021. The initial designation was effective through September 30, 2021 and that required covered NY employers to activate their NY HERO Act airborne infectious disease exposure prevention plans. NY covered employers must now keep their HERO Act workplace exposure prevention plans activated until at least October 31, 2021.
2. **Change to Model Plan Template on Face Coverings:** The NY State Department of Labor recently amended the template prevention plan to address the use of face coverings. This change explains that in workplaces where all individuals on the premises (not just employees) are fully vaccinated, the Department recommends, but does not require, that employees wear face coverings in accordance with guidance from the NY State Department of Health or the CDC.

However, most workplaces will not be able to say that everyone on site is fully vaccinated. Thus, in such workplaces, employees are required to wear face coverings throughout the workday to the greatest extent possible, and in accordance with guidance from the State’s Department of Health or the CDC. Note, as has been previously communicated, OSHA, the CDC, the NYS DOL and the NY State DOH all recommend the use of proper face coverings indoors – whether individuals are vaccinated or not.

Employers should update their Prevention Plan as necessary to reflect this amendment of the template Prevention Plan.

Update to Section 2 of the HERO Act - Workplace Safety Committee

Per the original language of HERO Act, covered employers with at least ten (10) employees must “**permit** employees to establish and administer a joint labor-management workplace safety committee” by November 1, 2021. However, the recent FAQ published by the NY State Department of Labor states that “employers who employ at least 10 employees are **required** to establish a workplace safety committee.”

Prior to the publication of this new guidance (in the NYS DOL’s FAQ) it was unclear whether an employer had to take affirmative steps to create a workplace safety committee, or passively allow employees to create such a committee. The FAQ now states that, “[t]he law **requires** employers with 10 or more employees to establish and administer a joint labor-management workplace safety committee[,]”. This appears to confirm that employers must affirmatively create these workplace safety committees to comply with the law. This discrepancy will hopefully be addressed in future regulations. In the meantime, it is recommended that covered employers prepare for the creation of these committees.

Actions Employers Should Take

Section 1 of the HERO Act - Airborne Infectious Disease Exposure Prevention Plans

If not already done so, covered NY employers need to activate their plans and institute a number of workplace COVID-19 prevention measures similar to those that were previously required under the New York Forward guidance from May 2020 through June 2021. These minimum measures include, but are not limited to:

- ✓ Stay at home policies for employees who test positive or who have symptoms
- ✓ Daily health screenings of employees
- ✓ Wearing face coverings throughout the workday to the greatest extent possible. However, as noted, the NYS DOL updated its prevention plan template to indicate that where all individuals at a workplace are fully vaccinated, appropriate face coverings are recommended, but not required. Note the **NYS DOL still requires face coverings at workplaces without a completely vaccinated population.** Also, OSHA, the CDC, the NYS DOL and the NY State DOH all recommend the use of proper face coverings indoors – whether individuals are vaccinated or not.
- ✓ Physical distancing where feasible
- ✓ Engineering controls, such as ensuring effective ventilation
- ✓ Administrative controls, such as employee training, limiting the sharing of workstations, and capacity constraints
- ✓ The use of personal protective equipment (where applicable)
- ✓ Cleaning and disinfection practices
- ✓ Verbal Training and Review (the verbal training can be conducted electronically). Employers must provide a verbal training of the employer’s prevention plan and employee rights under the HERO Act.

Personnel must be trained on the following topics:

- a) COVID-19 and the disease(s) it can cause
- b) The signs and symptoms of COVID-19
- c) How COVID-19 can spread
- d) A review of the employer’s prevention plan
- e) Activities and locations at the employer’s worksite that may involve exposure to COVID-19
- f) The use and limitations of exposure controls
- g) Review the NY Standard released by the NYS DOL, including employee rights and anti-retaliation protections provided under the HERO Act.

Section 2 of the HERO Act - Workplace Safety Committee

While we are hopeful additional guidance will be provided by the NYS DOL, it is recommended that covered employers prepare for the creation of these committees.