

New York Establishes New Requirements for Employers under the New York HERO Act: What You Need to Know

Insights

July 16, 2021

Governor Andrew Cuomo signed the [New York Health and Essential Rights Act \(NY HERO Act\)](#) (the “Act”) into law on May 5, 2021. Amendments were made in June and signed by Governor Cuomo on June 14, 2021. The purpose of this new law is to protect employees against exposure and disease during a potential future airborne infectious disease outbreak. The Act establishes a new obligation on New York employers to develop extensive workplace health and safety standards to prevent exposure to airborne infectious diseases in the workplace.

On July 7, 2021, the New York State Department of Labor (the “NYS DOL”) released its [model safety plans](#), which include several industry-specific templates.

Private employers have until **August 5, 2021** to **establish** safety plans, and until **September 4, 2021** to distribute the plans to all employees. Safety plans do not need to be **implemented** until required by the New York State Commissioner of Health.

The HERO Act Requirements

The Act required the New York State Commissioner of Labor (“Commissioner”), in consultation with the New York State Department of Health, to create and publish model airborne infectious disease exposure prevention standards for industries representing a significant portion of the workforce, or those with unique characteristics requiring distinct standards. Additionally, a general model airborne

infectious disease exposure prevention standard was required to be created for any worksites that are not included within the specific industry standards.

The standards establish requirements on procedures and methods for:

- Employee health screenings;
- Face coverings;
- Required personal protective equipment (“PPE”) applicable to each industry for eyes, face, head and extremities, including protective clothing, respiratory devices, and shields and barriers, which must be provided at the employer’s expense;
- Accessible workplace hand hygiene stations and protocols;
- Regular cleaning and disinfecting of shared equipment and frequently touched surfaces (i.e., workstations, touchscreens, phones, handrails, doorknobs, etc.);
- Effective social distancing for employees and consumers or customers (i.e., increasing physical space between employees at the worksite; limiting capacity of customers or consumers; flexible meeting and travel options; flexible worksites; or implementing flexible work hours such as staggered shifts);
- Compliance with mandatory or precautionary orders of isolation or quarantine issued to employees;
- Compliance with engineering controls (i.e., proper air flow or exhaust ventilation);
- Designation of one or more supervisory employees to enforce compliance of the safety plan and federal, state, and local protocols related to the avoidance of spreading an airborne infectious disease;
- Compliance with employee notification requirements; and
- Verbal review of standards, employer policies and employee rights.

The New York State Model Safety Plans Impact on Employers

The clock has now started ticking – triggered by the release of the NYS DOL plans – for employers to comply with the new law.

Within 30 days of the commissioner’s publication of model and general standard plans, each employer must adopt and implement a model airborne infectious disease

exposure prevention plan, meaning that employers only have **until August 5, 2021** to establish an airborne infectious disease exposure prevention plan either by:

1. Adopting the commissioner's model standard relevant to their industry, **or**
2. Creating their own safety plan that meets or exceeds the minimum standards established by the commissioner.

If an employer develops its own safety plan, it must do so pursuant to an agreement with the collective bargaining representative, if any, or in a non-unionized workplace, with meaningful participation of employees for all aspects of the plan, and such plan needs to be tailored and specific to hazards in the specific industry and work sites of the employer. The law forbids a non-supervisory employee from being responsible for monitoring compliance with the plan requirements.

Employers are required to provide the plan to their employees (i) within **30 days** after adoption of the plan, (ii) within **15 days** after reopening following a closure due to an airborne infectious period, and (iii) to all newly hired employees, upon hire.

The plan must be distributed in English and in an employee's primary language if other than English, if there is a model policy developed for that specific language.

Employers must distribute the plan to all employees within **60 days** (i.e., **by September 4, 2021**) after the commissioner publishes the model plan relevant to the industry.

Employers must also post the prevention plan in a visible and prominent location within each worksite (other than a vehicle). All employers must make the prevention plan available, upon request, to all employees and independent contractors, employee representatives, collective bargaining representatives, the commissioner and the commissioner of health.

Additionally, an employer that provides an employee handbook to its employees must include the prevention plan in its handbook.

If an employer fails to comply with the Act, it may be subject to penalties. In addition to fines, the Act creates a private right of action for employees, under certain circumstances.

It is important to note that employers are **not** required to implement the plan until the New York State Commissioner of Health designates an airborne infectious agent or disease as a highly contagious communicable disease that presents a serious risk of harm to the public health. As of the date this article was published, no such

designation is in effect. However, the new law does require employers to prepare now for a potential future outbreak.

Discrimination and Retaliation Prohibited

The Act expressly prohibits discrimination and retaliation against employees for (1) exercising their rights under the Act or the employer's prevention plan; (2) reporting violations of the Act or of the prevention plan; (3) reporting or seeking assistance or intervention with respect to airborne infectious disease exposure concerns to an employer or official entity; (4) refusing to work when an employee reasonably believes, in good faith, that there is an unreasonable risk of working conditions inconsistent with laws or the prevention plan, provided that the employee notified the employer of the inconsistent working conditions and the employer failed to cure the conditions or the employer had or should have had reason to know about the working conditions, and they were not corrected.

Covered Employees and Employers

The Act defines "employees" broadly, including but not limited to "any person providing labor or services for remuneration for a private entity or business within the state," part-time workers, independent contractors, domestic workers, home care and personal care workers, seasonal workers, individuals working for digital applications or platforms, contractors, subcontractors, staffing agencies, as well as any individual delivering goods or transporting people at, to or from the work site on behalf of the employer, regardless of whether delivery or transport is conducted by an individual or entity that would otherwise be deemed an employer under the labor law.

The Act defines "employers" as "any person, entity, business, corporation, partnership, limited liability company, or association employing, hiring, or paying for the labor of any individual in any occupation, industry, trade, business, or service." With the exception of Section 27-d, discussed below, this applies to private employers with one or more employees. The term does not include the state, any political subdivision of the state, a public authority, or any other governmental agency or instrumentality.

Joint Labor-Management Workplace Safety Committee

Additionally, Section 27-d of the Act provides that employers shall permit employees to establish and administer a joint labor-management workplace safety committee. This section applies to private employers that have at least ten employees and goes into effect November 1, 2021. The New York State Department of Health will be

issuing proposed regulations relating to the implementation of workplace safety committees.

The Bottom Line – What’s Next?

1. Employers are required to adopt the model standard relevant to their industry or create their own plan that meets or exceeds the minimum standards provided in the model **by August 5, 2021**.
2. Employers should distribute their plan in English and in the employee’s primary language (if other than English) to all employees **by September 4, 2021**.
3. The Act states employers must post the plan prominently in the workplace, provide the plan to new employees upon hire, and, if a handbook exists, must add the plan to their employee handbook.

The New York State Department of Labor states on their website that they will be sharing more details about this law in the near future and to check back for updates. For now, be prepared to meet these requirements in the future.

We will continue to make updates available on this evolving development. Please reach out to your Gunderson Dettmer attorney if you have any questions regarding the HERO Act or any COVID-19 or employment law issues.

Related Services

Employment & Labor

Featured Insights

FIRM NEWS

Gunderson Dettmer Commemorates 2025 Asian American and Pacific Islander Heritage (AAPI) Month

CLIENT NEWS

Brazilian Carbon Capture Company Mombak Announces \$30M Financing

CLIENT NEWS

Africa B2B OmniRetail Announces \$20M Financing

CLIENT NEWS

Glacier Announces Series A Financing to Expand Robot Recycling Fleet

CLIENT NEWS

Dataminr Announces \$100M Investment Led by Fortress Investment Group

CLIENT NEWS

Omnidian Announces \$87M Series C for Renewable Energy Performance

INSIGHTS

Splitting the Pie: How Savvy Founders Divide Ownership and Navigate Other Founder Equity Decisions

CLIENT NEWS

Chainguard Announces \$356 Million Series D Led by Kleiner Perkins and IVP

INSIGHTS

Client Insight: California AI Transparency Act

INSIGHTS

Client Insight: Prepare for BE-10 Benchmark Survey of US Direct Investment Abroad

INSIGHTS

Tech Brew Interviews Aaron Rubin in “Where the legal battle stands around copyright and AI training”

CLIENT NEWS

Latin America Fintech Belvo Announces \$15M Funding