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New York issues model disease prevention plans under HERO Act

The New York HERO Act requires employers to implement certain health and safety standards and to adopt a plan to prevent the workplace spread of COVID-19 and other airborne infectious diseases. On July 6, the state DOL published an exposure prevention standard, a generally-applicable model disease prevention plan and 11 industry-specific model plans, triggering a 30-day window for employers to adopt the model plan relevant to their industry or to create their own prevention plan.

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Authors

Nancy Vary, JD

Abe Dubin, JD

Background

On May 5, Governor Andrew Cuomo signed the New York Health and Essential Rights (HERO) Act into law, imposing new workplace health and safety obligations on private employers. The HERO Act charged the New York State Department of Labor (NYSDOL), in consultation with the New York State Department of Health, with creating and publishing a model safety standard that establishes minimum requirements for preventing workplace exposure to COVID-19 and other airborne infectious diseases. It required covered employers to establish an airborne infectious disease exposure prevention plan — either by adopting the NYSDOL model standard for their industry or implementing an alternative plan that meets or exceeds state standards. (See our [May 18, 2021 FYI](#).)

Amendments signed into law on June 11 required the NYSDOL to publish industry-specific model disease prevention protocols by July 5 and gave employers 30 days after their publication to adopt the model standard or to create a prevention plan that meets or exceeds state standards. (See our [June 16, 2021 FYI](#).)

Model prevention plans

On July 6, the NYSDOL published an [Airborne Infectious Disease Exposure Prevention Standard](#), a generally-applicable [Model Airborne Infectious Disease Exposure Prevention Plan](#) and industry-specific prevention [plans](#) for: agriculture, construction, delivery services, domestic workers,

emergency response, food services, manufacturing and industry, personal services, private education, private transportation, and retail. The publication triggers a 30-day window within which employers must adopt the model relevant to their industry or create their own airborne disease prevention plan that meets or exceeds the minimum requirements of the law. Employers will have until August 5 to do so.

Employers will be required to provide the exposure prevention plan to employees within 30 days of adoption but no later than September 4 (60 days after the NYSDOL published the model general standard and applicable industry standard) in English and in the primary languages of their employees, if the NYSDOL has made a translation available. Businesses that are closed due to airborne infectious disease will be required to provide the plan to all employees within 15 days after reopening. Employers will have to provide the adopted safety protocols to new employees upon hire.

Although employers must adopt and distribute prevention plans as required by the HERO Act, they are not currently required to activate them. According to the NYSDOL, plans would go into effect “when an airborne infectious disease is designated by the New York State Commissioner of Health as a highly contagious communicable disease that presents a serious risk of harm to the public health.”

Buck comment. With certain exceptions, Governor Cuomo recently lifted COVID-19 restrictions making the state’s health guidance and New York Forward industry specific guidelines optional. However, the state’s health guidelines remain in effect for large-scale indoor event venues, pre-K to grade 12 schools, public transit, homeless shelters, correctional facilities, nursing homes, and health care settings and masks are still required for unvaccinated individuals in accordance with federal CDC guidance.

In closing

Employers with worksites located in New York State should review any existing COVID-19 policies, safety protocols and prevention plans and make changes as needed to ensure compliance with the model relevant to their industry.

COVID-19 Compliance check-in

Buck’s latest version of the **COVID-19 Compliance check-in** is updated to reflect the retirement, health, labor and employment issues facing employers now. Review the checklist to help your team manage priorities and determine next steps.

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