

# FYI<sup>®</sup>

## For Your Information<sup>®</sup>

### **NY HERO Act update: Workplace exposure prevention plans must now remain in effect through December 15**

New York's Health and Essential Rights (HERO) Act required private employers to adopt workplace exposure prevention plans to curb the workplace spread of COVID-19 and other airborne infectious diseases. The New York State Health Commissioner recently extended the designation of COVID-19 as a serious public health risk, obligating employers to maintain activated plans through mid-December.

#### **Background**

Earlier this year, New York enacted the Health and Essential Rights (HERO) Act imposing new workplace health and safety obligations on private employers. Among other things, the HERO Act required New York employers to adopt a prevention plan to curb the workplace spread of COVID-19 and other airborne infectious diseases and to distribute the plan to workers by September 4. However, it did not require plans to be put in effect unless and until an airborne infectious disease was officially designated as a serious public health risk. (See our [May 18, 2021 FYI](#).)

On September 6, the New York State Health Commissioner designated COVID-19 as a serious public health risk in the state, based on the "substantial" or "high" level of transmission identified by the Centers for Disease Control and Prevention (CDC). Initially slated to remain in effect until September 30, the designation was continued by the Health Commissioner through October 31, requiring workplace prevention plans to remain in effect. (See our [October 11, 2021 FYI](#).)

#### **Designation of COVID-19 as a serious public health risk extended again**

On October 31, New York's Health Commissioner continued the designation of COVID-19 as a "highly contagious communicable disease" until December 15, based on transmission levels identified by the CDC. This means that New York employers must continue to keep in effect the airborne infectious disease prevention plans that they adopted in response to COVID-19. According to the

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latest designation, the Health Commissioner will review COVID transmission levels in New York State and determine whether to continue this designation on December 15.

Notably, the portions of the HERO Act that require New York employers to adopt and implement an airborne infectious disease prevention plan do not apply to “employees covered by any other OSHA standard specifically related to airborne infectious diseases or COVID-19 in particular,” such as health care workers. It is not yet clear whether or how OSHA’s release of a generally applicable emergency temporary standard (ETS) requiring the COVID-19 vaccination or weekly testing of workers for employers with 100 or more employees may impact employer obligations under the HERO Act. However, the New York Department of Labor is expected to address the issue in the coming days.

## In closing

The New York Health Commissioner’s continued designation of COVID-19 as a serious public health risk requires employers to keep their HERO Act workplace exposure prevention plans activated until at least December 15. Employers should take any necessary steps to ensure compliance.

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