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NY HERO Act update: Workplace exposure prevention plans must remain in effect through February 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 for the fourth time, obligating employers to maintain activated plans through mid-February.

Background

Last 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. However, it did not require plans to be activated unless and until an airborne infectious disease was officially designated as a serious public health risk. (See our *FYI* from [May 18, 2021](#).)

On September 6, 2021, 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, 2021, the designation was subsequently continued by the Health Commissioner three times, requiring workplace prevention plans to remain in effect through January 15, 2022. (See our *FYIs* from [October 11, 2021](#), [November 9, 2021](#), and [December 17, 2021](#).)

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Designation of COVID-19 as a serious public health risk extended for fourth time

On January 15, New York’s Health Commissioner continued the designation of COVID-19 as a “highly contagious communicable disease that presents a serious risk of harm to the public health” until February 15, citing transmission levels identified by the CDC. This means that New York employers must continue to keep the airborne infectious disease prevention plans required by the HERO Act activated through that date. On February 15, the Health Commissioner will review COVID transmission levels in New York State and determine whether to extend this designation further.

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 February 15. Employers should take any necessary steps to ensure compliance.

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