

New York “HERO” Act Amendments

June 16, 2021

Employers Provided with Additional Time and Guidance to Comply with Law Aimed to Reduce Spread of Airborne Infectious Diseases

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The New York State legislature has passed several amendments to its Health and Essential Rights Act (the “HERO Act”), which we previously wrote about, [here](#), and which is intended to reduce the spread of not just COVID-19 but all airborne infectious diseases. The amendments provide New York state employers with additional time and guidance regarding how to comply with the HERO Act.

In particular, the amendments limit employees’ ability to bring private causes of action against employers for violations of the Act, specifically requiring notice and an opportunity to cure—and establishing a six-month statute of limitations on bringing any claim from the time an employee becomes aware of an alleged violation. Other key adjustments and dates employers should be aware of are as follows:

July 5, 2021

Under the amendments, section 1 of the HERO Act will now take effect on **July 5, 2021**, rather than June 4, 2021—which has already passed. Section 1 still requires employers to adopt an airborne infectious disease exposure prevention plan tailored to industry-specific hazards and work sites addressing topics such as health screenings, face coverings, and engineering controls such as proper airflow and ventilation.

Employers may also still choose to adopt the applicable model plan provided by the state Departments of Labor and Health, or create their own plan—which must meet at minimum the standards laid out in the state-developed plans. Whichever route an employer chooses, it has 30 days from the time that the state publishes its model plans—the deadline for which is July 5, 2021—to either adopt one or develop and implement its own. The amendments also provide more detailed timelines as to when employers must provide the plans to all employees and new hires.

November 1, 2021

Section 2 of the HERO Act, which requires that employers with at least 10 employees permit their employees to establish and administer “joint-labor-management workplace safety committee[s],” still goes into effect on **November 1, 2021**. However, the amendments clarify that an employer need not create a second committee if one that meets the Act’s requirements is already in existence. Moreover, the amendments clarify that a committee’s role shall be limited to reviewing and/or raising occupational health and safety concerns implicated by the Act’s provisions—a committee’s scope does not reach all parts of New York’s Labor Law.

Conclusion

The HERO Act amendments grant employers a bit more time to either adopt a state-developed prevention plan or craft their own. However, proactive planning about health and safety processes now will make implementation in the next couple of months a much smoother process. We encourage employers to reach out to the authors of this advisory or any member of our Employment Group, in order to discuss specific employment questions or business concerns.