

New York State Publishes HERO Act Model and Industry Plans for Returning to Work

July 28, 2021

By August 5, 2021, all employers with worksites in New York state must either: (i) adopt a model plan promulgated by the Department of Labor or (ii) develop and establish an alternative plan that meets the minimum standards of the NY Hero Act's Airborne Infectious Disease Exposure Prevention Standard.

Although a plan must be adopted by August 5, it does not need to go into effect immediately because, even though New York continues to deal with COVID-19, the Commissioner of Health has not made a "designation" under the Act. The Plan would go into effect when the Commissioner of Health designates an airborne infectious disease as a highly contagious communicable disease that presents a serious risk of harm to public health. A Model Airborne Infectious Disease Exposure Prevention Plan developed by the Department of Labor is available [here](#).

Three key items:

- The plan must be reviewed and updated whenever necessary to reflect new or modified tasks and procedures which affect occupational exposure and to reflect new or modified employee assignments.
- The plan must be made available, upon request, to all employees, employee representatives, collective bargaining representatives, independent contractors, the Department of Labor, and the Department of Health.
- The plan must be distributed to all employees by September 4, 2021.

Below is a checklist of the tasks in the Standard that must be done when the Commissioner of Health makes a designation.

1. Immediately review the plan and update the plan, if necessary, to ensure that it incorporates current information, guidance, and mandatory requirements issued by federal, state, or local governments related to the infectious agent of concern.

2. Finalize and promptly activate the plan.

3. Provide a verbal review of employer policies, employee rights under the plan and Section 218-b of the Labor Law (including anti-discrimination and anti-retaliation provisions), and the plan. The

verbal review should be provided in a manner most suitable for the prevention of an airborne infectious disease (e.g., by Zoom, Teams, or other video conference technology).

4. Provide each employee with a copy of the plan in English or the language identified as the primary language of such employee; and

- a. Post a copy of the plan in a visible and prominent location at the worksite,
- b. Ensure that a copy of the plan is accessible to employees during all work shifts.

5. Assign and designate enforcement responsibilities to one or more supervisory employees to enforce compliance with the plan and any other federal, state, or local guidance related to avoidance of spreading an airborne infectious disease as applicable to employees and third parties such as customers, contractors, members of the public within the workplace. No individual who is not a supervisory employee shall have responsibility for overseeing compliance with the requirements of the plan.

6. Monitor and maintain exposure controls.

7. Regularly check for updated information and guidance provided by the NY State Department of Health and the Centers for Disease Control and Prevention concerning the airborne infectious disease and updating the plan, when necessary, so that the plan reflects current NY State Department of Health or Centers for Disease Control and Prevention recommended control measures.