

NYS DOL Publishes Model Airborne Infectious Disease Exposure Prevention Plan Under HERO

On July 6, 2021, the Department of Labor for the state of New York published its model Airborne Infectious Disease Exposure Prevention Plan (the Model Plan) under the New York Health and Essential Rights Act (HERO), which was signed into law on May 5, 2021 by Governor Cuomo. In addition to the Model Plan, several industry specific templates were also published including agriculture, construction, delivery services, domestic workers, emergency response, food services, manufacturing and industry, personal services, private education, private transportation, and retail.

HERO, which covers virtually all private sector businesses with worksites in New York state except employees covered by an OSHA temporary or permanent COVID-19 standard and/or airborne infectious agents and diseases, requires employers to adopt the Model Plan or develop an alternative plan with meaningful participation of employees or union involvement that provides the same level of protection within 30 days, i.e., August 5, 2021. Employees must be provided the plan within 30 days after adoption and it must be posted in a visible location at the worksite. However, the adopted plan does not need to be in “effect” until the New York state commissioner of health designates an infectious disease as a “highly contagious communicable disease” that presents a serious risk of harm to the public health. As of this writing, no such designation has been made.

HERO further requires employers with at least 10 employees to establish and administer at least one joint labor-management workplace safety committee per worksite that is charged with reviewing and/or raising occupational safety and health issues. Committee members must be paid for their time, although the law provides compensatory caps for meeting and training time. This portion of the law takes effect on November 1, 2021.

Unlike OSHA, HERO also provides a private right of action to employees but only if the employer fails to correct alleged violations within 30 days’ notice. There is a six-month statute of limitations to bring a civil action from the date an employee has knowledge of an alleged violation.

A link to the Model Plan and additional information about HERO is [located here](#).

New York employers should immediately review and begin the process of adopting the Model Plan or creating an acceptable alternative infectious disease exposure prevention plan.



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