



New York State Enacts HERO Act

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On May 5, 2021, New York Governor Andrew Cuomo signed into law the New York Health and Essential Rights Act (“HERO Act” or the “Act”). The HERO Act will require employers to implement safety standards to prevent occupational exposure to an airborne infectious disease. The HERO Act aims to reduce workplace transmission and community spread through enforceable health and safety standards. Certain provisions of the Act will go into effect on June 4, 2021.

Who is covered?

The HERO Act covers all private sector employers in New York State. “Employees” covered by the HERO Act include any person providing labor or services for remuneration including, but not limited to, part-time workers, independent contractors, domestic workers, home care and personal care workers, day laborers, farmworkers, and other temporary and seasonable workers.

Minimum Safety Standards

The HERO Act requires the New York State Department of Labor (the “NYSDOL”) and New York State Department of Health (the “NYSDOH”) to create industry-specific health and safety standards. These safety standards will set the minimum requirements that all workplaces must follow to limit the risk of infectious disease in the workplace and include:

- Employee health screenings;
- Face coverings;
- Required PPE that must be maintained in a sanitary and reliable condition at the employer’s expense;
- Accessible workplace hand hygiene stations and maintaining healthy hand hygiene;
- Regular cleaning and disinfecting of shared equipment and frequently touched surfaces;
- Effective social distancing for employees, consumers, and customers;
- Compliance with mandatory or precautionary orders of isolation or quarantine that have been issued to employees;
- Compliance with applicable engineering controls such as proper air flow, exhaust ventilation, or other special design requirements; and
- Compliance with any applicable laws, rules, regulations, standards, or guidance on notification to employees and relevant state and local agencies of potential exposure to airborne infectious disease at the worksite.

Prevention Plan

The HERO Act requires the NYSDOL and NYSDOH to create a model airborne infectious disease exposure prevention plan (“Prevention Plan”). Employers are required either to adopt the model Prevention Plan or implement their own written prevention plan that meets or exceeds the standards set forth in the state model. The Prevention Plan must meet several notification requirements.

If a unionized employer wants to adopt its own plan, it must do so in conjunction with an agreement with the union.¹ A non-unionized employer seeking to adopt an alternative plan must do so with the involvement of its employees.

Workplace Safety Committees

Effective November 1, 2021, employers with at least 10 employees, shall permit their employees to establish and administer a joint labor-management workplace safety committee. Each safety committee shall be authorized to perform tasks, including but not limited to:

- Raise health and safety concerns, hazards, complaints, and violations to which the employer must respond;
- Review any policy that is implemented pursuant to the Act and provide feedback; and
- Review the adoption of any workplace policy concerning any health or safety law, ordinance, rule, regulation, executive order, or other related directive.

Anti-Discrimination and Anti-Retaliation Provisions

The HERO Act prohibits discrimination and retaliation of employees who:

- Report violations of the Act or an employer's Prevention Plan to any state, local, or federal government entity, public officer or elected official;
- Report airborne infectious disease exposure concerns; and/or
- Refuse to work if the employee reasonably believes, in good faith, that such work exposes the employee or other employees to an unreasonable risk of exposure to an airborne infectious disease.

Penalties for Noncompliance

Employers will face penalties for noncompliance with the above-mentioned requirements. Employers will be fined \$50 per day for failure to implement a compliant Prevention Plan or between \$1,000 and \$10,000 for failure to abide by an adopted Prevention Plan. If it is determined by New York State that an employer violated the Act in the preceding six (6) years, employers will be fined \$200 per day for failure to implement a compliant Prevention Plan or between \$1,000 and \$20,000 for failure to abide by an adopted Prevention Plan.

Potential Additional Provisions

Governor Cuomo has indicated that future amendments to the Act may include: (i) more specific instructions and timelines for the NYSDOL and employers to enact these safety standards; (ii) providing an opportunity for employers to immediately cure violations; and (iii) limiting litigation to situations where employers are acting in bad faith and failing to cure deficiencies.

If you have any questions about the HERO Act, please contact **Blythe E. Lovinger** at (212) 407-7770, **Jonathan A. Wexler** at (212) 407-7732, **Victoria L. Jaus** at (212) 407-7745 or any other Vedder Price attorney with whom you have worked.

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¹ Both the Prevention Plan and workplace safety committee requirements of the Act can be waived by an agreement with a union that expressly references the applicable section of the law.