

New York State Amendments to the HERO Act

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June 23, 2021

On June 7, 2021, the New York State legislature approved several amendments to the New York Health and Essential Rights Act (“HERO Act” or the “Act”). The Act was signed into law by New York Governor Andrew Cuomo on May 5, 2021 and requires employers to implement safety standards to prevent occupational exposure to airborne infectious disease. See our previous bulletin, [New York State Enacts Hero Act](#).

The amendments provide employers in New York State with additional time and guidance on how to comply with the HERO Act. The amendments are summarized below:

Effective Date of the Prevention Plan

The requirement in Section 1 of the Act that the New York State Department of Labor (the “NYSDOL”) and the New York State Department of Health (the “NYSDOH”) create a model airborne infectious disease exposure prevention plan (“Prevention Plan”) has been postponed from June 4, 2021 to July 5, 2021. The effective date of Section 2 of the Act, which establishes an employee’s right to form workplace safety committees, remains November 1, 2021.

Model Airborne Infectious Disease Exposure Prevention Standards

Within thirty (30) days after the Commissioner publishes the model general standard and the model industry standards, the amendments require that employers implement an airborne infectious disease exposure plan, either by adopting the applicable model standard or by creating an alternative plan that meets or exceeds the minimum requirements in the model standard.

Definition of Employee and Worksite

The definition of a covered “employee” has been broadened to include individuals working for digital applications or platforms. The definition of “worksite” has been revised to prioritize locations where work is performed over which an employer can exercise control. Telecommuting or telework sites do not fall under the term’s purview, unless “the employer has the ability to exercise control of such site.”

Liability

To commence a civil action for an alleged violation of the Act, an employee must provide the employer with thirty (30) days’ notice before commencing suit. Only where the employee alleges with particularity that the employer has been unwilling to cure the violation in bad faith can the employee bring suit without first providing notice. Any civil action must be commenced within six (6) months from the date the employee had knowledge of the alleged violation.

If the action is found to be frivolous at any point during the proceedings, the court can award reasonable attorneys’ fees and costs to the employer.

Workplace Safety Committees

Employers shall permit employees to establish and administer a joint labor-management workplace safety committee, but not more than one committee per worksite. If an employer already has a workplace safety committee that is otherwise

consistent with the requirements of the Act, the worksite shall be exempt from creating additional safety committees. Committees are still allowed to schedule a committee meeting during work hours at least once a quarter, but the amendments clarify that the meetings shall not last longer than two (2) hours.

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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