

New York Designates COVID-19 as a Highly Contagious Communicable Disease under the HERO Act

By Blythe E. Lovinger, Jonathan A. Wexler and Victoria L. Jaus

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On September 6, 2021, New York Governor Kathy Hochul announced that the Commissioner of Health has designated COVID-19 as a highly contagious communicable disease that presents a serious risk of harm to the public health under the New York State Health and Essential Rights (“HERO”) Act. Since then, the New York State Department of Labor (“NYDOL”) released Information & FAQs on the HERO Act and most recently updated the Model Airborne Infectious Disease Exposure Prevention Plan (the “Model Plan”).

The HERO Act requires all employers in New York to implement safety standards and adopt an exposure prevention plan to protect against the spread of airborne infectious disease in the workplace. See our previous bulletins, [New York Enacts HERO Act](#), [New York State Amendments to the HERO Act](#), and [New York State Issues HERO Act Prevention Standard and Model Plans](#). On September 30, 2021, the Commissioner of Health extended the designation until October 31, 2021. In view of the Commissioner’s designations, employers are required to promptly activate their exposure and prevention plans and ensure that such plans are adequately implemented.

I. Employer Obligations During a Designation

When there is a designation that a highly contagious communicable disease presents a serious risk of harm to the public health, each employer must:

1. Immediately review the worksite’s exposure prevention plan and update the plan, if necessary, to ensure that it incorporates current information, guidance and mandatory requirements;
2. Finalize and promptly activate the worksite exposure prevention plan;
3. Provide verbal review of the plan; and
4. Provide each employee with a copy of the exposure prevention plan in English or in the language identified as the primary language of such employees, if available. The plan must also be posted at the worksite and be accessible to employees during all work shifts.

II. Exposure Controls - Immediate Measures

During an airborne infectious disease outbreak, employers must immediately implement the exposure controls outlined in their prevention plan. Exposure controls include, but are not limited to the following:

1. Health screenings at the beginning of employee shifts;
2. Physical distancing as much as feasible; and
3. A stay-at-home policy for employees with symptoms.

III. Face Coverings

The NYDOL updated its requirement for face-coverings contained in its Model Plan. During a designated outbreak, employees will wear appropriate face coverings in accordance with guidance from State Department of Health or the Centers for Disease Control and Prevention (“CDC”), as applicable. Where all individuals on the premises, including but not limited to employees, are fully vaccinated, appropriate face coverings are recommended, but not required. The CDC recommends that anyone who is not fully vaccinated wear a mask in “indoor public places.” The NYDOL has indicated that both vaccinated and unvaccinated individuals should wear face masks in places where not all individuals are vaccinated and where physical distancing is not possible.

IV. Training & Verbal Review

Employers must conduct training and a verbal review of the exposure protection plan with their employees. The training must be verbally provided in person or by virtual means and must cover the topics included in the exposure prevention plan. The training should be provided at no cost to employees and take place during working hours. The training should be appropriate in content and vocabulary to the employees’ educational level, literacy, and preferred languages.

V. Continuing Obligations

While the designation remains in effect, employers need to ensure that the worksite’s exposure prevention plan is effectively followed by:

1. Designating one or more supervisory employees to enforce compliance with the prevention plan.
2. Monitoring and maintaining exposure controls; and
3. Regularly checking for updated information and guidance provided by the New York state Department of Health and Centers for Disease Control and Prevention and updating the exposure prevention plan, when necessary, so that the plan reflects current recommended control measures.

The NYDOL will be sharing more details about the HERO Act in the near future.

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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