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Monkeypox – What New York Nonprofits Need to Know

In the last few weeks, monkeypox was declared an imminent threat to public health in New York State¹ and a public health emergency in New York City.² At the federal level, the U.S. Department of Health and Human Services has similarly declared the ongoing spread of the monkeypox virus to be a public health emergency.³ Similar designations were made in respect of COVID-19 back in early 2020, and nonprofits may be wondering what, if anything, this means for their current operations and legal obligations.

These types of emergency designations generally allow State and City officials to issue special emergency orders to respond to the relevant public health threat. As of the date of this Legal Alert, no monkeypox-specific orders that directly impact nonprofit organization operations have been issued. However, nonprofit employers should monitor for any updates and also consider how the current outbreak may implicate other policies and procedures in their workplaces.

Monkeypox comes from the same family of viruses that cause smallpox and generally spreads through close physical contact. Monkeypox can cause flu-like symptoms and a painful rash with lesions. According to the Centers for Disease Control and Prevention (CDC), individuals who have monkeypox are contagious from the onset of symptoms until the rash has fully healed, which may take two to four weeks.⁴ For this reason, the CDC recommends that individuals with monkeypox remain isolated for the duration of the time they are experiencing symptoms (including until such time as their rash has fully healed, all scabs have fallen off, and a fresh layer of intact skin has formed).⁵

Although there are not currently any monkeypox-specific leave laws in New York, nonprofit employees who have monkeypox may be covered as having a serious health condition for purposes of the Family and Medical Leave Act (FMLA).⁶ For New York employers, employees who have monkeypox may also be entitled to take time off under New York State's Paid Sick Leave Law (NYS PSSL) and New York City's Earned Safe and Sick Time Act (ESSTA). In addition, although universal vaccination against monkeypox is not

¹ https://health.ny.gov/press/releases/2022/docs/monkeypox_declaration_letter.pdf

² <https://www1.nyc.gov/assets/doh/downloads/pdf/monkeypox/monkeypox-public-health-emergency.pdf>

³ <https://www.hhs.gov/about/news/2022/08/04/biden-harris-administration-bolsters-monkeypox-response-hhs-secretary-becerra-declares-public-health-emergency.html>

⁴ <https://www.cdc.gov/poxvirus/monkeypox/faq.html>;
<https://www.cdc.gov/poxvirus/monkeypox/clinicians/isolation-procedures.html>

⁵ Note, however, that current NYC Department of Health guidance suggests that individuals who are not experiencing fever, chills, or respiratory symptoms may be around others if they follow additional precautions, including masking, distancing, and fully covering all rashes with clothing or bandages. See <https://www1.nyc.gov/assets/doh/downloads/pdf/monkeypox/what-to-do-when-sick.pdf>.

⁶ Generally, the FMLA only applies to nonprofits with 50 or more employees.

currently recommended or available, nonprofit employees who *are* eligible for vaccinations and choose to get vaccinated are entitled to use their sick time under the NYS PSSL and ESSTA to do so.⁷

Other than ensuring appropriate leave for impacted employees, employers should maintain appropriate cleaning and infection control procedures in the workplace. Employers with ten or more employees should also remember that under the New York State HERO Act, employees are entitled to form workplace safety committees to raise health and safety concerns and participate in various other health- and safety-related tasks. Importantly, although other portions of the HERO Act focus specifically on airborne infectious diseases like COVID-19, the workplace safety committee requirements apply generally to any health- and safety-related concerns in the workplace and could include concerns regarding monkeypox.⁸

Finally, nonprofits should remain mindful of anti-discrimination and anti-harassment laws and policies. Early reporting on the monkeypox outbreak highlighted the disproportionate rates of infection among men who have sex with men. Employers should not target individuals (for medical inquiries or otherwise) based on known or assumed protected personal characteristics like sexual orientation and should be mindful of enforcing their anti-discrimination and anti-harassment policies to the extent that discrimination and harassment occur in the workplace.

Additional Resources

Nonprofits may continue to monitor monkeypox-related developments from:

- The CDC: <https://www.cdc.gov/poxvirus/monkeypox/index.html>
- The New York State Department of Health: <https://www.health.ny.gov/diseases/communicable/zoonoses/monkeypox/>
- The New York City Department of Health: <https://www1.nyc.gov/site/doh/health/health-topics/monkeypox.page>

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⁷ For more information on monkeypox vaccinations in New York City, see: <https://www1.nyc.gov/site/doh/health/health-topics/monkeypox.page#vax>.

⁸ For more information on the requirements of the NYS HERO Act on workplace safety committees, see our Legal Alert: [New York State HERO Act and Workplace Safety Plans – What Now?](#).