

March 31, 2022

### **New York State HERO Act and Workplace Safety Plans – What Now?**

On March 17, 2022, the New York State Commissioner of Health ended the designation of COVID-19 as an airborne infectious disease that presents a serious risk of harm to public health.<sup>1</sup>

As a result, private sector employers in New York State may now “de-activate” their safety and health plans under the New York Health and Essential Rights Act (the HERO Act)<sup>2</sup> for the first time since COVID-19 was first designated an airborne infectious disease for purposes of the Act on September 6, 2021.

However, this does not mean the end of all HERO Act obligations for employers!

Even in the absence of a designation by the NYS Commissioner of Health, the HERO Act requires employers to (1) maintain (but not implement) a safety and health plan for airborne infectious diseases and continue informing employees of the plan and (2) permit employees to form workplace safety committees.

#### **Safety and Health Plans**<sup>3</sup>

All private New York State employers must continue to maintain safety plans on “standby” to address the risk of airborne infectious disease. However, employers are not required to *implement* or *activate* their plans unless and until the NYS Commissioner of Health again designates a particular airborne infectious disease. If an employer did not previously adopt a plan before the original August 5, 2021 deadline under the HERO Act, they should do so promptly.

A number of template model plans, based on employer industry, as well as an Airborne Infectious Disease Exposure Prevention Standard (the “Standard”), are available on the New York State Department of Labor (NYS DOL) website.<sup>4</sup> Employers may adopt the relevant model plan for their industry or may choose to design their own plan. However, any employer-designed plan must meet or exceed the minimum requirements set forth in the Standard.<sup>5</sup> In addition, any such plan must be developed with meaningful participation of employees. FAQs issued by the NYS DOL indicate that this requires employee review, but not necessarily employee approval, of the plan.<sup>6</sup>

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<sup>1</sup> See <https://dol.ny.gov/ny-hero-act>.

<sup>2</sup> See <https://legislation.nysenate.gov/pdf/bills/2021/s1034b>; implemented at New York Labor Law (“NYLL”) § 218-b (<https://www.nysenate.gov/legislation/laws/LAB/218-B>) and NYLL § 27-d (<https://www.nysenate.gov/legislation/laws/LAB/27-D>).

<sup>3</sup> See generally NYLL § 218-b.

<sup>4</sup> <https://dol.ny.gov/ny-hero-act>.

<sup>5</sup> Available at <https://dol.ny.gov/ny-hero-act>.

<sup>6</sup> [https://dol.ny.gov/system/files/documents/2022/02/heroact-factsheet-02-14-22\\_0.pdf](https://dol.ny.gov/system/files/documents/2022/02/heroact-factsheet-02-14-22_0.pdf).

If adopting a new plan, copies must be provided to all employees within 30 days of adoption.

Employers who previously adopted a safety and health plan must continue to provide copies of the plan to new employees upon hire. Additionally, a copy of the plan must be posted in a visible and prominent location in each worksite and must be included in an employer's employee handbook (if the employer has an employee handbook).

### **Workplace Safety Committees**<sup>7</sup>

In addition, private New York State employers with ten or more employees must permit their employees to establish and administer joint labor-management workplace safety committees, composed of individuals designated by both the employer and the employees.

Such committees are authorized to raise health and safety concerns, complaints and violations; review health- and safety-related policies; and participate in other health- and safety-related tasks. Employees participating in such committees are entitled to use a certain amount of work time (without loss of pay) for committee-related trainings and meetings. Participating employees are protected from retaliation for actions taken pursuant to their participation.

An employer's workplace safety committee obligations apply regardless of whether the NYS Commissioner of Health has made a designation of an infectious airborne disease requiring activation of a safety plan. Additionally, the scope of the workplace safety committee is not limited to concerns regarding airborne infectious diseases.

At present, final regulations setting forth the details of workplace safety committees have not been adopted, although proposed regulations are available on the NYS DOL website.<sup>8</sup>

***This alert is meant to provide general information only, not legal advice. If you have any questions about this alert please contact Veronica Aksu at [vaksu@lawyersalliance.org](mailto:vaksu@lawyersalliance.org) or visit our website at [www.lawyersalliance.org](http://www.lawyersalliance.org) for further information. To become a client, visit [www.lawyersalliance.org/becoming-a-client](http://www.lawyersalliance.org/becoming-a-client).***

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<sup>7</sup> See generally NYLL § 27-d.

<sup>8</sup> <https://dol.ny.gov/system/files/documents/2022/01/12-nycrr-part-850-dol-proposed-12.22.21.pdf>.