

New York State Imposes New Infectious Disease Safety Standards in the Workplace

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On May 5, 2021, Gov. Andrew Cuomo signed the HERO Act (the Act) requiring all New York employers to implement certain safety standards and a written safety plan to protect against the further spread of COVID-19 and other airborne infectious diseases in the workplace. The Act, which becomes effective June 4, also requires New York employers with 10 or more employees to form a workplace safety committee consisting of management and nonsupervisory employees to raise and review issues related to health and safety.

New Safety Plan Requirement

As of June 4, the New York Department of Labor is required to establish a model airborne infectious disease exposure prevention standard that identifies minimum workplace safety requirements. This standard will vary based on a company's particular industry but will address the following:

- Employee health screenings
- Face coverings
- Required personal protective equipment (PPE)
- Accessible workplace hand hygiene stations
- Regular cleaning and disinfecting of shared equipment and frequently touched surfaces
- Social distancing for employees, consumers, and customers
- Compliance with orders of isolation or quarantine that have been issued to employees
- Compliance with applicable engineering controls such as proper airflow, exhaust ventilation, and other special design requirements
- Designation of one or more supervisory employees to enforce compliance with the

plan and applicable legal guidance related to avoidance of spreading an airborne infectious disease

- Compliance with applicable laws and guidance by health authorities requiring notification to employees of potential exposure to airborne infectious disease in the workplace
- Verbal review of infectious disease standard, employer policies, and employee rights

Employers are required to adopt the state model or implement their own written plan that meets or exceeds the state's minimum requirements. Employers must post their plan in the workplace, distribute it to their employees, and include it in their employee handbook (if the company has one). The safety plan must be made available to employees in the language identified as their primary language, unless the employee identifies a language for which a model document is not available from the state.

The Act prohibits discrimination and retaliation against an employee for reporting violations of the plan or for refusing to work where the employee reasonably believes the workplace presents an unreasonable risk of exposure to an airborne infectious disease.

Employers that fail to adopt a plan are subject to a fine of \$50 per day until a plan is implemented. An employer that fails to comply with its adopted plan can be subject to a fine ranging from \$1,000 to \$10,000, or up to \$20,000 if the employer previously violated the Act. The new law enables employees to bring suit against their employers and seek injunctive relief, costs, attorneys' fees, and damages.

Workplace Safety Committee Mandate

The Act also requires that by November 1, 2021, New York employers with at least 10 employees allow employees to establish and administer a joint labor-management workplace safety committee composed of employee and employer designees.

Two-thirds of the committee's members must be nonsupervisory employees who are selected by nonsupervisory employees. A committee should be co-chaired by a representative of the employer and a representative of the nonsupervisory employees. Committees representing geographically distinct worksites may also be formed as necessary.

Among other things, committees are authorized to do the following:

- Raise health and safety concerns.
- Review any workplace policy as required by the Act and provide feedback.
- Review the adoption of any policy in the workplace in response to any health or safety law, ordinance, rule, regulation, executive order, or other related directive.
- Participate in any site visit by any governmental entity responsible for enforcing safety and health standards in a

manner consistent with any provision of the law.

- Review any report filed by the employer related to the health and safety of the workplace.
- Schedule a meeting during business hours at least once each quarter.

Employers must permit safety committee designees to attend training, without adverse employment consequences, and may not retaliate against committee members for their participation on the safety committee.

Next Steps for New York Employers

New York businesses should begin to review any COVID-19-related safety policies they have in place and be prepared to make changes as required by the anticipated New York model safety standard.

Lowenstein Sandler's Employment Law Practice Group will continue to monitor further developments related to the HERO Act. We remain ready to counsel employers through the myriad of legal issues brought about by the COVID-19 pandemic.

To see our prior alerts and other material related to the pandemic, please visit the [Coronavirus/COVID-19: Facts, Insights & Resources](#) page of our website by clicking [here](#).

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