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Department
of Labor

THE NY HERO ACT Information & FAQs

On May 5, 2021, the New York Health and Essential Rights Act (NY HERO Act) was signed into law. The law mandates extensive new workplace health and safety protections in response to the COVID-19 pandemic. The purpose of the NY HERO Act is to protect employees against exposure and disease during an airborne infectious disease outbreak.

Under this new law, the New York State Department of Labor (NYS DOL), in cooperation with the NYS Department of Health, has developed a new standard, a model plan or general industry template, and 11 industry-specific model plans for the prevention of airborne infectious disease. Employers can choose to adopt the applicable policy template/plan provided by NYS DOL or establish an alternative plan that meets or exceeds the standard's minimum requirements.

This plan must go into effect when an airborne infectious disease is designated by the New York State Commissioner of Health as a highly contagious communicable disease that presents a serious risk of harm to the public health. The standard is subject to any additional or greater requirements arising from a declaration of a state of emergency due to an airborne infectious disease, as well as any applicable federal standards.

The standard is available in English and Spanish.

TIMELINE

- **May 5, 2021** – NY HERO Act signed into law.
- **July 6, 2021** – DOL publishes model standards.
- **August 5, 2021** (30 days after NYS DOL develops and publicizes model standards) – Deadline for New York employers to adopt an airborne infectious disease exposure plan. Employers must also provide the plan in writing to all employees in English and the primary language of the worker(s) within 30 days of adopting the plan, within 15 days of reopening due to airborne infectious disease related closure, and to all new employees upon hire.
- **September 4, 2021** – Employers' airborne infectious disease plan must be distributed to employees.
- **November 1, 2021** – All employers with 10 or more employees must permit workers to establish and administer a joint labor-management workplace safety committee.

Note: Details are subject to modification. Please refer to dol.ny.gov/ny-hero-act for updates and additional information.

FREQUENTLY ASKED QUESTIONS

What businesses are covered by the NY HERO Act?

The law covers all non-governmental industries across New York and work sites, with the exception of any employee or employer within the coverage of a temporary or permanent OSHA standard on COVID-19, or airborne infectious diseases, generally. As of this time, only health care is covered by such an OSHA standard including employer-provided housing and transportation. It also protects special categories of workers at “non-traditional” workplaces, including private households and individuals working for digital applications or platforms. The NY HERO Act does not cover telework or any work site that the employer does not have the ability to control.

Is the NY HERO Act specific to COVID-19?

No. The law is meant to help prepare for any future airborne infectious disease. This includes any infectious viral, bacterial, or fungal disease that is transmissible through the air via aerosol particles or droplets and is designated by the New York State Commissioner of Health as a highly contagious communicable disease.

What obligations do employers have regarding their safety plan?

All covered businesses must have their plans in place within 30 days from the release of NYS DOL's airborne infectious disease policies (August 5, 2021). A general template, or Model Airborne Infectious Disease Exposure Prevention Plan, as well as industry specific templates, have been produced by the Department of Labor. Employers may use one of these templates or develop their own plan with the participation of their employees or collective bargaining agents.

What steps must employers take after an airborne infectious disease designation by the New York State Commissioner of Health?

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

- 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 issued by federal, state, or local governments related to the infectious agent of concern;
- Finalize and promptly activate the worksite exposure prevention plan;
- Provide a verbal review of the plan with their employees;
- 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.

What if there is no designation by the Commissioner of Health? Does an employer have to do anything?

Yes. Even in the absence of a designation by the New York State Commissioner of Health employers must:

- Establish an airborne infectious disease exposure prevention plan and provide it to employees within 30 days of adoption.
- Continuously review and update their plan to reflect new or modified aspects of business operations or to be consistent with an updated airborne infectious disease exposure prevention standard as published by the Department of Labor.

Does an employer have to give the written airborne infectious disease exposure prevention plan to their employees?

Yes. An employer must provide the written plan to employees:

- Within 30 days of adoption of the plan;
- Within 15 days after reopening after a period of closure due to airborne infectious disease;
- Upon the hiring of a new employee.

What does the Act's joint labor-management workplace safety committee requirement entail?

The law requires employers with 10 or more employees to establish and administer a joint labor-management workplace safety committee to ensure workers play an integral role in work site safety and can raise safety and health concerns. This requirement goes into effect on November 1, 2021. NYS DOL will issue regulations regarding workplace safety committee requirements in the future.

What enforcement mechanisms exist to address violations of the law?

Employers may be subject to daily penalties of \$50 and violations ranging up to \$10,000 for failure to abide by the requirements of the plan.

What happens if an employer fires or take other retaliatory actions against workers?

The NY HERO Act has strong anti-retaliation protections that prohibit employers from taking adverse actions against workers for activities protected by the Act. Employers are expressly prohibited from retaliation against employees exercising their rights under the law.

See more at: dol.ny.gov/retaliation

Does an employer have to provide a written plan to employees in a language other than English?

Yes. An employer must provide the written plan in the employee's primary language. If an employee identifies their primary language as a language for which a model standard is not available from the commissioner, the employer may provide that employee with an English-language notice.

Is an employer required to explain the plan to its employees?

Yes. A verbal review of the plan with all employees must be conducted, except need not be provided to individuals working for staffing agencies, contractors and subcontractors, or individuals delivering goods or transporting people to or from the worksite. A verbal review of the plan must also be conducted when a highly contagious communicable disease is designated by the Commissioner of Health as presenting a serious risk of harm to the public health.

What is meant by “verbal review”?

Employers must conduct a verbal review of the infectious disease exposure protection plan with their employees, but such review is not required to be in person. Employers should conduct the verbal review in a manner most suitable for the prevention of an airborne infectious disease, including via audio or video conference technology when applicable.

Are employers required to post the plan at the work site?

Yes. The plan must be posted in a visible and prominent location within each work site, except when such work site is a vehicle.

What are the differences between the various industry specific templates?

The various industry specific templates contain unique “Advanced Controls” sections tailored specifically to each industry.

What if there is no template for my industry?

If there is no template available that is specific to their industry, employers may either adopt the Department of Labor’s Model Airborne Infectious Disease Exposure Prevention Plan or create their own alternative plan. An alternative plan must equal or exceed the minimum standards provided by the Department of Labor’s Model Airborne Infectious Disease Exposure Prevention Plan. Employers can use the “Advanced Controls” section to add controls that are applicable to their industry or business.

Is employee review and feedback always required in the development of the employer’s plan?

While the Department of Labor encourages all employers to engage their workforce on the adoption of a plan, an employer who utilizes one of the plans or templates published by the Commissioner of Labor is not required to have employees review the plan and provide feedback prior to adoption. As required by Section 2 of the HERO Act, which takes effect on November 1, 2021, employers who employ at least 10 employees are required to establish a workplace safety committee which is authorized, among other tasks, to review workplace policies relating to occupational safety and health.

If the employer makes alterations to the plan is it considered an “Alternative Plan” needing employee review and/or participation?

Modifications by the employer in the Controls or Advance Controls sections of the Department of Labor’s General Industry Template do not necessarily constitute an “alternative plan” for the purposes of the HERO Act and likely do not require additional employee participation. However, amendments to such templates that go beyond the open fields of such template likely do constitute an “alternative plan” requiring employee review and/or participation.

Will more industry specific templates be published?

While there are no current plans to publish more industry specific plans, the Department of Labor welcomes suggestions for future consideration, and will consider additional templates as well as amendments to the existing templates as such feedback is received.

Is the healthcare industry covered by the HERO Act?

It can be. Employers in the healthcare industry are **not** covered by the HERO Act if the employer is covered by a temporary or permanent standard adopted by the Occupational Safety and Health Administration (OSHA). However, every employer must make its own determination as to whether or not it, or any of its employees, is covered by a temporary or permanent OSHA standard. In the event that a temporary OSHA standard is no longer in effect, the employer previously covered by the OSHA standard will then be covered by the HERO Act.

Does the HERO Act Apply to public universities and schools?

No. The HERO Act does not apply to governmental entities such as public schools or universities. Public employers, however, are subject to the requirements of Section 27-c of the Labor Law, which requires the preparation of public employers for state disaster emergencies involving public health.

Is employer-provided housing and transportation covered under the HERO Act?

A “work site” under the Act is defined as any physical space that has been designated as the location where work is performed and over which an employer has the ability to exercise control. This generally includes employer-provided housing and transportation.

If the employer is based outside of New York State but has employees based in NY, are the NY employees covered by the HERO Act?

Yes, unless the employee within New York State is telecommuting or teleworking from a site at which the employer has no ability to exercise control (e.g. the employee’s home residence).

Will the Department of Labor be publishing HERO Act regulations?

Yes, the Department of Labor will be promulgating regulations for the HERO Act in accordance with the State Administrative Procedure Act.

Are independent contractors covered?

Employers are required to have an airborne infectious disease plan in place for all work locations over which they have the ability to exercise control, including a work site with independent contractors.

Does the written plan need to be distributed to independent contractors, individuals working for staffing agencies, and others broadly defined as “employees” under the HERO Act who would not traditionally be defined as employees?

Yes.

Is there DOL guidance to assist in determining what industry specific plan an employer should utilize?

Not at this time. Employers should adopt a plan that most closely applies to their industry and work site or use the Model Airborne Infectious Disease Exposure Prevention Plan.

Are employers required to add this plan to their employee handbook, if they have one?

Yes.

If an employer has multiple industries and environments, which template should be used?

Employers should select the most appropriate template and customize the controls section to add appropriate controls for the industry or work site(s) by assessing specific employee or contractor functions and unique circumstances and conditions of particular work sites to determine the appropriate template to utilize. The employer may also establish more than one plan for multiple work sites.

Which template is most appropriate for an office environment?

The Model Airborne Infectious Disease Exposure Prevention Plan is best suited to an office environment, but attention should be paid to ensure that controls and other aspects of the plan address the unique circumstances and conditions of particular work sites.

When does an employer’s airborne infectious disease plan need to go into effect?

Employers must follow their airborne infectious disease plan when a highly contagious communicable disease is designated by the Commissioner of Health as presenting a serious risk of harm to public health, as is currently the case with COVID-19. Employers should monitor the Department of Labor’s HERO Act website at dol.ny.gov/ny-hero-act for any updates.

If an employer develops an alternative plan for their work site, does it need be approved by the Department of Labor before it is adopted?

No. However, employers must ensure that their alternative plan equals or exceeds the minimum standards provided by the model standard.

Does the HERO Act apply to a business with no employees other than the owner?

No. The owner in such a scenario would not qualify as an “employer” as defined under the HERO Act and would not need to adopt a plan for their work site.

For more information, refer to the NY HERO Act standards.