



NEW YORK EMPLOYERS MUST ACTIVATE COVID PREVENTION PLANS UNDER NEW YORK HERO ACT

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On Sunday, September 6, 2021, New York Gov. Kathy Hochul announced the “designation” of COVID-19 as an airborne infectious disease under the state’s new Health & Essential Rights Act (the “HERO” Act). The designation requires all private-sector employers to activate their HERO Act-compliant workplace exposure

prevention plans.

Among other items, the HERO Act requires employers to adopt “Infectious Disease Exposure Prevention Plans.”^[1] The New York Department of Labor issued a “Model Infectious Disease Prevention Plan” last month. The DOL also issued several industry-specific prevention plans for employers in certain industries, including agriculture, construction, manufacturing, retail, and others. The model plan and industry-specific plans are available on the DOL’s HERO Act site.

Employers may adopt the DOL’s model plan or industry-specific plan relevant to their workforce. Alternatively, employers can develop and adopt their own prevention plan instead of the DOL’s plans. If developing their own plan however, employers must develop the plan with meaningful participation of their employees. Employers with a union presence may adopt their own plan only with the input and agreement of their union.

The HERO Act treats the prevention plans as dormant until the Department of Health “designates” a particular outbreak of infectious disease as presenting a serious risk of harm to the public health. With the Department of Health’s designation of the current wave of COVID-19 as such an outbreak, employers must now activate their prevention plans.

Prevention Plan Requirements and Next Steps

HERO Act prevention plans call for resumption of several pandemic-normal practices that were eased back during the summer. Among other items, the prevention plans require: daily health screenings; face covering usage when social distancing cannot be maintained; and stay-at-home policies for symptomatic employees.

Employers must also provide training to all employees on their prevention plan. The training should be done “verbally,” whether in-person or via web conferencing. Additional details on required training

elements are included at Section V of the state's model prevention plan.

This checklist provides a brief guide for employers' next steps:

- **(1) Adopting and finalizing prevention plans.** Employers who have not yet adopted a prevention plan should do so immediately. Employers should review their plans to ensure they cover necessary items, such as designating a supervisor to ensure compliance with the plan.
- **(2) Activating and disseminating the plan.** Employers should inform all employees that the prevention plan has been activated, and provide copies to all employees. Plans should also be posted in the worksite.
- **(3) Conduct training.** All employees must be verbally trained on the plan's details and procedures.

Employers should continue to monitor the DOL's HERO Act's website for additional guidance and updates. Human Resources teams and small businesses should ensure their organizations have HERO Act compliant plans and practices, and reach out to employment counsel with questions or concerns.

This alert is not a substitute for advice of counsel on specific legal issues.

Harris Beach has offices throughout New York State, including Albany, Buffalo, Ithaca, Long Island, New York City, Rochester, Saratoga Springs, Syracuse and White Plains, as well as New Haven, Connecticut and Newark, New Jersey.

[1] For more information on the HERO Act: please see our Alert detailing its requirements; a subsequent Alert detailing amendments made to the law shortly after its passage; and our Alert after the DOL published its model prevention plans.