

NY HERO Act for Infectious Disease Prevention is on the Horizon for Employers

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On July 6, 2021, pursuant to the New York Health Essential Rights Act (HERO Act), the New York Department of Labor (NYDOL) published a (1) [Minimum Standard](#) and (2) [Model Plan](#) for airborne infectious disease exposure prevention.

The HERO Act, signed into law in May 2021, requires New York non-public sector employers to implement written infectious disease exposure prevention plans in accordance with the recently released guidance. By August 5, 2021, employers must adopt either the Model Plan, or their own policy that meets or exceeds the minimum standard.

The recent NYDOL release includes [fillable PDF templates](#) for employers to rely on when drafting policies. Industry-specific templates were issued in the following areas:

- Agriculture
- Construction
- Delivery Services
- Domestic Workers
- Emergency Response
- Food Services
- Manufacturing and Industry
- Personal Services
- Private Education
- Private Transportation

- Retail

Although employers must have written plans ready by August 5, 2021, employers are not required to implement their plans until the New York Commissioner of Health designates a disease as a highly contagious communicable disease that presents a serious risk of harm to public health. If a disease is designated as such, New York employers are required to implement preventive measures where occupational exposure exists, including:

- Offer health screenings at the beginning of the workday pursuant to the State Department of Health and Centers for Disease Control and Prevention (CDC) guidelines
- Follow CDC guidelines related to isolation and quarantine
- Provide face coverings at no cost to employees
- Implement physical distancing of six feet apart when possible
- Provide handwashing facilities, to the extent feasible
- Provide hand sanitizer if handwashing facilities are not possible
- Implement an appropriate cleaning and disinfection plan depending on facility type

The HERO Act contains a provision prohibiting discrimination or retaliation against employees for refusing to work when the employee reasonably believes that such work may pose an unreasonable risk of exposure to an airborne infectious disease due to working conditions inconsistent with the minimum standard of the Act. Also, employers may be entitled to costs and attorneys' fees if a claim under the HERO Act is found frivolous.

November 1, 2021 — when the HERO Act is implemented — will be an important date for employers to track. Part two requires employers with at least 10 employees to provide for the establishment of workplace safety committees.

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