

# New York HERO Act Workplace Safety Committees: Proposed Regulations

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On December 22, 2021, the New York State Department of Labor (NYSDOL) published highly anticipated [proposed regulations](#) in the *New York State Register* regarding section 2 of the [New York Health and Essential Rights Act \(NY HERO Act\)](#). Section 2 of the act, which took effect on November 1, 2021, requires all private employers with at least 10 employees to allow employees to establish joint employer-employee committees authorized to raise workplace health and safety issues and evaluate applicable policies. The proposed regulations provide definitional clarifications, rules for the establishment, composition, and operation of committees, and information regarding employer obligations. Nevertheless, the proposed regulations leave many questions unanswered.

## Counting Employees

The proposed regulations clarify that the 10-employee threshold is based on the number of employees located in New York State. Further, part-time, newly hired, temporary, and seasonal employees will be counted, as well as those employees on paid or unpaid leave, disciplinary suspension, or other types of temporary leave in which the employer reasonably expects the employee to return to active employment.

## Employers With Multiple Worksites

The [June 2021 amendments](#) to the act clarified that employers are not required to permit more than one workplace safety committee per worksite. The amendments did not address whether employers with multiple worksites in New York State, particularly in the same geographic location, are required to permit one committee at each and every worksite.

While the proposed regulations attempt to address this unanswered question by utilizing existing regulatory language provided by the New York State Worker Adjustment and Retraining Notification (WARN) Act in 12 NYCRR 921-1.1, the proposed regulations seem to suggest that employers with multiple worksites, even within geographic proximity to one another, would be required to permit the establishment of a committee at each worksite. Specifically, the proposed regulations provide that “[c]ontiguous buildings or sites occupied by the same employer” and “[n]on-contiguous sites in the

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same geographic area” would not constitute a single worksite if they have “separate management, produce different products or provide different services, and have separate workforces.” On the other hand, “[s]eparate buildings or facilities which are not physically connected or are not in proximity to one another may be considered a worksite if they are in reasonable geographic proximity, are used by the employer for the same purpose, and share the same staff or equipment.” Additionally, “all operations of an [e]mployer within the same building will be considered a single worksite.”

## **Establishment of Committees**

The proposed regulations provide that a committee may be established “following a written request for recognition by at least two non-supervisory employees who work at the worksite.” A “non-supervisory employee” is defined as “any employee who does not perform supervisory responsibilities, which includes but is not limited to the authority to direct and/or control the work performance of other [e]mployees ... [and] excludes managerial and executive [e]mployees.”

After receiving such a written request, the employer would be required to respond “with reasonable promptness.” Within five days after the employer recognizes the committee, the employer would be required to notify “all employees at the worksite of the recognition.”

The proposed regulations nevertheless lack guidance about whether and how employers would be required to notify employees of their ability or right to request the establishment of a workplace safety committee.

## **Composition of Committees**

Committees would be comprised of at least 2 non-supervisory employees and at least one employer representative, not to exceed 12 members or one-third of the total number of employees at each worksite—whichever is fewer.

Worksites that have fewer than 10 employees would be comprised of 3 members.

## **Employer Obligations**

Once a workplace safety committee is established and recognized, employer obligations would include but not be limited to:

- “[r]espond[ing], in writing, to each safety and health concern, hazard, complaint and other violations raised by the workplace safety committee or one of its members within a reasonable time period”;
- “[r]espond[ing] to a request for policies or reports that relate to the duties of the workplace safety committee ... from a workplace safety committee or one of its members within a reasonable time period”; and
- “[a]ppoint[ing] an employer representative to the committee to act as co-chair. Such employer representative may be a non-supervisory employee, an officer, the employer, or other representative.”

The proposed regulations specify limitations on the obligations to respond to workplace safety committee requests. Specifically, employers would not be required to disclose to the workplace safety committee or a committee member personal identifying information of an employee, information, or documentation outside the scope of occupational health and safety, or other information or documentation where such disclosure would be prohibited by law.

The NYSDOL has scheduled a public hearing on the proposed regulations for Wednesday, February 9, 2022, at 11:00 a.m. EST. The location of the hearing will be announced on the [NYSDOL website](#).

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