

## NEW YORK HEALTH AND ESSENTIAL RIGHTS ACT TAKES EFFECT

A new law, the New York Health and Essential Rights Act (NY HERO Act or the Act), went into effect on July 5, 2021. It was enacted in response to COVID-19, and it requires employers to adopt – but not currently implement – an Airborne Infectious Disease Exposure Prevention Plan that meets standards set by the New York Labor Department (“DOL”). The standards include requirements relating to:

- Employee health screenings;
- Face coverings;
- Personal protective equipment;
- Engineering controls; and
- Compliance with employee notification requirements triggered by a potential exposure to airborne infectious disease at the work site.

The full set of standards can be found at the DOL website (see link below).

The standards apply to all employers in New York state, but only with respect to an “airborne infectious disease” that has been designated by the NY Commissioner of Health as a highly contagious communicable disease that presents a serious risk of harm to the public health. At present, the NY state Health Commissioner has *not* designated COVID-19 as such an “airborne infectious disease.” In other words, what employers must do now is *adopt a plan* to use in the future, they do *not* currently have to *implement* the plan (by providing face covering, conducting health screenings, etc.).

By August 5, 2021, all New York employers must adopt an Airborne Infectious Disease Exposure Prevention Plan (“Plan”). They can either adopt the model Plan created by the DOL or create and implement their own alternative

Plan that meets the DOL’s minimum standards. Employers who choose to create their own alternative Plan must do so with the “meaningful participation of their employees.” Beginning in November 2021, employers must “permit” employees to form a “workplace safety committee” to address the Airborne Infectious Disease policy (as well as other safety and health issues).

A copy of the DOL’s model Plan can be found at the DOL website (see link below). (There are also 11 special model Plans for specific industries, such as Food Service, Construction and Delivery Services.) Given the short time frame for adopting and distributing a Plan, employers may want to consider simply adopting the DOL’s model plan.

The HERO Act requires employers to provide a copy of the Plan to all employees in English and/or Spanish (or in their primary language, but only if the DOL’s model Plan is available in that language). The Plan must be given to employees within 30 days after the employer adopts the Plan, within 15 days after the employer reopens following a closure due to an airborne infectious disease, and, for new employees, at the time of hiring. The Plan must also be posted in a visible and prominent location at the worksite and included in any employee handbook. The Act also requires that employers make the Plan available, upon request, to all employees and independent contractors, employee representatives, collective bargaining representatives, and the commissioner and the commissioner of health.

In sum, compliance with the HERO Act requires employers to take the following steps:

- Review the [DOL’s Airborne Infectious Disease Exposure Prevention Standard](#).

- Fill out and adopt the model [Airborne Infectious Disease Exposure Prevention Plan](#) on or before August 5, 2021. (In the alternative, employers can develop their own alternative Plan with employee participation.)
- Provide a copy of the Plan to all employees within 30 days of adopting the Plan (but no later than September 4, 2021).
- Post the Plan in a visible and prominent location at the worksite.
- Include a copy of the Plan in their employee handbook.
- Include a copy of the Plan in their onboarding materials.

## For Questions Relating to This Client Alert, Please Contact:



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Amory represents employers and executives in all aspects of the employment relationship with a focus on counseling, litigation avoidance and, when necessary, litigation. Her counseling experience on behalf of a broad range of employers includes advice on issues ranging from discrimination and retaliation to wage-and-hour issues to compensation. She also regularly drafts, updates, and negotiates agreements and policies on behalf of clients concerning executive employment agreements, separation agreements, and other business arrangements.



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Kathleen's practice focuses on employment matters on behalf of both employees and employers, and also includes general commercial litigation. She advises employers on compliance with federal, state, and local employment statutes. She has defended mass transit agencies, as well as other U.S. and foreign defendants, in suits by employees alleging sex, race, and disability discrimination, civil rights violations, violations of the Family and Medical Leave Act, and violations of the Fair Labor Standards Act.

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