

New York Issues Standard on Airborne Infectious Disease Exposure Prevention Plans in Wake of HERO Act

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After the May passage of the New York [Health and Essential Rights Act](#) (HERO Act), and June [amendments](#), the New York State Department of Labor (DOL) has issued guidance including the model general standard and model airborne infectious disease prevention plans relevant to specific industries on its [dedicated website](#).

Included in the DOL's July 6, 2021, HERO Act guidance is:

- The Airborne Infectious Disease Exposure Prevention Standard;
- A General Model Airborne Infectious Disease Exposure Prevention Plan; and
- Model Industry Specific Airborne Infectious Disease Exposure Prevention Plans for the following industries:
 - Agriculture
 - Construction
 - Delivery Services
 - Domestic Workers
 - Emergency Response
 - Food Services
 - Manufacturing and Industry
 - Personal Services
 - Private Education
 - Private Transportation
 - Retail

The DOL also designated an email address where individuals may send feedback and inquiries on the resources issued to date.

Employers who have been monitoring the DOL's website should keep in mind the following key deadlines now that the DOL has published its prevention standard and model plans:

- Employers have 30 days from the published standards, *through August 5, 2021*, to adopt the model standard relevant to their industry, or establish an alternative that meets or exceeds the minimum standards provided in the model; and
- Employers have 60 days from the published standards, *through September 4, 2021*, to provide all employees with written copies of their plan in English and the employee's primary language (if a model standard has been published in the employee's language), and subsequently must provide copies to new employees upon hire, or within 15 days after reopening following a period of closure.

While employers must adopt and issue notice of their plans under the HERO Act to ensure compliance, the DOL's guidance clarifies that employers do not need to implement their plans until 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, which as of this writing, has not yet occurred. As a result, while employers must adopt their prevention plans and issue notice to ensure compliance with the HERO Act, they do not currently need to implement their

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plans until a designation is made.

Additionally, while the text of the HERO Act requires employers with employee handbooks to include their airborne infectious disease exposure prevention plan in their handbooks and post their plan in a visible prominent location within each worksite, other than a vehicle, based on current guidance it is unclear whether this requirement is only applicable if the plan becomes effective.

The DOL's website indicates that additional details will become available in the coming days and encourages employers to check back for further updates.

Jackson Lewis attorneys will continue to monitor changes in COVID-19 guidance and regulations in the workplace. If you have questions about the HERO Act or related workplace safety issues, please reach out to the Jackson Lewis attorney with whom you often work or any member of our [Disability, Leave and Health Management Group](#) or [Workplace Safety and Health Group](#).

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