

New York Amendments to HERO Act Give Labor Department, Employers More Time to Comply

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Amendments to New York's [Health and Essential Rights Act](#) (HERO Act) give the state Department of Labor more time, until July 5, 2021, to create industry-specific model safety standards and to clarify when employers must implement required airborne infectious disease prevention plans.

The HERO Act was passed in response to the COVID-19 pandemic and established a standard for preventing airborne infectious diseases in the workplace.

Background

The HERO Act amended the New York Labor Law (NYLL) by adding:

- Section 1, NYLL Section 218-b, "Prevention of Occupational Exposure to an Airborne Infectious Disease" – Essentially codifies the type of health and safety requirements found in the New York Forward Guidance.
- Section 2, NYLL Section 27-d, "Workplace Safety Committee" – Gives employees the opportunity to create a joint employer and employee committee to address workplace health and safety issues.

Amendments

Under the amendments, the Labor Commissioner, in conjunction with the state Department of Health, will have until July 5, 2021, to publish their model airborne "Infectious Disease Exposure Prevention Standards." Once these industry-specific standards are issued, employers will have 30 days to implement their own infectious disease exposure prevention plan by:

1. Adopting the model standard relevant to their industry; or
2. Establishing an alternative plan that equals or exceeds the minimum standards provided in the model standard.

In addition, the amendments revised the law as follows:

- Limit the jurisdiction of the workplace safety committee to safety and health issues only;
- Allow only an award of costs and reasonable attorneys' fees to the employer if the court deems the employee's lawsuit was frivolous;
- Require employees to provide the employer 30 days' notice and an opportunity to cure a violation before bringing an action, unless the employee alleges with particularity that the employer demonstrated an unwillingness to cure in bad faith;
- Limit the workplace safety committee to one per worksite; and
- Limit paid meetings to no longer than two hours and trainings for committee members to no longer than four hours.

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Next Steps

While employers will not be able to prepare an exposure prevention plan that aligns with the HERO Act until the Infectious Disease Exposure Prevention Standards are issued, they should take steps now to confirm their current exposure prevention plan measures align with the most recent New York Forward Guidance. The Department of Health's [update to the New York Forward Guidance](#) for most industries may signal what is ahead.

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 [Workplace Safety and Health Group](#).

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