

New York HERO Act COVID-19 Designation Extended Through October 31, 2021

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The New York State Commissioner of Health designated COVID-19 as a “highly contagious communicable disease that presents a serious risk of harm to the public” on September 6, 2021. Originally set to expire on September 30, the Commissioner has [extended the designation](#) through October 31. Accordingly, employers must continue to have their Airborne Infectious Disease Exposure Prevention Plans in place.

On September 23, 2021, the New York State Department of Labor (DOL) updated its [Model Airborne Infectious Disease Exposure Prevention Plan](#). Although not readily reflected in the corresponding [Exposure Prevention Standard](#) and [FAQs](#), the Model Plan now provides employers greater flexibility regarding masking and physical distancing requirements.

As amended, the Model Plan distinguishes between employers with a fully vaccinated workplace and those that do not. Previously, the Model Plan provided only that employees had to wear face coverings “to the greatest extent possible,” without reference to vaccination status. Now, if all persons in the workplace are fully vaccinated, including non-employees, the DOL is only recommending that all employees wear a mask.

[APPLICABLE FOR WORKPLACES where all individuals on premises, including but not limited to employees, are fully vaccinated – defined as having completed a federally authorized or approved vaccination series for an airborne infectious disease designated as a highly contagious communicable disease that presents a serious risk of harm to the public health (as is currently the case for COVID-19, pursuant to the Commissioner of Health’s designation)] Appropriate face coverings are recommended, but not required, consistent with State Department of Health and the Centers for Disease Control and Prevention applicable guidance, as of September 16, 2021.

If not everyone in the workplace is vaccinated, employees must wear masks in accordance with guidance from the state or the Centers for Disease Control and Prevention (CDC).

[APPLICABLE FOR MOST WORKPLACES] Employees will wear appropriate face coverings in accordance with guidance from State Department of Health or the Centers for Disease Control and Prevention, as applicable.

As to physical distancing requirements, the revised Model Plan states only that “Physical distancing will be used to the extent feasible” as advised by guidance from the Department of Health or CDC, as applicable. The Model Plan no longer refers to

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“avoiding unnecessary gatherings” or use of a mask when social distancing cannot be maintained.

Although seemingly providing employer more flexibility in implementing their plans based on the individual circumstances of each employer and worksite, the revised Model Plan does not provide much additional clarity. This is especially true until the state updates its Exposure Prevention Standard or FAQs on the HERO Act and Model Plan. What remains consistent, however, is an employer’s obligation to review their Airborne Infectious Disease Exposure Prevention Plans to ensure it incorporates the latest “information, guidance, and mandatory requirements issued by federal, state or local governments related to” COVID-19. Thus, it is imperative for employers to stay up to speed and current with guidance from all relevant sources.

For New York City employers, this includes the [City’s September 29, 2021](#), guidance on how to handle positive COVID-19 cases in the workplace. The City asks employers to report all positive cases and information regarding close contacts to the NYC Health Department using the [COVID-19 Facility Exposures form](#). The City also considers a fever to be 100.0°F or more, as compared to state and the CDC, which deem someone to have a fever only when their temperature reaches 100.4°F or greater.

Jackson Lewis attorneys will continue to monitor changes in COVID-19 guidance and regulations affecting the workplace. If you have questions or need assistance, please reach out to the Jackson Lewis attorney with whom you regularly work, or any member of our [COVID-19 team](#).

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