



September 27, 2021

NY Hero Act (updated)

The New York Health and Essential Rights Act (HERO Act) was signed into law on May 5, 2021. The law mandates new workplace health and safety protections in response to COVID-19 and requires all employers to adopt an airborne infectious disease “Exposure Prevention Plan”.

On September 6, 2021, Governor Hochul announced that the Commissioner of Health designated COVID-19 as an airborne infectious disease that is a “highly contagious communicable disease that presents a serious risk of harm to the public health.” Under the HERO Act, this designation triggers the requirement for employers to promptly activate their Exposure Prevention Plan.

The following summarizes the HERO Act’s requirements for employers:

<p>How should employers establish and adopt an Exposure Prevention Plan?</p>	<p>Employers may adopt the NYS Model Exposure Prevention Plan (published on July 6, 2021, and updated September 23, 2021).</p> <p>Or employers may create a different exposure prevention plan that complies with the HERO Act. Such plan must be adopted with meaningful participation by its employees (or pursuant to a collective bargaining agreement for unionized employees). The plan must also be tailored and specific to the hazards of the employer’s industry and worksite(s). NYS DOL also provides industry specific plan templates, available on the NYS DOL’s website.</p>
<p>What steps are required for an employer to activate the Exposure Prevention Plan?</p>	<p>Employers should review and update the Exposure Prevention Plan.</p> <p>Employers should conduct a verbal review of the plan.</p> <p>Employers should add this plan to their Employee Handbook.</p> <p>The plan should be posted in a visible and prominent location at the worksite, and be accessible to employees during all work shifts.</p> <p>Employers should make the plan available to any new employees as well as all employees within 15 days after reopening the worksite after closure due to exposure to an airborne infectious disease.</p> <p>Employers should make the plan available, upon request, to all employees and independent contractors, and all employee representatives and</p>



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	collective bargaining representatives, as well as NYSDOL and the NYS Department of Health (DOH).
Which workers are covered by the Hero Act?	The Hero Act broadly defines covered employees to include part-time employees, independent contractors, and individuals working for staffing agencies, contractors or subcontractors.
What exposure controls need to be included in the Exposure Prevention Plan?	<p>Health Screening: Employees should be screened for COVID-19 symptoms at the beginning of the workday in accordance with guidance by the DOH or CDC. Employers must follow DOH or CDC guidance on protocols including testing, isolation, and quarantine before allowing employees to return to the worksite.</p> <p>Face Coverings: At no cost to employees, employers should provide appropriate face coverings in accordance with the DOH or CDC guidance. Employers must require their employees to wear the face coverings when physical distancing cannot be maintained in accordance with DOH or CDC guidance.</p> <p><u>NOTE: As of September 23, 2021, the DOL updated its NYS Model Exposure Prevention Plan to state that for workplaces where all individuals (including employees) are fully vaccinated, face coverings are recommended but not required.</u></p> <p>Physical Distancing: When possible, employers must keep employees at least six (6) feet apart from each other, or as recommended distancing by the DOH or CDC.</p> <p>Hand Hygiene Facilities: To the extent practicable and feasible, employers must provide handwashing facilities, adequate supply of tepid or warm water, soap, and single-use towels or air-drying machines. If hand washing facilities are not practicable and feasible, employers must provide hand sanitizing facilities and/or supplies. The hand sanitizers must contain at least 60% alcohol or other composition determined appropriate by the DOH or CDC.</p> <p>Cleaning and Disinfection: Employers should establish a cleaning and disinfection plan and method that is appropriate for the worksite, or as otherwise directed by the DOH or CDC. The HERO Act further outlines cleaning and disinfection procedures for contaminated surfaces, frequently touched surfaces, and shared areas and equipment.</p>



	<p>Personal Protective Equipment: Employers must provide and require employees to use personal protective equipment (PPE) deemed necessary or recommended by DOH, and provide employees with PPE training and information. If the employee uses their own PPE at the worksite, employers must ensure the PPE is adequate and functioning properly. All PPE at the worksite must be stored, used, and maintained in a sanitary and reliable condition.</p> <p>Employers should select the appropriate controls based on the types and level of exposure risks specific to their worksite activities.</p>
<p>What steps do employers need to take to ensure the plan is complied with?</p>	<p>Employers must designate one or more supervisory employees to enforce compliance.</p> <p>Employers should also monitor and maintain the exposure controls described in the plan, check regularly for any updated information provided by DOH and CDC; and update the plan so to reflect current recommended control measures by the DOH or CDC.</p>
<p>Does the Hero Act protect employees against retaliation?</p>	<p>Yes. The Hero Act prohibits employers from discriminating or retaliating against employees for exercising their rights under the Hero Act or the employer’s Exposure Prevention Plan. This covers employees who report violations to their employer or to government officials or who refuse to work based on a good-faith belief that there is a danger of exposure to airborne infectious diseases.</p>
<p>Are there any recordkeeping requirements?</p>	<p>Yes, employers must keep all records between the employee and the employer related to the potential risk of exposure for a period of two (2) years after the conclusion of the Commissioner of Health’s designation.</p>
<p>What are the penalties for noncompliance?</p>	<p>Employers that fail to adopt an Exposure Prevention Plan can be penalized not less than \$50 for each day of non-compliance.</p> <p>In addition, an employer may be penalized between \$1,000 and \$10,000 for failing to comply with its own Exposure Prevention Plan.</p>
<p>Can employees sue their employer for Hero Act violations?</p>	<p>Yes, employees can sue for injunctive relieve if the employer violates the plan in a manner that creates a substantial probability of death or serious physical harm.</p>



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	<p>A successful plaintiff may be able to recover costs and attorneys' fees and liquidated damages up to \$20,000.</p>
<p>Does the Hero Act give employees any additional rights?</p>	<p>Effective November 1, 2001, the HERO Act also requires employers with at least 10 employees to allow employees to establish and administer a joint labor-management workplace safety committee.</p> <p>Such joint committee must include shared chairing representation from non-supervisory employees and supervisory employees; at least two-thirds non-supervisory employees as members; and member employees that are chosen by non-supervisory employees.</p> <p>The committee would be authorized to, among other things: (i) raise health and safety concerns and violations; (ii) review any policy related to occupational safety and health and provide feedback; (iii) review the adoption of any policy in response to any health or safety law, ordinance, rule, regulation, executive order, or other related directive; (iv) participate in any site visit by any governmental entity responsible for enforcing safety and health standards unless otherwise prohibited by law; (v) review any report filed by the employer related to the health and safety of the workplace; and (vi) regularly schedule no more than two (2) hours meetings during work hours at least once a quarter.</p>

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