

NYS Hero Act Update for Medical Practices



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September 16, 2021 | **PRESS RELEASES**

The New York Health and Essential Rights Act (NY HERO Act) was enacted on May 5, 2021. The law requires employers to put into place workplace health and safety protections in response to the COVID-19 pandemic.

The purpose of the NY HERO Act is to protect employees against exposure and disease during a future airborne infectious disease outbreak. The Act requires all covered employers to create airborne infectious disease exposure prevention plans, to take effect when New York State designates an airborne infectious disease as a highly contagious communicable disease that presents a serious risk of harm to the public health. It also requires employers with at least ten (10) employees to permit the establishment of joint labor-management workplace safety committees with their employees.

On September 6, 2021, Governor Kathy Hochul announced the designation of COVID-19 as an airborne infectious

disease under the NY HERO Act. As a result, all covered employers must implement the workplace safety plans that were required to be put into place previously pursuant to the NY HERO Act. The worksite safety plans must address safety measures such as employee health screenings, masking and social distancing requirements, workplace hygiene stations, workplace cleaning protocol, quarantine protocol, and building airflow technology. The work safety plan must be distributed to all employees and posted in a visible and prominent location within each worksite. In addition, all employers must conduct a verbal review of the employer's policies, as well as employee rights and employer obligations under the HERO Act. Such review may be held in person, or remotely via audio or video conference technology.

The New York State Department of Labor (DOL) has developed model plans to address the prevention of airborne infectious disease. Employers may choose to either adopt a DOL model plan or create an alternative plan that meets or exceeds the model plan's requirements. Employers who choose to create their own plans are required to do so with meaningful participation of their employees.

Of note, healthcare employers that are already covered by the federal OSHA Emergency Temporary Standard (ETS) rules are exempt from the NY HERO Act. The ETS, issued by the U.S. Department of Labor on June 10, 2021, similarly created specific obligations for employers to provide protections to workers from occupational exposure to COVID-19 in certain healthcare settings. The ETS required covered employers to develop and implement a COVID-19 plan by July 6, 2021. Such plan must meet various requirements established by OSHA intended to reduce the risk of transmission of COVID, and must be in writing if an employer has more than ten (10) employees. Medical offices that screen every non-employee prior to admittance into their offices, and who deny entry to anyone suspected or confirmed to have COVID-19, are exempt from the ETS and as such, must comply with the NY HERO Act.