



## Airborne Infectious Disease Prevention Standards and Safety Policy Templates

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### **What Is It?**

The New York Health and Essential Rights Act ("NY HERO Act"), enacted in May 2021, requires employers to establish new health and safety measures regarding airborne infectious diseases. The Act also gives the New York State Department of Labor ("NYSDOL") authority to develop minimum standards for employers to follow to help prevent the spread of airborne infectious diseases, such as COVID-19.

The Act applies to all nongovernmental employers, and it defines covered "employees" broadly to include all employees, independent contractors, leased employees, and vendors performing work at employer-controlled worksites. Worksites covered under the Act include any physical space, including a vehicle, that has been designated as the location where work is performed over which an employer can exercise control. Telecommuting or telework sites are not included unless the employer can exercise control of the site.

On July 7, 2021, the NYSDOL published standards and industry-specific prevention policies, which can be found here: <https://dol.ny.gov/ny-hero-act>. The standards differ among industries but are similar to many of the measures implemented by employers for COVID-19.

### **Implementation**

Although employers are required to adopt and post their plan now, the plan is not required to be in effect at this time. The plan only needs to go into effect if the NYS Health Commissioner designates an airborne infectious disease. Given that New York has ended its COVID-19 state disaster emergency and recently lifted most COVID-19 restrictions, no such designation is currently in effect.

### **Deadlines**

By August 5, 2021

- Employers must adopt one of the model plans published by the NYSDOL or develop an alternative airborne disease prevention plan that meets or exceeds the minimum requirements.
- If an employer chooses to develop its own plan, it must do so in consultation with collective bargaining representatives, or in a non-unionized workforce, with employee participation.
- The employer's plan must be customized to incorporate industry-specific hazards and worksite considerations.

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Employers must provide the plan to employees within 30 days of the adoption date. They must also provide it within 15 days after reopening if they close for a period due to airborne infectious disease. The plan must be provided to newly hired employees and be published in the employer's employee handbook if the employer has one. Also, employers must post the plan in a visible and prominent location within the worksite.

By November 1, 2021

- Employers with 10 or more employees must begin allowing employees to form a joint labor-management workplace safety committee with employee and employer designees.
- The committee must be allowed to perform duties such as:
  - raising workplace health and safety concerns;
  - reviewing employer policies related to workplace health and safety topics;
  - participating in government site visits relating to workplace health and safety standards; and
  - attending committee meetings and trainings related to workplace health and safety standards.

### **Penalties**

If an employer fails to adopt a written airborne infectious disease exposure prevention plan, it may be subject to a penalty of at least \$50 per day until the employer implements such a plan. An employer that fails to comply with its adopted plan's health and safety measures during a designated airborne infectious disease period can be subject to a civil fine ranging from \$1,000 to \$10,000. Additionally, fines may increase for repeat violations.

### **Employer Liability**

As of July 5, 2021, an employer can be liable for discrimination or retaliation against employees under the Act. Employers cannot discriminate, threaten, or take any adverse action against employees for:

- exercising their rights under the Act or the employer's plan;
- reporting violations of the Act or the employer's plan to officials;
- reporting or seeking assistance for an airborne infectious disease exposure concern to an employer or official entity; or
- refusing to work when the employee believes in good faith that the workplace exposes them to an unreasonable risk of exposure.

If you have any questions or concerns about the HERO Act or how it affects your company, Bousquet Holstein's Labor & Employment Group is ready to speak with you.

*If we can provide you with additional insight and information regarding changing employment laws related to the current coronavirus pandemic and how to address internal issues at your business, please contact:*

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Our attorneys are also fully versed in the complex set of rules that regulate the employee benefits area as set forth under ERISA (Employee Retirement Income Security Act of 1974, as amended) and the Internal Revenue Code. We routinely advise clients with regard to the design, implementation, and administration of employee retirement, welfare, and fringe benefit plans.



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