

MSF CLIENT ALERT

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New York Releases Model Plans Required For Employers by The HERO Act

The New York State Department of Labor (“NYSDOL”) published minimum standards and template plans related to airborne infectious disease prevention in the workplace as a guide to employers who must adopt and implement a plan for their New York worksites under the New York Health and Essential Rights Act (“HERO Act”).

July 19, 2021

On July 6, 2021, the NYSDOL released its HERO Act [airborne infectious disease exposure prevention standard](#) (“Standard”), its [general model airborne infectious disease prevention plan](#) (“General Plan”), and eleven (11) industry specific plans for employers with worksites in New York, which can be found on the NYSDOL’s HERO Act [webpage](#).

What Do Employers Need to Do Now?

New York employers have until **August 5, 2021** to either: (i) adopt the appropriate model plan issued by the NYSDOL; or (ii) create an alternative prevention plan that meets or exceeds the Standard issued by the NYSDOL. Employers should review the General Plan and/or the applicable industry specific plan to determine whether the model plan is sufficient to protect their employees. The industries covered by specific plans include Agriculture, Construction, Delivery Services, Domestic Workers, Emergency Response, Food Services, Manufacturing and Industry, Personal Services, Private Education, Private Transportation and Retail.

After adopting a plan, employers have until **September 4, 2021** to post their written plan at the worksite and provide it to employees in English and in the primary languages of their employees, if different from English and if the translation is made available by the NYSDOL. Written plans must also be provided to new hires.

Employers with at least ten (10) employees are also required to permit employees to form a joint labor-management workplace safety committee by **November 1, 2021**. Such committees may raise health and safety concerns, review the plan and other safety policies, participate in government site visits relating to workplace health and safety standards, and attend committee meetings and trainings related to workplace health and safety standard.

While Employers Must Quickly Adopt Plans, Plans Do Not Need to Be in Effect at This Time

Significantly, the NYSDOL stated: “Currently, while employers must adopt plans as required by the law, as of the date of this writing no designation has been made and plans are not required to be in effect.” As a result, while employers must adopt a plan, there is no need to implement it at this time. The plan need only be implemented when an airborne infectious disease is designated by the New York State Commissioner of Health as a highly contagious communicable disease that presents a serious risk of harm to the public health.

As a result, employers must adopt, post and distribute a plan in preparation for such a designation (e.g., if the Covid-19 pandemic were to worsen in New York State), but the plan does not need to be implemented.

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Adopting a Plan

When adopting the General Plan, an industry specific plan or their own plan, Employers must:

- List all worksites where the plan will apply
- Name supervisory employee(s) to enforce compliance with the plan
- Designate a contact person for questions about the plan
- List engineering and administrative controls
- List PPE required at the worksite

As no designation of an airborne infectious disease requiring implementation of a plan is in effect, and one may not be in effect by the deadlines for employers to adopt, post and distribute plans, we recommend employers note that the plan is subject to change based upon the circumstances surrounding any future designation of an airborne infectious disease requiring implementation of a plan. Employers should also proactively identify specific areas of their plan that may be subject to modification if the employer deems it necessary to adjust the plan to better protect the worksite. Note that modifications to a plan must meet or exceed the Standards and cannot reduce the minimum requirements for prevention and protection.

The HERO Act also requires employers to include their plans in their Employee Handbook. Given, as stated above, that plans are subject to change based upon the circumstances surrounding the designation of an airborne infectious disease, we recommend employers include their plan as an appendix to their Employee Handbook with a note explaining that the plan is only in effect upon designation of a public health crisis and that it is subject

to change based on the specific data available at the time of designation of an airborne infectious disease.

Activating a Plan

If the New York State Commissioner of Health designates a public health emergency that triggers the need to activate employer plans, employers must take the following steps:

- Immediately review the adopted plan and update it to reflect current data, guidance and mandatory requirements issued by federal, state or local governments.
- Provide an updated plan (if needed) to all employees within fifteen (15) days of the designation and post the plan at the worksite in a conspicuous location.
- Train employees during working hours on all elements of the plan. Training should be provided in a manner consistent with the safety precautions provided by the employer's plan (e.g., via video conference, in-person with sufficient social distancing and PPE, etc.).
- Continue to monitor the designated emergency and update the plan as needed to account for new information and guidance.

Employers should familiarize themselves with the NYSDOL [webpage](#) dedicated to the HERO Act in order to properly prepare for adoption and implementation of their plan(s).

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