

MSF CLIENT ALERT

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HERO Act Update: COVID-19 Airborne Infectious Disease Designation Requires New York Employers to Implement Plan

On September 6, 2021, the Commissioner of Health in New York State designated COVID-19 as a highly contagious communicable disease that presents a serious risk of harm to the public health under New York’s Health and Essential Rights Act (“HERO Act”). Due to this designation, all New York employers must implement the airborne infectious disease exposure prevention plans they were previously required to prepare and circulate to their workforce.

September 10, 2021

As we [previously reported](#), 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, and required employers with worksites in New York to adopt a plan that meets or exceeds the Standard by August 5, 2021.

On September 6, 2021, Governor Kathy Hochul announced that the Commissioner of Health in New York State designated COVID-19 as a highly contagious communicable disease under the HERO Act triggering the requirement for employers to implement their plans.

What Do Employers Need to Do Now?

As a result of the designation, 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 and post the plan at the worksite in a conspicuous location.

- Verbally review the plan with employees, which may be done remotely or in person.
- Continue to monitor the designated emergency and update the plan as needed to account for new information and guidance.

Depending on the specifications of the worksite, employers may also need to 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.).

How to Ensure Compliance While the Designation Remains in Effect?

While the designation remains in effect, employers must continually ensure that their plan is followed by:

- Assigning enforcement responsibilities to supervisory employees;
- Monitoring and maintaining exposure controls; and

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- Regularly checking for updated information and guidance from the New York State Department of Health and the CDC.

The current designation remains in effect until September 30, 2021, at which time Governor Hochul will evaluate whether to extend the designation.

Please contact an attorney in MSF's Employment if you need assistance with respect to this information.



Andrea B. Neuman
Partner | Chair, Employment
(212) 655-3513 | abn@msf-law.com



Gregg M. Kligman
Counsel | Employment
(646) 273-8209 | gmk@msf-law.com



Samantha Frenchman
Associate | Employment
(212) 655-3580 | slf@msf-law.com

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