

Labor & Employment Law Alert: New York State Department of Labor Issues Guidance on HERO Act

The New York Health and Essential Rights Act (the “HERO Act”) requires private sector employers in New York State to adopt an airborne infectious disease plan. On July 6, 2021, the New York State Department of Labor (“NYSDOL”) issued its model airborne infectious disease plan, along with an airborne infectious disease exposure standard and industry specific sample airborne infectious disease plans. The industry specific model plans issued by the NYSDOL cover the agriculture, construction, delivery services, domestic worker, emergency response, food service, manufacturing and industrial, personal service, private education, private transportation and retail industries. The **materials** issued by the NYSDOL are available on its website.

The amendments to the HERO Act provide employers with 30 days from the time the NYSDOL publishes its model airborne infectious disease plans to adopt a plan. Therefore, employers must adopt an airborne infectious disease plan issued by the NYSDOL or develop a plan that meets or exceeds the requirements of the Airborne Infectious Disease Exposure Prevention Standard issued by the NYSDOL by August 5, 2021.

Employers have 30 days from the adoption of an airborne infectious disease plan to communicate the plan to employees. The deadline for communicating the existence of an airborne infectious disease plan to employees is September 4, 2021.

The NYSDOL clarified that although employers must adopt an airborne infectious disease plan, such plans take effect only if the New York State Commissioner of Health designates an airborne infectious disease “as a highly contagious communicable disease that presents a serious risk of harm to the public health,” and that no such designation by the Commissioner of Health is currently in effect.

The Airborne Infectious Disease Exposure Prevention Standard also requires employers to conduct a verbal review of policies issued by the employer as a result of the HERO Act. Employers should also remember that their plans must be included in employee handbooks, provided to employees in English and in the language identified by each employee as their primary language, and posted in a visible and prominent location at each worksite.

As employers navigate these issues, our Firm’s **labor and employment** attorneys are standing by to provide legal advice.