

EMPLOYERS, IT'S TIME TO ACTIVATE YOUR HERO ACT PLANS – GOVERNOR HOCHUL ANNOUNCES NYSDOH DESIGNATION OF COVID-19 AS A RISK-PRESENTING HIGHLY CONTAGIOUS COMMUNICABLE DISEASE

Hodgson Russ Labor & Employment Alert
September 7, 2021

As we previously reported [here](#), [here](#), and [here](#), the New York Health and Essential Rights Act (“HERO Act”) was signed into law on May 5, 2021 and amended on June 14, 2021.

Under the HERO Act, employers were required to establish and adopt exposure prevention plans for airborne infectious diseases by August 5, 2021, and distribute those plans to all employees by September 6, 2021. The substantive provisions of the prevention plans, however, would only go into effect during periods in which 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 public health.

On September 6, 2021, Governor Kathy Hochul announced that the New York State Commissioner of Health designated COVID-19 as a highly contagious communicable disease that presents a serious risk of harm to the public health under the HERO Act. Employers must now take the following steps:

- Immediately review the worksite’s exposure prevention plan and update it, if necessary, to ensure that it incorporates current information, guidance, and mandatory requirements issued by federal, state, or local governments related to the infectious agent of concern.
- Finalize and promptly activate the worksite exposure prevention plan.
- Provide all personnel with training on all elements of the plan and the following topics:
 - The infectious agent and the disease it can cause;
 - Signs and symptoms of the disease;
 - How the disease can be spread;

Attorneys

Luisa Bostick
Joseph Braccio
Glen Doherty
Andrew Drilling
Ryan Everhart
Andrew Freedman
Peter Godfrey
John Godwin
Charles H. Kaplan
Karl Kristoff
Christopher Massaroni
Elizabeth McPhail
Lindsay Menasco
Kinsey O'Brien
Jeffrey Swiatek
Michael Zahler

EMPLOYERS, IT'S TIME TO ACTIVATE YOUR HERO ACT PLANS – GOVERNOR HOCHUL ANNOUNCES
NYSDOH DESIGNATION OF COVID-19 AS A RISK-PRESENTING HIGHLY CONTAGIOUS COMMUNICABLE
DISEASE

- An explanation of the plan;
- The activities and locations at the worksite that may involve exposure to the infectious agent;
- The use and limitations of exposure controls; and
- A review of the HERO Act standard, including employee rights under Section 218-B of the New York Labor Law.
- The requisite training must be provided at no cost to employees and must take place during work hours. It must be appropriate in content and vocabulary to the education level, literacy, and preferred language of the employees, and verbally provided in person or through telephonic, electronic, or other means.
- Distribute and post the plan. Specifically, the employer must provide each employee with a copy of the exposure prevention plan in English or in the language identified as the primary language of such employees, if available; post a copy of the exposure prevention plan in a visible and prominent location at the worksite; and ensure that a copy of the exposure prevention plan is accessible to employees during all work shifts.
- Ensure that the worksite's exposure prevention plan is effectively followed by:
 - Assigning enforcement responsibilities in accordance with the HERO Act and ensuring that adequate enforcement of the worksite's exposure prevention plan takes place;
 - Monitoring and maintaining exposure controls; and
 - Regularly checking for updated information and guidance provided by the New York State Department of Health (NYSDOH) and Centers for Disease Control and Prevention (CDC) concerning the airborne infectious disease and updating the exposure prevention plan, when necessary, so that the plan reflects current recommended control measures.
- Designate one or more supervisory employees to enforce compliance with the exposure prevention plan, the NYSDOL standard, and any other applicable federal, state, or local guidance related to preventing spread of the airborne infectious disease.

While Governor Hochul announced the designation on September 6th, as of the time of this Alert neither the NYSDOH nor the NYSDOL has updated its website to reflect the designation. Accordingly, employers should begin to implement the steps listed above but should also carefully monitor those websites for any updated guidance on the necessary steps to activate their exposure prevention plans and otherwise comply with the HERO Act.

If you have questions or would like assistance in activating your airborne infectious disease exposure prevention plan, please contact John Godwin (716.848.1357), Lura Bechtel (416.595.2693), Kinsey O'Brien (716.848.1287), or any member of Hodgson Russ's Labor & Employment Practice.