

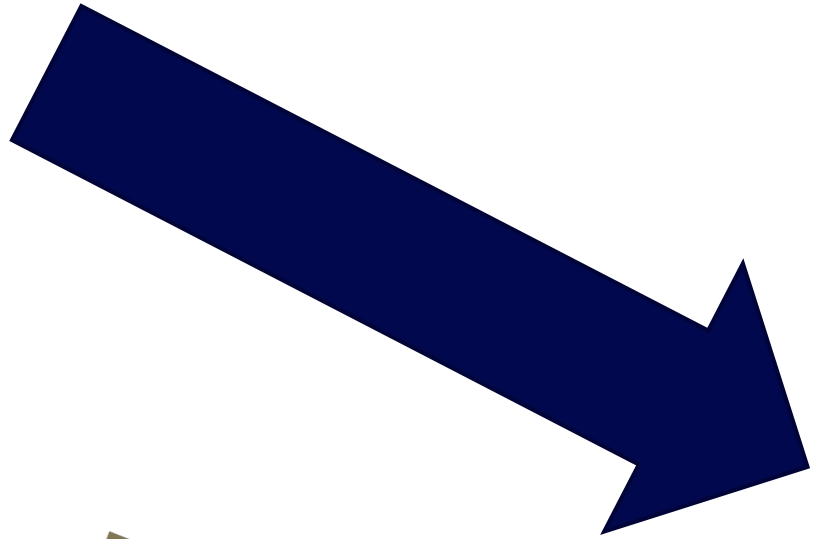
# COVID-19 After 18 Months

*A Legal Update for New York Employers*

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# Health and Essential Rights (HERO) Act

- ▶ Signed by Gov. Cuomo on May 5, 2021
- ▶ Amended June 11, 2021
- ▶ Adds two new sections to the NY Labor Law
- ▶ Applies to private businesses (profit and not-for-profit)
- ▶ Doesn't cover employers subject to OSHA regulations

# Airborne Infectious Disease Exposure Prevention

- ▶ NY Labor Law § 218-b
- ▶ Plans had to be adopted by August 5th
- ▶ Implemented on Labor Day (9/6/21) for COVID-19
- ▶ Designation through September 30<sup>th</sup>, subject to extension

# Activation Requirements

- ▶ Review, update, and activate plan
- ▶ Provide plan to employees
- ▶ Conduct verbal review of infectious disease standard, employer policies, and employee rights under Labor Law § 218-b

# Workplace Safety Committees

- ▶ NY Labor Law § 27-d
- ▶ Applies to private employers with at least 10 employees in New York
- ▶ Covered employers must “permit” employees “to establish and administer a joint labor-management workplace safety committee”
- ▶ Effective November 1, 2021

# Committee Activities

- ▶ Raise health and safety concerns, hazards, complaints, and violations to which the employer must respond
- ▶ Review any policy put in place in the workplace required by the NY Labor Law relating to occupational safety and health and provide feedback to such policy in a manner consistent with any provision of law
- ▶ Review the adoption of any policy in the workplace in response to any health or safety law, ordinance, rule, regulation, executive order, or other related directive
- ▶ Participate in any site visit by any governmental entity responsible for enforcing safety and health standards
- ▶ Review any report filed by the employer related to the health and safety of the workplace
- ▶ Regularly schedule a meeting during work hours at least once a quarter that shall last no longer than two hours

# Guidance and Regulations

- ▶ DOL recently issued FAQs
- ▶ Indicates covered employers will be required to establish workplace safety committees
- ▶ Confirms formal regulations forthcoming
- ▶ Check <https://dol.ny.gov/ny-hero-act>



# President's Action Plan

- ▶ All employers with 100+ employees must require vaccination or weekly testing
- ▶ Mandatory vaccination for health care workers
- ▶ Mandatory vaccination for federal workers and contractors
- ▶ Paid time off to get vaccinated

# Federal Contractors

- ▶ Executive Order applies to most federal contractors (not grantees)
- ▶ Triggered by new contract, including extensions, renewals, and exercise of option beginning October 15, 2021
- ▶ Safer Federal Workforce Taskforce has issued initial guidance, with more details required by September 24th

“The Department of Labor’s Occupational Safety and Health Administration (OSHA) is developing a rule that will require all employers with 100 or more employees to ensure their workforce is fully vaccinated or require any workers who remain unvaccinated to produce a negative test result on at least a weekly basis before coming to work. OSHA will issue an Emergency Temporary Standard (ETS) to implement this requirement. This requirement will impact over 80 million workers in private sector businesses with 100+ employees.”

Source: <https://www.whitehouse.gov/covidplan/>

# OSHA

- ▶ ETA on ETS?
- ▶ DOA?
- ▶ New York impact



# NYS Mandates

- ▶ Mandatory vaccination for healthcare employees
- ▶ Weekly testing for unvaccinated school employees
- ▶ Litigation underway and likely to proliferate

# NYS Quarantine Leave

- ▶ Applies to all New York public and private employers of any size
- ▶ Limited to employees unable to work because of quarantine/isolation orders
- ▶ Employee benefits vary based on size of business (5-14 days, paid or unpaid)
- ▶ NYS DOL allows up to 3 such leaves; 2<sup>nd</sup> and 3<sup>rd</sup> must be based on positive test
- ▶ Optional FFCRA paid-leave program ends 9/30/21

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**The only certainty  
is uncertainty...**



**and litigation.**

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# Questions?



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