

# HERO Act Update Part I:

## *Airborne Infectious Disease Prevention*

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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)

# Airborne Infectious Disease Exposure Prevention

- ▶ NY Labor Law § 218-b
- ▶ Covered employers must adopt an airborne infectious disease exposure prevention plan
- ▶ NYS DOL issued “Standard” and model plans on July 6th
- ▶ Plans must be adopted by August 5<sup>th</sup>
- ▶ Fines of \$50+ per day for not having plan in place (\$200+ per day for subsequent violations)

# Covered Employees

- ▶ Broader than normal definitions of “employee”
- ▶ Includes independent contractors
- ▶ Also includes individuals working for staffing agencies, contractors, subcontractors, and delivery personnel present on employer’s worksite
- ▶ May not currently include healthcare workers

# Industry Templates

- ▶ Agriculture
- ▶ Construction
- ▶ Delivery Services
- ▶ Domestic Workers
- ▶ Emergency Response
- ▶ Food Services
- ▶ Manufacturing and Industry
- ▶ Personal Services
- ▶ Private Education
- ▶ Private Transportation
- ▶ Retail

# Responsibilities

- ▶ Identifies worksites subject to the plan
- ▶ Designates supervisory employee(s) to enforce plan compliance



## I. RESPONSIBILITIES

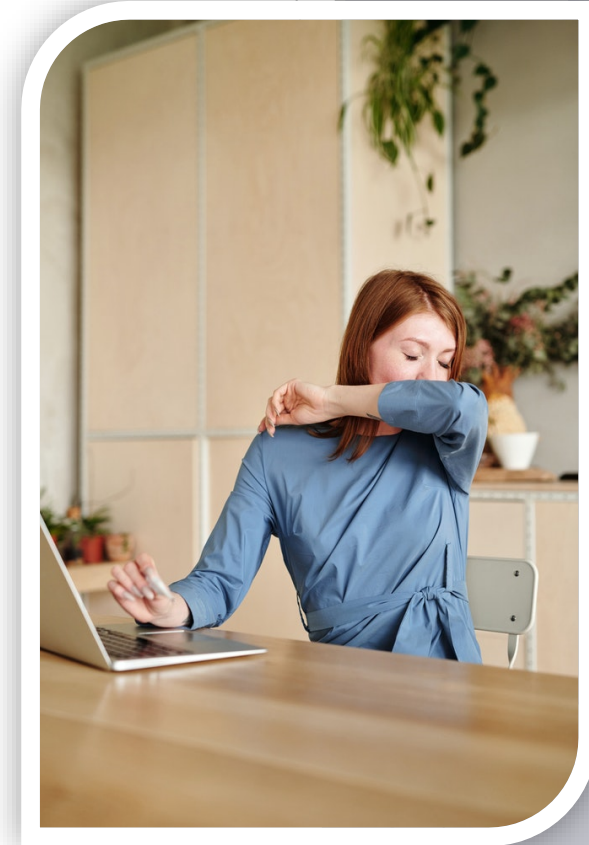
This plan applies to all employees of \_\_\_\_\_, and [all]/[the following work sites]:


This plan requires commitment to ensure compliance with all plan elements aimed at preventing the spread of infectious disease. The following supervisory employee(s) are designated to enforce compliance with the plan. Additionally, these supervisory employees will act as the designated contacts unless otherwise noted in this plan:

Name	Title	Location	Phone

# Minimum Controls

- ▶ General Awareness
- ▶ “Stay at Home Policy”
- ▶ Health Screening
- ▶ Face Coverings
- ▶ Physical Distancing
- ▶ Hand Hygiene
- ▶ Cleaning and Disinfection
- ▶ “Respiratory Etiquette”
- ▶ Special Accommodations for Individuals with Added Risk Factors





5. **Physical Distancing:** Physical distancing will be followed as much as feasible. Avoid unnecessary gatherings and maintain a distance of at least six feet (or as recommended by the NYSDOH/CDC for the infectious agent) from each other. Use a face covering when physical distance cannot be maintained.

*In situations where prolonged close contact with other individuals is likely, use the following control methods: (Note to employer: Check off the controls you intend to use and add any additional controls not listed here.)*

- restricting or limiting customer or visitor entry;
- limiting occupancy;
- allowing only one person at a time inside small enclosed spaces with poor ventilation;
- reconfiguring workspaces;
- physical barriers;
- signage;
- floor markings;
- telecommuting;
- remote meetings;
- preventing gatherings;
- restricting travel;
- creating new work shifts and/or staggering work hours;
- adjusting break times and lunch periods;
- delivering services remotely or through curbside pickup;
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

# Advanced Controls

- ▶ Elimination
- ▶ Engineering Controls
- ▶ Administrative Controls
- ▶ PPE

# Engineering Controls

- ▶ Mechanical Ventilation
- ▶ General Ventilation
- ▶ Natural Ventilation
- ▶ Automatic Disinfection Systems
- ▶ Cleanable Barriers
- ▶ Change Layout of Premises



# Manufacturing

- ▶ Use air filters with MERV-13 or higher (or highest compatible with HVAC system)
- ▶ Air purifiers
- ▶ Additional timeclocks to avoid overcrowding
- ▶ Spread out workstations, including along assembly lines

Subject to changes based on operations and circumstances surrounding the infectious disease, engineering controls that are anticipated to be used are listed in the following table:

<b>Engineering Controls Utilized/Location:</b>

*Note to Employer: One of the best ways to reduce exposure to infectious agents is to improve ventilation. The aim is to deliver more “clean air” into an occupied area and exhaust the contaminated air to a safe location. In some cases, the air may have to be filtered before it enters the work area and/or before it is exhausted. Direct the contaminated air away from other individuals and from the building’s fresh air intake ports. Consult your ventilation system’s manufacturer or service company to determine if improvements are possible for your system.*

# Administrative Controls

- ▶ Increase space between workers
- ▶ Employee training
- ▶ Prioritizing job functions
- ▶ Signage
- ▶ Additional breaks for hand hygiene/cleaning
- ▶ Pods/cohorting

# Food Service

- ▶ Prohibit eating and drinking in the work area
- ▶ Limit or discourage handling of cash
- ▶ Do not refill cups that have been used
- ▶ Let diners pack their own to-go box
- ▶ Develop touchless curbside pickup





# Housekeeping

- ▶ Disinfection Methods and Schedules
- ▶ Adjustments to Normal Housekeeping Procedures
- ▶ Isolating symptomatic employees
- ▶ Trash can procedures





# Infection Response

*If an actual, or suspected, infectious disease case occurs at work, take the following actions:*

- Instruct the sick individual to wear a face covering and leave the worksite and follow NYSDOH/CDC guidance.*
- Follow local and state authority guidance to inform impacted individuals.*

# Training and Information

- ▶ General training and additional training when plan activated
- ▶ Must be “appropriate in content and vocabulary to your [i.e, employees’] educational level, literacy, and preferred language”



# Plan Evaluations

- ▶ “The employer will review and revise the plan periodically, upon activation of the plan, and as often as needed to keep up-to-date with current requirements.”
- ▶ Includes blank table to fill-in “Plan Revision History”

# Retaliation Protections and Reporting of any Violations

- ▶ States that no one may retaliate against any covered “employee” for exercising their rights under the plan
- ▶ Protects employees for refusing to work based on good faith belief of unreasonable risk of exposure following notice to the employer
- ▶ Suggests employers should include contact information for reporting violations

# Plan Options

- ▶ Adopt model plan
- ▶ Agree with union on alternative plan
- ▶ If non-union, implement alternative plan  
“with meaningful participation of employees”
- ▶ Any alternative plan must be “tailored and specific to hazards in the specific industry and work sites of the employer”

# Timing

- ▶ Adopt plan by August 5<sup>th</sup> and post in each worksite
- ▶ Once plan adopted, employer must provide in writing to all existing employees within 30 days
- ▶ Must give to all subsequent new employees upon hire
- ▶ Plan must be included in employee handbook if you have one



# 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 likely to issue additional guidance, but timing uncertain
- ▶ Model plans will be available in Spanish (and eventually in additional languages)
- ▶ Check <https://dol.ny.gov/ny-hero-act>

# Considerations

- ▶ Prepare for August 5<sup>th</sup>, but watch for further information
- ▶ Any reason not to use model plans?
- ▶ Can revise plan later (and may have to)
- ▶ Training?

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# Questions?



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