

# Client Alert **Employment & Labor**

## **New York HERO Act: All New York Employers under Deadline to Adopt an Airborne Infectious Disease Exposure Prevention Plan**

On May 5, 2021, Governor Cuomo signed the New York Health and Essential Rights Act (“NY HERO Act”) into law, which mandates extensive workplace health and safety protections against exposure and disease during a future airborne infectious disease (“AID”) outbreak. The State enacted amendments on June 7, 2021, which included amendments directing the New York State Department of Labor (“NY DOL”) to publish industry specific guidance by July 5, 2021 and to require employers to adopt or create an Airborne Infectious Disease Exposure Prevention Plan within 30 days of such publication. In addition, employers with at least 10 employees are required to permit the establishment of safety committees to address safety workplace concerns effective November 1, 2021.

As expected, on July 6th, the [NY DOL](#) published the Airborne Infectious Disease Exposure Prevention Standard (the “Exposure Prevention Standard”) and the Model Airborne Infectious Disease Exposure Prevention Plan (the “Model Plan”). In addition, the NY DOL published certain industry specific templates for agriculture, construction, delivery services, domestic workers, emergency response, food service, manufacturing and industry, personal services, private education, private transportation and retail industries.

Accordingly, by August 4th, all New York employers with worksites (of any size) located in New York must either adopt the applicable Model Plan provided by the NY DOL, or establish an alternative plan that meets or exceeds the minimum requirements set forth in the published Exposure Prevention Standard. If an employer develops its own plan or a different exposure plan, it must do so in accordance with a collective bargaining agreement, or if there is no collective bargaining representative, with the “meaningful participation” of employees.

Every plan must include appropriate exposure controls for activities performed at the worksite, including implementing health screenings prior to the beginning of the work day, requiring face coverings (to be provided to the employees at no cost), implementing physical distancing, cleaning and disinfecting worksites, providing hand hygiene facilities and personal protective equipment, if applicable. Plans should also be updated in response to guidance from the New York State Department of Health and the Centers for Disease Control.

July 13  
**2021**

This Client Alert has been prepared by Sills Cummis & Gross P.C. for informational purposes only and does not constitute advertising or solicitation and should not be used or taken as legal advice. Those seeking legal advice should contact a member of the Firm or legal counsel licensed in their state. Transmission of this information is not intended to create, and receipt does not constitute, an attorney-client relationship. Confidential information should not be sent to Sills Cummis & Gross without first communicating directly with a member of the Firm about establishing an attorney-client relationship.

Each employer must provide the written Airborne Infectious Disease Exposure Prevention Plan in English or in the primary language of its employees within 30 days after the adoption of the plan (no later than September 3rd), or within 15 days after a period of closure due to an AID. In addition, employers should post the plan in a visible and prominent location within the worksite. Employers that provide employee handbooks should include the Airborne Infectious Disease Exposure Prevention Plan in its handbook, and distribute the plan to newly hired employees, upon hiring. The plan should otherwise be available, upon request, to all employees, employee representatives, collective bargaining representatives, independent contractors, the Department of Labor and the Department of Health.

The Airborne Infectious Disease Exposure Prevention Plans must go “into effect” when an AID is designated by the New York State Commissioner of Health as a highly contagious communicable disease that presents a serious risk of harm to the public health. As noted above, currently there is no AID designation and plans are not required to be in effect.

When an AID is designated by the Commissioner of Health, each employer shall immediately review and update its prevention plan, activate the plan and provide each employee with a written copy of the plan in English or in the primary language of its employees, and post a copy of the plan in a visible and prominent location at the worksite. Once an AID is designated, employers also must conduct a “verbal review” of employer policies and employee rights under the NY HERO Act, including the employer’s exposure prevention plan set forth herein.

It is important to note that the Exposure Prevention Standard prohibits discrimination, retaliation or adverse action taken against any employee exercising their rights under the NY HERO Act, for reporting violations of the plan, reporting any exposure concern, or refusing to work where the employee reasonably believes in good faith that the work creates an unreasonable risk of exposure to the infectious disease.

Additionally, employers with at least 10 employees are required to permit employees to establish and administer a joint labor-management workplace safety committee effective November 1, 2021. These workplace safety committees, which are to be comprised of two-thirds non-supervisory employees will be authorized to perform tasks including but not limited to, raising health and safety concerns, reviewing exposure prevention plan policies, and participating in site visits by any governmental entity responsible for enforcing safety and health standards. Employers that already have workplace safety committees consistent with the above requirements will be exempted.

Failure to comply with the NY HERO Act may result in civil penalties of \$50 per day for failing to adopt an appropriate plan and a fine of \$1,000-10,000 for failing to comply with an adopted plan. Employees may also bring a civil action seeking injunctive relief against employers alleged to have violated an adopted prevention plan; however, advance notice to the employer of the alleged violation is required. The Court may among other things, enjoin the employers conduct or order the payment of liquidated damages of no greater than \$20,000.

### Takeaways

All New York employers are required to take affirmative steps to adopt, distribute and post a compliant plan by August 4, 2021 and then to take additional detailed steps if an AID is designated. While the NY HERO Act is forward looking in the event of another communicable disease outbreak, the terms of the plan cover the same types of preventative measures that were required by New York State during the COVID-19 pandemic and should be familiar to employers.

---

Attorneys in our Employment and Labor Law Practice Group are available to assist on any aspect of the NY HERO Act, as well as on the evolving circumstances of the COVID-19 pandemic.

---

**Jill Turner Lever, Esq.**

Client Alert Issue Editor; Of Counsel, Employment and Labor Practice Group  
[jlever@sillscummis.com](mailto:jlever@sillscummis.com) | (973) 643-5691

**Amy H. Sachs, Esq.**

Client Alert Issue Author; Associate, Employment and Labor Practice Group  
[asachs@sillscummis.com](mailto:asachs@sillscummis.com) | (973) 643-4134

**Patricia M. Prezioso, Esq.**

Co-Chair, Employment and Labor Practice Group  
[ppezioso@sillscummis.com](mailto:ppezioso@sillscummis.com) | (973) 643-5041

**David I. Rosen, Esq.**

Co-Chair, Employment and Labor Practice Group  
[drosen@sillscummis.com](mailto:drosen@sillscummis.com) | (973) 643-5558

**Grace A. Byrd, Esq.**

Of Counsel, Employment and Labor Practice Group  
[gbyrd@sillscummis.com](mailto:gbyrd@sillscummis.com) | (973) 643-6792

**Jordan E. Pace, Esq.**

Of Counsel, Employment and Labor Practice Group  
[jpace@sillscummis.com](mailto:jpace@sillscummis.com) | (973) 643-4295

**Stacy L. Landau, Esq.**

Associate, Employment and Labor Practice Group  
[slandau@sillscummis.com](mailto:slandau@sillscummis.com) | (973) 643-5782