

GREATER NEW YORK HEALTH CARE FACILITIES ASSOCIATION

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21-19

TO: ALL MEMBER FACILITIES

FROM: ROBIN C. ROSEN, ESQ., LABOR COUNSEL

DATE: MAY 24, 2021

RE: NEW YORK HEALTH AND ESSENTIAL RIGHTS ACT (HERO Act)

As you may be aware, Governor Cuomo recently signed the HERO Act into law, which requires all New York employers to implement safety standards and adopt a prevention plan to protect against the spread of COVID-19 and other airborne infectious diseases in the workplace. The Act's first provision on the implementation and adoption of a prevention plan takes effect on June 4, 2021, while the Act's second provision on workplace safety committees takes effect on November 1, 2021.

Effective June 4, 2021, the NYS Department of Labor (NYSDOL) is directed, in consultation with the NYS Department of Health (NYSDOH) to create a model airborne infectious disease exposure prevention standard for all work sites, which will differ depending on the industry. All New York employers will be required to adopt a prevention plan and provide the plan to all employees, including temporary employees and independent contractors. The NYSDOL's model standard will establish minimum protocols related to employee health screenings; face coverings; PPE; hand hygiene stations; regular cleaning and disinfecting of shared equipment and frequently touched surfaces; social distancing for employees, consumers and customers; compliance with mandatory or precautionary orders of isolation or quarantine; compliance with applicable engineering controls such as proper air flow and exhaust ventilation; designation of one or more supervisory employees to enforce compliance with airborne infection disease exposure plan and any

other laws, rules, regulations or guidance; and verbal review of infectious disease standard, employer policies and employee rights.

Employers are required to establish an airborne infectious disease exposure plan either by adopting the NYSDOL's model standard for their industry or creating a plan that equals or exceeds the minimum standards established by the model standard. Employers will not be required to establish their own plan until the NYSDOL issues its standards. Employers, upon the Act's effective date and upon hire, must provide the plan to all its employees in writing in English and in the language identified by each employee as their primary language. Employers are further required to post the plan in a visible and prominent location within the worksite, include a copy in the employee manual and make the plan available, upon request, to all employees, collective bargaining representatives and the Commissioner of Labor and Commissioner of Public Health.

The Act prohibits discrimination and retaliation if employees report violations of the Act and/or refuse to work where such employee reasonably believes, in good faith, that such work exposes workers to an unreasonable risk of exposure, provided the employer was notified of the employee's concerns and failed to address the employee's concerns. Additionally, penalties for non-compliance with the Act's requirements may include fines of \$50 per day for failure to adopt a prevention plan or between \$1,000 and \$10,000 for failure to abide by an adopted prevention plan. If the NYSDOL finds that the employer has violated the provisions of this law in the preceding six years, civil penalties can be increased to fines of not less than \$200 per day for failure to adopt a prevention plan or between \$1,000 and \$20,000 for failure to abide by an adopted prevention plan.

A second provision of the NY HERO Act requires employers with at least 10 employees to allow their employees to establish and administer a joint labor-management workplace safety committee. This provision is effective on November 1, 2021.

Each workplace safety committee shall be composed of employee and employer designees, provided at least two-thirds are non-supervisory employees. If there is a collective bargaining agreement in place, the collective bargaining representative shall be responsible for selecting the employees to serve as members of the committee. Each workplace safety committee and workplace safety designee shall be authorized to perform the following tasks, including but not limited to: raise health and safety concerns, hazards, complaints and violations to the employer to which the employer must respond; review any policy put in place in the workplace required by the Labor Law or the Workers' Compensation 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; and regularly schedule a meeting during work hours at least once a quarter. Employers shall permit safety committee designees to attend training, without suffering a loss of pay, on the function of worker safety committees and an introduction to occupational safety and health. Additionally, employers are prohibited from retaliating against any employee who participates in the activities of the safety committee, and any violations of this section will be subject to civil penalties and injunctive relief.

We will keep you updated on the NYSDOL model standard and any further developments related to this Act. Thank you.