

New York State Enacts Workplace Safety Requirements

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On May 5, 2021, New York Governor Andrew Cuomo signed the New York Health and Essential Rights Act into law, which will require New York State employers to implement workplace health and safety standards to protect their workers from airborne infectious diseases. The so-called HERO Act, adopted in large part because of the COVID-19 pandemic, is designed to protect workers from contracting future viruses in the workplace by reducing transmission and community spread.

The new law requires New York's Departments of Labor and Health to establish a model airborne infectious disease exposure prevention standard. That model is expected to address protocols concerning, among other subjects, health screenings, use of personal protective equipment, social distancing, hygiene, and disinfecting equipment. Starting June 4, 2021, covered employers will be required to either adopt that standard or implement an alternative protocol that exceeds the requirements of the model standard. The Act applies to all non-governmental employers regardless of size, and its protections extend to all workers, including full- and part-time employees, independent contractors, and temporary workers. New York State employers will be required to distribute their health and safety protocols to workers.

In addition, the HERO Act requires that employers with 10 or more employees create a joint workplace health and safety committee to address related issues and assess the employer's existing health and safety protocols. Covered employers must create these committees by November 1, 2021, and the law mandates that at least two-thirds of each committee be composed of nonsupervisory employees.

Employers face the risk of fines and civil monetary judgments for failing to comply with the requirements of the HERO Act. The law empowers the Commissioner of the state Department of Labor to assess a \$50 civil fine for each day an employer fails to adopt a compliant standard. The Commissioner may also assess civil fines of between \$1,000 and \$10,000 for an employer's failure to adhere to that standard.

Moreover, the Act grants workers with a private right of action to bring civil lawsuits against employers for violations of the HERO Act, and permits workers to collect up to \$20,000 in liquidated damages, unless a judge finds that the employer maintained a reasonable excuse for its failure to comply. The Act also permits workers to collect their attorneys' fees for successful claims under the Act. Further, the new law protects workers from retaliation for asserting their rights under the law. An aggrieved worker may be entitled to liquidated damages, attorneys' fees, reinstatement, and back pay on such claims.

The state Departments of Labor and Health are expected to publish the model standard soon. In the meantime, New York state employers should evaluate their current health and safety protocols and provide instruction to their managerial employees on compliance with HERO Act's requirements.

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