

LABOR AND EMPLOYMENT LAW INFORMATION MEMO

MAY 6, 2021

Governor Cuomo Signs HERO Act into Law

On May 5, 2021, Governor Cuomo officially signed the New York Health and Essential Rights Act (HERO Act) into law. [The HERO Act](#) effectively imposes significant obligations on covered employers to provide and maintain a safe workplace in the face of the ongoing COVID-19 pandemic, and for future airborne infectious disease outbreaks. [As previously reported](#), [the HERO Act](#) amended the New York Labor Law by adding two new sections: (1) Section 218-b, which governs development and adoption of an airborne infectious disease prevention policy; and (2) Section 27-D, that requires employers to permit the creation of workplace safety committees. Both sections only apply to private sector employers. However, Section 27-D specifically only applies to private employers with at least 10 employees.

Under the law as presented to the governor, the Department of Labor (DOL) is required to develop and promulgate minimum standards for covered businesses to follow to minimize spread of airborne, infectious disease in the workplace. The DOL will issue model prevention plans for employers to adopt based on their industry. As an alternative, employers may develop their own prevention plan, but must be careful to comply with the requirements for adopting their own prevention plan as specifically provided by the law. Section 218-b goes into effect on June 4, 2021.

The current version of the legislation appears to suggest that covered businesses must adopt an airborne infectious disease prevention plan that meets or exceeds the minimum standards by June 4, 2021. Most employers will also be required to post and provide notice of the adopted prevention plan by June 4, 2021 as well. We anticipate that the DOL will develop and post industry-specific model prevention plans prior to the effective date so employers who choose to adopt the model prevention plan may do so in compliance with the law. Violations of this section could result in monetary civil penalties for failure to adopt a prevention policy as well as for violations of an adopted prevention policy or issued guidelines/standards. The law also creates private rights of action to employees under certain circumstances, for violations of the law.

In a memo approving the bill, Gov. Cuomo stated that technical changes will be made to the HERO Act before it is finalized, however, those specific changes are not yet available. Per the governor's memo, the changes generally include additional guidance to the DOL with respect to development and implementation of the workplace standards, including a clear timeline, and incorporation of an immediate requirement that employers cure violations in an effort to both protect the safety of workers and limit litigation to the private rights of action created by the law.

Section 27-D provides protections for employees who seek to form a workplace safety committee. In addition, the law also sets certain standards and requirements for such committees, and authorizes committees to engage in certain activities without fear of reprisals. Section 27-D goes into effect on Nov. 1, 2021.

Lastly, both sections include anti-retaliation provisions for employees who exercise their rights or engage in other protected activities as provided under the respective sections.

If you have any questions about the information presented in this memo, please contact [Stephanie H. Fedorka](#), any attorney in Bond's [Labor and Employment practice](#) or the Bond attorney with whom you are regularly in contact.



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