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Introduction



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OSHA's COVID Guidance, FAQs and Unresolved Issues



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HERO Act Amendments and New Deadlines



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NY HERO Act – It's Official!

- Signed into law by Governor Cuomo May 5, 2021
“I have secured an agreement with the Legislature to make technical changes to the bill...On the basis of this agreement, I am pleased to sign this bill.”
- Technical Changes → Proposed Chapter Amendments Passed June 7, 2021
 - Signed into law by Governor Cuomo June 11, 2021



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NY HERO Act – Quick Recap

- NY Health and Essential Rights Act – Breaks Down Into Two Components:
 1. **NYLL Section 218-b**: Establishes enforceable safety standards for workplaces to prevent spread of COVID-19 (and future airborne infectious diseases/pandemics), and
 2. **NYLL Section 27-D**: Allows establishment of joint labor-management workplace safety committees



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Model Standards & Plans

- Department of Labor in consultation with Department of Health tasked with developing and publishing “**model airborne infectious disease exposure prevention standard**”
 - “General” Prevention Standard – applicable to all worksites not included in the specific industry standards
 - “Specific” Industry Prevention Standard –
 - Industries representing significant portion of the workforce, or
 - Those with unique characteristics requiring distinct standards
 - English and Spanish (+ other selected languages)



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General Requirements For Model Standard(s)

- Must take into account types of risks present at any work site “customarily associated with each covered industry” (including presence of third parties)
- Must explicitly specify and distinguish the extent to which provisions are applicable for “different levels of airborne infectious disease exposure”
- Must take into account whether state of emergency has been declared or not
 - Distinctions in policies based on whether or not state of emergency due to airborne infectious disease declared must take into consideration all applicable federal standards to extent practicable



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Specific Topics To Be Included

Requirements on procedures and methods for:

- a) Employee health screenings
- b) Face coverings;
- c) Required PPE
- d) Accessible workplace hand hygiene stations (including adequate break times for handwashing)
- e) Regular cleaning and disinfecting of equipment, frequently touched surfaces, restrooms, breakrooms/dining areas, etc. ("high-risk areas"/"frequently touched surfaces")
- f) Social distancing
- g) Compliance with mandatory/precautionary orders of quarantine/isolation
- h) Compliance with applicable engineering controls (proper air flow, exhaust ventilation)
- i) Designation of one or more supervisory employee(s) to enforce compliance with prevention plan
- j) Compliance with any applicable rules, laws, regulations, standards, guidance regarding notification to employees and relevant state/local agencies regarding potential exposure at worksite
- k) Verbal review ("training") of standard, employer policies, and employee rights under this section of the HERO Act (not required for individuals working for staffing agencies, contractors, subcontractors)



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Inclusion of Anti-Retaliation Provision

• Prevention plan must also include anti-retaliation provision:

1. Exercising rights under Section 218-b or under applicable airborne infectious disease exposure prevention plan
2. Reporting violations of Section 218-b or applicable airborne infectious disease exposure prevention plan to state, local, federal government entity, public officer, elected official
3. Reporting airborne infectious disease exposure concern to, or seeking assistance or intervention with respect to airborne infectious disease exposure concerns to their employer, state, local, federal entity, public officer, elected official
4. Refusing to work where:
 - o Employee reasonably believes, in good faith such work exposes him/her or other works or the public to unreasonable risk of exposure to an airborne infectious disease due to existence of working conditions that are inconsistent with laws, rules, policies, orders of any governmental entity, including but not limited to minimum standards in model prevention policy **Provided that** the employee or another employee or employee representative notified the employer of the inconsistent working conditions **and** employer failed to cure conditions **or** employer had or should have had reason to know about the inconsistent working conditions **and** maintained the inconsistent working conditions (i.e., didn't fix them)



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New Deadlines for NYLL 218-b

NYLL Section 218-b → New Effective Date July 4 (read: July 5/6)

- **Covered:** Private employers (no size threshold)
- **Time to Adopt Compliant Airborne Infectious Disease Exposure Prevention Plan:**
 - NYSDOL must publish model prevention plan(s)/standards
 - Employers will have 30 days from NYSDOL publishes model to either:
 1. Adopt an appropriate model for their industry, **or**
 2. Develop and adopt alternative plan that meets or exceeds minimum standards*



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New Deadlines for NYLL 218-b

NYLL Section 218-b

- **Written Notice of Plan To Employees:**
 1. If business is open on effective date: Within 60 days after NYSDOL publishes model standard relevant to the industry
 2. Within 30 days after adoption of plan
 3. Within 15 days after reopening after period of closure due to airborne infectious disease
 4. Upon hire to newly hired employees

NOTE: Posting requirement too!

NOTE: If employer has employee handbook, must be included!



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Enforcement

NYLL 218-b:

- NYSDOL and Attorney General can enforce
 - Injunctive Relief & Assessment of Penalties
- Civil Penalties for non-compliance
- **“First Time Offenses”**
 - Failure to adopt an airborne infectious disease exposure prevention plan: **At least \$50 per day**
 - Failure to abide by an adopted prevention plan: **\$1,000 - \$10,000**
- **“Subsequent Offenses” (Prior Violation in Preceding 6-years)**
 - Failure to adopt an airborne infectious disease exposure plan: **\$200 per day**
 - Failure to abide by an adopted prevention plan: **\$1,000 - \$20,000**



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NYLL 27-D – Workplace Safety Committees

- **Who is covered?** Private employers with at least 10 employees
- **Obligation?** Allows employees to establish and administer joint labor-management workplace safety committees
- **Effective?** November 1, 2021



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Workplace Safety Committees

- Composed of employee and employer designees
 - At least 2/3 must be “non-supervisory” employees
 - “Co-chaired” by representative of employer and non-supervisory employee
- Selection of “employee” members:
 - By and from among non-supervisory employees
 - Where there is a collective bargaining agreement → collective bargaining representative responsible for selection
- Geographically distinct work sites may have own committee, as necessary



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Prohibition on Employer Interference

- Employers must not interfere with:
 - Selection of employees who serve on committee or who serve as workplace safety designee
 - Employees' performance of authorized duties



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Authorized Duties of Safety Committee

- Workplace safety committee and workplace safety designee authorized to:
 - Raise health and safety concerns, hazards, complaints, violations
 - Employer must respond
 - Review any policy put in place in the workplace required by any provision of the Chapter relating to occupational safety and health and provide feedback
 - Review adoption of any policy in workplace in response to any health or safety law, ordinance, rule, regulation, executive order or related directive
 - Participate in any site visit by governmental health and safety agency (unless otherwise prohibited by law)
 - Review any report filed by the employer related to health and safety of workplace
 - Regularly schedule a meeting during work hours at least once per quarter that may no last longer than 2 hours



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Training

- Employers must permit safety committee designees to attend training on:
 - Function of worker safety committees
 - Rights established under Section 27-D
 - Introduction to occupational safety and health
- Proposed Amendments clarify that this is limited to max of 4 hours
 - Unclear if this is one time training per employee, or something else...
- Without loss of pay (read: paid)



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Retaliation

- Retaliation provisions apply here too
 - Participation in activities or establishment of workplace safety committee
 - Incorporates remedies for retaliation under existing Article 7 of NYLL



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Collective Bargaining Agreements

- Obligations under either section are waivable by CBA
 - NOTE: For waiver to be valid, it must explicitly reference the section
- Nothing in either section diminishes the rights, privileges, or remedies of an employee under CBA



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Key Changes From Chapter Amendments

- Liability for employers under NYLL 218-b
 - 30-day notice requirement and opportunity to cure → Necessary for employee to bring a lawsuit under section
 - If employer cures violation, employee is barred from bringing suit
 - Removal of \$20,000 liquidated damages
 - 6 Month SOL
- NYLL 27-D
 - One committee per worksite – if an employer has a workplace safety committee that is otherwise consistent with the requirements of 27-D, will not be required to create an additional safety committee
 - Training: Max of 4 hours
 - Quarterly meetings: Max of 2 hours



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“To Do List”

- **Develop Plan:** How will your organization evaluate model prevention plan and whether to adopt one of the model plans or develop alternative?
 - Note: Obligations for bargaining or “meaningful participation” if alternative plan will be developed and implemented.
- **Designate Supervisory Employee(s):** Who will be in charge of compliance with plan and guidance, etc?
- **Budget:** What needs to be built into the budget for compliance?
 - PPE, cleaning, training, time-off, etc.
- **Training:** Consider training for supervisors/management



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Update from Albany



Caitlin A. Anderson

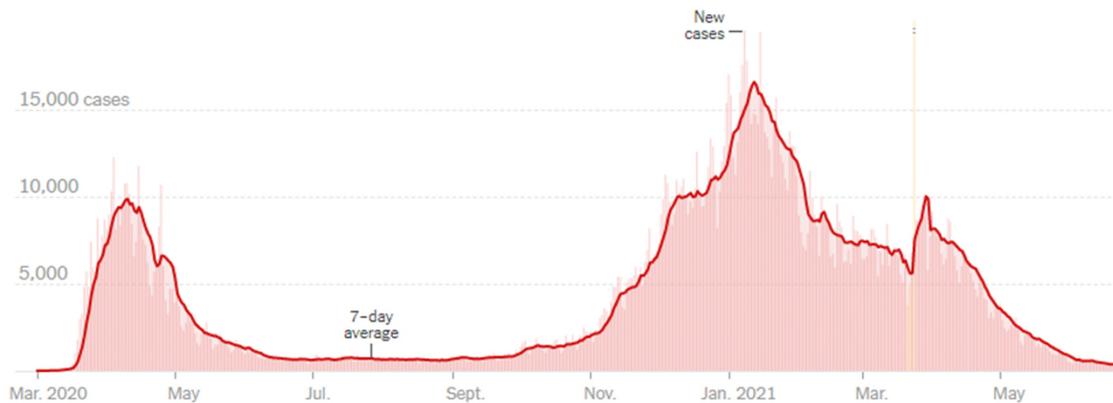
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New reported cases

The New York Times



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Vaccination progress

- All New Yorkers:
 - 52% fully vaccinated
 - 59% one dose
- 18 and older:
 - 63% fully vaccinated
 - 71% one dose

COVID Restrictions Lifted as 70% of New Yorkers Vaccinated

Most COVID-19 restrictions are lifted as 70% of New Yorkers 18+ have received the first dose of the vaccine.

REOPENING NEW YORK

Industry Guidance

Archived Guidance

Archived *New York Forward* industry reopening guidance documents are no longer mandatory. These documents are being made available as a public reference and resource only.

[VIEW ARCHIVED GUIDANCE](#)

Active Guidance

These *New York Forward* reopening industry guidelines are still in effect.

[SEE ACTIVE GUIDANCE](#)

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What restrictions have been lifted?

- Reopening guidance documents for all industries except fairs and festivals, large-scale performing arts & entertainment, Pre-K – 12 schools, professional sports, and public transportation.
 - No more health screening!
 - No more **collecting** contact tracing data!
- Executive Order 202.111: No more capacity limitations on indoor gatherings, except at large-scale venues.

 **BOND** SCHOENECK & KING ATTORNEYS

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What restrictions remain?

- **Unvaccinated people must wear masks.**
- Executive Orders remain in effect.
 - Electronic notarization, virtual meetings, etc.
- Federal state of emergency in effect until at **least** February 2022; New York will likely continue the state of emergency until the winter.



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Graduations

- Many restrictions no longer apply.
- For outdoor ceremonies of all sizes and indoor ceremonies of 5,000 or fewer, there is no requirement to conduct health screenings.
 - Unvaccinated individuals must still wear masks.
- For large-scale indoor venues: proof of vaccination must be provided, and unvaccinated people must present a recent negative COVID-19 test and remained masked.



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Bills Signed By the Governor in the Past Week

- Safe Staffing Ratios: Nursing Homes and Hospitals
- Schools who could not operate for 180 full days because of COVID-19 will not experience financial harm.
- Increased oversight by the Department of Agriculture and Markets over beekeeping.



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What COVID Laws/Restrictions Remain and FAQs



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New York Employment Law: The Essential Guide

Bar Association Members can buy the book from the bar [here](#).

Non-Bar Association Members can purchase through Amazon [here](#).



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