

2022

BUSINESS IN 2021

WEEKLY WEBINAR SERIES

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Introduction

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HERO Act Standard and Templates/Guidance



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NY HERO Act

- Airborne Infectious Disease Exposure Prevention Plans (NYLL § 218-b)
 - Effective July 4, 2021
 - All private employers (no numerosity threshold)
 - **Focus of today's discussion**
- Workplace Safety Committees (NYLL § 27-D)
 - Effective November 1, 2021
 - Private employers with at least 10 employees



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NYSDOL Published Model Plans & Standard

- [Airborne Infectious Disease Exposure Prevention Standard](#)
 - Minimum standard/requirements
- [General Model Airborne Infectious Disease Exposure Prevention Plan](#)
- [Industry Specific Model Airborne Infectious Disease Exposure Prevention Plans](#) (available on NYDOL HERO Act website)
 - Agriculture, Construction, Delivery Services, Domestic Workers, Emergency Response, Food Services, Manufacturing and Industry, Personal Services, Private Education, Private Transportation, Retail



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Critical Compliance Deadlines

- **Adoption of Plan**
 - Statute: By **August 5, 2021**, private employers must adopt either a model prevention plan or an alternative plan that meets/exceeds minimum standard
 - Special rules apply is creating an “alternative plan”
 - Agreement with collective bargaining representative, **or**
 - “Meaningful participation from employees”
 - Tailored and specific to hazards in specific industry and worksites
- **Verbal Review**
 - Statute & Guidance: Employers must conduct a “verbal review” of policies, employee statutory rights, and the prevention plan
 - During outbreak of airborne infectious disease
 - Before designated/declared outbreak???



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Additional Requirements

- **Written Notice / Posting**

- Statute: Employers must provide copy of the adopted plan to all employees in primary language within 30 days of adoption, or by **September 4, 2021** (within 60 days from NYSDOL published models/standard)
- Post plan in visible and prominent location in each worksite
- Other additional scenarios, including (per Guidance) if there is a designated outbreak
- Employee Handbook

- **Training**

- Guidance: Required once plan is “activated” during a designated outbreak



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Key Takeaways from Standard (Guidance)

- Who does this apply to?
 - Only applies to employers with worksites in NYS
 - Covers a broad range of workers (not just employees)
 - Only applies to an “airborne infectious agent or disease” designated by the Commissioner of Health as highly contagious communicable disease that presents serious risk of harm to public health
- Standard is clear that this **does not apply to** any seasonal or endemic infectious agent or disease (like the seasonal flu)



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Key Takeaways from Standard (Guidance)

- Who does this **not** apply to?
 - The standard **does not apply to** “[a]ny employee within coverage of a temporary or permanent standard adopted by [OSHA] setting forth applicable standards regarding COVID-19 and/or airborne infectious disease agents and diseases”
 - No “health care” specific model plan



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Key Takeaways from Standard (Guidance)

- Employers must adopt plan, but the plan is not “activated” or “in effect” until the Commissioner of Health makes such a designation.
 - NYSDOL website and guidance is clear that currently no such designation has been made.
- Standard: When plan is “activated”, requirements triggered for “implementation” of the plan
- Standard: While designation remains in effect, other obligations/expectations apply



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Biden EO on Anti-Competitive Activity



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Executive Order on Promoting Competition in the American Economy – July 9, 2021

- Announced by Press Secretary Jen Psaki on July 7, 2021
- EO establishes a “whole-of-government” effort to promote competition in the American economy
 - 72 initiatives



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Executive Order on Promoting Competition in the American Economy – July 9, 2021

- Impetus for the EO
 - Corporate consolidation
 - Lack of competition drives up prices for consumers
 - Barriers to competition are driving down wages
 - Inadequate competition hinders economic growth and innovation
- Creation of the White House Competition Council

Sources: Executive Order on Promoting Competition in the American Economy, <https://www.whitehouse.gov/briefing-room/presidential-actions/> (July 9, 2021) and FACT SHEET: Executive Order on Promoting Competition in the American Economy, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/> (July 9, 2021)



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Executive Order on Promoting Competition in the American Economy – July 9, 2021

- Noncompetition Agreements
 - Employment provisions that prohibit an employee from going to work for a competitor or starting a competing business after leaving her employment
 - Typically contain temporal limitations and/or geographic limitations
 - Usually signed at the commencement of employment (sometimes signed during employment)



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Executive Order on Promoting Competition in the American Economy – July 9, 2021

- EO references a national survey published in 2019
 - Study collected information from private sector American businesses with 50+ employees
 - March 2017-July 2017
- 49.4% → at least some employees had noncompetes
- 31.8% → all employees
- Increase in the use of noncompetition agreements
- Employees of all levels of education are being required to sign them
- Common across the U.S.

Source: Noncompete agreements: Ubiquitous, harmful to wages and to competition, and part of a growing trend of employers requiring workers to sign away their rights. Economic Policy Institute, Colvin & Shierholz, Dec. 10, 2019.



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Executive Order on Promoting Competition in the American Economy – July 9, 2021

- ~30% of jobs in the US require a license
- <5% of occupations that require a license are treated consistently across the 50 states
- Negative impact on military spouses

Source: Executive Order on Promoting Competition in the American Economy, <https://www.whitehouse.gov/briefing-room/presidential-actions/> (July 9, 2021)



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Executive Order on Promoting Competition in the American Economy – July 9, 2021

- Courts **DO NOT LIKE** noncompetition agreements!
- In NYS, the AG has gone after these agreements in recent years
 - Jimmy John's
 - Law360
 - WeWork
 - EMSI
- Various pieces of legislation have been proposed in NYS
 - A07864A – 2017 bill proposed by the AG's office
 - S3937C – Feb. 21, 2019
 - A7193 – April 11, 2019



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Executive Order on Promoting Competition in the American Economy – July 9, 2021

- EO will: “Make it easier to change jobs and help raise wages by banning or limiting non-compete agreements and unnecessary cumbersome occupational licensing requirements that impede economic mobility.”
- EO tasks the FTC with implementing the noncompetition/licensing initiative

Source: FACT SHEET: Executive Order on Promoting Competition in the American Economy, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/> (July 9, 2021)



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Executive Order on Promoting Competition in the American Economy – July 9, 2021

- President Biden encourages the FTC to:
 - “ban or limit non-compete agreements”
 - “Ban unnecessary occupational licensing restrictions that impede economic mobility”
- EO encourages the FTC and the DOJ to work together to:
 - “Strengthen antitrust guidance to prevent employers from collaborating to suppress wages or reduce benefits by sharing wage and benefit information with one another”

FACT SHEET: Executive Order on Promoting Competition in the American Economy, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/> (July 9, 2021)



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Refresher on Harassment & Sexual Harassment in New York & New York City



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Mandatory Sexual Harassment Training and Policies Still Required

- Sexual harassment training required for all employees under State and City law.
 - Even if the employees are working remote
- Training must be interactive
- Notice and policy requirements
- Amended standard



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Update from Albany



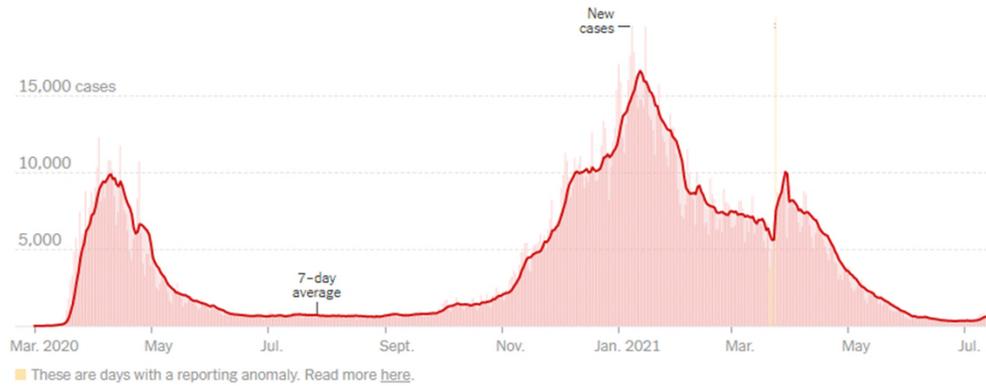
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New reported cases



Vaccination progress

- All New Yorkers:
 - 55% fully vaccinated
 - 61% one dose
- 18 and older:
 - 67% fully vaccinated
 - 73% one dose

Pfizer says it's time for a Covid booster; FDA and CDC say not so fast



By Maggie Fox, CNN
Updated 6:45 AM EDT, Fri July 9, 2021

- Pfizer is seeking emergency approval for a COVID booster.
- Yesterday: Israel began administering third Pfizer doses to heart transplant patients and people with compromised immune systems.
- Biggest issue: less than half the U.S. population is fully vaccinated; globally, significantly less.



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Face Masks in Schools

- NY DOH: no longer requiring pre-K through 12th grade students and staff to wear masks indoors during summer school.
 - **Decision is ultimately up to the district.**
- NYC, Buffalo: Still requiring masks.
- CDC Guidance: Students and staff who are fully vaccinated do not need to wear masks.
- Schools no longer need to report daily COVID cases.



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N.Y. Eviction/Foreclosure Moratorium

- Residential Evictions: Moratorium until August 31.
- Residential Foreclosure: Moratorium until August 31.
- Commercial Evictions: Moratorium until August 31 (only applies to small businesses with under 50 employees).
- Commercial Foreclosure: Moratorium until August 31.



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Biden EO on Anti-Competitive Activity

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Refresher on Harassment & Sexual Harassment Requirements in NY/NYC

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Update from Albany

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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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