

LABOR AND EMPLOYMENT LAW

INFORMATION MEMO

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Employers Activate Your HERO Act Plans! NY Commissioner of Health Issues NY HERO Act Designation for COVID-19

On Sept. 6, 2021, Gov. Kathy Hochul directed the NYS Commissioner of Health to designate COVID-19 as a highly contagious communicable disease that presents a serious risk of harm to the public health. The [designation](#) is official and available on the NYS Department of Health (NYSDOH) website.

By way of brief review and background, the NY HERO Act, specifically Section 218-b of the New York Labor Law, required all private employers in New York to adopt an “airborne infectious disease exposure prevention plan” by Aug. 5, 2021. In accordance with this new law, the NYS Department of Labor issued the [Airborne Infectious Disease Exposure Prevention Standard](#) (Standard). The Standard sets forth the minimum requirements for what must be included in the Airborne Infectious Disease Exposure Prevention Plan, clarifies who is subject to the Standard, delineates employee rights under the law, identifies certain minimum exposure controls, and includes other obligations when the Plans are required to be implemented. The Standard is clear that implementation of the Plans is only required when the NYS Commissioner of Health designates an airborne infectious disease/agent as highly contagious communicable disease that presents a serious risk of harm to the public health.

Now that such a designation has been made, employers are required to implement or “activate” their Plans. The Standard also outlines specific details regarding implementation of the airborne infectious disease exposure prevention plans when there is a designated outbreak. This includes immediately reviewing their current plan, updating the plan to incorporate current information, guidance and any mandatory requirements as necessary or appropriate, and finalizing and promptly activating the plan. It also includes a “verbal review” requirement, distribution of the plans, posting a copy of the plan and ensuring that a copy of the plan is accessible to employees during all work shifts.

Importantly, it will be imperative for employers to stay educated on the latest guidance, regulations, orders, rules and recommendations from government entities including the Centers for Disease Control and Prevention (CDC), NYSDOH, and other federal, state or local government entities as it pertains to the ongoing fight against COVID-19. With the surge of the Delta variant and the fall season upon us, we anticipate guidance and changes in recommendations will likely be forthcoming.

Employers should carefully review the Standard and their adopted plans to ensure that they are fully prepared and compliant with both. For more information, questions or concerns about this post or the NY HERO Act, please contact [Stephanie 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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