

# Bond

## HERO Act Refresher September 8, 2021



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## Recap -- 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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## Who is covered?

- Who does this apply to?
  - Only applies to **private** 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)
- 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”

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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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## 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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## 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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**NYS HERO ACT**

## Protecting New York Workers from Airborne Diseases

The New York Health and Essential Rights Act (NY HERO Act) was signed into law on May 5, 2021. The law mandates extensive new workplace health and safety protections in response to the COVID-19 pandemic. The purpose of the NY HERO Act is to protect employees against exposure and disease during a future airborne infectious disease outbreak.

**On September 6, 2021, Governor Kathy Hochul announced the designation of COVID-19 as an airborne infectious disease under the HERO Act. This designation requires all employers to implement workplace safety plans.**

Under this new law, the New York State Department of Labor (NYS DOL), in consultation with the NYS Department of Health, has developed a new Airborne Infectious Disease Exposure Prevention Standard, a Model Airborne Infectious Disease Exposure Prevention Plan, and various industry-specific model plans for the prevention of airborne infectious disease. Employers can choose to adopt the applicable policy template/plan provided by NYS DOL or establish an alternative plan that meets or exceeds the standard's minimum requirements.

The airborne infectious disease exposure prevention plans must go into effect when an airborne infectious disease is designated by the New York State Commissioner of Health as a highly contagious communicable disease that presents a serious risk of harm to the public health.

The standard and model plans are available in English and will be available in Spanish in the coming days. Employers are required to provide a copy of the adopted airborne infectious disease exposure prevention plan and post the same in a visible and prominent location within each worksite. Templates and resources are available below.

DOL will be sharing more details about this law in the near future. Please check this website for updates.



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## Designation by Commissioner of Health

- September 6, 2021 – Commissioner of Health designated COVID-19 as a “highly contagious communicable disease that presents a serious risk of harm to the public health.”

**Magic words → ACTIVATE PLAN!**



**Department of Health**

KATHY HOCHUL, Governor | HOWARD A. ZUCKER, M.D., J.D., Commissioner | LISA PINK, M.A., J.D., Executive Deputy Commissioner

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**Commissioner's Designation Pursuant to Labor Law § 218-b for COVID-19**

September 6, 2021

Pursuant to Labor Law § 218-b and the associated regulation at 12 NYCRR 840.1, I hereby designate COVID-19 as a highly contagious communicable disease that presents a serious risk of harm to the public health in New York State, in which the Centers for Disease Control and Prevention (CDC) has identified the level of transmission of such disease as "substantial" or "high." This designation will remain in effect until September 30, 2021, at which point I will review the level of transmission of COVID-19 in New York State and determine whether to continue this designation.



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## Implementation of Exposure Prevention Plans

### Standard:

- When designation is made by the Commissioner of Health each employer shall:
  - Immediately review the worksite's exposure prevention plan and update the plan, if necessary, to ensure that it incorporates current information, guidance, and mandatory requirements issued by federal, state, or local governments related to the infectious agent of concern
  - Finalize and promptly activate the worksite exposure prevention plan;
  - Provide the verbal review;
  - Provide each employee with a copy of the exposure prevention plan in English or in the language identified as the primary language of such employees, if available, and
  - Post a copy of the exposure prevention plan in a visible and prominent location at the worksite (except when the worksite is a vehicle); and
  - Ensure that a copy of the exposure prevention plan is accessible to employees during all work shifts.

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## Implementation of Exposure Prevention Plans

### Standard:

- While the designation is in effect:
  - Assign enforcement responsibilities and ensure that enforcement takes place;
  - Monitor and maintain exposure controls;
  - Follow updates to guidance;
  - Designate one or more supervisory employees to enforce compliance with the plan. \*Must be a supervisory employee

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## Next Steps – Breaking it down

- Review Your Plan – Update as Necessary
  - Familiarize yourself with the exposure controls you need to have in place and consider what exposure controls you can/should have in place
  - Familiarize yourself with the Standard itself– this lays out the requirements and is currently an “Emergency Regulation” itself
    - Process has already started to become full regulation
  - Be prepared to change or update plan to reflect current guidance from NYSDOH and/or CDC
- Finalize and Activate!
- Provide verbal review/training to all employees
- Updated copies/plans to employees, posted, etc.

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## Verbal Review/Training

- **Standard:** “The employer *shall* conduct a verbal review of employer policies, employee rights under [the Standard] and section 218-b of the labor law, and the employer’s exposure prevention plan set forth herein...”

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## Verbal Review/Training

**Model Plan(s):** “When this plan is activated, all personnel will receive training which will cover all elements of this plan and the following topics:

1. The infectious agent and the disease(s) it can cause;
2. The signs and symptoms of the disease;
3. How the disease can be spread;
4. An explanation of this Exposure Prevention Plan;
5. The activities and locations at our worksite that may involve exposure to the infectious agent;
6. The use and limitations of exposure controls
7. A review of the standard, including employee rights provided under Labor Law, Section 218-B.”

“The training will be:

1. Provided at no cost to employees and take place during working hours. If training during normal work hours is not possible, employees will be compensated for the training time (with pay or time off);
2. Appropriate in content and vocabulary to your educational level, literacy, and preferred language; and
3. Verbally provided in person or through telephonic, electronic, or other means.”

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## Verbal Review/Training Examples

- Pre-recorded training session
- Zoom/video meeting
- Pre-shift meeting
- In-person meeting

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## FAQs

- Can we make changes to our plan?
- Do we now have to require our employees to wear masks at work?
- The Standard and the model plans include information about health screenings– does this mean we now have to resume doing health screenings?

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## FAQs (Cont'd)

- What screening process are we required to implement?
- Do I need a HERO act plan if I have fewer than \_\_\_\_ employees?
- When do I have to “activate” my plan?

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## Questions?



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