

2022
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Introduction



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HERO Act FAQs



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NY HERO Act

- NY HERO Act; passed in May 2021
 1. Occupational Exposure to Airborne Infectious Disease, NYLL 218-b (eff. July 4, 2021) **Today's Focus**
 2. Workplace Safety Committees, NYLL 27-D (eff. Nov. 1, 2021)



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NY HERO Act: Key Dates

- **July 6, 2021:** NYSDOL publishes Standard and Model Plans
- **August 5, 2021:** Deadline to *adopt* Airborne Infectious Disease Exposure Prevention Plan
- **September 4, 2021:** Deadline to *distribute* written copy of plan to employees, post, verbal review, *etc.*
- **September 6, 2021:** NYS Commissioner of Health designates COVID-19 to be “highly contagious communicable disease that poses serious risk to public health” → **“ACTIVATE” PLANS**
- **September 9, 2021:** NYSDOL publishes new guidance



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What is Required with “Activation” of Plan?

- 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;



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What is Required with “Activation” of Plan (Cont.)

- Post a copy of the exposure prevention plan in a visible and prominent location at the worksite(s) (except when the worksite is a vehicle);
- Ensure that a copy of the exposure prevention plan is accessible to employees during all work shifts;
- Assign enforcement responsibilities and ensure that enforcement takes place;
- Monitor and maintain exposure controls;
- Follow updates to guidance; and
- Designate one or more supervisory employees to enforce compliance with the plan.



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FAQs on NY HERO Act Compliance

- **When do we need to activate our plans by?**
 - No specified deadline, but must be activated “promptly”
- **Must healthcare industries adopt a plan?**
 - Maybe.
 - If employees covered by OSHA’s ETS, then ETS applies (and not the NY HERO Act)
 - If/when OSHA ETS expires, HERO Act would apply
 - Possible to have some employees covered by ETS and others covered by HERO Act
- **Do public employers have to adopt a plan?**
 - No, the law clearly exempts public employers from coverage



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FAQs on NY HERO Act Compliance

- **Does it matter how many employees my business has?**
 - No...
 - but, exception for owner who has no other employees
- **When do we have to conduct “verbal review”?**
 - New guidance suggests both *before* and *after* designation is made
- **What constitutes “verbal review”?**
 - Depends on what is in your plan; model plan outlines “training”



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FAQs on NY HERO Act Compliance

- **What about independent contractors? Does my plan apply to them?**
 - Yes, it covers independent contractors and certain other contingent workers who are engaged at your workplace
 - Certain aspects of the HERO Act will apply; must provide them with a copy of plan, ensure they are following, *etc.*
 - Training does not apply to independent contractors and some other contingent workers



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FAQs on NY HERO Act Compliance

- **Do we have to do health screenings again, and what should that entail?**
 - NYSDOL’s “standard” states that employers must conduct health screening before start of workday
 - No current governmental guidance on what screening should specifically entail
- **If we have multiple industries or have different operations/environments, do we need to adopt more than one plan?**
 - Not necessarily, but...
- **Do I have to put a copy of the plan in my employee handbook?**
 - Yes



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FAQs on NY HERO Act Compliance

- **What if I don’t adopt a model plan?**
 - Must meet additional criteria:
 - Tailored and specific to hazards in the industry and worksite(s); *and*
 - “Meaningful participation” from employees; *or, if applicable*
 - Agreement from employee union
- **What constitutes an “alternative” plan?**
 - New guidance suggests that making substantial changes beyond the open fields in the “model” plans = “alternative” plan



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FAQs on NY HERO Act Compliance

- What constituted “meaningful participation” from employees?
 - New guidance suggests that this may entail allowing employees opportunity to “review and comment”



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Most Significant Vaccine Mandates



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BIG THREE

- NYS DOH Mandate for Health Care Workers
- U.S. OSHA Mandate for Employers of 100 or More
- Presidential Executive Order for Federal Contractors



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AND ALSO

- Federal Employee Mandate
- SUNY Students In-Person Attendance Mandate
- NYS Employee Mandate
- NYC Employee Mandate
- NYC Dept. of Education Employee Mandate
- NYC Indoor Dining, Entertainment, etc.



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NYS DOH Mandate for Health Care Workers

- Applies to:
 - Hospitals
 - Nursing Homes
 - Certified Home Health Agencies
 - Licensed Home Care Services Agencies
 - Long Term Home Health Care Programs
 - AIDS Home Care Programs
 - Hospice
 - Adult Care Facilities (see SSL Art. 7)
 - Maybe Consumer Directed Program



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NYS DOH Mandate for Health Care Workers

- Not on the list – not covered
- Covers employees, contract staff, students and volunteers
- Covers employees of affiliated entities who come into the covered entity



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NYS DOH Mandate for Health Care Workers

- First Shot
 - Hospitals and Nursing Homes, September 27
 - All other covered entities, October 7
- Exemptions
 - Only Medical
 - Must meet standards
 - No Religious Exemption



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Federal Rule – Large Employers

- No rule yet
- OSHA is developing
- Expected in October
- Will have a Medical Exemption and Religious Exemption



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Federal Contractors

- Presidential Executive Order
- Broad Scope but Less Than Meets the Eye
- Broad Definition of Contractor
- Applies to New Contracts
- Religious and Medical Exemption



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Update from Albany



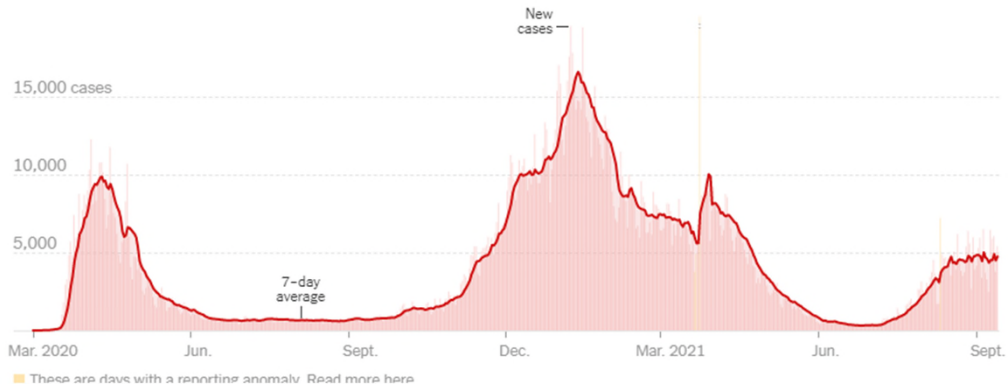
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New reported cases



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DAILY AVG. ON SEPT. 6 14-DAY CHANGE

Cases	4,685	+4%
Tests	116,714	+6%
Hospitalized	2,790	+23%
Deaths	31	+34%

[About this data](#)

DAILY AVG. ON SEPT. 13 14-DAY CHANGE

Cases	4,750	Flat
Tests	114,037	+8%
Hospitalized	2,829	+3%
Deaths	33	+32%

[About this data](#)

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Vaccination progress

- All New Yorkers:
 - 62% fully vaccinated
 - 69% one dose
- 12 and older:
 - 72% fully vaccinated
 - 80% one dose

Vaccine Mandates

- Federal:
 - Federal employees
 - Federal contractors
 - Nursing home workers (CMS final rule expected in October)
 - OSHA – 100 employees or more (pending)
- State:
 - SUNY Students
 - Emergency regulations: Hospitals and Article 36 entities (e.g., home health agencies, long term home health care programs, etc.)
 - State employees (pending)
 - Teachers/staff – unvaccinated must test weekly

Vaccine Mandates

- New York City:
 - Key to NYC enforcement begins this week
 - All Department of Education employees
 - New hires
 - City employees or contractors – vaccinate or weekly testing
 - Childcare and after school workers

OSHA Vaccine Mandate: What We Know

- No firm timeline for issuing the Emergency Temporary Standard (ETS)
- Will apply to employers with 100 or more employees, not limited to worksites with 100+
- Fully remote workers will not be covered
- Role of testing is unclear
- Encouraging employers to get ahead of the ETS
- Legal challenges imminent

HERO Act FAQs

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Most Significant Vaccine Mandates

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Update from Albany

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