

LABOR AND EMPLOYMENT LAW

INFORMATION MEMO

SEPTEMBER 28, 2021

NYSDOL Updates the NY HERO Act Model Plan

The NYS Department of Labor has updated their [model airborne infectious disease exposure prevention plans](#). Notably, the updated plans reflects two key changes.

First, the updated model plan revises the section on “face coverings” to provide two options from which employers can choose. The new language incorporated is as follows:

“1. [APPLICABLE FOR MOST WORKPLACES] Employees will wear appropriate face coverings in accordance with guidance from State Department of Health or the Centers for Disease Control and Prevention, as applicable.

2. [APPLICABLE FOR WORKPLACES where all individuals on premises, including but not limited to employees, are fully vaccinated – defined as having completed a federally authorized or approved vaccination series for an airborne infectious disease designated as a highly contagious communicable disease that presents a serious risk of harm to the public health (as is currently the case for COVID-19, pursuant to the Commissioner of Health’s designation)] Appropriate face coverings are recommended, but not required, consistent with State Department of Health and the Centers for Disease Control and Prevention applicable guidance, as of September 16, 2021.”

This new plan language suggests that workplaces where “**all** individuals on premises, including but not limited to employees” are fully vaccinated, do not have to wear face coverings, but are recommended to do so, consistent with State Department of Health and CDC guidance. (emphasis added). However, for workplaces where not every individual in the workplace is vaccinated, employers appear to still be subject to the original provision mandating employees to wear masks.

Second, the NYSDOL appears to have removed the words “*use a face covering when physical distancing cannot be maintained*” under the “Physical Distancing” section of the template. In addition, it also removed the provision stating to “[a]void unnecessary gatherings and maintain a distance of at least six feet”. Instead, the model plan now simply states: “***Physical distancing will be used, to the extent feasible, as advised by guidance from State Department of Health or the Centers for Disease Control, as applicable.***”

In addition, other minor changes to the template were made, including changes to the front page.

Although these updates to the model plan have been made, no changes to the Airborne Infectious Disease Exposure Prevention Standard or the guidance seem to have been made at this time. Employers should review their circumstances to determine if these changes impact their current plan and policies.

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.

