


2022
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Introduction



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HERO Act Update and NY Paid COVID Leave (Expiration of FFCRA)



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NY HERO Act Updates

- Three “Newer” Updates
 - Updated Model Plans (“Model Plans 2.0”)
 - Updated Guidance/FAQs
 - Extension of designation for COVID-19



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N.Y. HERO Act Update (10/5/21)



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Designation Remains in Effect Through 10/31

- COVID-19 designated as “highly contagious communicable disease that poses serious risk to public health”
 - Triggers HERO Act Plan activation and other responsibilities
- Initial designation (9/6/20) effective through September 30, 2021
- NYSDOH: Designation extended through October 31, 2021
 - To be reviewed and evaluated again at that time
- Continue to have your HERO Act Plans in place



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Updated Model Plans (“Model Plans 2.0”)

- Key Changes:
 - Face Coverings
 - Physical Distancing

Model Plan 1.0

4. **Face Coverings:** To protect your coworkers, employees will wear face coverings throughout the workday to the greatest extent possible. Face coverings and physical distancing should be used together whenever possible. The face covering must cover the nose and mouth, and fit snugly, but comfortably, against the face. The face covering itself must not create a hazard, e.g. have features could get caught in machinery or cause severe fogging of eyewear. The face coverings must be kept clean and sanitary and changed when soiled, contaminated, or damaged.

Model Plan 2.0

4. **Face Coverings:** When in use, face coverings must cover the nose and mouth, and fit snugly, but comfortably, against the face. The face covering itself must not create a hazard (e.g., have features could get caught in machinery or cause severe fogging of eyewear). The face coverings must be kept clean and sanitary and changed when soiled, contaminated, or damaged.
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.

Model Plan 1.0

5. **Physical Distancing:** Physical distancing will be followed as much as feasible. Avoid unnecessary gatherings and maintain a distance of at least six feet (or as recommended by the NYSDOH/CDC for the infectious agent) from each other. Use a face covering when physical distance cannot be maintained.

Model Plan 2.0

5. **Physical Distancing:** Physical distancing will be used, to the extent feasible, as advised by guidance from State Department of Health or the Centers for Disease Control and Prevention, as applicable.



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Updated Guidance/FAQs

- Shorter, specific to “Part I” of the NY HERO Act (occupational airborne infectious disease exposure prevention)
 - Includes dates specific to the current designation
- Sneak peek into “Part II” of the NY HERO Act (workplace safety committees)
 - More guidance coming from NYSDOL before November 1, 2021 effective date...
- Guidance/FAQs posted in several languages



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New York State COVID-19 Sick Leave

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NYS COVID-19 Sick Leave

- FFCRA Expired on 9/30/21
- NY's COVID-19 Sick Leave Still Applies
 - Governmental "Quarantine or Isolation Order"
 - NYSDOL's Expansive "Guidance"
 - No Benefit If Employee Is Asymptomatic & Can Work Remotely
 - PFL/DBL May Be Involved for Smaller Employers
 - No Tax Credits
- NY's "Regular" PSL May Alternatively Apply
 - Ex. Recovery from Vaccination (According to NYS Guidance)

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Benefits

What benefits can I use for COVID-19 quarantine leave?

If you are under a mandatory or precautionary order of quarantine or isolation issued by the State, New York State Department of Health, local Board of Health, or other authorized government entity you may be eligible for job-protected sick leave and compensation through a combination of disability and Paid Family Leave COVID-19 quarantine leave benefits.

- **If you work for an employer with 10 or fewer employees as of January 1, 2020 and your employer made less than \$1 million In 2019:** Your employer is required to provide you with job protected leave and you may be eligible for a combination of Paid Family Leave and disability COVID-19 quarantine leave benefits.
- **If you work for an employer with 10 or fewer employees as of January 1, 2020 and your employer made more than \$1 million In 2019:** Your employer is required to provide you with five days of paid sick leave. After those days are used, you may be eligible for a combination of Paid Family Leave and disability COVID-19 quarantine leave benefits.
- **If you work for an employer with between 11-99 employees as of January 1, 2020:** Your employer is required to provide you with five days of paid sick leave. After those days are used, you may be eligible for a combination of Paid Family Leave and disability COVID-19 quarantine leave benefits.
- **If you work for an employer with 100 or more employees as of January 1, 2020:** Your employer is required to provide you with 14 days of paid sick leave, which should cover the period of mandatory or precautionary quarantine or order of isolation.
- **If you work for a public employer:** All public employers (for example, town, public school, public college or university, district, county, city, village, fire district and state), must provide at least 14 days of paid sick leave, regardless of how many employees they have.



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Andrew M. Cuomo, Governor
Roberta Reardon, Commissioner

GUIDANCE ON USE OF COVID-19 SICK LEAVE

On March 18, 2020, New York State enacted legislation authorizing sick leave for employees subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19. The law provides paid and unpaid sick leave with access to expanded paid family leave and temporary disability depending on the size of the employer. All employees, regardless of the size of their employer, are entitled to job protection upon return from leave.

This document supplements prior guidance on the application of COVID-19 sick leave. All prior guidance remains in effect.

1. An employee who returns to work following a period of mandatory quarantine or isolation does not need to be tested before returning to work, except for nursing home staff. However, an employee who subsequently receives a positive diagnostic test result for



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HHS Guidance on COVID and HIPAA



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HHS Guidance

- Guidance titled “HIPAA, COVID-19 Vaccination, and the Workplace” was published by the Department of Health and Human Services on September 30, 2021.
- The Guidance addresses longstanding questions regarding HIPAA and an employer’s ability to inquire about vaccination status.



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HHS Guidance

- Guidance definitively states that the HIPAA Privacy Rule *does not* prevent businesses or individuals from *asking* whether their customers or clients have received the COVID-19 vaccine.
- Additionally, the Privacy Rule does not apply when :
 - An individual is asked about their vaccination status by a school, employer, store, restaurant, entertainment venue or other individual;
 - An individual asks another individual, their doctor, or service provider whether they are vaccinated
 - An individual asks a company, such as a home health agency, whether its workforce members are vaccinated.

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HHS Guidance

- The Privacy Rule does not prevent any individual from disclosing whether that individual has been vaccinated against COVID-19 or any other disease. The Privacy Rule does not apply to individuals' disclosures about their own health information.
- Individuals are free to disclose their own vaccination status to anyone else, at any time, as far as HIPAA is concerned.

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HHS Guidance

- Does the HIPAA Privacy Rule prohibit an employer from requiring a workforce member to disclose whether they have received a COVID-19 vaccine to the employer, clients, or other parties?
 - **No.** The Privacy Rule does not apply to employment records, including employment records held by covered entities or business associates in their capacity as employers.
 - Generally, the Privacy Rule does not regulate what information can be requested from employees as part of the terms and conditions of employment that an employer may impose on its workforce.

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HHS Guidance

- Additionally, the Privacy Rule does not prohibit a covered entity or business associate from requiring or requesting that employees:
 - Provide documentation of their COVID-19 or flu vaccination to their current or prospective employer.
 - Sign a HIPAA authorization for a covered health care provider to disclose the workforce member's COVID-19 or varicella vaccination record to their employer.

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HHS Guidance

- Additionally, the Privacy Rule does not prohibit a covered entity or business associate from requiring or requesting that employees:
 - Wear a mask--while in the employer's facility, on the employer's property, or in the normal course of performing their duties at another location.
 - Disclose whether they have received a COVID-19 vaccine in response to queries from current or prospective patients.

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HHS Guidance

- Documentation Concerns
 - Documentation or other confirmation of vaccination, however, must be kept confidential and stored separately from the employee's personnel files under Title I of the Americans with Disabilities Act (ADA).
- The Privacy Rule also regulates how and when a covered entity or its business associate may use or disclose information about an individual's vaccination status- generally, individual authorization is required.

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HHS Guidance

- Specific information in the Guidance on when disclosures may be made by hospitals, pharmacies, health plans, physicians, nurse practitioners, and clinicians, even without patient authorization.
- Full Guidance can be found here: <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/hipaa-covid-19-vaccination-workplace/index.html>

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Update from Albany

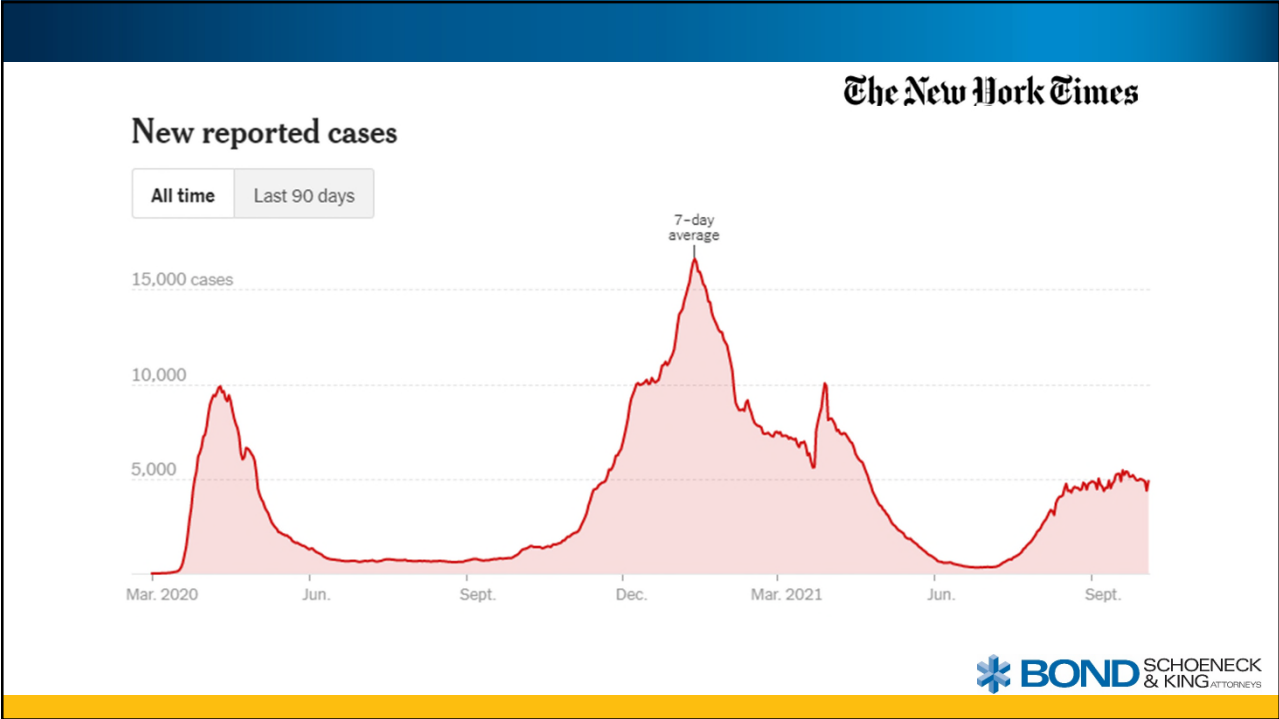


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	DAILY AVG. ON OCT. 4	14-DAY CHANGE
Cases	4,865	-7%
Tests	159,983	+17%
Hospitalized	2,695	-5%
Deaths	39	+18%

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Vaccination progress

- All New Yorkers:
 - 64% fully vaccinated
 - 72% one dose
- 12 and older:
 - 75% fully vaccinated
 - 83% one dose

Vaccine Mandate Updates

- NYC Schools: 95% of employees vaccinated.
 - Remainder placed on unpaid leave.
- NY Courts: Vaccine mandate in place, 85% vaccination rate.
 - Associate Chief Judge Jenny Rivera is the only state jurist to not receive the vaccine OR seek an exemption.
- NY Healthcare Facilities: October 7 vaccine date for all other healthcare facilities (including Article 36 home care service agencies)

Executive Order No. 4

- Remember – Governor has power to suspend or modify laws using an executive order, but cannot issue directives.
- Suspended numerous provisions regarding healthcare personnel to address staffing issues:
 - Out of state/out of country physicians, nurses, NP, PA, etc.
 - Medical students who will graduate in 2021 or 2022 – can practice in any institution under supervision.
 - Expands what labs can test for; expands what can be done by nurses without physician supervision

DOL Unemployment Insurance FAQs

6. If a worker refuses to get vaccinated, will they be eligible for UI benefits?

Like all UI claims, eligibility will depend on the circumstances as each claim is unique and reviewed on a case-by-case basis. Workers in a healthcare facility, nursing home, or school who voluntarily quit or are terminated for refusing an employer-mandated vaccination will be ineligible for UI absent a valid request for accommodation because these are workplaces where an employer has a compelling interest in such a mandate, especially if they already require other immunizations. Similarly, a public employee who works in a public setting and is subject to a local government mandate to submit proof of vaccination or negative testing may be disqualified from the receipt of UI if they refuse to get vaccinated or tested. In contrast, a worker who refuses an employer's directive to get vaccinated may be eligible for UI in some cases if that person's work has no public exposure and the worker has a compelling reason for refusing to comply with the directive.

DOH News

- Mary T. Bassett nominated to be DOH Commissioner (beginning December 1)
 - Must be confirmed by the State Senate.
- Previously served as NYC Health Commissioner from 2014-2018.
 - Led city's response to 2014 Ebola outbreak and 2015 Legionnaires' Disease outbreak.
- Current position: Director of the FXB Center for Health and Human Rights at Harvard University.

Minimum Wage Increase

General Minimum Wage Rate Schedule

Location	12/31/16	12/31/17	12/31/18	12/31/19	12/31/20	2021*
NYC - Big Employers (of 11 or more)	\$11.00	\$13.00	\$15.00			
NYC - Small Employers (10 or less)	\$10.50	\$12.00	\$13.50	\$15.00		
Long Island & Westchester	\$10.00	\$11.00	\$12.00	\$13.00	\$14.00	\$15.00
Remainder of New York State Workers	\$9.70	\$10.40	\$11.10	\$11.80	\$12.50	\$13.20*

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Update from Albany

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