

September 15, 2021

Checklist for Implementing the New York HERO Act Infectious Disease Exposure Prevention Plan

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Governor Kathy Hochul's September 6, 2021, designation of COVID-19 as an airborne infectious disease triggered New York employers' obligation to implement an Airborne Infectious Disease Exposure Prevention Plan (the "Plan") under the New York Health and Essential Rights Act (the "HERO Act"). Until this designation, the HERO Act only required employers to simply adopt such a Plan, but now employers must implement the adopted Plan. The following is a checklist for employers to implement the Plan:

- **Ensure that the Plan includes the following requirements:**
 - **Performing health screening** at the beginning of workday, and limiting exposure of other individuals to employees who develop COVID-19 symptoms, in accordance with applicable guidance;
 - **Requiring Face Coverings**, which must be provided at no cost to employees;
 - **When necessary, requiring and providing personal protective equipment** such as N95 respirators, gloves, eye protection, etc.;
 - **Maintaining physical distancing**, which may include among other means, limiting occupancy, reconfiguring workspaces, staggering work shifts, and displaying signage;
 - **Promoting good hygiene practices** by providing adequate handwashing facilities and ample hand sanitizing supplies;
 - **Implementing appropriate cleaning and disinfection** plan for the workplace including frequent cleaning and disinfection of commonly touched surfaces.
 - **Implementing a "stay at home policy"** for employees who develops symptoms of COVID-19.
 - **Requiring appropriate respiratory etiquette** in the workplace including *covering nose and mouth when sneezing, coughing, or yawning*.
 - **Accommodating individuals with added risk factors**, including due to underlying health condition, who may be at increased risk of severe illness if infected.
- **Train employees on the following topics:**
 - COVID-19 disease and the virus causing the disease;
 - The signs and symptoms of COVID-19;
 - How COVID-19 can be spread;

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- An explanation of the Plan;
- The activities and locations at the worksite that could involve exposure to COVID-19;
- The use and limitations of exposure controls; and
- A review of the HERO Act.

The training must: (a) take place during working hours; (b) be tailored to educational level, literacy, and preferred language; and (c) be provided verbally in-person or through telephonic, electronic, or other means. If training during normal work hours is not possible, employees should be compensated for the training time (with pay or time off). Employers do not need to train individuals working for staffing agencies, contractors, or subcontractors, but upon request from such persons, employers must share the Plan with them.

- **Other employer obligations:**

- Provide a copy of the Plan to each employee and post the Plan in a prominent location in the workplace. Employers may benefit from including a summary of the Plan in the employee handbook referencing the specific Plan and where it is housed at the workplace. Alternatively, if preferred, employers may include the entire Plan as part of the employee handbook.
- Ensure compliance with the Act by: (1) implementing adequate enforcement procedures of the safety controls; (2) monitoring and maintaining safety controls; and (3) designating one or more supervisory employees to ensure compliance with the Plan and other applicable mandates and guidance.
- Ensure there is no discrimination or retaliation against any employee who reports conduct that the employee reasonably believes in good faith violates the plan or who refuses to work because the employee reasonably believes in good faith that such work exposes the worker or others to an unreasonable risk of exposure. The Act requires employers to retain all such communications for two years after the conclusion of the designation of a high-risk disease by the State.

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