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Department
of Labor

SECTION 1 OF THE NY HERO ACT Information & FAQs

Section 1 of the New York Health and Essential Rights Act (the HERO Act) requires every private employer in New York State to adopt a safety and health plan to protect employees from airborne infectious diseases.

To assist employers, the New York State Department of Labor (NYS DOL) published a safety and health standard and model plans on its website. Each employer may adopt one of the model plans or create its own plan that follows the standard's minimum requirements.

Employers must adopt a safety and health plan regardless of the risk of a particular airborne infectious disease. But employers only need to implement the plan when the New York State Commissioner of Health designates a particular disease as an airborne infectious disease. On September 6, 2021, the Commissioner of Health designated COVID-19 as an airborne infectious disease under the HERO Act. This means that employers must now implement their HERO Act plan specifically for COVID-19.

Section 2 of the HERO Act requires employers with 10 or more employees to allow employees to create a joint labor-management workplace safety committee. That part of the HERO Act went into effect on November 1, 2021. The information provided in this document is limited to Section 1 of the HERO Act.

TIMELINE

- **May 5, 2021** – NY HERO Act signed into law.
- **July 6, 2021** – NYS DOL published the HERO Act standard and model plans.
- **August 5, 2021** – All employers in New York were required to adopt their safety and health plan.
- **September 4, 2021** – All employers in New York were required to give their safety and health plan to their employees and post the plan in each work site.
- **September 6, 2021** – The New York State Commissioner of Health designated COVID-19 as an airborne infectious disease.

FREQUENTLY ASKED QUESTIONS

Which employees are covered by Section 1 of the HERO Act?

Section 1 of the HERO Act covers all employees of private employers in New York State, including digital platform companies. It does not cover employees at any work site that the employer does not have the ability to control, including most telework/telecommuting.

Section 1 of the HERO Act **does not** apply to employees covered by an OSHA standard specifically related to airborne infectious diseases or COVID-19 in particular. Currently, OSHA does not have such a standard, but NYS DOL will update information if and when OSHA does create a standard that applies to any additional employees.

Are independent contractors covered by Section 1 of the HERO Act?

Section 1 of the HERO Act applies to workers at all work sites over which employers have the ability to exercise control, including independent contractors, individuals working for staffing agencies, and other workers not traditionally defined as employees.

Does Section 1 of the HERO Act apply to a business with no employees other than the owner?

No.

Is Section 1 of the HERO Act specific to COVID-19?

No. The law covers any airborne infectious disease designated by the Commissioner of Health as a highly contagious disease that presents a serious risk of harm to the public health. At this time, however, the Commissioner of Health has designated COVID-19 as the only airborne infectious disease covered by Section 1 of the HERO Act.

Does an employer have to do anything if there is nothing designated as an airborne infectious disease?

Yes. Even if there is no designation by the Commissioner of Health, employers must:

- Create an airborne infectious disease exposure prevention plan.
- Give a copy to employees within 30 days after creating one.
- Give a copy to any new employees when they are hired.
- Post the plan in each work site so employees can view it.
- Update the plan as needed.

Now that COVID-19 has been designated as an airborne infectious disease, what do employers need to do?

Each employer must:

- Check current CDC and New York State Department of Health guidance to make sure its HERO Act plan complies with the guidance.
- Implement the HERO Act plan.
- Give employees a verbal review of the plan.

Does an employer have to provide a written plan to employees in a language other than English?

It depends. If an employee's primary language is not English and NYS DOL has published the model standard in that employee's language, then the employer must give the employee the plan in that language. If NYS DOL has not published the model standard in that language, the employer can give the plan to employees in English.

Is an employer required to explain the plan to its employees?

Yes. Employers must conduct a verbal review of the plan with all employees when the Commissioner of Health designates a disease as an airborne infectious disease that presents a serious risk of harm to the public health.

Why are there different model plans on the NYS DOL website?

NYS DOL has created a number of model plans tailored to the specific conditions of each industry. There is also a non-industry specific model plan that employers not covered by one of the industry-specific model plans can use.

What if there is no model plan for my industry?

If there is no model plan specific to an industry, employers may either adopt the non-industry specific model plan or create their own alternative plan that follows the standard created by NYS DOL.

Employers can use the "Advanced Controls" section in the model plan to add controls that are applicable to their specific business.

If an employer works in multiple industries and environments, which template should be used?

Employers should select the most appropriate model plan and customize the controls section for the industry or work site by assessing specific employee or contractor functions and other unique conditions of the work site. Employers may also adopt more than one plan if they have multiple work sites.

Which model plan is best for an office environment?

NYS DOL recommends that employers use the non-industry specific model plan for offices.

Is employee review and feedback always required in the development of the employer's plan?

Currently, if an employer adopts one of NYS DOL's model plans, the employer doesn't need to seek employee feedback. Should an employer develop its own plan, then the employer must review the plan with employees. However, employees do not need to approve the plan for it to be adopted.

Does the HERO Act Apply to public universities and schools?

No. The HERO Act does not apply to any public employers or employees.

Is employer-provided housing and transportation covered under Section 1 of the HERO Act?

Generally, yes. A "work site" under Section 1 of the HERO Act is any physical space that has been designated as the location where work is performed and over which an employer has the ability to exercise control.

If the employer is based outside of New York State but has employees based in NY, are the NY employees covered by Section 1 of the HERO Act?

Yes, unless the employee within New York State is telecommuting or teleworking or the employer otherwise cannot exercise control of the work site.

Are employers required to add the HERO Act plan to their employee handbook, if they have one?

Yes.

If an employer does not adopt one of the model plans and instead creates an alternative plan for their work site, does it need be approved by the NYS DOL before it is adopted?

No, but employers should make sure that their plan meets the elements of 12 NYCRR 840.1.

What happens if an employer does not comply with Section 1 of the HERO Act?

Employers may be required to pay penalties of \$50 or more per day for not creating a plan and up to \$10,000 for not following an adopted plan. Section 1 of the HERO Act also allows employees to bring a private right of action against their employer for not adopting a plan or not following a plan in certain situations.

The HERO Act also prohibits retaliation against employees who exercise their rights under the HERO Act, including raising questions about compliance with the safety and health plan.

Note: Details are subject to modification. Please refer to dol.ny.gov/ny-hero-act for updates and additional information.

Inquiries about the HERO Act can be emailed to Airborne.Infectious.Diseases@labor.ny.gov.