

Emergency Regulation (Effective 8/5/2021) and Proposed Final Regulation

**A new Subchapter B is added to Chapter XI 12 NYCRR to read as follows:
§ 840.1 Airborne Infectious Disease Exposure Prevention Standard**

A. GENERAL PROVISIONS

1. This standard shall apply to:
 - i. Employers with worksites located in New York State; and
 - ii. Only an airborne infectious agent or disease designated by the Commissioner of Health as a highly contagious communicable disease that presents a serious risk of harm to the public health.
2. This standard does not apply to:
 - i. Employees or independent contractors of the state, any political subdivision of the state, a public authority, or any other governmental agency or instrumentality.
 - ii. Any employee within the coverage of a temporary or permanent standard adopted by the Occupational Safety and Health Administration setting forth applicable standards regarding COVID-19 and/or airborne infectious agents and diseases; and
 - iii. Any seasonal or endemic infectious agent or disease, such as the seasonal flu, that has not been designated by the Commissioner of Health as a highly contagious communicable disease that presents a serious risk of harm to the public health.
3. The provisions of this section shall not be interpreted as relieving any employer from the requirements of any other state or federal guidance or requirements related to preventing the spread of an airborne infectious agent or disease to employees and third parties such as customers, contractors, and members of the public within the workplace.
4. The definitions applicable to Section 218-b of the Labor Law shall be applicable to the terms used in this section.

B. EXPOSURE PREVENTION PLAN

1. Each employer shall establish a written exposure prevention plan designed to eliminate or minimize employee exposure to airborne infectious agents in the event of an outbreak of an airborne infectious disease.
2. Any exposure prevention plan adopted by an employer shall contain exposure controls identified in paragraph (c) of this section.
3. Employers that develop their own, or adopt a different exposure prevention plan, also known as an alternative plan, shall adopt such plan pursuant to an agreement with the collective bargaining representative, if any, or with the meaningful participation of employees where there is no collective bargaining representative, for all aspects of the plan, and such plan shall be tailored and specific to the hazards in the specific industry and worksites of the employer.
4. The exposure prevention plan shall consider and incorporate controls applicable to the worksite as outlined in the appropriate industry specific model templates published by the department of labor in accordance with the provisions of this section and section 218-b of the Labor Law.
5. The exposure prevention plan shall be reviewed and updated whenever necessary to reflect new or modified tasks and procedures which affect occupational exposure and to reflect new or modified employee

assignments.

6. Each employer shall make the exposure prevention plan available, upon request, to all employees, employee representatives, collective bargaining representatives, independent contractors, the department of labor, and the department of health.
7. Verbal Review:
 - i. The employer shall conduct a verbal review of employer policies, employee rights under this section and section 218-b of the labor law, and the employer's exposure prevention plan set forth herein.
 - ii. Such verbal review shall be provided in a manner most suitable for the prevention of an airborne infectious disease, whether in person in a well-ventilated environment with appropriate face masks or personal protective equipment, or via audio or video conference technology.
8. Implementation of the exposure prevention plan during an outbreak of an airborne infectious disease:
 - i. When a highly contagious communicable disease is designated by the Commissioner of Health as presenting a serious risk of harm to the public health, each employer shall:
 - a. 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;
 - b. Finalize and promptly activate the worksite exposure prevention plan;
 - c. Provide the verbal review as required by this section; and
 - d. 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, and
 1. Post a copy of the exposure prevention plan in a visible and prominent location at the worksite (except when the worksite is a vehicle); and
 2. Ensure that a copy of the exposure prevention plan is accessible to employees during all work shifts.
 - e. Employers that utilize a template exposure prevention plan prepared by the Department of Labor shall not be responsible for errors in translations relating to such.
 - ii. While the designation remains in effect, the employer shall:
 - a. Ensure that the worksite's exposure prevention plan is effectively followed by:
 1. Assigning enforcement responsibilities in accordance with Labor Law Section 218-b(2)(i), and ensuring that adequate enforcement of the worksite's exposure prevention plan takes place;
 2. Monitoring and maintaining exposure controls; and
 3. Regularly checking for updated information and guidance provided by State Department of Health and the Centers for Disease Control and Prevention concerning the airborne infectious disease and updating the exposure prevention plan, when necessary, so that the plan reflects current State Department of Health or Centers for Disease Control and Prevention recommended control measures.
 - b. Designate one or more supervisory employees to enforce compliance with the exposure prevention plan; this standard; and any other federal, state, or local guidance related to preventing the spread of the airborne infectious disease as applicable to employees and third parties such as customers, contractors, and members of the public within the workplace. No individual who is not a supervisory employee shall have responsibility for overseeing compliance with the requirements of the exposure prevention plan.

C. EXPOSURE CONTROLS

1. The employer shall select and obtain appropriate exposure controls based on the types and level of exposure risks employees have during all activities performed at the worksite.
2. The following controls shall be included in the exposure prevention plan adopted by an employer to be used at any worksite where occupational exposure exists:
 - i. Health Screening:

- a. Health screening for the disease shall be performed at the beginning of the workday, in accordance with guidance issued by State Department of Health or the Centers for Disease Control and Prevention, as applicable. Employers must limit the exposure of other individuals to employees demonstrating any symptoms of an airborne infectious disease.
 - b. Employers shall follow State Department of Health or the Centers for Disease Control and Prevention, as applicable protocols regarding testing, isolation and quarantine before allowing employees to return to the worksite and inform employees of the same.
- ii. Face Coverings:
- a. The employer shall select and provide at no cost to employees face coverings deemed appropriate and in accordance with guidance from State Department of Health or the Centers for Disease Control and Prevention, as applicable.
 - b. The employer shall require that employees wear appropriate face coverings when physical distancing cannot be maintained and in accordance with applicable guidance from State Department of Health or the Centers for Disease Control and Prevention, as applicable.
- iii. Physical Distancing:
- a. Physical distancing shall be used, when possible, to keep employees at least six feet apart from other individuals or as recommended by State Department of Health or the Centers for Disease Control and Prevention, as applicable during a disease outbreak.
- iv. Hand Hygiene Facilities:
- a. The employer shall, to the extent practicable and feasible, provide handwashing facilities with an adequate supply of tepid or warm potable water, soap, and single-use towels or air-drying machines.
 - b. When provision of handwashing facilities is not practical and feasible, the employer shall provide hand sanitizing facilities and/or supplies.
 - c. The hand sanitizers provided by the employer shall be effective against the infectious agent and shall contain at least 60% alcohol or other composition determined to be appropriate by State Department of Health or the Centers for Disease Control and Prevention for the disease outbreak, as applicable.
- v. Cleaning and disinfection:
- a. The employer shall determine and implement an appropriate plan for cleaning and disinfection that includes the methods of decontamination based upon the location, facility type, type of surface(s) to be cleaned, type of material present, tasks or procedures being performed in the area, and as otherwise directed by State Department of Health or the Centers for Disease Control and Prevention for the disease outbreak.
 - b. Surfaces known or believed to be contaminated with potentially infectious materials shall be cleaned and disinfected immediately or as soon as feasible, unless the area and surfaces can be isolated for a period of time prior to cleaning.
 - c. Surfaces contaminated with dust or other loose materials shall be wiped clean prior to disinfection, and the cleaning methods used should minimize dispersal of the dust or loose materials into the air.
 - d. Frequently touched surfaces, such as handrails, doorknobs, and elevator buttons, shall be disinfected throughout the workday and/or as recommended by State Department of Health or the Centers for Disease Control and Prevention, as applicable.
 - e. Shared tools, equipment, and workspaces shall be cleaned and disinfected prior to sharing and/or as recommended by State Department of Health or the Centers for Disease Control and Prevention, as applicable.
 - f. Common areas, such as bathrooms, dining areas, break rooms, locker rooms, vehicles, and sleeping quarters, shall be cleaned and disinfected at least daily or as recommended by State Department of Health or the Centers for Disease Control and Prevention, as applicable.
3. Personal Protective Equipment:

- i. In addition to that required or recommended by State Department of Health or the Centers for Disease Control and Prevention, as applicable, personal protective equipment that is identified as necessary for the protection of the employee shall fit the employee, and provided, used, and maintained in a sanitary and reliable condition at the expense of the employer
- ii. The employer shall:
 - a. Provide and require employees use the personal protective equipment and other personal protective equipment deemed necessary or recommended, as applicable, by State Department of Health; and
 - b. Provide appropriate training and information to each employee required to use personal protective equipment.
- iii. Where employee-owned personal protective equipment is used at the worksite, the employer shall be responsible for ensuring that the employee-owned personal protective equipment is adequate and functioning properly.
- iv. All personal protective equipment, including employee-owned personal protective equipment used at the worksite, shall be stored, used, and maintained in a sanitary and reliable condition in order to be used at the worksite.

D. ANTI-RETALIATION

1. No employer, or his or her agent, or person, acting as or on behalf of a hiring entity, or the officer or agent of any entity, business, corporation, partnership, or limited liability company, shall discriminate, threaten, retaliate against, or take adverse action against any employee for:
 - i. Exercising their rights under this section or under the applicable airborne infectious disease exposure prevention plan;
 - ii. Reporting violations of Section 218-b of the Labor Law, or a plan adopted under this section to any state, local, or federal government entity, public officer or elected official;
 - a. For the purposes of this paragraph an employee shall be deemed to have reported a violation if they reasonably believe, in good faith, that a violation has occurred.
 - iii. Reporting an airborne infectious disease exposure concern to, or seeking assistance or intervention with respect to airborne infectious disease exposure concerns, to their employer, state, local, or federal government entity, public officer or elected official; or
 - iv. Refusing to work where such employee reasonably believes, in good faith, that such work exposes him or her, or other workers or the public, to an unreasonable risk of exposure to an airborne infectious disease due to the existence of working conditions that are inconsistent with laws, rules, policies, orders of any governmental entity, including but not limited to, the minimum standards provided by the model airborne infectious disease exposure prevention standard, provided that the employee, another employee, or employee representative notified the employer, of the inconsistent working conditions and the employer failed to cure the conditions or the employer had or should have had reason to know about the inconsistent working conditions and maintained the inconsistent working conditions.
 - a. Notification of a violation by an employee may be made verbally or in writing, and without limitation to format including electronic communications.
 - b. To the extent that records exist between the employer and employee regarding a potential risk of exposure, without limitation to format including electronic communications, they shall be maintained by the employer for two years after the conclusion of the designation of a high risk disease from the Commissioner of Health.\

**No changes have been made to the original Airborne Infectious Disease Exposure Prevention Standard, posted 7/5/2021.*

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