

NY HERO Act

(NY Health and Essential Rights Act)

What is the NY HERO Act?

- The New York Health and Essential Rights Act was signed into law on May 5th, 2021.
- The law mandates new workplace health and safety protections, in response to the COVID-19 pandemic, to protect workers against exposure and disease during airborne infectious disease outbreaks.
- The New York State Department of Labor (DOL) has created Model Airborne Infectious Disease Exposure Prevention Plans and various industry-specific model plans. Employers must either adopt an applicable Model Plan from the DOL, or create an alternative plan that exceeds the minimum standards.
- When New York State designates an airborne infectious disease as a serious public health risk, employers are required to implement their plans.
- Employers with 10 or more employees must permit workers to establish and administer a joint labor-management workplace safety committee.

Who is covered?

- The NY HERO Act covers all private-sector workers regardless of immigration status.
- This includes part-time workers, independent contractors, domestic workers, home care and personal care workers, day laborers, farmworkers, and other temporary and seasonal workers.



Who is not covered?

- The NY HERO Act does not cover employees or independent contractors of the state, any political subdivision of the state, a public authority, or any other governmental agency.
- Employers in the healthcare industry are not covered by the HERO Act if the employer is covered by a temporary or permanent standard adopted by the Occupational Safety and Health Administration (OSHA).
- Every employer must make its own determination as to whether or not it, or any of its employees, is covered by a temporary or permanent OSHA standard.
- If a temporary OSHA standard is no longer in effect, the employer previously covered by the OSHA standard will then be covered by the HERO Act.

Implementation

How is the NY HERO Act implemented?

- What needs to be implemented under the law depends on whether there is a current designation of an airborne infectious disease as a serious public health risk.
- The designation is made by New York State's Commissioner of Health.
- For the most up to date information, check dol.ny.gov/ny-hero-act



At all times (whether or not a designation is in effect)

Employers must:

- Create a plan to protect workers from airborne diseases. You can also adopt the templates provided by the Department of Labor.
- 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.

Worker Committees:

- Employers with 10 or more employees must permit workers to establish and administer a joint labor-management workplace safety committee.
- Worker committees can address any workplace health and safety issue policy, not just issues concerning COVID-19.
- Worker committees can always be created and meet whether or not a designation is in effect.

When a designation is in effect

Employers must:

- Make sure their exposure prevention plan is up to date, and follow guidance from New York State Department of Health and Department of Labor.
- Implement the plan.
- Give employees a verbal review of the plan.

Workers' Rights:

- If your employer is not adhering to the standards set in place by the NY HERO Act, they are violating your rights and putting you at risk of exposure to airborne infectious diseases.
- You have the right to refuse work without retaliation.
- You can file a complaint with the Department of Labor at: dol.ny.gov/ny-hero-act



Worker Committees

What are Worker Committees?

The NY HERO Act gives private-sector employees (working in companies with 10 or more employees) the right to create worker committees to address any workplace health and safety issue policy, not just issues concerning COVID-19.



Why create a committee?

Creating a committee can make a space for employees to do the following:

- Raise concerns and complaints to employers to which employers are mandated to respond
- Review any health and safety policy from the employer
- Participate in site visits and inspections from government agencies
- Review any health and safety reports filed by the employer
- Committees meet 2 hours every quarter during work hours
- Committee members are allowed to attend a training, not to exceed four hours, on occupational health and safety and the function of worker safety committees

Who can be on the committees?

- Committees must be at least 2/3 non-supervisory employees and must also include at least one representative of the employer. Committees are co-chaired by employers and employees.
- Currently a Worker Committee can have no more than 12 members.
- Workers choose their representatives and are protected from retaliation.



What are my rights?

- Workers have the right to form these committees without being fired, demoted, or any form of retaliation
- You can file a complaint with the Department of Labor at: dol.ny.gov/ny-hero-act
- You can get in touch with the Essential Worker's Coalition for support! Email: protectnyheroes@gmail.com

Airborne Infectious Disease Exposure Prevention Plan

What is an Exposure Prevention Plan?

- The Department of Labor has created a standard plan that can be modified or adopted as is. The purpose of this plan is to protect employees against exposure and disease during an airborne infectious disease outbreak.
- Employers must at minimum adopt the following guidelines.
- The plan and industry-specific guidelines can be found on the DOL website: dol.ny.gov/ny-hero-act



Minimum Controls During an Outbreak

The following minimum controls must be used by employers in all areas of the worksite

- General Awareness:
 - Maintain physical distancing
 - Wear face coverings, gloves, and personal protective equipment (PPE)
 - Wash hands properly and often
- If an employee develops symptoms of the disease, then the employee should not be in the workplace
- Employees should complete a health screening at the start of their shift
- There should be appropriate physical distancing measures
- Employees should maintain proper hand hygiene
- Cleaning and disinfection
- Special accommodations for individuals with added risk factors

Advanced Controls During an Outbreak

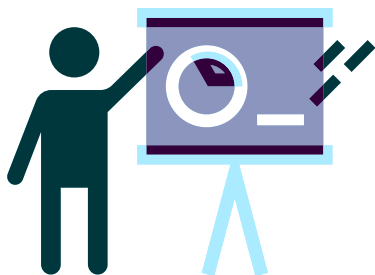
Additional controls may be taken when the minimum controls will not provide sufficient protection for employees:

- Employers should consider the temporary suspension of risky activities
- Employers should consider the following:
 - Natural ventilation
 - Air Purifiers
 - Plexiglass
 - Ultraviolet light disinfection systems
- Administrative Controls
 - Increasing physical distancing
 - Provide additional short breaks for hand washing and cleaning
 - Provide soap, sanitizer, disposable disinfecting towelettes
- PPE must be provided to an employee at no cost to the employee. PPE provided will be based on a hazard assessment for the workplace.

Airborne Infectious Disease Exposure Prevention Plan

Training and Information During an Outbreak

- The employer will verbally inform all employees of the existence and location of the plan put in place, the circumstances under which it is activated, the policies, and their rights under the HERO Act.
- When the plan is activated, all personnel will receive training which will cover all elements of the plan and other related topics:
 - The infectious agent and the disease(s) it can cause
 - The signs and symptoms of the disease
 - How the disease can be spread
 - An explanation of this Exposure Prevention Plan
 - The use and limitations of exposure controls
 - The activities and locations at the worksite that may involve exposure to the infectious agent
- The training will be:
 - Provided at no cost to employees and take place during work hours
 - Appropriate in content and vocabulary to the employees' educational level, literacy, and preferred language
 - Verbally provided in person or through telephonic, electronic, or other means



Disinfection

- Objects that multiple individuals touch must be cleaned frequently with an appropriate disinfectant.
- Housekeeping staff may be at increased risk because they may be cleaning many potentially contaminated surfaces. For that reason, alternative methods and/or increased levels of protection may be needed.
 - Instead of dusting, the CDC recommends cleaning surfaces with soap and water before disinfecting them.
- Housekeepers should wear respiratory protection.
- Liners should be used in trash containers.
 - Do not forcefully squeeze the air out of the trash bags before tying them closed



Retaliation Protections

- No employer shall discriminate, threaten, retaliate against, or take adverse action against any employee for exercising their rights under this plan.
- In the plan, employers should include contact information to report violations.
- An employee may report a violation either verbally or in writing. If you experience retaliation you can contact the designated contact your employer has designated.

Information for Small Business Owners

What does this mean for me as a small business owner?

- If you are the owner of a small business and are not the sole employee, then you must adhere to the HERO Act.
- You must either create your own workplace plan either by adopting the Department of Labor's Model Standards or creating a stronger plan. Models can be found at dol.ny.gov/ny-hero-act.
- If you create your own plan, it does not have to be approved by the DOL but it should meet elements of the DOL's standard plan.



Implementation Checklist

- ✓ Create a plan to protect workers from airborne diseases. You can also adopt the templates provided by the Department of Labor.
- ✓ When New York State designates an airborne infectious disease as a serious public health risk, this plan must be implemented and communicated to employees. Employees have the right to request it in their preferred language.
- ✓ If you have 10+ employees, they must be allowed to establish and administer a joint labor-management workplace safety committee.

What will happen if I don't comply?

- You may be fined \$50 per day or more if you fail to adopt an exposure prevention plan or recognize a worker committee.
- You may face fines ranging from \$1,000 to \$10,000 by the state Commissioner of Health, with a likely substantial increase in fines if repeated infractions occur within six years.
 - You should promptly develop and distribute a prevention plan and remain up to date on airborne infectious disease outbreak designations.

Who can I contact for help in my language?

- The Department of Labor provides language access services so you can speak with someone in the language you are most comfortable with at: 1-888-469-7356.

What standards do I need to implement?

- The model plans provided by the DOL provide more information but at minimum you must:
 - Provide masks to employees and require employees to wear masks
 - Provide necessary PPE
 - Require social distancing of at least 6 feet
 - Provide hand sanitizing/washing stations
 - Do daily screenings at the beginning of each day to ensure workers do not have Covid-19 symptoms
 - Increase the supply of outside air circulation to the greatest degree possible
 - Regularly disinfect highly touched surfaces
 - Require infected and exposed employees to take paid quarantine leave
 - Designate a supervisor in charge of compliance