

# NY HERO Act: What Does This Mean For Your Company?

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**PRESENTED BY:**

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# **The New York Health and Essential Rights Act (NY HERO Act)**

Signed into law by Governor Cuomo in May, the NY HERO Act seeks to prevent current and future occupational exposure to airborne infectious diseases at workplaces throughout New York State

## Businesses Need to Act Now

- ❑ By **August 5, 2021**, employers are required to adopt an Airborne Infectious Disease Exposure Prevention Plan
- ❑ By **September 4, 2021**, employers must notify and make their plan available to all employees
- ❑ By **November 1, 2021**, employers with 10 or more employees must begin allowing employees to form joint labor-management workplace safety committees



# Airborne Infectious Disease Exposure Prevention Standard and Model Plans

NY Department of Labor published its Airborne Infectious Disease Exposure Prevention Standard and a template for a general prevention plan and several industry specific plans:

- Agriculture
- Construction
- Delivery Services
- Domestic Workers
- Emergency Response
- Food Services
- Manufacturing & Industry
- Personal Services
- Private Education
- Private Transportation
- Retail



## THE AIRBORNE INFECTIOUS DISEASE EXPOSURE PREVENTION PLAN

The purpose of this Airborne Infectious Disease Exposure Prevention Plan ("Plan") is to protect employees against exposure and disease during an airborne infectious disease outbreak. This Plan goes into effect when an airborne infectious disease is designated by the New York State Commissioner of Health as a highly contagious communicable disease that presents a serious risk of harm to the public health. This Plan may be changed or modified subject to any mandates from a declaration of a state of emergency due to an airborne infectious disease, as well as any applicable federal standards. Employees should report any questions or concerns with the implementation of this plan to the following designated contact: \_\_\_\_\_.

### EXPOSURE CONTROLS AND GUIDELINES

During an infectious disease outbreak, the following exposure controls and guidelines will be used in the workplace.

#### HEALTH SCREENING GUIDELINES

Employees will be screened for symptoms of the infectious disease at the beginning of the workday, in accordance with guidance issued by the State Department of Health ("DOH") or the Centers for Disease Control and Prevention ("CDC"), including guidance on testing, isolation and quarantine before allowing employees to return to the worksite and inform employees of same. An employee showing signs or symptoms of the infectious disease may be asked to leave the workplace immediately.

#### FACE COVERING GUIDELINES

Employees are required to wear appropriate face coverings when physical distancing cannot be maintained. The Company will supply face coverings at no cost to employees.

#### PHYSICAL DISTANCING GUIDELINES

Employees must remain at least six feet apart (or a distance recommended by the DOH or CDC) unless wearing face coverings. In situations where prolonged contact with other individuals is likely, the Company may implement, as appropriate, the following controls:

- Limiting visitor entry;
- Limiting occupancy;
- Allowing only one person at a time inside small enclosed spaces with poor ventilation;
- Reconfiguring workspaces;
- Physical barriers;
- Signage;
- Floor markings;
- Telecommuting;
- Remote meetings;
- Preventing gatherings;
- Restricting travel;
- Creating new work shifts and/or staggering work hours; and
- Adjusting break times and lunch periods.

#### HYGIENE GUIDELINES

The Company encourages employees to utilize hand sanitizer or to wash with soap and water regularly throughout the day and after touching shared office equipment. The Company shall make hand sanitizing facilities and supplies available. The hand sanitizer provided shall contain at least 60% alcohol or other composition determined to be appropriate by the DOH or CDC.

#### CLEANING AND DISINFECTION GUIDELINES

The Company will adjust its routine cleaning and disinfecting procedures as directed by DOH and/or CDC guidance in effect at the time. The Company will follow the following cleaning and disinfection standards:

- 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.
- 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.
- Frequently touched surfaces, such as handrails, doorknobs, and elevator buttons, shall be disinfected throughout the workday and/or as recommended by the DOH and/or CDC, as applicable.
- Shared office equipment, and workspaces shall be cleaned and disinfected prior to sharing and/or as recommended by the DOH and/or CDC, as applicable.
- Common areas, such as bathrooms, dining areas, and break rooms, shall be cleaned and disinfected at least daily or as recommended by the DOH and/or CDC, as applicable.

#### PERSONAL PROTECTIVE EQUIPMENT (PPE) GUIDELINES

Should the Company or the DOH and/or CDC determine that specific PPE is necessary for the protection of the employee, the Company will supply PPE at the Company's cost. The Company will maintain the PPE in a sanitary and reliable condition. Employees will be given training and information on the proper use of such PPE, as appropriate.

Employees are permitted to use their own PPE, however it must meet the standards for such PPE and function properly. Employees must store, use, and should maintain their own PPE in a sanitary and reliable condition in order to be used at the worksite.

### IMPLEMENTATION OF THE PLAN DURING AN OUTBREAK

When a highly contagious communicable disease is designated by the Commissioner of Health as presenting a serious risk of harm to the public health, the Company will immediately review and update this Plan, as 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. After completing its review, the Company will finalize and promptly activate this Plan. The Company will provide each employee with a written copy and a verbal review of the finalized and activated Plan.

While the designation remains in effect, the Company will monitor and maintain exposure controls and guidelines. The Company will continue to regularly check for updated information and guidance from the DOH and/or CDC to update the Plan. The Company will designate [insert job title], to enforce compliance with this Plan.

### ANTI-RETALIATION

The Company prohibits discrimination, threats, retaliation or any adverse action against any employee for:

- exercising their rights under this Plan;
- reporting conduct the employee reasonably believes, in good faith, violates Section 218-b of the Labor Law or this Plan to any state, local or government entity;
- reporting, or seeking assistance or intervention with respect to airborne infectious disease concerns to the Company, state, local or federal entity, public officer or elected official;
- refusing to work where such employee reasonably believes, in good faith that such work exposes him or her, other workers or the public to an unreasonable risk of exposure to an airborne infectious disease, provided that the employee, another employee, or representative notified the Company, of the inconsistent working conditions and the Company failed to cure the conditions or the Company knew or should have known about the inconsistent working conditions and maintained the inconsistent working conditions. Notification of a violation may be made verbally or in writing, including electronic communication such as e-mail or text message. To the extent such notification is made in writing, the Company shall maintain the writing for two years after the conclusion of the designation of a high risk disease from the Commissioner of Health.

For questions, please contact  
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# Exposure Controls & Guidelines

- Health Screening
- Face Covering
- Physical Distancing
- Cleaning & Disinfection
- Personal Protective Equipment

# Employee Health Screenings



- Screen employees at the beginning of the workday
- Employees who show symptoms of the disease should be sent home
- Follow guidance from DOH & CDC on testing, isolation and quarantine



## Face Coverings

- Require employees to wear appropriate face covering when physical distancing cannot be maintained
- Supply face covering at **no cost** to employees



# Physical Distancing

- ❑ At least **6 feet apart**.
- ❑ Workplace Layout: Distance Work Stations, Erect Barriers, Install Signage or Floor markings, Avoid Multiple Crews or Teams in same area.
- ❑ Prohibit non-essential visitors.
- ❑ Stagger work hours or Adjust lunch times.
- ❑ Encourage Remote meetings and Telecommuting.



# Hygiene

- ❑ Encourage employees to utilize hand sanitizer and wash with soap and water.
- ❑ Provide hand hygiene stations – either handwashing with soap, water, and paper towels or alcohol-based sanitizer if handwashing is not feasible.
- ❑ Hand sanitizer must meet DOH and/or CDC standards (at least 60% alcohol).



# Cleaning & Disinfection

- ❑ Adjust routine cleaning and disinfecting procedures as directed by DOH & CDC.
- ❑ Clean and disinfect surfaces known to be contaminated.
- ❑ Prior to disinfecting, surfaces contaminated with dust/loose materials should first be wiped clean.
- ❑ Frequently touched surfaces and shared equipment should be disinfected regularly throughout the workday.
- ❑ Common areas should be cleaned and disinfected at least daily.



# Protective Equipment

- Employer must:
  - Provide acceptable protective equipment at no cost and maintain equipment in a sanitary and reliable condition.
  - Allow for individual protective equipment.
  - Educate: provide training and information on proper use of equipment.



# Implementation of the Plan During Outbreak

Employers **DO NOT** need to implement their plan until Commissioner of Health designates a highly contagious communicable disease as a serious risk of harm to public health.

- ❑ **COVID-19** is **NOT DESIGNATED** as highly infectious disease presenting serious risk to public health

# Implementation of the Plan During Outbreak

Company must:

- Review and update plan to incorporate new guidance.
- Finalize and promptly activate the Plan.
- Provide each employee with a written copy of the Plan and verbal review.
- Monitor and maintain exposure controls.
- Regularly check and update Plan.
- Designate employee to enforce compliance.



# Anti-Retaliation Policy

Prohibit discrimination, threats, retaliation, or any adverse action against employee for:

- Exercising rights under the Plan;
- Reporting conduct employee reasonably believes in good faith violate the law or the Plan;
- Reporting concerns about exposure to airborne infectious disease; or
- Refusing to work where employee believes, in good faith, work exposes employee, other workers or public, provided that Company is on notice
  - Notice can be verbal or written
  - If written, Company must maintain for 2 years after designation ends





# Liability & Penalties

- Employees have private right of action:
  - Employee must first give notice to employer of violation and 30 days to cure. If cured – NO CLAIM
  - 6 month statute of limitations from date employee gained knowledge
  - Employers may request attorneys' fees and costs for frivolous suits
- A fine of \$50 per day for failure to implement a compliant plan or \$1,000-\$10,000 for failure to abide by plan



- Adopt the general or industry-specific model plan immediately
- Distribute the plan to your employees by September 4<sup>th</sup>
- Post the plan at your workplace and, if you have a handbook, include in your handbook
- Provide a copy of the plan to new hires



# Additional Questions

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