

e-Alert

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e-Alert: New York State Issues Updated Model Workplace Safety Plans and FAQ Guidance Under the HERO Act

Background

On September 23, 2021, New York updated its [workplace safety plan](#) model for employers complying with the Health and Essential Rights (HERO) Act.

Summary

Earlier in September, New York had passed the HERO Act to combat the spread of airborne infectious diseases, by requiring employers to publish a plan in the workplace. Updates have been made to the model workplace safety plan pertaining to face coverings and social distancing.

- Face Coverings:
 - For employers where all employees are fully vaccinated, the plan now states that wearing masks is recommended, but not required.
 - For all other employers, the plan now states that employees will wear masks based upon guidance from the State Department of Health or Centers for Disease Control and Prevention.

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- Social Distancing:
 - Physical distancing will now be used to the extent feasible as directed by the State Department of Health or Centers for Disease Control and Prevention.

In addition, the New York Department of Labor (NYDOL) has issued [Frequently Asked Questions](#) to help employers navigate the Act. Noteworthy provisions from the FAQs include:

- Modifications to Model Plans:
 - If an employer makes drastic changes to the “Controls and Advanced Controls” sections of the General Industry template, the plan would then be deemed an alternative plan.
 - If an employer creates an alternative plan, they must seek participation from employees directly or an employee representative if they are part of a collective bargaining agreement.
- Workplace Safety Committees: Previously, the Act stated that employers with 10 or more employees “**shall permit**” employees to establish and administer a joint labor-management workplace safety committee. The amendment now states that employers with 10 or more employees “are **required** to” establish and administer a joint labor-management workplace safety committee.
- **HERO Act Regulations:** The FAQs announced that the NYDOL will be promoting these regulations to answer any remaining questions under the Act such as provisions governing workplace safety. Stay tuned for more information as it becomes available.

Employer Next Steps

- Employers should ensure they have a workplace safety plan in place to comply with the HERO Act. If an employer does not have a plan currently in place, they can utilize sample plans found [here](#).
- If you are a Full-Service or Virtual HR client and would like our assistance with updating your policy, please [email us](#).

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