

Legislative Update

MAY 2021*

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NEW YORK STATE ENACTS HEALTH AND ESSENTIAL RIGHTS (“HERO”) ACT

Due to the COVID-19 pandemic, legislation known as the New York Health and Essential Rights Act, or HERO Act, was signed into law by Governor Cuomo on May 5, 2021. The HERO Act imposes workplace health and safety requirements on private sector employers in New York State.

Under the HERO Act, the New York State Departments of Labor and Health are directed to create health and safety standards and model prevention plans to aid in the prevention of airborne infectious diseases across New York State workplaces and industries. Following these standards, including any applicable industry standards, will become mandatory for private sector employers in New York. These employers will also be obligated to provide copies of their prevention plans to their employees. Although this section of the HERO Act was originally intended to take effect in early June 2021, this timeline is reportedly being extended by the Governor and Legislature.

Additionally, under the HERO Act, private sector employers with ten or more employees will be required to allow workplace health and safety committees composed jointly of employees and management beginning November 1, 2021. Purposes for these joint committees include identifying health and safety issues, and reviewing and commenting on workplace health and safety policies.

The HERO Act also prohibits discrimination and retaliation for an employee who:

- Reports violations of the HERO Act or an employer’s prevention plan to any federal, state or local government entity, elected official or public officer;
- Reports airborne infectious disease exposure concerns; or
- Refuses to work if the employee believes, reasonably and in good faith, that working exposes the employee, other workers or the public to an unreasonable risk of exposure to an airborne infectious disease, but only if the employee had previously notified the employer of his or her concerns regarding the employer’s failure to comply with the Act, and the employer failed to correct or otherwise address the employee’s legitimate concerns.

The model prevention plans and workplace standards are expected to be issued later this Summer.

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