



PHILLIPS LYTLE LLP CLIENT ALERT

LABOR & EMPLOYMENT

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New York State Employers Must Activate HERO Act Plans

On Monday, September 6, 2021, New York State Governor Kathy Hochul announced that the New York State Commissioner of Health (“Commissioner”) has designated COVID-19 as a “highly contagious communicable disease that presents a serious risk of harm to the public health” under the New York Health and Essential Rights Act (HERO Act). The Commissioner’s designation requires that all New York State employers “promptly” activate their workplace airborne infectious disease exposure prevention plans which they were required to adopt under the HERO Act.

The HERO Act requires that all New York State employers have in place an industry-specific model airborne disease exposure prevention plan issued by the New York State Department of Labor (DOL) or develop their own exposure prevention plan that equals or exceeds the exposure prevention standard set by the DOL. The DOL standard and model exposure prevention plans are available [here](#).

Under the DOL’s exposure prevention standard, activation of an employer’s exposure prevention plan requires that an employer take several steps, including the following:

- Review its exposure prevention plan and update it as necessary to incorporate current information, guidance and mandatory requirements;
- Finalize and promptly activate its exposure prevention plan;

- Verbally review its plan and policies with employees and inform employees of their rights under New York Labor Law § 218-b; and
- Provide employees with a copy of its plan, post a copy in a visible and prominent location at the worksite, and ensure a copy is accessible to employees during all work shifts.

Employers should review the specifics of their own exposure prevention plans to ensure that they comply with all other requirements listed in them.

As long as the Commissioner’s designation is in effect, employers must also do the following:

- Assign one or more supervisory employees to enforce their exposure prevention plan;
- Monitor and maintain exposure controls; and
- Regularly check for updated information and guidance from the New York State Department of Health and the CDC, and update their plans accordingly.

Additional Assistance

For further assistance, please contact any of the attorneys on our [Labor & Employment Practice Team](#) or the [Phillips Lytle attorney](#) with whom you have a relationship. ■