

## CLIENT ALERT

### HERO Act Update: New York State Department of Labor

Jul.14.2021

The New York State Department of Labor (“DOL”) published important guidance regarding the New York Health and Essential Rights Act (the “HERO Act”) on July 6, 2021. Specifically, the DOL issued an Airborne Infectious Disease Exposure Prevention Standard and a Model Airborne Infectious Disease Exposure Prevention Plan as well as eleven industry-specific model prevention plans in the following industries: Agriculture; Construction; Delivery Services; Domestic Workers; Emergency Response; Food Services; Manufacturing and Industry; Personal Services; Private Education; Private Transportation; and Retail. This publication imposes obligations on employers with work sites in New York State to adopt, but not yet implement, airborne infectious disease exposure prevention plans (“Plans”) by August 5, 2021.

As we previously reported, a covered employer can adopt the DOL’s general model Plan, or a model Plan applicable to its industry, or establish an alternative Plan that meets or exceeds the minimum requirements provided by the model standard. Such Plans must be developed “pursuant to an agreement with the collective bargaining representative, if any, or with meaningful participation of employees where there is no collective bargaining representative, for all aspects of the Plan, and such Plan shall be tailored and specific to hazards in the specific industry and work sites of the employer.” After adoption of a Plan, employers will have an additional 30 days (until September 4, 2021) to provide their Plan to employees in English as well as in the language identified by each employee as their primary language, if a translation is made available by the DOL. Spanish-language versions are expected shortly. Subsequently, employers must provide the Plan to new employees upon hire as well as to all employees within 15 days of a reopening due to an airborne infectious disease related closure. Additionally, the HERO Act requires that employers post the Plan in a visible and prominent location in each work site, and that “[a]n employer that provides an employee handbook to its employees shall, in addition, include the [Plan] in its handbook.”

While employers are required to adopt their Plans by August 5, 2021, their implementation is not required until the New York State Commissioner of Health designates an airborne infectious disease as a highly contagious communicable disease that presents a serious risk of harm to the public health. Because no such designation has been made, employers are currently not required to implement the Plan.

The DOL further indicated that it will be sharing further guidance regarding the HERO Act in the near future. We will continue to monitor developments concerning the evolving guidance provided by the DOL, and encourage you to reach out to one of the individuals listed below or your regular Crowell & Moring contact with any questions you may have. For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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