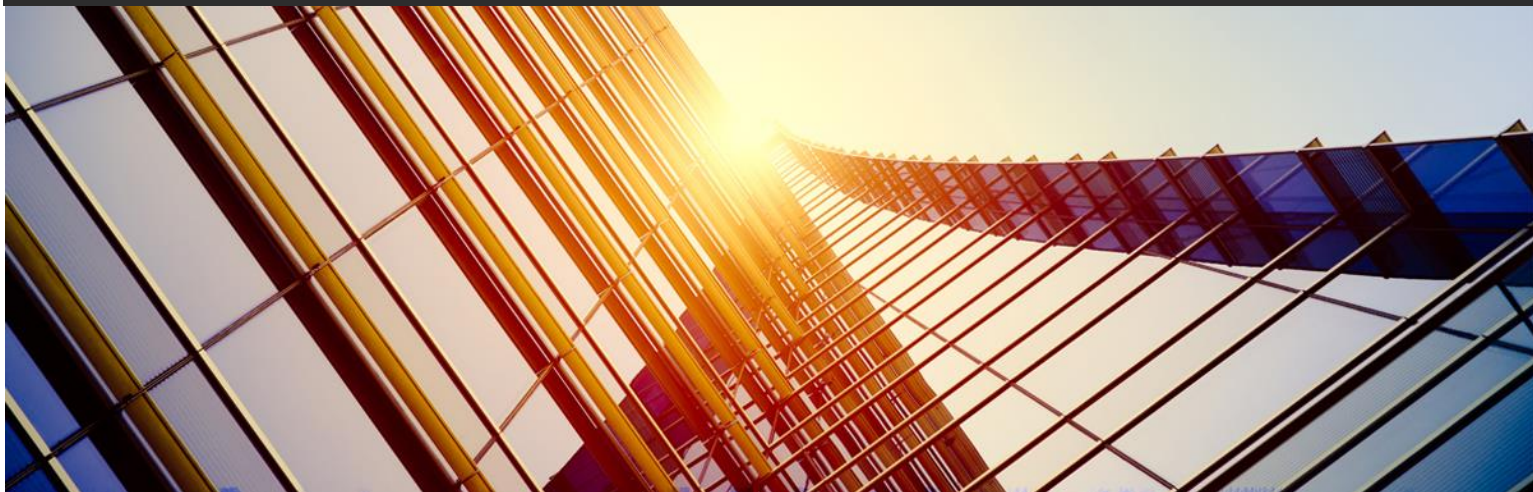


## **Alert | Health Emergency Preparedness Task Force: Business Continuity Amid COVID-19**



September 2021

### **New York Employers Must Activate Airborne Infectious Disease Exposure Prevention Plans Under NY HERO Act**

On Sept. 6, 2021, New York Gov. Kathy Hochul **announced** the New York State Department of Health had designated COVID-19 a highly contagious communicable disease that presents a risk of harm to the public under the New York Health and Essential Rights Act (NY HERO Act), which passed May 5, 2021. As a result, NY employers must now activate their disease exposure prevention plans in accordance with the NY HERO Act.

The NY HERO Act mandates that New York employers adopt an “airborne infectious disease exposure prevention plan” within 30 days after the New York Department of Labor publishes model standards of such plans. On July 6, 2021, the DOL published model standards as well as model disease exposure prevention plans for various industries. *See GT Alert*. Accordingly, New York employers were required

- by Aug. 5, 2021, to adopt their own disease exposure prevention plan;
- by Sept. 4, 2021, to distribute the plan to employees; and
- by Nov. 1, 2021, to allow workers to establish and administer a joint labor-management workplace safety committee (for employers with 10 or more employees only).

Initially as written, the NY HERO Act was not directed to address COVID-19 specifically, and employers were not required to activate or implement their disease exposure prevention plans unless and until the New York State Commissioner of Health designated a disease a “highly contagious communicable disease” that “presents a serious risk of harm to the public health.” In light of the governor’s Sept. 6, 2021, announcement, employers must now activate their plan by:

1. Immediately reviewing the worksite’s exposure prevention plan and update the plan, if necessary, to ensure it incorporates current information, guidance, and mandatory requirements issued by federal, state, or local governments related to COVID-19;
2. Finalizing and promptly activating the worksite exposure prevention plan;
3. Providing a verbal review of the plan to their employees; and
4. Providing each employee and independent contractor at each work site a copy of the exposure prevention plan in English or in the language identified as the primary language of such employees, if available, and posting the plan at the worksite, such that it is accessible to employees during all work shifts.

Notably, the exposure plans need not be implemented with respect to work sites over which New York employers do not exercise control, such as personal residences where employees are working from home. The NY HERO Act also does not apply to government employers or employers governed by temporary or permanent OSHA standards for COVID-19, such as certain employers in the health care industry.

Employers that fail to adopt a plan or implement their plans may be subject to civil penalties ranging from \$50 to \$10,000 for a first offense and may open themselves to lawsuits seeking injunctive relief under the NY HERO Act. The NY HERO Act also contains anti-retaliation provisions which prohibit employers from taking adverse actions against employees for exercising any right or reporting any violation under the NY HERO Act.

For more information and updates on the developing situation, visit [GT’s Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#) and [Business Continuity Amid COVID-19](#) page.

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