



New York Health and Essential Rights Act (NY HERO Act)

Overview of NY HERO Act

In response to the COVID-19 pandemic, the NY HERO Act was created to protect employees against exposure and disease during future airborne infectious disease outbreaks. The law requires employers to implement extensive new workplace health and safety protections.

The NYS Department of Health has provided an [Airborne Infectious Disease Exposure Prevention Standard](#) and a [Model Airborne Infection Disease Exposure Prevention Plan](#). Employers may choose to adopt this plan or create an alternative method that meets or exceeds the standard's minimum requirements.

The plan must go into effect when an airborne infectious disease is designated by the New York State Commissioner of Health as a highly contagious infectious disease that presents a severe risk of harm to public health.

This plan does not apply to a seasonal or endemic infectious agent or disease such as the seasonal flu.

Anti-Retaliation: No employer shall discriminate, threaten, retaliate against, or take adverse action against an employee for:

- Reporting violations
- Reporting airborne infectious disease exposure concern, seeking assistance or intervention to the exposure concern
- Refusing to work where the employee reasonably believes that work exposes them to an unreasonable risk of exposure to an airborne infectious disease

Understand the Risk of Non-Compliance

Employers may be fined at least \$50 a day for failing to adopt or create a Prevention Plan. Employers who fail to abide by their Prevention Plan can potentially face fines of anywhere from \$1,000 to \$10,000. Multiple violations within a given six-year period will lead to a substantial increase in penalties.

Does this apply to me?

The NY HERO Act applies to all employers, regardless of size, with worksite employees located in New York State as defined by the NYS HERO Act below:

- **“Worksite”** is defined under the HERO Act as any physical space, including a vehicle, that has been designated as the location where work is performed over which an employer can exercise control; however, a “worksite” does not include a telework site unless the employer can exercise control of such site.
- **“Employee”** refers to any person providing labor or services for remuneration (money paid for work or service) for a private entity business within the state, without regard to immigration status, and shall include (and is not limited to)
 - Part-time workers
 - Independent contractors
 - Domestic workers
 - Home care and personal care workers,
 - Day laborers
 - Farmworkers
 - Temporary and seasonal workers
 - Workers for digital applications
 - Staffing agencies
 - Contractors and subcontractors

Important Immediate/Upcoming Action Items to Note

To be Completed by August 5, 2021

- Adopt the model Prevention Plan applicable to your industry OR create your own Prevention Plan. PrestigePEO recommends that you use the state-provided plan appropriate to your industry. If you elect to create your own, see the additional notes below.
- Designate the supervisory employee(s) responsible for implementing and enforcing your Prevention Plan.

To be Completed by September 4, 2021

- Share your Prevention Plan with all current employees.
- Post the plan in a visible and prominent location at each worksite, attach it to any handbook materials, and ensure staff responsible for hiring distribute the Prevention Plan to new hires.
- For all clients with a PrestigePEO handbook, please submit your Prevention plan to your PrestigePEO HRBP to be uploaded to your current manual by August 16 so we can meet the September 4 posting deadline.

Additional notes:

- Are you choosing to develop an alternative plan?
 - *You must do so per an agreement with the collective bargaining representative, if applicable, OR where there is no collective bargaining representative, with meaningful participation of employees.*
 - *Your alternative plan must be tailored to the industry and worksite of the employer.*
- If you deem it necessary, you may wish to consult your legal counsel.

Additional Action Items:

- Develop training materials and collateral
- Update current training policies and procedures

Resources:

- NYS Overview on DOL's Website: <https://dol.ny.gov/ny-hero-act>
- Model Prevention Plan: <https://dol.ny.gov/system/files/documents/2021/07/model-airborne-infectious-disease-exposure-prevention-plan-p765.pdf>
- Prevention Standard: <https://dol.ny.gov/system/files/documents/2021/07/p764-the-airborne-infectious-disease-exposure-prevention-standard-v4.pdf>

Disclaimer:

Please note while the information within this alert may concern certain employment laws and regulations to be aware of, it is provided solely as general guidance so that you maintain compliance. It is not the equivalent

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