

# New York State HERO Act: Likely Amendment to Infectious Disease Safety Standards in the Workplace

By **Julie Levinson Werner** and **Amy C. Schwind**

We are writing to update you on anticipated amendments and changes to the New York Hero Act (the “Act”). Recently, as we detailed [here](#), New York enacted the Act requiring New York employers to implement certain safety standards and a written safety plan to protect against the further spread of COVID-19 and other airborne infectious diseases in the workplace. Now, tandem bills to amend certain provisions of the Act have passed in the New York State Assembly and New York State Senate. It is anticipated that Governor Andrew Cuomo will sign these bills into law, which will modify and clarify certain aspects of the Act.

Under the existing Act, New York employers are required to establish a model airborne infectious disease exposure prevention standard that identifies minimum workplace safety requirements. Among other clarifications, the proposed amendments refine the obligations of the Commissioner of the New York State Department of Labor, in consultation with the Department of Health, regarding the publication of the model standards. In particular, the amendments state that customized standards would be established for “industries representing a significant portion of the workforce, or those with unique characteristics requiring distinct standards,” and that for all other worksites, the Commissioner will provide a general model airborne infectious disease exposure prevention standard. The base components of the standards remain unchanged by the amendments; they will continue to address items such as employee health screenings, face coverings, personal protective equipment, hand hygiene, cleaning and disinfecting, social distancing, compliance with orders of isolation or quarantine, and engineering controls.

Significantly, as currently drafted, the Act seemed to require an employer to establish a compliant plan no later than the effective date of the applicable section of the Act (which date, June 4, 2021, has now come and gone). Under the proposed amendments, employers would be permitted the more workable

timetable of establishing a plan within 30 days after the Commissioner publishes the model general standard and the model standard relevant to the industry. Moreover, the proposed amendments specify that an employer would have within 30 days *after adoption of the plan* to provide the plan to employees. In addition, the employer would be required to provide the plan within 15 days of reopening after a period of closure due to airborne infectious disease and to newly hired employees upon hire.

While the proposed amendments offer additional limitations with respect to workplace safety committees, which are committees that under the Act New York employers with at least 10 employees must allow employees to establish and administer, the proposed amendments do not alter the November 1, 2021 date to comply with the workplace safety committee requirements.

The proposed amendments further include certain limitations on the commencement of civil actions as well as alter fee-shifting provisions.

New York employers should anticipate the likely passage of these amendments to the Act and evaluate how the amendments will affect the employer’s plans for compliance with the Act.

Lowenstein Sandler’s Employment Law Practice Group will continue to monitor further developments related to the HERO Act. We remain ready to counsel employers through the myriad legal issues brought about by the COVID-19 pandemic.

***To see our prior alerts and other material related to the pandemic, please visit the [Coronavirus/COVID-19: Facts, Insights & Resources](#) page of our website by clicking [here](#).***

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