



KTAP COVID-19 ALERT

May 13, 2021

—UPDATED COVID REOPENING REGULATIONS—

On May 5th, 2021, Governor Cuomo signed into effect the Health and Essential Rights (“HERO”) Act. The Act requires employers to implement additional COVID related requirements with the goal of preventing the further spread of airborne infectious diseases in the workplace. The Act is applicable not only to COVID, but also to any infectious viral, bacterial, or fungal disease that is transmitted through the air and is designated a highly contagious disease by the commissioner of health.

The following is an overview of the HERO Act:

SAFETY PLAN

The New York Department of Labor will create and issue a plan that stipulates the standard for airborne infectious disease prevention guidelines (the “Model Plan”). The Model Plan will vary based upon industry and sets forth the minimum requirements to be adhered to. The standards will include (but not be limited to) the following:

- Employee health screenings;
- Face coverings;
- Personal protective equipment (“PPE”) based on hazard assessments by industry;
- Workplace hand hygiene stations;
- Regular cleaning and disinfecting of shared equipment and surfaces (touchscreens, phones, doorknobs, restrooms, dining areas, etc.);
- Social distancing in the workplace;
- Mandatory or precautionary orders of isolation or quarantine;
- Air flow, ventilation, or other design requirements;
- Supervisory employee designation to enforce compliance with the Model Plan and other state or local guidance related to avoidance of infectious disease spread.

All employers must either adopt the Model Plan relevant to their industry or establish an alternative plan that equals or exceeds the minimum requirements set by the Model Plan. The adopted standards shall be provided to employees on the Act’s effective date in English and the employee’s primary language. The plan shall also be clearly and conspicuously posted in a prominent location in the workplace, as well as be included in each employer’s employee handbook.

ANTI-RETALIATION REQUIREMENTS

Employers are prohibited from discriminating, threatening, retaliating, or taking adverse action against any employee for:

- Reporting any violations of the workplace airborne infectious disease prevention plan;
- Seeking assistance with or reporting an exposure to an airborne infectious disease;
- Exercising their rights under the HERO Act;
- Refusing to work where the employee has a reasonable belief that such work exposes them to an unreasonable risk of exposure to an airborne infectious disease due to the existence of work conditions that are in violation of the Model Plan or other applicable government policies, provided that the employee notified the employer of the condition and the employer failed to correct the condition.

FINES AND PRIVATE CAUSE OF ACTION

Any employer found to be in violation of the Act by the commissioner may be fined up to \$10,000 per day, based on the severity of the violation.

For the failure to adopt an airborne infectious disease exposure plan, the fine is at least \$50 per day. For the failure to abide by a plan, the fine may range from \$1,000 to \$10,000 per day.

Employees are permitted to bring a civil action against an employer that is alleged to have violated the prevention plan. The employee can seek injunctive relief, attorneys' fees, and liquidated damages of up to \$20,000.

WORKPLACE SAFETY COMMITTEES

Under the Act, employers with *ten or more* employees must permit their employees to establish a joint labor-management workplace safety committee. Employee and employer designees can be on the committee, so long as two-thirds are non-supervisory employees. Employers cannot interfere with the selection of employees on the committee.

The workplace safety committee shall be authorized to:

- Raise health and safety concerns, hazards, complaints and violations to the employer, and the employer must respond;
- Review any policy put in place at the workplace required under the Act and provide feedback;
- Review any workplace policy adopted as a result of any health or safety law/directive;
- Participate in site visits by any governmental entity that is responsible for enforcing safety and health standards;
- Review any report filed by the employer related to the health and safety of the workplace;
- Regularly schedule a meeting during work hours at least once a quarter.

Employers must permit the committee to attend training on the function of worker safety committees, rights under the Act, and an introduction to occupational safety and health, without suffering the loss of

pay. Further, no employees can be retaliated against for their involvement in the committee. Additionally, employees dealing with a collective bargaining agreement (“CBA”) may waive out of these requirements, provided that the CBA explicitly references the Act.

WHAT’S NEXT?

Most provisions of the HERO Act become effective June 4, 2021. However, the provisions relating to the workplace committee go live on November 1, 2021.

Employers should start by reviewing their current COVID response plans, employee handbooks, and workplace environment to assess their current needs to comply with the Act. Further guidance will be issued once the Model Plan is released by the New York Department of Labor. Should you have any questions on how to implement these regulations, prudent actions to take in light of them or what industry specific actions that you should take, KTAP is always available to assist you.

FURTHER HELP

We understand that these additional requirements may be financially and practically difficult to implement. They also may be the springboard for litigation and problems down the road. Our team stands ready to help. For further assistance, do not hesitate to call any member of our team:

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