June 25, 2021

New York Amends HERO Act Mandating Workplace Safety Plan for Airborne Infectious Diseases

As we previously reported, Governor Cuomo signed the New York Health and Essential Rights Act (the HERO Act) on May 5, which requires all New York employers to implement model safety plans for airborne diseases, prohibits discrimination and/or retaliation against employees who exercise their rights under the HERO Act, and requires employers with 10 employees or more to establish a joint labor-management workplace safety committee.

Upon signing the HERO Act, Governor Cuomo issued a memorandum that "technical changes" to the law were coming to ensure that employers have clear guidelines for what is expected and when, as well as a mechanism to "immediately" cure any violations. On June 7, the New York State legislature approved the amendments and, on June 11, Governor Cuomo signed them into law.

Section 1—Model Safety Plans

Section 1 of the HERO Act requires employers to implement an airborne infectious disease prevention plan that must address certain workplace safety requirements. The Commissioner of the New York Department of Labor, in consultation with the New York Department of Health, will create a model plan. Under the original version, Section 1 became effective June 5. Under the amendments, Section 1 does not become effective until July 5. In addition, the original law did not provide any deadline for employers to either implement the model plan or create their own. Now, employers will have 30 days after the model plan is issued to either adopt the model plan or establish their own policy that meets the minimum requirements of the model plan for their industry. Employers will then have another 30 days (or 60 days from issuance of the model plan) to distribute their plan to all employees. Employers must also reissue their plan within 15 days after reopening if they close because of an airborne infectious disease, and must also issue the plan during the onboarding process for all new hires.

The original version of the HERO Act included a provision that permitted a court to issue a $20,000 liquidated damages penalty upon a proven violation of the law. That provision has been deleted (although there are still potential fines, and exposure to the employer to pay attorneys' fees, costs, etc. if a lawsuit is filed). Moreover, the amendments add a six-month statute of limitations for any legal claims to be filed, which begins on the date the employee has knowledge of a violation. Notably, the law also provides that an employee cannot file a lawsuit without notice to the employer of the alleged violation and a 30-day opportunity to cure the violation (unless the employer refuses). The law also allows an employer to recover attorneys' fees and costs of defense if an alleged violation of the law is determined to be frivolous.

Section 2—Workplace Safety Committee

Section 2 requires employers with 10 or more employees to establish a joint labor-management workplace safety committee. The original version of the HERO Act required employers to pay committee members for their time attending committee meetings and health and safety training. While employers must still compensate employees for that time, the amendments cap that time at two hours per quarter for committee meetings and four hours for trainings. Section 2 of the HERO Act is effective November 1.

Start Preparing Now

In sum, given the 30-day period between the issuance of the model plan and the date the plan must be adopted/implemented, employers should review their current health and safety policies now, and consider the resources and expertise they will need to comply with the HERO Act.

For more Day Pitney alerts and articles related to the impact of COVID-19, as well as information from other reliable sources, please visit our COVID-19 Resource Center.

COVID-19 DISCLAIMER: As you are aware, as a result of the COVID-19 pandemic, things are changing quickly and the effect, enforceability and interpretation of laws may be affected by future events. The material set forth in this document is not an unequivocal statement of law, but instead represents our best interpretation of where things stand as of the date of first publication. We have not attempted to address the potential impacts of all local, state and federal orders that may have been issued in response to the COVID-19 pandemic.

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