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New York Revises Model Workplace Safety Plan Under HERO Act

As we recently reported [here](#), the New York Commissioner of Health on September 6 designated COVID-19 a highly contagious communicable disease that presents a serious risk of harm to the public health under the Health and Essential Rights Act (HERO Act), requiring all New York employers with at least one employee to implement the airborne infectious disease exposure prevention plan that they were required to adopt under the HERO Act. On September 23, the New York Department of Labor revised its Model Airborne Infectious Disease Exposure Prevention Plan in two ways, concerning face coverings and physical distance in the workplace.

Previously, the model plan stated that employees should wear face coverings in the workplace when they cannot maintain at least six feet of physical distance from others, with no exceptions for employees who have been vaccinated. Now, the revised model plan states that for workplaces where all individuals on the premises, including but not limited to employees, are fully vaccinated, "[a]ppropriate face coverings are recommended, but not required, consistent with State Department of Health and the Centers for Disease Control and Prevention applicable guidance, as of September 16, 2021." For other workplaces, the revised model plan states, "Employees will wear appropriate face coverings in accordance with guidance from State Department of Health or the Centers for Disease Control and Prevention, as applicable."

The model plan's discussion of physical distancing has also been revised. It now states, "Physical distancing will be used, to the extent feasible, as advised by guidance from State Department of Health or the Centers for Disease Control and Prevention, as applicable."

New York employers that adopted the model plan need not, but may choose to, revise their plans to reflect these recent revisions. Employers that do so should ensure that each employee is informed of the revisions to the plan and that the revised plan is posted at each work site and included in their employee handbook if they have one.

Any questions or concerns regarding an employer's obligations under the HERO Act should be addressed with legal counsel.

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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