

New York HERO Act Alert: COVID-19 Designated as Highly Contagious Communicable Disease

Article By:

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On September 6, 2021, New York State Commissioner of Health Howard A. Zucker designated COVID-19 as “a highly contagious communicable disease that presents a serious risk of harm to the public health in New York State.” As a result of [the commissioner’s designation](#), employers are required to activate their airborne infectious disease exposure prevention plans in accordance with the [New York Health and Essential Rights Act](#) (NY HERO Act).

As we [previously reported](#), on July 6, 2021, the New York State Department of Labor (NYS DOL), in consultation with the New York State Department of Health, published the [Airborne Infectious Disease Exposure Prevention Standard](#) and [Model Airborne Infectious Disease Exposure Prevention Plan](#). Although the NYS DOL initially published the standard and model plan only in English, the NYS DOL has since furnished the standard and the model plan in Spanish. The [industry-specific templates](#), for “Agriculture,” “Construction,” “Delivery Services,” “Domestic Workers,” “Emergency Response,” “Food Services,” “Manufacturing and Industry,” “Personal Services,” “Private Education,” “Private Transportation,” and “Retail,” are available only in English.

When the standard and the model plan were published, COVID-19 had not received the commissioner’s designation as a highly contagious communicable disease presenting a serious risk of harm to the public health. Now, because of the September 6, 2021, designation, employers with employees in New York may wish to ensure that they are complying with the applicable provisions of the NY HERO Act. Specifically, if not already completed, each employer shall:

1. Immediately review . . . and update the plan, if necessary, to ensure that it incorporates current information, guidance, and mandatory requirements, issued by federal, state, or local governments related to [COVID-19];
2. Finalize and promptly activate the . . . plan;
3. Provide the verbal review [in accordance with the plan];
4. Provide each employee with a copy of the . . . plan in English or in [Spanish, if identified as the employee’s primary language];

5. Post a copy of the plan in a visible and prominent location at the worksite (except when the worksite is a vehicle);
6. Ensure that a copy of the . . . plan is accessible to employees during all work shifts.

Per the act, if an employer has a handbook, the plan must be included in the handbook.

Because Commissioner Zucker's designation requires activation of the plans, employers may also want to consider that the model plan and industry-specific templates provide that when a plan is activated, training "which will cover all elements" of the plan must be provided. Per the model plan and industry-specific templates, the topics to be covered during training include the following:

1. The infectious agent and the disease(s) it can cause;
2. The signs and symptoms of the disease;
3. How the disease can be spread;
4. An explanation of [the] ... [p]lan;
5. The activities and locations at [the employer's] worksite that may involve exposure to the infectious agent;
6. The use and limitations of exposure controls[;]
7. A review of the standard, including employee rights provided under [the NY HERO Act].

The model plan and industry-specific templates also provide that the training will be furnished "at no cost to employees and take place during working hours," or, if training cannot take place during normal work hours, that "employees will be compensated for the training time (with pay or time off)." In addition, the training is required to be "[a]ppropriate in content and vocabulary to [the] educational level, literacy, and preferred language" of each employee and "[v]erbally provided in person or through telephonic, electronic, or other means."

The commissioner's designation will remain in effect until September 30, 2021, at which point the commissioner will "determine whether to continue [the] designation." Accordingly, employers may wish to continue to monitor guidance and information from the New York State Department of Health and the NYS DOL to determine additional or continuing obligations, if any.

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National Law Review, Volumess XI, Number 252

Source URL: <https://www.natlawreview.com/article/new-york-hero-act-alert-covid-19-designated-highly-contagious-communicable-disease>