

The Intersection of the New York HERO Act and Federal Labor Law

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On May 5, 2021, New York Governor Andrew Cuomo signed the New York Health and Essential Rights Act (“HERO Act” or “Act”), requiring, among other things, that the New York State Department of Labor (“NYSDOL”), in consultation with the State Department of Health, develop a model workplace airborne infectious disease exposure prevention standard (“model standard”). The Act further requires that all private sector employers adopt the model standard or a prevention plan that mirrors the model standard to address the spread of COVID-19 and other airborne infectious diseases in the workplace. The Act applies to those employees and worksites, as that term is defined in the Act, located within the State of New York. It does not apply to New York employers’ facilities outside the State. The model standards, which have not yet been released, are expected to address topics such as health screenings, face coverings, personal protective equipment, hand hygiene, cleaning and disinfecting of shared equipment and common use surfaces, and social distancing, among other related topics. The Act states that the standards are to take into account “all applicable federal standards to the extent practical.” Section 1 of the Act will apply to all of a covered employer’s in-state workforce, including not only employees, but contingent workers, and other individuals working in New York, including those making deliveries to the worksite.

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National Law Review, Volumess XII, Number 3

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