

LABOR AND EMPLOYMENT

ALERT

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New York State HERO Act: November Updates

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NEW DESIGNATION DATE

On September 6, 2021, pursuant to New York's Health and Essential Rights Act (HERO Act), the New York State Commissioner of Health designated Covid-19 as a highly contagious communicable disease that presents serious risk of harm to the public. That designation required all private-sector employers in New York to activate their airborne infectious disease exposure prevention plans through September 30, 2021. On September 30, Governor Hochul extended the designation through October 31, 2021, and thereafter, extended the designation through December 15, 2021. Simply put, employers must keep their airborne infectious disease exposure prevention plans activated and ensure that they fully train their staff on the plan and the HERO Act's requirements.

Read more detailed information about the HERO Act in Schnader's prior client alerts:

- Update on NY HERO Act: Covered Employers Must Activate Plans Now – <http://www.schnader.com/wp-content/uploads/2021/09/Update-on-NY-HERO-Act-Covered-Employers-Must-Activate-Plans-Now-9-24-21-2.pdf>

- NY HERO Act: Employers Need to Act by August 5 – http://www.schnader.com/wp-content/uploads/2021/08/ALert_NY-Hero-Act.pdf

FAQ ON NY'S HERO ACT

On September 30, 2021, the New York State Department of Labor (NYSDOL) updated its FAQ, clarifying employer obligations under the HERO Act – https://dol.ny.gov/system/files/documents/2021/10/heroact-factsheet-9-30-21_0.pdf.

Among other things, the FAQ: 1) states that employers working in multiple industries should adopt the model plan that mostly closely aligns with their business and customize the controls, as needed, and also that employers may adopt more than one plan if they have multiple worksites (employers may, of course, establish an alternate plan that equals or exceeds the minimum standards of the model plan); and 2) indicates that, before November 1, the NYSDOL would provide guidance on Section 2 of the HERO Act (New York Labor Law Section 27-D), which requires private-sector employers in New York with ten or more employees to permit employees to form and administer a joint labor-management workplace safety committee (Committee)¹, starting November 1. To date, the NYSDOL has not issued guidance on Section 2 of the HERO Act.

¹ By law, a Committee (two-thirds of which must be non-supervisory employees) may:

- raise health and safety concerns, complaints and violations to the employer, to which the employer must respond;
- review occupational health and safety policies and provide feedback, including those enacted in response to health and safety laws, executive orders, ordinances, rules, regulations or other directives;

- participate in workplace site visits by government agencies responsible for enforcing safety/health standards;
- review employer-filed safety/health reports;
- regularly schedule a meeting during work hours, up to two hours in length, at least once a quarter; and
- permit a committee designee to attend a training, up to four hours' paid, on occupational health and safety and the Committee's function.

HEARING SCHEDULED FOR SECTION 1, HERO ACT REGULATIONS

The NYSDOL has now scheduled a virtual public hearing for Wednesday, November 17, 2021 at 11:00 a.m. to address the proposed HERO Act **Section 1** regulations (not Section 2).² Any member of the public can register³ to provide hearing testimony or simply attend the hearing by Zoom.⁴

Schnader will continue monitoring these legal developments. ◆

This Alert is based on information available at the time of publishing. It is subject to change. Business leaders should consult with counsel and refer to government websites and publications for the most up-to-date information.

For more detailed analysis on a wide range of legal issues, please see Schnader's Covid-19 Resource Center at www.schnader.com/blog/covid-19-coronavirus-resource-center.

This summary of legal issues is published for informational purposes only. It does not dispense legal advice or create an attorney-client relationship with those who read it. Readers should obtain professional legal advice before taking any legal action.

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* See: www.schnader.com/jakarta

² <https://dol.ny.gov/system/files/documents/2021/08/p764.pdf>

³ <https://forms.ny.gov/s3/hearing-sign-up>

⁴ <https://zoom.us/j/93248645250>