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New York's HERO Act to Impose New Workplace Health and Safety Protections

By Tim Gumaer

[Update - May 7, 2021] On May 5, 2021, Governor Cuomo signed the HERO Act into law. It will take effect on June 4, 2021. As explained below, the New York Department of Labor (DOL) will have until July 4, 2021 to issue enforceable minimum workplace health and safety standards in response to the COVID-19 pandemic. Employers should continue to await publication of these standards and immediately thereafter institute a plan that either adopts or exceeds them.

The New York Health and Essential Rights Act (HERO Act), which requires employers to implement new workplace health and safety protections in response to the COVID-19 pandemic, is on its way to becoming law.

Both houses of the New York Legislature have passed the bill ([S.1034/A.2681-B](#)) and Governor Andrew Cuomo is expected to sign it in the coming weeks. The law will go into effect 30 days after that.

The act will require the New York Department of Labor (DOL) to issue enforceable minimum workplace health and safety standards within 30 days of the governor's signature. These standards will vary based on the particular industry, but will address employee health screening, face coverings, personal protective equipment (PPE), social distancing and cleaning and disinfecting protocols. Employers will have the option to either adopt the DOL's minimum standards or implement their own prevention plans that meet or exceed those minimum standards. They

will also be required to post their plan in the workplace and distribute it to their employees.

Under the law, employees will be permitted to form workplace committees to review and monitor their employer's plan, raise health and safety concerns and participate in on-site government inspections related to compliance. Such workplace safety committee provisions will take effect 180 days after the governor's signature.

Employers who fail to adopt a relevant plan will be subject to a penalty of at least \$50 per day until such a plan is implemented. An employer who fails to comply with its adopted plan can be subject to a fine ranging from \$1,000 to \$10,000.

The law also enables employees to bring suit seeking injunctive relief against their employer for failing to comply with their health and safety standards. A court could enjoin an employer's conduct and award the plaintiff liquidated damages of up to \$20,000, as well as both attorneys' fees and court costs, unless the employer can demonstrate that it made good faith attempts to comply with the law. The act also makes clear that employers cannot retaliate against an employee for reporting violations of the plan or for refusing to work where the employee reasonably believes that the workplace exposes him or her to health and safety risks.

Employers are encouraged to await publication of these standards and immediately thereafter

institute a plan that either adopts them or different standards that meet or exceeds them.

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