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## New York Senate Bill Mandates Safety Standards to Curb COVID-19

By Matthew C. Berger

On March 1, 2021, the New York State Senate passed the NY HERO ACT ([Senate Bill S1034A](#)) (the Act), which, if enacted into law, would require businesses to implement enforceable safety standards to prevent further spread of COVID-19 and other airborne infectious diseases.

The Act would require the State to implement enforceable minimum standards for workplace safety that include protocols on testing, personal protective equipment (PPE), social distancing, hand hygiene, disinfection, and other measures, which business must follow. If enacted, the Act would impose strict penalties on businesses for non-compliance with the implemented protocols.

Specifically, the Act would require the State to create a model airborne infectious disease exposure prevention standard for employers (which ultimately will differ between industries) that will establish minimum requirements to aid in the prevention of airborne infectious diseases in the workplace.<sup>1</sup>

These standards include, but are not limited to, establishing procedures and methods for:

- Employee health screenings;
- Face coverings;
- Required PPE that shall be maintained in a sanitary and reliable condition at the expense of the employer;

- Accessible workplace hand hygiene stations and maintaining healthy hand hygiene (employers will be required to provide adequate break times for workers to use handwashing facilities);
- Regular cleaning and disinfecting of shared equipment and frequently touched surfaces;
- Effective social distancing for employees and consumers/customers;
- Compliance with mandatory or precautionary orders of isolation or quarantine that have been issued to employees;
- Compliance with applicable engineering controls such as proper air flow, exhaust ventilation, or other special design requirements;
- Designation of one or more supervisory employees to enforce compliance with the airborne infectious disease exposure prevention plan and any other federal, state or local guidance related to avoidance of spreading an airborne infectious disease;
- Compliance with any applicable laws, rules, regulations, standards or guidance on notification to employees and relevant state and local agencies of potential exposure to airborne infectious diseases for contact tracing purposes; and

<sup>1</sup> While the Act is ostensibly intended to provide workplace protections for COVID-19, the text of the Act covers other airborne diseases as well. "Airborne infectious disease" is defined in the Act as any infectious viral, bacterial or fungal disease that is transmissible through the air in the form of aerosol particles or droplets and is designated a highly contagious communicable disease by the Commissioner of

Health that presents serious risk of harm to the public health. Accordingly, if the Act is signed into law, employers will likely be required to implement the below standards based on the Commissioner of Health's designation of any current or future airborne diseases, not just COVID-19.

- Verbal review of infectious disease standards, employer policies and employee rights.

The Act requires employers to establish an airborne infectious disease exposure prevention plan, either by adopting the model standard relevant to the employer's industry promulgated by the State or by establishing an alternative plan that meets or exceeds the minimum standards set forth by the State. Employers who are parties to a collective bargaining agreement will need to develop a plan that includes union representatives; employers who are non-unionized will need to create a plan with "input from their employees."

Employers must provide their airborne infectious disease exposure plan to all employees in writing, in English and in the language identified by each employee as their primary language. If a model plan is not available in an employee's primary language, the employer only needs to provide the plan in English. Further, the plan must be posted in a prominent location in the workplace, included in employee handbooks, and provided upon request from employees, independent contractors, union representatives and the New York Commissioner of Public Health.

The Act also prohibits discrimination and retaliation if employees (1) report violations of the Act or an employer's plan to any state, local, or federal government entity, public officer or elected official, (2) report airborne infectious disease exposure concerns, and/or (3) refuse to work if the employee reasonably believes, in good faith, that such work exposes the employee or other workers or the public to an unreasonable risk of exposure to an airborne infectious disease (provided that the employee notified the employer of the employee's concerns regarding the employer's failure to comply with the Act and the employer failed to cure or otherwise address those concerns).

If the Act is signed into law, employers will need to strictly comply with its requirements, as the Act includes significant penalties for non-compliance. Specifically, if an employer is found to have violated the Act, penalties may be imposed consisting of \$50 per day for failure to implement a compliant plan or between \$1,000 and \$10,000 for failure to abide by an adopted plan. If it is determined by the State that

an employer previously violated the Act in the preceding six (6) years, such penalties may increase to \$200 per day for failure to implement a compliant plan or between \$1,000 and \$20,000 for failure to abide by an adopted plan. Further, employees may bring a civil action against an employer and seek injunctive relief, costs, attorneys' fees and liquidated damages. If, however, an action is brought by an employee and a court finds that such action is completely without merit and undertaken to harass the employer, the employer may seek sanctions against the employee or the employee's attorney.

The Assembly is expected to pass the Act and Governor Cuomo has announced his intention to sign it into law should it come to his desk. We will continue to monitor the Act's progress through the legislature and, if enacted into law, the State's promulgation of a model plan and any regulations. In the meantime, employers should continue to follow the State's guidance on reopening and safety procedures for mitigating the spread of COVID-19.

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