



Workplace Safety Committees Defined in Proposed Regulations for New York State's HERO Act

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The New York State Department of Labor (NYSDOL) has released long-awaited [proposed rules](#) for the New York Health and Essential Rights Act (also known as the HERO Act) addressing joint labor-management workplace safety committees comprised of employer and employee designees.

As noted in our [prior alert](#), the NYSDOL already issued regulations related to Section 1 of the HERO Act, which requires that New York employers adopt an airborne infectious disease prevention plan. The plans must be implemented when the New York State Commissioner of Health designates a disease as a highly contagious infectious disease.¹

Section 2 of the HERO Act gives employees the right to be involved in making and reviewing safety procedures and compliance through a joint-labor management workplace safety committee.

Covered Employers

Section 2 of the HERO Act provides that employers with 10 or more employees located in New York State must allow employees to “establish and administer” a safety committee for each worksite. To determine whether an employer has 10 employees, the employer

should count paid and unpaid New York employees and employees on leave who are expected to return. For this purpose, employees include part-time, newly hired, temporary, and seasonal employees and employees who are jointly employed by more than one employer shall be counted by each employer, whether or not they are on the employer’s payroll records.

Employee’s Right to Create a Workplace Safety Committee

There is no requirement for an employer itself to create a safety committee. However, if two or more non-supervisory employees submit a written request to form a committee at a worksite, the employer must allow them to create a safety committee. Employers must respond to the request “with reasonable promptness,” though no time period is specified. The employer also must provide notice to all employees at the worksite within five days of the creation of a safety committee. Only one committee is allowed per worksite; however, separate committees can be established for geographically distinct worksites. Multiple requests can be combined and subsequent requests should be denied and referred to the existing committee.

¹ In September 2021, the Commissioner [designated](#) COVID-19 as an airborne infectious disease under the HERO Act, requiring all employers to implement workplace safety plans. This designation extends through January 15, 2022 and may be extended beyond that date.

Composition of Committees

Committees must have at least three members and a maximum of 12 members (or one-third of the staff at the worksite, whichever is fewer). Worksites with fewer than 10 employees must have exactly three representatives. Committees must be comprised of a ratio of at least two non-supervisory employees for every one employer representative. The committee shall be co-chaired by both a non-supervisory employee and an employer representative. If an employer has more than one worksite, non-supervisory employees may not serve on more than one committee for the same employer.

Selection of Committee Members

Employers may not interfere with the selection of employees to a workplace safety committee. In a nonunion setting, employees will determine how to select committee members (e.g. self-selection, nomination by co-workers, and elections). Where a collective bargaining agreement is in place, the union may select the employee committee members.

Committee Procedures

The proposed rule allows for committees to establish their own rules or bylaws to govern how they operate (e.g. how to select new members, terms of members and the training of new members). If no rules are adopted, the committee may take action by majority vote. Any established rule or bylaw must be consistent with the HERO Act.

Committee Training

Committee members may be paid up to four paid hours of training on safety related issues per calendar year, and up to two hours per quarter for committee meetings. Additional meetings may be held outside of work hours and do not need to be paid. Meetings must be

scheduled in accordance with rules adopted by the committee or, if no relevant rules exist, by agreement of the committee co-chairs.

Employer Obligations

Once a committee is formed, an employer is also obligated to:

- Respond promptly, in writing, to complaints of safety and health concerns or hazards and other violations raised by the committee or one of its members.
- Respond promptly to a request from a workplace safety committee or one of its members for copies of policies or reports that relate to safety or health.
- Provide written or electronic notice to the committee in advance of any visit at the worksite by a governmental agency enforcing safety and health standards.
- Appoint an employer representative to the committee to act as co-chair (may be a non-supervisory employee, an officer, the employer, or other representative).
- Permit members of the workplace safety committee to attend quarterly meetings and annual trainings.

If you receive a request for recognition of a safety committee, you should contact counsel to ensure you respond appropriately.

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