

Back to Business

Practical guidance for an ever-changing world

NY DOL Issues Airborne Infectious Disease Exposure Prevention Standard and Model Plan

Update

On September 6, 2021, Governor Kathy Hochul announced that the New York commissioner of health has designated COVID-19 a highly contagious communicable disease that presents a serious risk of harm to the public health. This designation requires employers to implement their airborne infectious disease exposure prevention plan in accordance with HERO Act standards.

As discussed in our recent [Alert](#), the HERO Act (the Act) requires all private employers in New York to implement an airborne infectious disease exposure prevention plan in accordance with standards issued by the New York Department of Labor (NYDOL). Among the purposes of the Act is to ensure that employers are ready to implement immediate safety measures in the event of a future airborne infectious disease outbreak.

On July 6, 2021, the NYDOL published the [Airborne Infectious Disease Exposure Prevention Standard](#) (Standard) and [Model Airborne Infectious Disease Exposure Prevention Plan](#) (Model Plan) for employers, as required by the Act. In addition to the Model Plan, which will generally apply to office-based businesses, the NYDOL has also posted on the [New York State website](#) template prevention plans for various industries, including retail, construction, manufacturing, food services, private transportation and others.

The Standard

In the Standard, the NYDOL addresses requirements for an employer's prevention plan and notes that the plan should be reviewed and updated whenever necessary in the event of worksite changes that may impact potential occupational exposure to airborne infectious diseases.

The Bottom Line

Employers are required to adopt the Model Plan (or create their own plan that meets or exceeds the Model Plan's standards) by August 5, 2021.

Employers should distribute their plan to employees by September 4, 2021 (i.e., 60 days after the NYDOL's publication of the Standard and Model Plan).

The plan must be posted prominently in the workplace, provided to new employees upon hire, and added to employee handbooks.

It also outlines the exposure controls that should be included in a plan for each worksite, including:

- >> Health screening,
- >> Face coverings,
- >> Physical distancing,
- >> Hand hygiene facilities,
- >> Cleaning and disinfection, and
- >> Personal protective equipment.

The Model Plan

The Model Plan is a fillable form that requires employers to provide specific information regarding the exposure controls that will be implemented during an infectious disease outbreak. These include both the minimum controls set forth in the Standard and more advanced steps, if necessary, to protect employees against disease transmission. The Model Plan also calls for the identification of supervisory employees who will be designated contacts for the execution of the employer's prevention plan, notes the training and information that must be provided to employees during a designated outbreak, and includes a provision regarding employee anti-retaliation protections and the right to report violations.

Next Steps for Employers

The NYDOL has noted in the Standard that it applies to employers with worksites located in New York and “[o]nly an airborne infectious agent or disease designated by the Commissioner of Health as a highly contagious communicable disease that presents a serious risk of harm to the public health.” Given the State's recent lifting of mandatory COVID-19 safety restrictions in most industries, the NYDOL has clarified that while employers are required to adopt prevention plans as required by law, the Commissioner of Health has not currently made a “designation” and therefore plans are not required to be in effect. This means that employers must adopt and distribute their plan to employees but are not required to execute the elements of the plan at this time.



For More Information

Please contact the attorney listed below or the Davis+Gilbert attorney with whom you have regular contact.

Shira Franco

Partner

212 468 4839

sfranco@dglaw.com

