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**HERO'S ACT—  
WE HAVE SOME DETAIL!**


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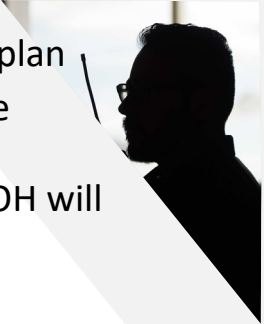
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## HERO'S ACT BASICS

## NY HEROES ACT

- Requires Employers to develop safety plan
  - Airborne infectious diseases in the workplace
  - Commissioner of Labor and NY DOH will develop model standards for each industry
- Requires Employers to develop safety committee which includes employees
- Non-retaliation provisions



## What Did We Get from DOL?

- General Statement About Applicability
- Prevention Standard
- Prevention Plan Models

<https://dol.ny.gov/ny-hero-act>

## EFFECTIVE DATE?

- POLICY MUST BE ADOPTED BY AUGUST 5, 2021
- Copy provided to all full-time, part-time employees, independent contractors, workers for digital platforms, hired through staffing agency, domestic workers **in writing** within 30 days of adoption.

## DO WE HAVE TO HAVE A PLAN NOW OR WHAT?

<https://dol.ny.gov/ny-hero-act>

YES. BUT . . .

“Currently while employers must adopt plans as required by the law, as of the date of this writing no designation has been made and plans are not required to be in effect.”



## WHERE DOES IT APPLY

- “any physical space, including a vehicle, that has been designated as the location where work is performed **over which an employer has the ability to exercise control.**”
- Does not include telecommuting sites unless the employer has control
- Does not apply to employees covered by an applicable OSHA standard
- Does not apply to seasonal flu or similar **unless** designated by Commissioner

## LABOR LAW 218-B REQUIREMENTS

- Step 1
  - Assess the Current risk
- Step 2
  - Create a Plan



## PLAN REQUIREMENTS

- Health Screenings
- Face Coverings
- Physical Distancing
- Handwashing Facilities and Breaks
- Cleaning and Disinfecting
- Physical Distancing (Social Distancing)
- PPE



## LABOR LAW 218-B CONT.

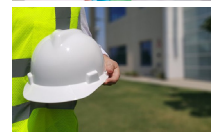
- Need to address mandatory or precautionary orders of isolation or quarantine
- Engineering controls (air flow)
- Compliance and designation of enforcement
- “Verbal” Training



## THE MODEL PLANS

## SPECIFIC INDUSTRY PLANS

- Agriculture
- Construction
- Delivery Services
- Domestic Workers
- Emergency Response
- Food Services
- Manufacturing and Industry
- Personal Services
- Private Education
- Private Transportation
- Retail



## WALK THROUGH THE GENERAL PLAN

- Responsibilities
- Exposure Controls
- Housekeeping
- Infection Response
- Training and Information
- Plan Evaluations
- Anti-Retaliation Provisions



## RESPONSIBILITIES

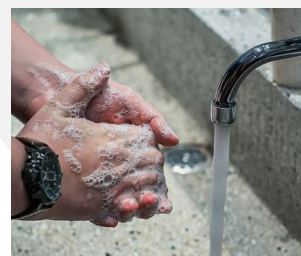
- **Who Does It Apply To?**
- **Who Are the Designated Supervisory Employees?**



## EXPOSURE CONTROLS

### MINIMUM CONTROLS

- General Awareness
- Stay at Home Policy
- Health Screenings
- Face Coverings
- Physical Distancing—checklist for employers
- Hand Hygiene
- Respiratory Etiquette
- Special Accommodations for individuals with risk factors

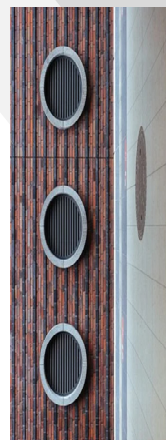




## EXPOSURE CONTROLS

### ADVANCED CONTROLS

- Elimination of Some Activities (Risk Based Analysis)
- Engineering Controls
  - Ventilation
  - Disinfecting Systems
  - Barriers and Partitions
  - Changing Layout of Rooms



## EXPOSURE CONTROLS

### ADVANCED CONTROLS CONT.

- ADMINISTRATIVE CONTROLS
  - Space between workers
  - Signage
  - Cross-training of employees
  - Traffic Flow
  - Additional Breaks
- PERSONAL PROTECTIVE EQUIPMENT
  - *Note: Requires Employer to have such items stored for use!*

## HOUSEKEEPING—I.E. CLEANING

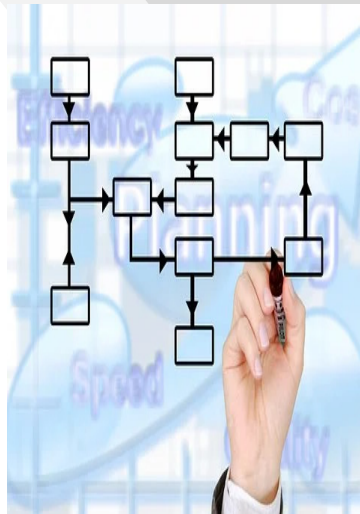
- Disinfection Methods and Schedules
  - *Note: May want to include “or suitable substitute that is available” when designating cleaning products*
- Adjustments to Normal Procedures
- Isolation and Cleaning for Symptomatic
- Liners for trashcans—no squeezing

## INFECTION RESPONSE



## TRAINING AND INFORMATION DURING A DESIGNATED OUTBREAK

- Who Conducts the Training?
- What the Training Will Cover
- Rules for the Training



## DOCUMENTATION OF REVISIONS OF THE PLAN

<https://dol.ny.gov/system/files/documents/2021/07/model-airborne-infectious-disease-exposure-prevention-plan-p765.pdf>

- Date
- Participants
- Major Changes
- Approved By

## ANTI-RETALIATION PROVISION

- No retaliation for making a complaint
- Must maintain complaints for 2 years after the conclusion of the high risk event
- Must have a way for employees to report violations during non-work hours

## COMMISSIONER'S MODEL PLAN V. PLAN DEVELOPED BY THE EMPLOYER

- Employer Plan must provide at least as many protections as the Commissioner's Plan
- Must Include collective bargaining representative input or "meaningful participation" of Employees



## “VERBAL REVIEW”

- Employer policies, employee rights, and exposure prevention plan
- Can be in person or via audio or video conference (must consider safety of employees)
- *No requirement for when or how often except at the start of an outbreak—you may want to address this in the plan*

## WHAT ELSE?

- Provide a Copy to Employees and New Hires
- Post it and add to the Employee Handbook

## ENFORCEMENT?



- Fines (lowered with amendment)
- Private Right of Action- Violation that “creates a substantial probability that death or serious physical harm could result” (damages plus attorneys’ fees and liquidated damages)

## IMPLEMENTATION OF PLAN

**When a highly contagious communicable disease is designated .**

- Review plan and update if necessary
- Finalize and implement the plan
- Provide the “Verbal Review” required
- Provide each required person a copy of the plan
- Post the plan



## IMPLEMENTATION CONTINUED

- Assign enforcement responsibility for the plan
- Monitor for exposure
- Check for updates from appropriate agencies
- Designate one or more supervisory employees to enforce compliance



## WORKPLACE SAFETY COMMITTEE

NO NEW GUIDANCE YET—IMPLEMENTATION  
DATE OF NOVEMBER 5, 2021

## 27-D WORKPLACE SAFETY COMMITTEE

- At least 2/3 non-supervisory employees
- Selected by non-supervisory employees
- Co-chaired by employer and non-supervisor designees
- May need separate committees at separate sites

## 27-D POWERS OF THE WORKPLACE SAFETY COMMITTEE

- Raise concerns
- Review any policy required by this law OR Worker's Comp. law **RELATED TO HEALTH AND SAFETY OF EMPLOYEES**
- Participate in site visits by government official (OSHA)
- Review any report by the employer



## 27-D SAFETY COMMITTEE-WHAT ELSE?

- Regularly schedule meeting during work hours at least once a quarter—LIMITED TO 2 HOURS
- Permit safety committee designees to attend training without loss of pay regarding safety committees—LIMITED TO 4 HOURS
- Non-retaliation



## SOME THOUGHTS

- Look at Your Re-Opening Plan
- Your Policy May Need Versions, Revisions, or Special Provisions
- Plan for the Committee Early
- Put the policy on a schedule for annual review and training

## YOUR QUESTIONS

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