PHILLIPS LYTLE LLP CLIENT ALERT
LABOR & EMPLOYMENT
JULY 2021

NY HERO ACT Update: Department of Labor Issues Industry-Specific Model Airborne Disease Prevention Plans

As we reported in an earlier alert, the New York Health and Essential Rights Act (NY HERO Act) required the New York State Department of Labor (DOL) to issue industry-specific model airborne disease prevention plans for employers to adopt. On July 7, 2021, the DOL issued a generally applicable prevention standard, along with model plans for the following industries:

- Agriculture;
- Construction;
- Delivery Services;
- Domestic Workers;
- Emergency Response;
- Food Services;
- Manufacturing and Industrial;
- Personal Services;
- Private Education;
- Private Transportation (by Automobile); and
- Retail.

Now that the model plans have been issued, employers must meet the following statutory deadlines:

- **August 6, 2021**: Adopt the model plan applicable to their industry or establish their own alternative plan that meets or exceeds the DOL standards.
- **September 5, 2021**: Provide a copy of their adopted model plan or their alternative plan to their employees.

The NY HERO Act also requires employers to do the following regarding the distribution of their plans to employees:

(1) Conduct a verbal review with employees of the employer's policies, employee rights under the law regarding airborne disease prevention plans, and the employer's prevention plan;
(2) Post their plan in the workplace; and
(3) Include their plan in their employee handbook.

While employers must adopt and distribute a prevention plan to their employees within the above deadlines, **there is currently no requirement that employers activate their plans when adopted**. Prevention plans and the obligation to comply with them will take effect only when an airborne infectious disease is designated by the New York State Commissioner of Health as a highly contagious communicable disease that presents a serious risk of harm to the public health. **At this time, the Commissioner of Health has not designated any airborne infectious disease (including COVID-19) as posing a serious risk of harm to the public.** Therefore, employers also will not have to activate their plans for seasonal or endemic infectious diseases, such as the seasonal flu, unless the Commissioner of Health designates such a disease as presenting a serious risk of harm to the public health.

Employers with at least 10 employees should also remember that under the NY HERO Act, as of November 1, 2021, they will be required to permit their employees to establish and administer joint labor-management workplace safety committees comprised of employee and employer representatives. The DOL has not yet issued guidance about these committees.

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The committees will have the right to:

- Raise workplace health and safety concerns;
- Review employer policies related to workplace health and safety;
- Participate in site visits by government agencies related to health and safety; and
- Attend committee meetings and training related to workplace health and safety.

Employers should review their obligations under the NY HERO Act and work with their labor and employment counsel to ensure compliance with its provisions by the required statutory deadlines.

Additional Assistance

For further assistance, please contact any of the attorneys on our Labor & Employment Practice Team or the Phillips Lytle attorney with whom you have a relationship. ■

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