

# Locke Lord QuickStudy: The Time Has Now Arrived: New York Designates COVID-19 as an Airborne Infectious Disease Under the HERO Act, Requiring Employers to Take Immediate Action to Implement Their Mandated Workplace Safety Plans

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The New York Health and Essential Rights Act (commonly referred to as the “HERO Act”), which was enacted in May 2021, requires all New York employers to adopt a workplace safety plan for all airborne infectious diseases and to put the plan into effect *if and when* an airborne infection disease emergency is declared by the New York State Department of Health. The law also imposes liabilities and penalties for non-compliance. As directed under the HERO Act, the New York State Department of Labor developed for employers an Airborne Infectious Disease Exposure Prevention Standard (the “Standard”). The Standard includes the minimum requirements to be included in employers’ workplace safety plans, outlines workers’ rights under the law, and identifies minimum exposure controls. In consultation with the Department of Health, the New York Labor Department recently released a Model Airborne Infectious Disease Exposure Prevention Plan (the “Model Plan”) and various industry-specific model plans for employers to consider and/or adopt. The Standard, Model Plan, and industry-specific plans are available for review on the Labor Department’s website.

New York employers were required by August 5, 2021 to either adopt one of the model plans or develop an alternative plan that meets or exceeds the requirements set forth in the Standard. Employers were also required to disseminate a copy of their adopted safety plan to their workforce, including all full and part-time employees and independent contractors, post it in a visible and prominent location within each worksite, and include it in an employee handbook. Under the HERO Act, employers are required to implement their safety plans only when the New York State Commissioner of Health designates an airborne infectious disease as a “highly contagious communicable disease that presents a serious risk of harm to the public.”

**On September 6, 2021, Governor Kathy Hochul directed New York’s Commissioner of Health to designate COVID-19 as an airborne infectious disease under the HERO Act. As a result, all New York employers must take urgent action to implement their previously created or adopted workplace safety plans.**

If an employer in New York has not yet created or adopted their plan, it should be drafted and disseminated immediately in accordance with the HERO Act.

At the time of this update, the State Labor Department’s website reads that it will be “sharing more details about

this law in the near future.”

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