

JacksonLewis

NY HERO Act

What Manufacturers Need to Know

Robert J. Guidotti

Jackson Lewis P.C. [White Plains]

Robert.Guidotti@jacksonlewis.com

NY Health and Essential Rights (“HERO”) Act

- Signed into law by Governor Cuomo on May 5, 2021, subject to certain “technical changes,” which were then put in place via amendment on June 11, 2021.
- **Purpose:** To create enforceable health and safety standards that prevent occupational exposure to airborne infectious diseases.
- Department of Labor has issued templates and guidance, though more guidance is expected.

NY HERO Act

- The Act has **two components**:
 - **Section 1, NYLL Section 218-b**
 - Addresses the prevention of occupational exposure to airborne infectious diseases through health and safety requirements.
 - **Section 2, NYLL Section 27-d**
 - Gives employees the opportunity to create a joint employer and employee committee to address workplace health and safety issues.

Section 1, NYLL Section 218-b

- Employers have through **August 5, 2021, establish an airborne infectious disease exposure prevention plan.**
- **Employers can either . . .**
 - **Adopt the model industry-specific plan promulgated by the DOL or**
 - **Establish an alternative plan that equals or exceeds the model standard.**
- **If an employer chooses to develop an alternative plan,** it must develop the plan pursuant to an agreement with the collective bargaining representative, if any, **or** with the “meaningful participation of employees where there is no collective bargaining agreement.”
- **Thereafter, employers have until September 4, 2021,** to provide all employees with their plan.

Section 1, NYLL Section 218-b

- **Notice Requirements:**
 - Employers must provide **new employees** a copy upon their hire, or within **15 days after reopening** following a period of closure.
 - Plan must also be **included in the employee handbook**.
 - **Post** in a visible and prominent location within the worksite.

Adoption, Not Implementation

- **Adoption** of the plan **does not mean implementation** of the plan.
- According to the DOL, **employers do NOT need to implement their plans until an airborne infectious disease is designated by the NYS Commissioner of Health** as a highly contagious communicable disease that presents a serious risk of harm to the public health.
- **At this point, no such designation has been made.**

Section 2, NYLL Section 27-d

- **Effective November 1, 2021.**
- **Permits employees to establish and administer a joint labor-management workplace safety committee.**
- **At least two-thirds of members must be non-supervisory employees.**
 - Selected by other non-supervisory employees (no employer interference) **OR**
 - If unionized, by the collective bargaining representative
 - *Not intended to modify any CBA; representative may waive this Section.*
- **Committee must be co-chaired by one employer representative and one employee representative.**
- **Limits the number of safety committees to one per worksite.**

Section 2, NYLL Section 27-d

Duties and responsibilities of committees are limited to health and safety issues *only*:

- Raise health and safety concerns, hazards, complaints and violations to which the employer must respond
- Review workplace safety policies before implementation
- Participate in on-site visits by a governmental entity enforcing safety and health standards
- Review any report filed by the employer related to the health and safety of the workplace
- Regularly meet during work hours once per quarter – capped at 2 hours and
- Attend training without suffering a loss of pay – capped at 4 hours

DOL Manufacturing Guidance

- **Minimum Controls During an Outbreak:**
 - ***General Awareness:***
 - Maintain physical distancing
 - Exercise coughing/sneezing etiquette
 - Wear face coverings, gloves, and PPE, as appropriate
 - Individuals limit what they touch
 - Stop social etiquette behaviors such as hugging and hand shaking
 - Wash hands properly and often

Minimum Controls

- ***“Stay at Home Policy”***

- If an employee develops symptoms of the infectious disease, employee should **not** be in the workplace
- Should inform the designated contact
- Follow NYS Department of Health and CDC guidance regarding medical care

- ***Health Screening***

- Screen employees for symptoms at the beginning of their shifts
- Employees should self-monitor throughout the shift and report any changes
- An employee showing signs or symptoms should be removed from the workplace

Minimum Controls

- ***Face Coverings***

- Employees will wear face coverings throughout the workday to the greatest extent possible
- Must cover the nose and mouth
- Face covering must not create a hazard, *i.e.*, have features that could get caught in machinery or cause severe fogging of eyewear

- ***Physical Distancing***

- Avoid unnecessary gatherings and maintain a distance of at least six feet (or as recommended by NYSDOH/CDC)

Minimum Controls

- ***Hand Hygiene and Cleaning/Disinfection Plan***
- ***Special Accommodations for Individuals with Added Risk Factors***
 - Have employees inform HR or their supervisor if they fall within an at-risk group and need an accommodation.

DOL Manufacturing Guidance

- Employers may need to ***determine whether Advanced Controls are necessary.***
- **Advanced Controls**
 - ***Elimination:*** temporary suspension or elimination of risky activities
 - ***Engineering Controls:*** mechanical ventilation; general ventilation; fans; air purifiers; natural ventilation
 - ***Administrative Controls:*** policies and work rules to prevent exposure
 - Increase space; slow production speed to accommodate fewer workers; disinfecting procedures; prioritize essential job functions; limit the use of shared work stations; clearly designate entrance and exits; provide additional breaks for handwashing and cleaning

Retaliation Protections and Reporting Violations

- Employers **cannot** discriminate or act adversely against an employee exercising their rights under this plan.
- This includes reporting conduct the employee reasonably believes in good faith violates the plan or based on their reasonable belief of exposure based on their work.

Employer Right to Cure

- Require employees to **provide the employer 30 days' notice and an opportunity to cure a violation before bringing an action, *unless* the employee alleges with particularity that the employer demonstrated an unwillingness to cure in bad faith.**
- Allow only an **award of costs and reasonable attorneys' fees to the employer if the court deems the employee's lawsuit was frivolous.**

Questions?

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Thank **you.**