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New York Lifts Most COVID-19 Requirements, Prepares to Implement New Employer Obligations

June 24, 2021

On June 15, 2021, Gov. Andrew Cuomo lifted New York's COVID-19 restrictions for employers across numerous industries, including businesses in office and retail settings. New York employers are no longer required to, among other things, conduct daily health screenings, enforce capacity restrictions, abide by social distancing protocols or manage employee contact tracing. The requirements under the New York Forward industry reopening guidance are now completely optional. For masks, New York implemented the federal Centers for Disease Control guidance, which states that unvaccinated individuals continue to be responsible for wearing a mask in public. Per New York's implementation guidance, businesses may rely upon self-reporting of vaccination status.

Employer obligations under NY HERO Act

On June 11, 2021, Cuomo signed legislation to amend the New York Health and Essential Rights (NY HERO) Act, which was enacted on May 5, 2021. The amended act will take effect July 5, 2021, and will require employers to implement workplace health and safety protections against any airborne and significantly infectious disease. The act will roll out employer obligations in two steps.

Step 1 of NY HERO Act rollout: Implementation of infectious disease prevention plan

For the first step, employers will be required to adopt and implement an infectious disease exposure prevention (DEP) plan for all New York work sites. The DEP plan must meet the minimum standards set by New York State Department of Labor (NY DOL), which was given more time to develop these standards through the amended act. NY DOL's standard will establish requirements on procedures and methods similar to those previously mandated in the COVID era, such as employee health screenings, face coverings, personal protective equipment, social distancing, cleaning and disinfecting workstations, and supervisory employee responsibilities for overseeing compliance. Employers can either adopt NY DOL's model DEP plan or create their own plan that meets the NY DOL's standards, provided that employees are permitted "meaningful participation" for all aspects of a customized employer plan.

Once adopted, the DEP plan must be provided to all employees upon reopening their work site and to all new hires. The plan must be posted in a visible and prominent location at each work site, and included in the employer's employee handbook (if one exists). Under the amended act, after the NY DOL creates its model standards, employers must adopt a DEP plan within 30 days and implement it within 60 days.

Step 2 of NY HERO Act rollout: Workplace safety committees

Effective November 1, 2021, New York employers with at least 10 employees will be required to permit employees to establish and administer a "joint labor-management workplace safety committee" of employee and employer designees, with at least two-thirds of the latter being nonsupervisory employees.

The workplace safety committee will be authorized to raise health and safety concerns and review workplace safety policies. The committee may schedule a regular meeting during work hours of no more than two hours at least once per quarter, and employers must allow designees to attend a training of no more than four hours covering the function of the committee, rights under the act, and an introduction to occupational safety and health.

Action items for employers

While New York employers can discontinue the additional health and safety protocols established during the

COVID era, they should be prepared to implement similar protocols when the NY DOL's safety standards are released, including the designation of a supervisory employee to manage compliance. Employers should also plan for updates to their new hire practices and employee handbook to meet the new act obligations. Although the act's second step does not take effect until later this year, employers should start making logistical arrangements for workplace safety committees at their work sites to minimize workplace disruptions.

We are closely tracking NY HERO Act developments and will publish further guidance when additional information becomes available. If you have any questions related to the act, please reach out to a member of the Cooley employment team.

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