

New York Updates Model Disease Exposure Prevention Plan

September 29, 2021

We described in a [previous client alert](#) the requirements set forth in the New York Health and Essential Rights (NY HERO) Act, including the requirement for employers to adopt and implement an infectious disease exposure prevention (DEP) plan for all New York worksites. Many employers, including those in office settings, adopted the New York State Department of Labor’s (NY DOL) model DEP plan. On September 6, 2021, New York State’s commissioner of health designated COVID-19 as a disease that immediately required employers with worksites in the state to activate their DEP plans. Upon activation of the NY HERO Act’s requirements for COVID-19, the shortcomings of the model DEP plan became apparent to employers, including conflicting guidance regarding mask-wearing.

On September 23, the NY DOL attempted to clarify some of the model DEP plan’s provisions in the context of COVID-19. One of the most significant changes is the incorporation of vaccination status in the mask-wearing guidance matrix. The revised model DEP plan can be found [on the NY DOL’s website](#). While some ambiguity exists in the revised model DEP plan, we believe that the revisions remove all mask requirements for vaccinated employees in the workplace. A summary of our interpretation of the revised model DEP plan is as follows:

| Workplace | Employee | Masks required? | Authority |
|--------------------|--------------|--------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Fully vaccinated | Vaccinated | No | Model DEP plan |
| Not all vaccinated | Vaccinated | Recommended , but not required | The Model DEP plan directs employers to comply with guidance published by either the Centers for Disease Control and Prevention (CDC) or the New York State Department of Health (NYS DOH). NYS DOH guidance does not require masks at work for vaccinated employees. |
| Not all vaccinated | Unvaccinated | Yes | NYS DOH rule and New York City Department of Health Rule requiring unvaccinated employee masking |

Given the new clarity regarding mask guidance for employer worksites in New York, we recommend that employers replace the original model DEP plan with the revised model DEP unless they elect to implement a plan more stringent than what is required by the NY HERO Act.

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.

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. When advising companies, our attorney-client relationship is with the company, not with any individual. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our AI Principles, may be considered Attorney Advertising and is subject to our [legal notices](#).

Key Contacts

| | |
|--------------------------------|----------------------------------------------------------|
| Ann Bevitt London | abevitt@cooley.com +44 (0) 20 7556 4264 |
| Wendy Brenner Palo Alto | brennerwj@cooley.com +1 650 843 5371 |
| Leslie Cancel San Francisco | lcancel@cooley.com +1 415 693 2175 |
| Helenanne Connolly Reston | hconnolly@cooley.com +1 703 456 8685 |
| Joseph Lockinger New York | jlockinger@cooley.com +1 212 479 6736 |
| Joshua Mates San Francisco | jmates@cooley.com +1 415 693 2084 |
| Gerard O'Shea New York | goshea@cooley.com +1 212 479 6704 |
| Miriam Petrillo Chicago | mpetrillo@cooley.com +1 312 881 6612 |

| | |
|---------------------------------|------------------------------------------|
| Ryan Vann Chicago | rhvann@cooley.com +1 312 881 6640 |
| Summer Wynn San Diego | swynn@cooley.com +1 858 550 6030 |
| Steven A. Zuckerman New York | szuckerman@cooley.com +1 212 479 6647 |

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.