

## LEGAL ALERT

May 9, 2021

### **NEW YORK HEALTH AND ESSENTIAL RIGHTS ACT (NY HERO ACT)**

On May 5, 2021, Governor Andrew Cuomo signed into law the New York Health and Essential Rights Act (NY HERO Act), which is intended to protect workers from airborne infectious diseases in the workplace. The law will require employers to comply with minimum standards for workplace safety, which are to be developed, implemented and enforced by the NYS Department of Labor (NYSDOL) and the New York Department of Health (NYSDOH). These standards, once implemented, will address testing, PPE, social distancing, hand hygiene, disinfection, and engineering controls.

The standards will be “industry-specific,” and the NYSDOL/NYSDOH will consider different levels of potential exposure and the prevalence of a disease in particular industries when crafting the new standards.

The law also will permit employers to correct potential violations of these standards before being held accountable. The legislature will make technical corrections to the NY HERO Act before it takes effect later this year.

Among other things, the NY HERO Act requires companies with at least ten employees to allow workers to form special oversight committees that will be tasked with monitoring the implementation and maintenance of the newly developed standards. The Act also establishes worker protections against retaliation for taking advantage of these protections. Businesses may be fined for each day that they fail to adopt a plan to prevent the spread of infectious diseases among their employees.

Some business groups have been opposed to the new law and claim that lawmakers ignored the effect it will have on small employers. The bill may have an outsized impact on small businesses that have already been suffering because of the pandemic and

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resulting economic conditions of closures, downturns in business and other conditions. The Act is supported by labor unions and other groups representing employees and immigrants.

The steps that employers will need to take to be in compliance with the new law will become more clear once the NYSDOL and the NYSDOH issue minimum standards for each industry.

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