

Hedge Up: A Heads-Up on Employment Issues Confronting the Investment Management Industry

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Be a HERO: New York Firms Scramble to Comply with N.Y. HERO Act

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Key Points

- Under New York's Health and Essential Rights (HERO) Act, New York-based firms must maintain an airborne infectious disease exposure prevention plan ("Prevention Plan") that meets or exceeds the minimum standards required by the New York State Department of Labor (NYSDOL).
- Firms must provide their Prevention Plans to employees by September 4, 2021. Employers also must post their Prevention Plans in a prominent location at their New York office(s) and include it in their employee handbook (if applicable).
- We are available to discuss the HERO Act and assist clients in complying therewith, including helping prepare the required Prevention Plan.

Background

Former New York Governor Andrew Cuomo signed the HERO Act into law on May 5, 2021. The law requires private employers to, *inter alia*, adopt a Prevention Plan, which firms must activate whenever the New York State Commissioner of Health determines that a highly contagious and communicable airborne disease presents a serious risk of harm to public health. **As of the date of this article, no such designation exists.** The Prevention Plan must cover topics such as health screenings, face coverings, cleaning and disinfecting, physical distancing and hand hygiene. The deadline for establishing Prevention Plans was August 5, 2021, so firms that have not yet done so should craft their plans as soon as possible.

Under the HERO Act, New York firms with at least 10 employees must allow their employees to establish a joint labor-management workplace safety committee ("Safety Committee") by November 1, 2021 (unless a firm already has a committee that meets the law's requirements). The Safety Committee would be authorized to raise health and safety issues to firm management, review and provide feedback on health and safety policies, participate in site visits by government entities, and review employer health and safety reports. The Safety Committee would be authorized to meet at least once per quarter during regular working hours.

The text of the HERO Act can be found [here](#).

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Airborne Infectious Disease Exposure Prevention Standard and Plans

Last month, the NYSDOL published the Airborne Infectious Disease Exposure Prevention Standard (“NYSDOL Standard”) and several Model Airborne Infection Disease Exposure Prevention Plans.

The NYSDOL Standard details the minimum requirements for Prevention Plans, additional steps firms must take in the event of an outbreak of an applicable infectious disease and the requirements imposed by the HERO Act’s anti-retaliation provisions. The NYSDOL Standard can be found [here](#).

The Model Airborne Infectious Disease Exposure Prevention Plans include a general model plan and certain industry-specific model plans. As of the date of this article, there is no model industry-specific plan for the financial industry, so the applicable model for most investment managers is the general model plan (available [here](#)). Firms either must adopt the general model plan as their Prevention Plan or create an alternative plan that meets or exceeds the NYSDOL Standard. If firms create their own plan, they must do so with the “meaningful participation” of firm employees (or with the employees’ collective bargaining representative, if applicable).

Firms must provide their Prevention Plan to workers (including part-time workers and independent contractors) by September 4, 2021. According to the statute, the plan must be provided to employees in English and in the primary language identified by each of their New York employees, to the extent translations have been made available by the NYSDOL. Employers also must post their Prevention Plan in a visible and prominent location in their New York office(s), include their plan in their employee handbook (if they have one) and provide copies of their plan to any new employees at the time of hire.

Next Steps

New York-based firms should familiarize themselves with the NYSDOL Standard and ensure their compliance. For some firms, this may include the formation of a Safety Committee, though we are awaiting further potential guidance on this aspect of the law.

Firms that have not yet adopted their Prevention Plan should do so as soon as possible. (Firms adopting their own plan, rather than using the NYSDOL model plan, should ensure they obtain the participation of firm employees in crafting the document). Firms then should provide their Prevention Plan to employees by September 4, 2021. Firms also should provide their Prevention Plan to new employees upon hiring, post the plan in their New York office(s) and include the plan in their employee handbook (if they have one).

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