



## **The Health and Essential Rights (Hero) Act. Signed by Gov. Cuomo on May 5, 2021. Applies to non-governmental businesses and organizations.**

### **Key components.**

218-b “prevention of occupational exposure to an airborne infectious disease”

The term infectious disease - “any infectious viral, bacterial or fungal disease that is transmissible through the air in the form of aerosol particles or droplets and is designated as a highly contagious communicable disease by the commissioner of health that presents a serious risk of harm to the public health”.

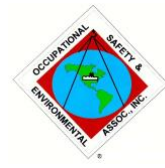
Employer - Any person providing labor or services for a private entity or business within the state. Includes independent contractors, staffing agencies, contractors, or subcontractors, individuals delivering goods, transport of people.

The worksite is any physical space including vehicles, where work is performed.

Supervisor - “Any person who has the authority to direct and control the work of others.....to take corrective action regarding the violation of the law”.

More to come. DOL to publish industry-specific model airborne infectious disease exposure prevention standards. The standard must address:

- Health screenings
- Face coverings
- PPE for eyes, face, head, and extremities
- Protective clothing
- Respiratory devices
- Protective shields and barriers
- Accessible workplace hand hygiene stations
- Regular cleaning and disinfecting, shared equipment, surfaces etc.
- Social distancing
- Compliance isolation and quarantine orders
- Engineering controls, such as airflow and exhaust
- Designation of a supervisory employee to enforce compliance
- Notification of potential exposure to airborne infectious disease at the workplace
- Verbal review of the infectious disease standard, policies and employee rights
- Anti-retaliation protections. This includes the right to refuse work based on a good faith belief of an unreasonable risk of exposure to an infectious disease due to the existence of working conditions that are inconsistent with laws or other governmental orders, despite notice to the employer that the employer failed to address.



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Penalties - \$50 per day for not adopting an airborne infectious disease exposure plan, \$1,000-10,000 for failure to abide by an adopted plan. Penalties can elevate to \$200 per day and to \$1,000-20,000 for repeat violations.

### **Safety Committee.**

Section 27-d of the NY Labor Law permits employees to organize workplace safety committees (employers with a least 10 employees). This group to recognize and deal with any safety and health issues. This is not limited to airborne infectious disease prevention. Note that the workplace safety committee provisions are in a separate statutory section of the requirements.

### **Committee structure.**

Include both employer and employee members. At least 2/3rds non-supervisory employees. One each employee/employer co-chairs of the committee. At least quarterly meetings must be conducted.

Committee may do the following:

- Raise safety and health concerns-employer must respond
- Review any policy out in place required by the NY Labor Law or the Workers' Compensation Law and provide feedback
- Review the adoption of any policy in the workplace in response to any health or safety law, ordinance, rule, regulation, executive order, or other related directive
- Participate in any site visit by any governmental entity responsible for enforcing safety and health standards
- Review any report filed by the employer related to the health and safety of the workplace

### **Takes effect.**

Could take effect in as little as 30 days which would be June 4, 2021. However, the Dept. of Labor must set minimum standards and issue the industry-specific models before compliance is required to adopt these plans.

The workplace safety committee provisions are not scheduled to take effect for 6 months, November 1, 2021.

### **Commentary**

It would appear that the Commissioner of Health designation as to what are Highly Infectious Diseases will be critical. Plans will be dictated by the NY Dept. of Labor, but will no doubt mirror current CDC Guidelines follow under the current COVID-19 pandemic.

The safety committee portion is separate and should be planned for compliance. There is concern that this requirement essentially imposes an on-going "union-like" bargaining obligation. Unanswered is whether a single employee's request is sufficient to mandate the creation of a safety committee.