

EMPLOYERS MUST PROMPTLY IMPLEMENT THEIR WORKPLACE SAFETY PLANS UNDER THE NEW YORK HERO ACT, KD Law Alert, Oct. 11, 2021

The New York Commissioner of Health recently extended the designation of COVID-19 as a “highly contagious communicable disease that presents a serious risk of harm to the public health.” As a result of this extension, employers must continue to implement their workplace safety plans under the New York HERO Act through October 31, 2021.

As indicated in previous KD Alerts, the Commissioner of Health’s initial designation required employers to take prompt action to implement their workplace safety plans. In implementing a workplace safety plan, employers may choose to utilize a Model Airborne Infectious Disease Exposure Plan (the “Model Plan”) or one of the various industry specific Model Plans developed by the New York State Department of Labor (“NYSDOL”).

It is important to note that the NYSDOL recently revised the Model Plans to clarify the face covering requirement under the Plan’s “Minimum Controls” section. Specifically, as set forth in further detail below, the face covering requirement will depend on the nature of the employer’s workplace:

- **Workplaces Where All Individuals on the Premises Are Fully Vaccinated:** “Appropriate face coverings are recommended, but not required.”
- **All Other Workplaces:** Employees are required to wear appropriate face coverings “in accordance with guidance from State Department of Health or the Centers for Disease Control and Prevention, as applicable.”

Lastly, as was also discussed in a previous KD Alert, employers with 10 or more employees should be mindful of the NY HERO Act’s November 1, 2021 deadline in which they “shall permit employees to establish a joint-labor management workplace safety committee.” The NYSDOL has indicated that regulations regarding workplace safety committees are impending.

KD IS HERE TO HELP

For employers who have yet to implement their workplace safety plans, it is imperative that you take prompt action to activate your plans. In addition, the requirements under the HERO Act, as well as federal, state, and local guidance in response to the COVID-19 pandemic, are constantly evolving. As such, the attorneys at Kaufman Dolowich & Voluck continue to closely monitor any relevant updates. Should you need any assistance implementing your workplace safety plan or have any questions regarding the enforcement of same, please contact Keith Gutstein (KGutstein@kaufmandolowich.com), Jennifer E. Sherven (JSherven@kaufmandolowich.com), or Edward H. Grimmett (EGrimmett@kaufmandolowich.com) by email.