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The NY HERO Act

The 2021 Legislative Session has come to a close in Albany. Among some of the high-profile state bills enacted into law is S.1034-B / A.2681-B, known as the New York Health and Essential Rights Act, or NY HERO Act, sponsored by Senator Gianaris (Queens) and Assemblywoman Reyes (Bronx) to establish standards for workplace safety protocols regarding airborne infectious disease prevention. The law also levies fines against companies that fail to adopt such standards.

MACNY, on behalf of many of our members, opposed this legislation - not based on its intention but on the regulatory burden it could cause for our small to medium-sized businesses. We expressed our concerns with legislators and joined other statewide groups to seek amendments to the original bill, once we knew it would likely pass. Many of you even joined our efforts and wrote Governor Cuomo to express your concerns. In May, Governor Cuomo signed the bill into law with an agreement with the state legislature on amendments to create a clearer timeline for employers and a “cure period” for correcting any future violations.

The NY HERO Act is a complex piece of legislation that our members continue to have questions on. Therefore, I wanted to provide you with an overview of the responsibilities New York State employers will have going forward.

Model Airborne Infectious Disease Exposure Prevention Standards

The Department of Labor and the Department of Health will create model airborne infectious disease exposure prevention standards for all worksites, differentiated by industry. Employers must either adopt these model standards or develop their own that follow a minimum

set of requirements set forth by the DOL. Such standards will include employee health screenings, face coverings, personal protective equipment, hygiene stations, worksite space and equipment cleaning, social distancing, air circulation, employee quarantine guidelines, a verbal plan review, and compliance. Employers must provide a written plan to their employees.

If an employer does not adopt an airborne infectious disease exposure prevention plan, the company could face fines of no less than \$50 per day. In the case of a violation to an adopted plan, employers could face stiff fines of \$1,000 to \$10,000 for each violation. Under the legislation, an employee also has the power to bring a lawsuit against an employer. However, if an employee alleges a violation, he/she must notify the employer and allow for a 30-day period to correct the violation. If an employer cures the violation during the 30-day period, an employee may not file a civil action.

Workplace Health and Safety Committees

The new law allows for employees to create joint labor-management workplace safety committees. These committees will be comprised of employee and employer designees with at least two-thirds non-supervisory employees. Members of the committee will be selected by non-supervisory employees and perform a wide variety of tasks including, but not limited to, raising health and safety concerns, reviewing health and safety plans, and participating in site visits by governmental entities.

Effective Dates

- The New York State Department of Labor has 60 days from enactment of this legislation to develop model standards – by July 4, 2021.
- Employers will then have 30 days to adopt the standards or alternative standards (August 3, 2021).
- Employers must notify employees 30 days after the adoption of standards (September 2, 2021).
- Workplace safety committees will need to become effective in 180 days (November 1, 2021).

If you have any questions, please contact me at tiffanylatinog@macny.org.