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## MEMORANDUM

TO: Retail Council of New York State

FROM: Elena DeFio Kean, Esq.  
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RE: New York State Department of Labor Guidance Relative to the NYS HERO Act

DATE: July 9, 2021

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As you may be aware, the provisions of the New York State HERO Act (“NYS HERO Act”) became effective on July 4, 2021 as it relates to the implementation of an airborne infectious disease exposure prevention plan. To that end, the New York State Department of Labor (“NYS DOL”) has released guidance and model plans. (NYS HERO Act, Protecting Workers from Airborne Disease, <https://dol.ny.gov/ny-hero-act>).

The NYS DOL also created industry-specific plans applicable to agriculture, construction, delivery services, domestic workers, emergency response, food service, manufacturing and industry, personal services, private education, private transportation and retail. The model plan released by the NYS DOL applicable to the retail industry can be found at <https://dol.ny.gov/system/files/documents/2021/07/retail-exposure-prevention-plan-p765k.pdf>.

Pursuant to the law, employers must adopt a plan within the next 30 days. However, notwithstanding this obligation, the NYS DOL webpage provides the following statement:

**Currently, while employers must adopt plans as required by the law, as of the date of this writing no designation has been made and plans are not required to be in effect.**

(NYS HERO Act, Protecting Workers from Airborne Disease, <https://dol.ny.gov/ny-hero-act>)

This is consistent with the fact that the State has lifted the state of emergency; however, it does not eliminate an employer’s obligation to have a plan. Therefore, the plan need not be utilized at this time, but rather created for future use.

In addition to the model plans, the NYS DOL issued an Airborne Infectious Disease Exposure Prevention Standard, establishing employer obligations relative to adopting and implementing an exposure prevention plan. The model standard can be found at <https://dol.ny.gov/system/files/documents/2021/07/p764-the-airborne-infectious-disease-exposure-prevention-standard-v4.pdf>

Notably, the standard states:

The provisions of this section shall not be interpreted as relieving any employer from the requirements of any other state or federal guidance or requirements related to preventing the spread of an airborne infectious agent or disease to employees and third parties such as customers, contractors, and members of the public within the workplace.

(Id.)

Thus, employers must continue to comply with any additional state or federal guidance or requirements, to the extent applicable and in effect.

Hinman Straub will continue to monitor both the NYS DOL guidance relative to the NYS HERO Act and will provide updates as they are available. However, if you have any questions in the interim, or require assistance in the interpretation and implementation of this law and the requirements, please do not hesitate to contact us.