

# NEW YORK STATE HERO ACT - PREVENTION PLANS - FAQs

*Updated Sept. 10, 2021*

## Introduction

*The New York Health and Essential Rights Act (HERO Act) took effect on July 4, 2021. It has two major parts, one of which requires employers to adopt plans to protect their employees and the public should another highly contagious disease break out. Below are some questions many of you may have about the plan requirement. The other part will be the subject of a separate FAQ page later in the year.*

1. I only have a couple of employees. Do I have to do this?
2. I don't have any employees. Do I have to do this?
3. Does it apply to public employers such as town governments?
4. What do I have to do right now?
5. Where can I get a copy of the Labor Department's model plan?
6. Do I have to shell out a lot of money by August 5 to protect my employees?
7. What am I supposed to have in this plan?
8. What are these minimum controls the agency must have during an outbreak?
9. Now that I have to implement my prevention plan, am I required to perform employee health screenings every day and make them wear masks?
10. What are the advanced controls, and when do I have to implement them?
11. Do I have to submit this plan to the state?
12. What happens if I don't adopt a prevention plan?
13. Anything else I have to do?

**1. Q:** I only have a couple of employees. Do I have to do this?

**A:** The law applies to all New York State private employers, regardless of size.

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**2. Q:** I don't have any employees. Do I have to do this?

**A:** The law applies to "any person, entity, business, corporation, partnership, limited liability company, or association employing, hiring, or paying for the labor of any individual in any occupation, industry, trade, business, or service." If this does not describe your business, then the requirements do not apply to you. However, if you hire any part-time employees, independent contractors or temporary employees, the requirements do apply to you. Also, the airborne infectious disease exposure prevention standard developed by the New York State Department of Labor created minimum requirements "to protect the public and the workforce." To the extent that the public has access to your worksite, you must take measures to protect them.

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**3. Q:** Does it apply to public employers such as town governments?

**A:** No, the law exempts them.

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**4. Q:** What do I have to do right now?

**A:** The HERO Act requires your agency and all other New York employers to do the following:

- Adopt an airborne infectious disease exposure prevention plan by August 5. This can be either the model plan published by the New York State Department of Labor or a plan of your own devising. Any plan you create on your own must meet or exceed the requirements of the Labor Department's model. If you decide to create your own, you must do so in consultation with your employees, and the plan must address your specific worksite hazards.
- Distribute the plan you adopt to your employees (including part-time and temporary employees and independent contractors) within 30 days after you adopt it. The plan must be in English and/or the employee's primary language. If you can't get a copy of the plan in the employee's primary language, you must give the employee a notice in English.
- Provide any new employees with a copy at the time they are hired.
- Post a notice about the plan in a common area of your worksite.
- Add the plan to your employee handbook if you have one.

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**5. Q:** Where can I get a copy of the Labor Department's model plan?

**A:** The department has a link to it at <https://dol.ny.gov/ny-hero-act>.

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**6. Q:** Do I have to shell out a lot of money by August 5 to protect my employees?

**A:** No. You must adopt the plan by August 5, but you don't actually have to implement it unless or until the New York State Department of Health designates a disease as "a highly contagious communicable disease that presents a serious risk of harm to the public health." The Health Department has not applied that designation to any diseases yet. Therefore, while you should keep certain supplies (disinfectant wipes, masks, hand sanitizer, etc.) on hand for a potential outbreak, you don't have to implement your plan right now. **UPDATE: On Sept. 6, 2021, the Health Department applied this designation to COVID-19. Accordingly, all private employers must implement their plans immediately.**

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**7. Q:** What am I supposed to have in this plan?

**A:** The model plan has seven sections:

- A section for listing the individuals responsible for the agency's compliance.
- A section for listing minimum and advanced controls during an outbreak, plus steps for exposure control readiness, maintenance, and storage
- A section describing housekeeping during an outbreak.
- A section describing how your agency will respond if an infection occurs at the worksite.
- A section for describing what the agency will do to activate the plan and alert employees during an outbreak.
- A section for listing any revisions to the plan the agency may make during an outbreak.
- A section stating that employees will not face retaliation for reporting concerns about conditions at the worksite or for reporting violations to the authorities.

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**8. Q:** What are these minimum controls the agency must have during an outbreak?

**A:** Unless you were living on Mars the last two years, most of them will sound familiar:

- General awareness on the part of employees
- A company "stay at home when you're symptomatic" policy.
- Employee health screenings
- Face coverings
- Physical distancing
- Hand hygiene
- Cleaning and disinfection
- "Cover-your-nose-and-mouth- when-yawning-coughing-or-sneezing" etiquette (also known as the "don't-be-gross" etiquette)
- Special accommodations for high-risk individuals

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**9. Q:** Now that I have to implement my prevention plan, am I required to perform employee health screenings every day and make them wear masks?

**A:** As things stand on Sept. 10, 2021, no. The law required the New York State Department of Labor to create and publish a model airborne infectious disease exposure prevention standard. The department published that standard in July 2021 and posted it on its [website](#). Pages 2 through 4 of the standard list the required controls, among them health screenings and masking. However, almost every one of them refers back to the current guidance from the NYS Department of Health and the U.S. Centers for Disease Control and Prevention "as applicable". You can review the current guidance by clicking the following two links:

- [Reopening New York – Implementing CDC Guidance](#)
- [Interim Public Health Recommendations for Fully Vaccinated People](#)

Neither document requires masks for vaccinated individuals, but they do require masks for those who are unvaccinated. Neither document even mentions health screenings. Therefore, it appears that employer-performed health screenings are not required, and masks are required only for those employees who are unvaccinated. The New York State Health Department's guidance states that "businesses may rely upon self-reporting of vaccination status (e.g., honor system)."

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**10. Q:** What are the advanced controls, and when do I have to implement them?

**A:** If, during a designated outbreak, you determine that the minimum controls by themselves won't adequately protect employees, you must determine whether any or all of these are necessary:

- Temporary suspension or elimination of risky activities
- Engineering controls, such as changes to mechanical and natural ventilation, automatic disinfection systems, cleanable barriers (such as the plastic partitions we've all grown accustomed to,) and changes to layout to avoid areas where employees may congregate.
- Administrative controls, which are office policies and procedures designed to prevent exposure.
- Personal protective equipment

You should store some supplies of PPE, cleaning supplies, hand sanitizer and the like so you'll have them if an outbreak gets declared. Remember how hard it was to get hand sanitizer in March 2020.

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**11. Q:** Do I have to submit this plan to the state?

**A:** No. You must be able to produce it upon request to:

- Employees
- Independent contractors
- Employee representatives
- Union representatives
- The New York State Labor and Health Departments

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**12. Q:** What happens if I don't adopt a prevention plan?

**A:** You will eventually make a donation to help balance the New York State budget. The penalty for a first offense of failing to adopt a plan is \$50 per day after the deadline. For a second offense, it's \$200 a day. Also, if you adopt a plan but fail to abide by it during a designated outbreak, the penalty is \$1,000 to \$10,000 for a first offense and \$1,000 to \$20,000 for a second offense. Also, your employees may have the right to sue you. I think you'll find it cheaper and easier to adopt and abide by a plan.

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**13. Q:** Anything else I have to do?

**A:** For agencies with more than nine employees (including part-time, temporaries and independent contractors,) you will have to permit the employees to form a workplace safety committee if they so choose. However, that requirement does not take effect until November 1, 2021. We'll cover that in a separate FAQ page as the deadline draws closer.