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COVID-19 Designated as an Airborne Infectious Disease under New York State's HERO Act

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On Monday, September 6, 2021, New York Governor Kathy Hochul announced that the Commissioner of Health has designated COVID-19 as a "highly contagious communicable disease that presents a serious risk of harm to the public health" under the New York State HERO Act. As we previously reported, the HERO Act requires all employers in New York to implement certain safety standards and adopt a prevention plan to protect against the spread of airborne infectious diseases in the workplace. Now that COVID-19 has received such a designation, employers across the state must now "promptly" take certain steps to activate their plans and ensure compliance.

According to the Airborne Infectious Disease Exposure Prevention Standard, once such as designation is made, each employer must:

1. Immediately review the worksite's exposure prevention plan and update the plan, if necessary, to ensure that it incorporates current information, guidance, and mandatory requirements;
2. Finalize and promptly activate the worksite exposure prevention plan;
3. Provide a verbal review of the plan; and
4. Provide each employee with a copy of the exposure prevention plan, post a copy of the plan in a visible and prominent location at each worksite, and ensure that a copy is accessible to employees during all shifts.

While the designation remains in effect, each employer shall ensure that the plan is followed by:

1. Assigning enforcement responsibilities to one or more supervisory employees;
2. Monitoring and maintaining exposure controls; and
3. Regularly checking for updated information from the New York State Department of Health and CDC, and updating the plan as necessary.

We are closely monitoring for developments from the State and will provide updates as they become available.

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Proskauer's cross-disciplinary, cross-jurisdictional Coronavirus Response Team is focused on supporting and addressing client concerns. Visit our Coronavirus Resource Center for guidance on risk management measures, practical steps businesses can take and resources to help manage ongoing operations.

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