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Designation of COVID-19 Under New York HERO Act Extended Once Again

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On October 31, 2021, the New York State Commissioner of Health continued the designation of COVID-19 as a "highly contagious communicable disease" pursuant to the HERO Act until December 15, 2021. This means that New York employers must continue to keep in effect the airborne infectious disease prevention plans that they have adopted related to COVID-19.

According to the latest designation, on December 15, the Commissioner "will review the level of transmission of COVID-19 in New York State and determine whether to continue this designation." A copy of the designation is available here.

It is worth noting that the portions of the HERO Act requiring the adoption and implementation of an airborne infectious disease prevention plan do not apply to "employees covered by any other OSHA standard specifically related to airborne infectious diseases or COVID-19 in particular." Presently there is no such general standard in effect for employees, though an emergency temporary standard ("ETS") related to COVID-19 is currently in place for health care workers, and thus such workers are not presently covered by the prevention plan requirements of the HERO Act.

However, it is anticipated that OSHA will very soon be releasing an ETS regarding vaccination of employees working for employers with 100 or more employees. It remains to be seen whether or to what extent the OSHA vaccination ETS may impact the applicability of the HERO Act to employers covered by the ETS. The HERO Act FAQs note that the New York Department of Labor "will update information if and when OSHA does create a standard that applies to any additional employees." We will continue to monitor developments in this area and report on any updates.

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