

Client Alert **Employment and Labor**

Federal Government and New York State Take Major Steps to Curb Spread at the Workplace

Coming Soon: Federal Mandate for Vaccine or Weekly Testing

On September 9, 2021, President Biden announced that he would be directing the Department of Labor's Occupational Safety and Health Administration ("OSHA") to issue an emergency rule requiring healthcare workers, federal workers and contractors, and companies with 100 or more employees to ensure that workforces are fully vaccinated or, alternatively, test negative for COVID-19 at least once a week. The emergency rule will also require employers to provide paid time off for employees getting vaccinated. According to White House officials, failure to comply with this forthcoming emergency rule may result in government enforcement actions which could include fines up to \$14,000 per violation. The new rule, which will be published as an emergency temporary standard, is anticipated to be published in the next several weeks and to go into effect thereafter.

For further details about the above, and President's Biden's six-pronged approach to combat the pandemic, please refer to President Biden's remarks [here](#) and [here](#). There is expected to be opposition to this measure and we will continue to monitor this important development.

Update to New York HERO ACT – Activation Now Required

As we have previously reported, on May 5, 2021, Governor Cuomo signed the New York Health and Essential Rights Act ("NY HERO Act"), and subsequent amendments on June 7, 2021. As set forth in our [prior alert](#), the NY HERO Act mandates extensive

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workplace health and safety protections against exposure and disease during an airborne infectious disease outbreak (“AID”).

On July 6, 2021, the New York State Department of Labor (“NY DOL”) issued the Airborne Infectious Disease Exposure Prevention Standard (“Exposure Prevention Standard”) and the Model Airborne Infectious Disease Exposure Prevention Plan (the “Model Plan”). By August 4, 2021, **all** New York employers were required to either adopt the Model Plan or create their own Airborne Infectious Disease Exposure Prevention Plan (“Exposure Prevention Plan”). The adopted or crafted plans were required to be distributed to all employees by September 4, 2021.

Previously the requirements for employers under NY HERO Act were limited to creating and distributing the plans because New York State had not officially designated any AIDs. That status changed on September 6, 2021, when Governor Kathy Hochul announced that the New York Commissioner of Health officially designated COVID-19 as an AID under the [NY HERO Act](#), stating that COVID-19 presents a serious risk of harm to the public health. Accordingly, the adopted Model Plans or alternative Exposure Prevention Plans must now promptly be activated and go into effect.

A compliant Exposure Prevention Plan will meet or exceed the requirements of the Model Plan and be crafted in accordance with a collective bargaining agreement or with meaningful participation from employees. As set forth in more detail in our prior alert, every plan must include appropriate exposure controls for activities performed at worksites including health screenings, requiring face coverings, implementing physical distancing, cleaning and disinfecting worksites, and providing hand hygiene and personal protective equipment.

In accordance with the NY HERO Act, now that New York State has designated COVID-19 as an AID, all employers in New York State should immediately review and update their prevention plan, activate the plan, provide each employee with a written copy of the plan in English or the primary language of the employees, and post a copy of the plan in a visible and prominent location. Additionally, employers must conduct a “verbal review” of the employer’s policies and employee rights under the NY HERO Act, including the employer’s Exposure Prevention Plan.

Failure to comply with the NY HERO Act may result in civil penalties of \$50 per day for failing to adopt an appropriate plan and a fine of \$1,000-10,000 for failing to comply with an adopted plan. Employees may also bring a civil action seeking injunctive relief against employers alleged to have violated an adopted prevention plan.

The attorneys in our Employment and Labor Practice will continue to monitor the evolving circumstances, including the pending federal mandate, and are available to assist on any aspect of the NY HERO Act, including the creation and implementation of compliant Exposure Prevention Plans.

Amy H. Sachs, Esq.

Client Alert Issue Author; Associate, Employment and Labor Practice Group
asachs@sillscummis.com | (973) 643-4134

Jill Turner Lever, Esq.

Client Alert Issue Co-Editor; Of Counsel, Employment and Labor Practice Group
jlever@sillscummis.com | (973) 643-5691

Patricia M. Prezioso, Esq.

Client Alert Issue Co-Editor; Chair, Employment and Labor Practice Group
pprezioso@sillscummis.com | (973) 643-5041

David I. Rosen, Esq.

Member, Employment and Labor Practice Group
drosen@sillscummis.com | (973) 643-5558

Grace A. Byrd, Esq.

Of Counsel, Employment and Labor Practice Group
gbyrd@sillscummis.com | (973) 643-6792

Jordan E. Pace, Esq.

Of Counsel, Employment and Labor Practice Group
jpace@sillscummis.com | (973) 643-4295

Stacy L. Landau, Esq.

Associate, Employment and Labor Practice Group
slandau@sillscummis.com | (973) 643-5782