

# Employee Handbook Updates 2023

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Working to create economic growth, good jobs and strong communities across New York State.

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# EEO Statement

*Age, race (including traits historically associated with race, including bu not limited to, hair texture and protective hair styles), creed, color, national origin, sexual orientation, military status, sex, disability, genetic predisposition or carrier status, marital status, arrest record or status as a victim of domestic violence, familial status, gender/gender expression, reproductive health decisions or any other factor prohibited by law.*

- Pending: Citizenship or Immigration Status – Delivered to Governor 12/12/2022



# EEO Statement

- Reproductive Health Decisions

*Employer will not discriminate nor take any retaliatory personnel action against an employee with respect to compensation, terms, conditions or privileges of employment because of the employee's (or their dependents) reproductive health decision, including but not limited to, the decision to use or access a particular drug, device or medical service. Employer will not allow retaliation against employees for exercising their rights under this law. An employee who feels they may have been discriminated against or retaliated against may seek remedy by bringing a civil action against the Employer in any court of competent jurisdiction.*



# Sexual Harassment

- Model Sexual Harassment Policy/Training Requirements
  - Four Year Review
- Confidential Hotline
  - 1-800-HARASS-3
- New Hire Information
  - Policy, Training Materials, Notice, Complaint Form on or before date of hire
- <https://www.ny.gov/programs/combating-sexual-harassment-workplace>



# Health and Essential Rights Act (HERO Act)

1. Adoption of an industry specific airborne infectious disease exposure prevention plan developed by the Department of Labor/Department of Health (Labor Law §218-b)
2. Workplace Safety Committees. Employers with “at least 10 employees” shall permit employees to establish and administer a “joint labor-management workplace safety committee.” (Labor Law §27-d)

# Effective Dates

## *The Airborne Infectious Disease Exposure Prevention Standard*

- Effective June 4, 2021
- July 6, 2021 – DOL Releases Industry Specific Standards/Templates
- August 5, 2021 – Deadline to adopt a Plan
- September 4, 2021 – Deadline to communicate to employees

## *Workplace Safety Committees*

- November 1, 2021



# Airborne Infectious Disease Exposure Prevention Plan

- Covers every employee and independent contractor as well as *“individuals working for staffing agencies, contractors or subcontractors on behalf of the employer at any individual work site,...”*
- Cover every worksite over which the employer exercises control including vehicles, employer provided housing, etc.
- Includes civil fines and penalties, including injunctive relief.
- 30-day “cure period”



# [dol.ny.gov/ny-hero-act](https://dol.ny.gov/ny-hero-act)

- The Airborne Infectious Disease Exposure Prevention Standard
- Model Airborne Infectious Disease Exposure Prevention Plan
- Industry Specific Templates

Agriculture	Construction	Delivery Services	Domestic Workers
Emergency Response	Food Service	Manufacturing and Industry	Personal Services
Private Education	Private Transportation	Retail	

# The Airborne Infectious Disease Exposure Prevention Standard

## Applies to:

- Employers with worksites located in New York State;

**Only an airborne infectious agent or disease designated by the Commissioner of Health as a highly contagious communicable disease that presents a serious risk of harm to the public health**



# The Airborne Infectious Disease Exposure Prevention Standard

## Does Not Apply:

- Employees or independent contractors of the state, any political subdivision of the state, a public authority, or any other governmental agency or instrumentality
- Any seasonal or endemic infectious agent or disease, such as the seasonal flu, that has not been designated by the Commissioner of Health as a highly contagious communicable disease that presents a serious risk of harm to the public health.

# The Airborne Infectious Disease Exposure Prevention Standard

- Requires a written plan – DOL templates vs. “alternative plan”
- Shall “consider and incorporate” exposure controls – discretion
- Review and update when necessary
- Make available upon request to employees, collective bargaining representatives, DOH, and the DOL
- Provide to new employees;
- “Verbal” review for employees - The plan must be posted and included in the employee handbook.



# Sample Language

## *Airborne Infectious Disease Plan*

As required by the Health and Essential Rights Act (HERO Act) of 2021, [Employer] has developed an Airborne Infectious Disease Plan. The airborne infectious disease exposure prevention plan must go into effect when an airborne infectious disease is designated by the New York State Commissioner of Health as a highly contagious communicable disease that presents a serious risk of harm to the public health.

The purpose of the NY HERO Act is to protect employees against exposure and disease during a future airborne infectious disease outbreak. Should such a designation be made, and the airborne infectious disease plan be implemented, you will be notified by [\_\_\_\_\_] and your role in the plan will be explained.

In the meantime, you may see a copy of the plan by contacting [\_\_\_\_\_]. Notices of this plan will also be posted at each worksite.



# Upon “Activation”

- Review, finalize and “promptly” activate plan
- Provide verbal review - employer policies, employee rights under this section and section 218-b of the labor law, and the employer’s exposure prevention plan
- Provide a copy to each employee – languages?
- Post a copy at each worksite (not vehicles)
- Assign enforcement responsibilities – supervisory employees

# Cannabis

- Signed March 31, 2021
- Legalizes recreation use and possession (up to 3 oz) of marijuana by adults over age 21
- Amends the Compassionate Care Act (CCA) of 2014 – allows those with a prescription to smoke marijuana
- Still illegal under Federal law

# Federal Law

- Controlled Substances Act (CSA) – does not discuss employment
- Drug-free Workplace Act of 1988
- Drug-Free Schools and Communities Act
- Executive Order 12564 – Law enforcement, national security, the protection of life and property, public health or safety, or other functions requiring a high degree of public trust
- Federal Motor Carrier Safety Administration (FMCSA)
- Federal Aviation Administration (FAA)
- National Highway Traffic Safety Administration (NHTSA)
- Pipeline and Hazardous Materials Safety Administration
- And more...





# NYS Labor Law §201-d

It shall be unlawful for any employer or employment agency to refuse to hire, employ or license, or to discharge from employment or otherwise discriminate against an individual in compensation, promotion or terms, conditions or privileges of employment because of:

- Individual's political or recreational activities outside of working hours; an individual's membership in a union; *an individual's legal use of consumable product*
- The provisions of this section shall not be deemed to protect activity which creates a material conflict of interest related to the employer's trade secrets, proprietary information or other proprietary or business interest



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# NYS Labor Law §201-d

- Amends “recreational activities” and “consumable products” to include:
- *Use of cannabis in accordance with state law, prior to the beginning or after the conclusion of the employee's work hours, and off of the employer's premises and without use of the employer's equipment or other property*

# Impairment in the Workplace is Prohibited

4-a. Notwithstanding the provisions of subdivision three or four of this section, an employer shall not be in violation of this section where the employer takes action related to the use of cannabis based on the following:

(i) the employer's actions were required by state or federal statute, regulation, ordinance, or other state or federal governmental mandate;

(ii) the employee is impaired by the use of cannabis, meaning the employee manifests specific articulable symptoms while working that decrease or lessen the employee's performance of the duties or tasks of the employee's job position, or such specific articulable symptoms interfere with an employer's obligation to provide a safe and healthy workplace, free from recognized hazards, as required by state and federal occupational safety and health law; or

(iii) the employer's actions would require such employer to commit any act that would cause the employer to be in violation of federal law or would result in the loss of a federal contract or federal funding.



# Specific Articulate Symptoms - Examples

- Impaired speech, physical dexterity, agility, coordination, demeanor, irrational or unusual behavior, or negligence or carelessness in operation equipment or machinery; disregard for the safety of the employee or others, or involvement in any accident that results in serious damage to equipment or property; disruption of a production or manufacturing process; or carelessness that results in any injury to the employee or others among others.

# Drug Testing

Pre-Employment,\* reasonable suspicion, and post-accident\*\* testing not restricted under NYS law. However:

- Cannabis metabolites remain detectable for up to 30 days
- Testing for active ingredients of THC could demonstrate “impairment”
- A positive test is not enough to take adverse employment action – should be used to confirm observation/documentation of impairment.

*\*NYC prohibits pre-employment testing of marijuana*

*\*\* OSHA considerations*



# Cannabis - New Policies

- May need multiple policies – Recreational and Medical Marijuana
- Separate policies based on job title/responsibilities (e.g. truck driver vs. office personnel)
- Make sure policies prohibit marijuana use consistent with §201-d
  - Explicitly prohibit employees coming to work impaired
  - Prohibit use or possession on site, during working hours, in company vehicles, using company machinery, equipment, etc.
- Testing – modify existing testing requirements to focus on THC as opposed to metabolites.



# NYS Electronic Monitoring Law

- Effective May 7, 2022
- Applies to all private sector employers – regardless of size - who “monitor or otherwise intercept” telephone calls, emails or internet access
- Employers must provide prior written notice of any electronic monitoring to employees upon hire
- Must receive a written or electronic acknowledgement from the employees of receipt of the notice
- Employers must also post the notice in a conspicuous place so that employees who are subject to electronic monitoring can readily review the notice



# NYS Electronic Monitoring Law

- No template available, however, requires

*“...an employee shall be advised that any and all telephone conversations or transmissions, electronic mail or transmissions, or internet access or usage by an employee by any electronic device or system, including but not limited to the use of a computer, telephone, wire, radio or electromagnetic, photoelectronic or photo-optical systems may be subject to monitoring at any and all times any by any lawful means.”*





# NYS Electronic Monitoring Law

- Does not apply to processes designated to manage the volume or type of incoming or outgoing email, voicemail, or internet usage; targeted to monitor or intercept any specific individual's communications; or performed solely for purposes of system maintenance or protection
- Does not specifically require notification in employers' employee handbooks, however...may be a best practice
- Enforced by the Attorney General's office - \$500 for first offense; \$1,000 for the second; \$3,000 for third and subsequent offenses



# New York State Whistleblower Law

- Effective January 26, 2022 – Poster required:
- [https://dol.ny.gov/system/files/documents/2022/02/l740\\_1.pdf](https://dol.ny.gov/system/files/documents/2022/02/l740_1.pdf)
- The amendments to Labor Law §740 significantly bolster protections for private-sector workers alleging retaliation
- Ensure handbook language is consistent with §740



# New York State Whistleblower Law

- Adding “former employees” and “independent contractors” to those permitted to bring whistleblower claims.
- Removing the previous requirement that there be an actual violation of the law and instead providing protections where a covered individual reasonably believes an employer’s activity or conduct is in violation of a law, rule or regulation or “poses a substantial and specific danger to the public health or safety;” and
- Providing that covered individual need only make a “good faith effort” to notify their employer of violations before disclosing such violations to a public body, whereas before actual notice to the employer was required.



# New and Pending - Retaliation

- Labor Law §215 Retaliation:

*(viii) because such employee has used any legally protected absence pursuant to federal, local, or state law.*

*...or assessing any demerit, occurrence, any other point, or deductions from an allotted bank of time, which subjects or could subject an employee to disciplinary action, which may include but not be limited to failure to receive a promotion or loss of pay.*

- Signed - Effective 2/19/2023



# Expressing Breast Milk in the Workplace

- Signed - Effective 6/7/23 – An employer shall provide reasonable unpaid break time...and shall designate a room...
- (i) in close proximity to the work area; (ii) well lit; (iii) shielded from view; and (iv) free from intrusion from other persons in the workplace or the public. Such room or other location shall provide, at minimum, a chair, a working surface, nearby access to clean running water and, if the workplace is supplied with electricity, an electrical outlet. The room or location provided by the employer for this purpose shall not be a restroom or toilet stall.
- If the workplace has access to refrigeration, the employer shall extend such access to refrigeration for the purposes of storing the expressed milk.

# Expressing Breast Milk in the Workplace

The commissioner shall develop and implement a written policy regarding the rights of nursing employees to express breast milk in the workplace pursuant to the provisions of this section. Employers shall provide such written policy to each employee upon hire and annually thereafter, and to employees upon returning to work following the birth of a child. Such policy shall:

- a) Inform employees of their rights pursuant to this section;
- b) Specify the means by which a request may be submitted to the employer for a room or other location for use by employees to express breast milk; and
- c) Require the employer to respond to such request within a reasonable timeframe, but not to exceed five business days.



# Miscellaneous

- Labor Law §201-h: Posting of Veterans services and benefits; To be developed by the DOL; Employers of 50 or more; Effective 1/1/2023
- New Federal EEOC “Know Your Rights” Poster:  
<https://www.eeoc.gov/poster>
- Paid Family Leave, NYS Paid Sick Leave, PTO

# Next Webinars

## Save the Date

January 19

February 23

March 16

April 20

May 18

June 15





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