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New York Updates Model Disease Exposure Prevention Plan

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We described in a [previous client alert](#) the requirements set forth in the New York Health and Essential Rights (NY HERO) Act, including the requirement for employers to adopt and implement an infectious disease exposure prevention (DEP) plan for all New York worksites. Many employers, including those in office settings, adopted the New York State Department of Labor's (NY DOL) model DEP plan. On September 6, 2021, New York State's commissioner of health designated COVID-19 as a disease that immediately required employers with worksites in the state to activate their DEP plans. Upon activation of the NY HERO Act's requirements for COVID-19, the shortcomings of the model DEP plan became apparent to employers, including conflicting guidance regarding mask-wearing.

On September 23, the NY DOL attempted to clarify some of the model DEP plan's provisions in the context of COVID-19. One of the most significant changes is the incorporation of vaccination status in the mask-wearing guidance matrix. The revised model DEP plan can be found [on the NY DOL's website](#). While some ambiguity exists in the revised model DEP plan, we believe that the revisions remove all mask requirements for vaccinated employees in the workplace. A summary of our interpretation of the revised model DEP plan is as follows:

Workplace	Employee	Masks required?	Authority
Fully vaccinated	Vaccinated	No	Model DEP plan
Not all vaccinated	Vaccinated	Recommended, but not required	The Model DEP plan directs employers to comply with guidance published by either the Centers for Disease Control and Prevention (CDC) or the New York State Department of Health (NYS DOH). NYS DOH guidance does not require masks at work for vaccinated employees.
Not all vaccinated	Unvaccinated	Yes	NYS DOH rule and New York City Department of Health Rule requiring unvaccinated employee masking

Given the new clarity regarding mask guidance for employer worksites in New York, we recommend that employers replace the original model DEP plan with the revised model DEP unless they elect to implement a plan more stringent than what is required by the NY HERO Act.

We are closely tracking NY HERO Act developments and will publish further guidance when additional information becomes

available. If you have any questions related to the act, please reach out to a member of the Cooley employment team.

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