



Top 6 Things NY Employers Need to Know About Proposed Regulations for HERO Act Workplace Safety Committees

Insights

1.26.22

The New York State Department of Labor (NYSDOL) recently issued its long-awaited proposed regulations related to workplace safety committees as allowed under the NY HERO Act. New York employers have already been addressing the HERO Act's requirements for the adoption of an airborne infectious disease exposure prevention plan, but now you must revisit the HERO Act's requirements regarding workplace safety committees. The HERO Act allows employees who work at businesses with 10 more employees to establish a workplace safety committee which has the right to raise health and safety concerns, review their employer's health and safety policies, and participate in health and safety site checks. This part of the law has been in effect since November 1, 2021, but without regulations or guidance from the state, employers have been grappling with implementation. With the release of these proposed regulations, the NYSDOL is finally providing some much-needed clarity on employer obligations concerning workplace safety committees. Here are the six things New York employers need to know about the proposed regulations.

1. Employee Count Is Statewide

The HERO Act requires employers with 10 or more employees to permit their employees to establish and administer a joint labor-management workplace safety committee. The proposed regulations provide that the employee count will be based on the total number of employees that an employer employs in New York State, not per worksite.

Employees must count full-time employees, as well as part-time, temporary or seasonal employees. Employees on paid or unpaid leave – including sick leave, leaves of absence, disciplinary suspension, or any other type of temporary absence – are included in the count as long as the employer has a reasonable expectation that the employee will later return to active employment.

2. Worksite Defined, Including for Telecommuters

Employers must recognize a committee at each worksite if requested by employees. The proposed regulations define "worksite" as a "single, physical location where services, operations or other activities are performed." The proposed regulations explain that several worksites within a single location or building may exist if separate employers conduct activities within the building. Employers, however, are only responsible for their individual worksite. Examples of

worksites:

- A single location or a group of contiguous locations in proximity to one another even though they are not directly connected to one another. For example, groups of structures which form a campus or industrial park or separate facilities across the street from one another owned by the same employer may be considered a single worksite.
- Separate buildings or facilities not physically connected or in proximity to one if they are in reasonable geographic proximity, are used by the employer for the same purpose, and share the same staff or equipment. Where an employer has two separate locations in the same geographic area and the purpose of one location is to support the operations of the other location, and this support requires travel between the two locations, the two locations will be considered a worksite.
- The worksite of employment for employees whose primary duties require travel from point to point, who telecommute, are out stationed, or whose primary duties involve work outside any of the employer's regular employment sites (e.g., railroad employees, bus drivers, salespersons), shall be the worksite to which they are assigned as their employer's home base, from which their work is assigned, or to which they report.

The proposed regulations clarify that a temporary worksite is not a "worksite" that would trigger a workplace safety committee.

3. Creating A Workplace Safety Committee

Per the proposed regulations, workplace safety committees may be established for each worksite following a written request for recognition by at least two non-supervisory employees who work at the worksite.

Upon the receipt of a request for recognition, employers must respond to with "reasonable promptness." This term is not defined by the proposed regulations. Within five days after recognizing a committee, the employer must provide notice (written, posted, or electronic) to all employees at the worksite of such recognition. If additional requests to form a committee are received after a committee is formed, the employer must deny the request and refer the requestors to the existing recognized committee. Furthermore, as stated in the statute, employers that already have a workplace safety committee consistent with the law do not have to permit the creation an additional committee.

4. Committee Composition

Workplace safety committees must be comprised of at least two non-supervisory employees and at least one employer representative. The proposed rules cap the committee at 12 members or one-third of the total number of employees at the worksite, whichever is fewer. Worksites with fewer than 10 employees can have only three committee members. Workplace safety committees must be co-chaired by a non-supervisory employee and an employer representative.

Employees select the members of the committee without employer involvement in the process. Employees determine the method for selecting committee members. However, where there is a collective bargaining agreement in place, the bargaining representative may select the non-supervisory employee members for the committee.

5. Committee Rights

Committees are permitted to establish operating rules and procedures, provided that such rules and procedures are consistent with the law. If no rules or procedures are adopted by the committee, the committee may take action only by majority vote. Committees have the right to:

- Set procedures for the selection, terms, and training of new members.
- Provide a training of up to four hours per calendar year for committee members. Training time counts as hours worked and is payable by the employer.
- Conduct an up to two-hour long meeting once per quarter – again, without loss of pay. Meetings must be scheduled at times that do not unreasonably conflict with business operations.

6. Employer Obligations

Employers cannot interfere with the duties of the workplace safety committee or its members. Further, per the proposed regulations, employers must:

- Appoint an employer representative to the committee to act as co-chair. The employer representative may be a non-supervisory employee, an officer, the employer, or other representative.
- Respond, in writing, to each safety and health concern raised by the committee or one of its members within a reasonable time period.
- Respond to a request for policies or reports that relate to the duties of the committee within a reasonable time period.
- Provide notice, where practicable and not prohibited by law, to the committee and its members ahead of any visit at the worksite by a governmental agency enforcing safety and health standards, such as OSHA.
- Permit members of the committee to attend, without loss of pay, quarterly meetings and an official training as scheduled by the committee.

What Should You Do Next?

A public hearing on the proposed rules is scheduled for February 9. While the proposed regulations will not take effect until after the rulemaking process is complete — and could be revised before finalized — they should act as a guide when handling any employee requests.

There is no immediate action required from you unless your employees have already made a request to form a workplace safety committee. If you have not yet received a request to form a committee, you should make sure your management employees are advised of this law and know that requests to form a committee need to be handled appropriately. Moreover, in preparation for the potential formation of any committee, you should make sure you are retaining and maintaining all records that the workplace safety committee members will have access to for their future review.

We will monitor developments related to this law, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information directly to your inbox. If you have questions about the HERO Act or your related policies, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in [our New York City office](#).

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