



PHILLIPS LYTLE LLP CLIENT ALERT
FOR BNHRA MEMBERS
LABOR & EMPLOYMENT



JANUARY 2022

New York State Department of Labor Issues Proposed Workplace Safety Committee Rule

On December 22, 2021, the New York State Department of Labor (DOL) issued a proposed rule regarding the workplace safety committees required by the New York Health and Essential Rights Act (NY HERO Act). There is no scheduled effective date for the proposed rule and, before taking effect, it will be subject to public comment. The DOL has scheduled a public hearing for February 9, 2022. Employers should become familiar with the proposed rule as it is likely that the final rule will be substantially similar.

NY HERO ACT

The NY HERO Act consists of two required components:

1. All private employers must adopt an airborne infectious disease prevention plan; and
2. All private employers with at least 10 employees must allow their employees to form workplace safety committees.

More information about the NY HERO Act can be obtained by reading [our prior alert](#).

WORKPLACE SAFETY COMMITTEES

The proposed rule confirms that for purposes of meeting the workplace safety committee 10-employee threshold, only employees employed within the State are counted. In determining if they meet the 10-employee threshold, employers must count full-time, part-time, newly hired, temporary and seasonal employees. Employees jointly employed by more than one employer must be counted

by each employer, whether or not they are on the employer's payroll records. Other significant aspects of the proposed rule are discussed below.

Establishing and Recognizing Workplace Safety Committees

The proposed rule allows non-supervisory employees to form a safety committee at each geographically distinct worksite of an employer upon a written request for recognition by at least two non-supervisory employees who work at the worksite. Multiple requests for a committee must be combined and treated as a single request. Upon receipt of a request, an employer must respond with "reasonable promptness" (not defined) and within five days provide notice of recognition to all employees at the worksite.

Composition of Workplace Safety Committees

Safety committees must be comprised of at least two non-supervisory employees and one employer representative. The ratio of non-supervisory employees to employer representatives must be at least two non-supervisory employees to one employer representative at any given time. Committees are limited to a maximum of 12 members, inclusive of non-supervisory employees and employer representatives, or one-third of the total number of employees at a worksite, whichever is fewer. A safety committee at a worksite with fewer than 10 employees must have at least three members. The committee co-chairs are responsible for notifying the employer of changes to the membership of the committee.



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Selection of Workplace Safety Committee Members

Non-supervisory employees at a worksite without a collective bargaining agreement in place shall be selected by and among the employer's non-supervisory employees as determined by the non-supervisory employees of the employer. Examples of methods to select non-supervisory employees include, but are not limited to, self-selection, nomination by co-workers and elections. At a worksite where there is a collective bargaining agreement in place, the collective bargaining representative shall select the employee representatives, who may be any non-supervisory employee or an employee covered by the collective bargaining agreement.

Governance of Workplace Safety Committees

Workplace safety committees must be co-chaired by a non-supervisory employee and an employer representative. Committees may establish rules or bylaws consistent with the NY HERO Act and take actions in a manner consistent with any rules or procedures adopted by the committee. If no rules or procedures are adopted, the committee may act only by majority vote.

Training and Meetings of Workplace Safety Committees

Committee members may attend up to four hours of training annually for which they must be paid. Meetings must be scheduled in accordance with rules adopted by the committee, or as otherwise agreed to by the co-chairs, and must be scheduled at times that do not unreasonably conflict with the employer's business operations. Meetings may be conducted at least once per quarter for not longer than two work hours in total for all meetings per quarter, and members must be paid for such time.

Employer Obligations

Under the proposed rule, employers are required to:

- Respond, in writing, within a reasonable time, to safety and health concerns, hazards, complaints and other violations raised by the workplace safety committee or one of its members.
- Respond, within a reasonable time, to a request for policies or reports that relate to the duties of the workplace safety committee from the workplace safety committee or one of its members.
- Notify the workplace safety committee and its members ahead of any visit at the worksite by a governmental agency enforcing safety and health standards.
- Appoint an employer representative to the workplace safety committee.
- Allow the workplace safety committee members to attend a meeting for up to two hours per quarter and official training for up to four hours per calendar year.
- Not interfere with the performance of the duties of the workplace safety committee or its members.
- Not disclose information or documentation to the workplace safety committee or its members where such disclosure is prohibited by law or contains the personal identifying information of an employee.

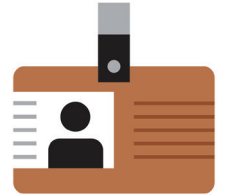
Additional Assistance

For further assistance, please contact any of the attorneys on our [Labor & Employment Practice Team](#) or the [Phillips Lytle attorney](#) with whom you have a relationship. ■



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