



Tax & Business Alert

OCTOBER 2021

BEING PREPARED FOR AN IRS AUDIT

The IRS recently announced it intends to hire thousands of new employees as part of a tax-enforcement push. This could mean an uptick in audits sometime soon, likely focused on wealthier individuals and business owners. (Some tax returns are chosen randomly as well.)

The best way to survive an IRS audit is to prepare for one in advance. On an ongoing basis, you should systematically maintain documentation — invoices, bills, canceled checks, receipts and other proof — for the items that you report on your tax return. Maintain and back up these records safely. With that said, it also helps to know what might catch the tax agency's attention.

AUDIT HOT SPOTS

Certain types of tax-return entries are known to the IRS to involve inaccuracies, so they may lead to an audit. One example is significant inconsistencies between tax returns filed in the past and your most current tax return. If you miscalculate deductions or try to claim unusually high ones, your return could be flagged. And if you're a business owner, gross profit margin or expenses markedly different from those of similar companies could subject you to an audit.

Certain types of deductions, such as auto and travel expense write-offs, may be questioned by the IRS because there are strict recordkeeping requirements involved. In addition, an owner-employee salary that's inordinately higher or lower than those of similar and similarly located companies can catch the IRS's eye — especially if the business is a corporation.

CONTACT METHODS

The IRS normally has three years within which to conduct an audit, and often an audit doesn't begin until a year or more after you file a return. If you're selected for an audit, you'll be notified by letter. Generally, the IRS doesn't make initial contact by phone. If there's no response to the letter, the agency may follow up with a call. Ignore unsolicited email messages about an audit. The IRS doesn't contact people in this manner; these are scams.



Many audits simply request that you mail in documentation to support certain deductions that you've claimed. Others may ask you to provide receipts and other documents to a local IRS office. Only the harshest version, the field audit, requires you to meet personally with one or more IRS auditors.

Keep in mind that the tax agency won't demand an immediate response to a mailed notice. You'll be informed of the discrepancies in question and given time to prepare. You'll need to collect and organize all relevant income and expense records. If any records are missing, you'll have to reconstruct the information as accurately as possible based on other documentation.

HOW WE CAN HELP

If the IRS chooses you for an audit, our firm can help you understand what the IRS is disputing

(it's not always clear) and then gather the documents and information needed. We can also help you respond to the auditor's inquiries in the most expedient and effective manner.

Above all, don't panic! Many audits are routine. By taking a meticulous, proactive approach to how you track, document and file your tax-related information, whether for an individual or business return, you'll make an audit easier and even decrease the chances that one will happen in the first place. ■

THE DEDUCTIBILITY OF MEDICAL EXPENSES

Individual taxpayers may be able to claim medical expense deductions on their tax returns. However, the rules can be challenging, and it can be difficult to qualify. Here are five points to keep in mind:

1. You must itemize to claim the deduction and have quite a few expenses. For 2021, the medical expense deduction can only be claimed to the extent your unreimbursed costs exceed 7.5% of your adjusted gross income. If your total itemized deductions for 2021 will exceed your standard deduction, moving or "bunching" nonurgent medical procedures and other controllable expenses into this year may allow you to exceed the 7.5% floor and benefit from the deduction.

2. Health insurance premiums may help.

This can total thousands of dollars a year. Even if your employer provides health coverage, you can deduct the portion of the premiums that you pay. Long-term care insurance premiums are also included as medical expenses, subject to limits based on age.

3. Transportation counts. The cost of getting to and from medical treatments counts as a medical expense. This includes taxi fares, public transportation or using your own car. Car costs can be calculated at 16 cents a mile for miles driven in 2021, plus tolls and parking. Alternatively, you can deduct certain actual costs (such as for gas and oil) that directly relate to your medical transportation.

4. Controllable costs are key. These include the costs of glasses, hearing aids, dental work, mental health counseling and other ongoing expenses in connection with medical needs. Purely cosmetic expenses generally don't qualify. Prescription drugs (including insulin) qualify, but over-the-counter aspirin and vitamins don't. Neither do amounts paid for treatments that are illegal under federal law (such as medical marijuana), even if state law permits them. The services of therapists and nurses can qualify if they relate to medical conditions and aren't for general health.

5. Don't overlook smoking-cessation and weight-loss programs. Amounts paid for participating in smoking-cessation programs and for prescribed drugs designed to alleviate nicotine withdrawal are deductible. However, nonprescription nicotine gum and patches aren't. A weight-loss program is deductible if undertaken as treatment for a disease diagnosed by a physician. Deductible expenses include fees paid to join a program and attend periodic meetings. The cost of diet food isn't deductible. ■



DON'T GET BLOWN AWAY BY A WINDFALL

Receiving a sudden and sizable influx of cash may seem like a dream come true. It can be, but many people get blown away by a windfall and end up in worse financial shape.

RISKY CONDITIONS

Perhaps the most obvious example is you may be tempted to immediately buy an expensive new car or home. Or fraudulent charities may come knocking. You can avoid these potential pitfalls by stashing your windfall in a bank or money market account as soon as you receive it. Let it sit there until you identify a few specific, reasonable goals — such as funding your retirement or a child or grandchild's education. Waiting at least a month before you touch the money can help prevent impulse buys and other mistakes.

Also, you may owe taxes. Some windfalls, such as lottery winnings and certain legal settlements, are subject to federal tax — as much as 37% federal tax if your windfall pushes you into the top income tax bracket. State and local taxes may apply as well. A tax professional can help you determine what you owe.

SHELTER FROM THE STORM

What you eventually decide to do with your windfall depends on many factors. If you have certain types of debt, you'll probably want to pay it off — especially if it carries a high interest rate and the interest isn't



deductible. Also, establishing or boosting your emergency savings can minimize the need to incur future debt.

Next, consider where you'd like to be five, 10 or 20 years into the future. Develop a budget that will help you move toward your goals — whether that means retiring early, starting a business or something else. You probably shouldn't quit your job. Few windfalls are large enough to see anyone all the way through retirement.

LONG-TERM PLAN

A final word of warning: Be careful when asked for money. Friends and family members may expect to share in your bounty or may pitch "sure-fire" investment opportunities. We can help you formulate a long-term plan to put a windfall to optimal use. ■

TAX CALENDAR

October 15

Personal federal income tax returns for 2020 that received an automatic extension must be filed today and any tax, interest and penalties due must be paid.

- The Financial Crimes Enforcement Network (FinCEN) Report 114 "Report of Foreign Bank and Financial Accounts" (FBAR) must be filed by today, if not filed already, for offshore bank account reporting. (This report received an automatic extension to today if not filed by the original due date of May 15th.)
- If an extension was obtained, calendar-year C corporations should file their 2020 Form 1120 by this date.
- If the monthly deposit rule applies, employers must deposit the tax for payments in September for Social Security, Medicare, withheld income tax and nonpayroll withholding.

November 1

The third quarter Form 941 ("Employer's Quarterly Federal Tax Return") is due today, and any undeposited tax must be deposited. (If your tax liability is less than \$2,500, you can

pay it in full with a timely filed return.) If you deposited the tax for the quarter in full and on time, you have until November 10 to file the return.

- If you have employees, a federal unemployment tax (FUTA) deposit is due if the FUTA liability through September exceeds \$500.

November 15

If the monthly deposit rule applies, employers must deposit the tax for payments in October for Social Security, Medicare, withheld income tax and nonpayroll withholding.

- If an extension was obtained, calendar-year tax-exempt organizations should file their 2020 returns by this date.

December 15

Calendar-year corporations must deposit the fourth installment of estimated income tax for 2021.

- If the monthly deposit rule applies, employers must deposit the tax for payments in November for Social Security, Medicare, withheld income tax and nonpayroll withholding.

STATE TAXES IMPACT BUSINESS SALES, TOO

For various reasons, business owners sometimes decide to put their companies on the market. To successfully negotiate the sale of a business, it's critical to understand the tax implications. Armed with this knowledge, you can assess the impact of various transaction structures and sales price allocations on your net proceeds from the sale and potentially adjust the sales price accordingly.

Business owners tend to focus on the federal tax implications of a sale, but don't ignore state taxes. Now that federal tax rates are lower than they've been in the past, state taxes may take on added significance. If you're contemplating relocating or retiring to another state, it may make sense to consider moving before you sell the business — especially if the new state has low, or even no, income tax.

Before you attempt this strategy, however, be sure to consult a qualified tax advisor. Changing your domicile and residence for tax purposes isn't like flipping a switch. You'll need to take several specific actions to demonstrate your intent to establish a permanent

place of abode in the new state, such as obtaining a driver's license, registering to vote, and becoming involved with local organizations and activities.



Keep in mind, too, that there may be rules about the number of days spent in the state. So, you may have to do more than take the steps above to show that you're a resident of your new state. For instance, if you live in your "old" state most of the year and spend only a couple months in your new state, you

could find that, at least for tax purposes, you're deemed a resident of both states. We can help you prepare for the state tax implications of a business sale. ■

Primary Destination	County	M&IE Total	Continental Breakfast/Breakfast	Lunch	Dinner	Incidental Expenses	First & Last Day of Travel
Albany	Albany	\$69	\$16	\$17	\$31	\$5	\$51.75
Binghamton	Broome	\$64	\$14	\$16	\$29	\$5	\$48.00
Buffalo	Erie	\$69	\$16	\$17	\$31	\$5	\$51.75
Floral Park / Garden City / Great Neck	Nassau	\$74	\$17	\$18	\$34	\$5	\$55.50
Glens Falls	Warren	\$69	\$16	\$17	\$31	\$5	\$51.75
Ithaca	Tompkins	\$74	\$17	\$18	\$34	\$5	\$55.50
Kingston	Ulster	\$69	\$16	\$17	\$31	\$5	\$51.75
Lake Placid	Essex	\$79	\$18	\$20	\$36	\$5	\$59.25
New York City	Bronx / Kings / New York / Queens / Richmond	\$79	\$18	\$20	\$36	\$5	\$59.25
Niagara Falls	Niagara	\$69	\$16	\$17	\$31	\$5	\$51.75



WE ARE YOUR DOL



Department
of Labor

THE NY HERO ACT

Information & FAQs

On May 5, 2021, the New York Health and Essential Rights Act (NY HERO Act) was signed into law. The law mandates extensive new workplace health and safety protections in response to the COVID-19 pandemic. The purpose of the NY HERO Act is to protect employees against exposure and disease during an airborne infectious disease outbreak.

Under this new law, the New York State Department of Labor (NYS DOL), in cooperation with the NYS Department of Health, has developed a new standard, a model plan or general industry template, and 11 industry-specific model plans for the prevention of airborne infectious disease. Employers can choose to adopt the applicable policy template/plan provided by NYS DOL or establish an alternative plan that meets or exceeds the standard's minimum requirements.

This 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 standard is subject to any additional or greater requirements arising from a declaration of a state of emergency due to an airborne infectious disease, as well as any applicable federal standards.

The standard is available in English and Spanish.

TIMELINE

- **May 5, 2021** – NY HERO Act signed into law.
- **July 6, 2021** – DOL publishes model standards.
- **August 5, 2021** (30 days after NYS DOL develops and publicizes model standards) – Deadline for New York employers to adopt an airborne infectious disease exposure plan. Employers must also provide the plan in writing to all employees in English and the primary language of the worker(s) within 30 days of adopting the plan, within 15 days of reopening due to airborne infectious disease related closure, and to all new employees upon hire.
- **September 4, 2021** – Employers' airborne infectious disease plan must be distributed to employees.
- **November 1, 2021** – All employers with 10 or more employees must permit workers to establish and administer a joint labor-management workplace safety committee.

Note: Details are subject to modification. Please refer to dol.ny.gov/ny-hero-act for updates and additional information.

FREQUENTLY ASKED QUESTIONS

What businesses are covered by the NY HERO Act?

The law covers all non-governmental industries across New York and work sites, with the exception of any employee or employer within the coverage of a temporary or permanent OSHA standard on COVID-19, or airborne infectious diseases, generally. As of this time, only health care is covered by such an OSHA standard including employer-provided housing and transportation. It also protects special categories of workers at "non-traditional" workplaces, including private households and individuals working for digital applications or platforms. The NY HERO Act does not cover telework or any work site that the employer does not have the ability to control.

Is the NY HERO Act specific to COVID-19?

No. The law is meant to help prepare for any future airborne infectious disease. This includes any infectious viral, bacterial, or fungal disease that is transmissible through the air via aerosol particles or droplets and is designated by the New York State Commissioner of Health as a highly contagious communicable disease.

What obligations do employers have regarding their safety plan?

All covered businesses must have their plans in place within 30 days from the release of NYS DOL's airborne infectious disease policies (August 5, 2021). A general template, or Model Airborne Infectious Disease Exposure Prevention Plan, as well as industry specific templates, have been produced by the Department of Labor. Employers may use one of these templates or develop their own plan with the participation of their employees or collective bargaining agents.

What steps must employers take after an airborne infectious disease designation by the New York State Commissioner of Health?

When there is a designation that a highly contagious communicable disease presents a serious risk of harm to the public health, each employer must:

- Immediately review the worksite's exposure prevention plan and update the plan, if necessary, to ensure that it incorporates current information, guidance, and mandatory requirements issued by federal, state, or local governments related to the infectious agent of concern;
- Finalize and promptly activate the worksite exposure prevention plan;
- Provide a verbal review of the plan with their employees;
- Provide each employee with a copy of the exposure prevention plan in English or in the language identified as the primary language of such employees, if available. The plan must also be posted at the worksite and be accessible to employees during all work shifts.

What if there is no designation by the Commissioner of Health? Does an employer have to do anything?

Yes. Even in the absence of a designation by the New York State Commissioner of Health employers must:

- Establish an airborne infectious disease exposure prevention plan and provide it to employees within 30 days of adoption.
- Continuously review and update their plan to reflect new or modified aspects of business operations or to be consistent with an updated airborne infectious disease exposure prevention standard as published by the Department of Labor.

Does an employer have to give the written airborne infectious disease exposure prevention plan to their employees?

Yes. An employer must provide the written plan to employees:

- Within 30 days of adoption of the plan;
- Within 15 days after reopening after a period of closure due to airborne infectious disease;
- Upon the hiring of a new employee.

What does the Act's joint labor-management workplace safety committee requirement entail?

The law requires employers with 10 or more employees to establish and administer a joint labor-management workplace safety committee to ensure workers play an integral role in work site safety and can raise safety and health concerns. This requirement goes into effect on November 1, 2021. NYS DOL will issue regulations regarding workplace safety committee requirements in the future.

What enforcement mechanisms exist to address violations of the law?

Employers may be subject to daily penalties of \$50 and violations ranging up to \$10,000 for failure to abide by the requirements of the plan.

What happens if an employer fires or take other retaliatory actions against workers?

The NY HERO Act has strong anti-retaliation protections that prohibit employers from taking adverse actions against workers for activities protected by the Act. Employers are expressly prohibited from retaliation against employees exercising their rights under the law.

See more at: dol.ny.gov/retaliation

Does an employer have to provide a written plan to employees in a language other than English?

Yes. An employer must provide the written plan in the employee's primary language. If an employee identifies their primary language as a language for which a model standard is not available from the commissioner, the employer may provide that employee with an English-language notice.

Is an employer required to explain the plan to its employees?

Yes. A verbal review of the plan with all employees must be conducted, except need not be provided to individuals working for staffing agencies, contractors and subcontractors, or individuals delivering goods or transporting people to or from the worksite. A verbal review of the plan must also be conducted when a highly contagious communicable disease is designated by the Commissioner of Health as presenting a serious risk of harm to the public health.

What is meant by “verbal review”?

Employers must conduct a verbal review of the infectious disease exposure protection plan with their employees, but such review is not required to be in person. Employers should conduct the verbal review in a manner most suitable for the prevention of an airborne infectious disease, including via audio or video conference technology when applicable.

Are employers required to post the plan at the work site?

Yes. The plan must be posted in a visible and prominent location within each work site, except when such work site is a vehicle.

What are the differences between the various industry specific templates?

The various industry specific templates contain unique “Advanced Controls” sections tailored specifically to each industry.

What if there is no template for my industry?

If there is no template available that is specific to their industry, employers may either adopt the Department of Labor’s Model Airborne Infectious Disease Exposure Prevention Plan or create their own alternative plan. An alternative plan must equal or exceed the minimum standards provided by the Department of Labor’s Model Airborne Infectious Disease Exposure Prevention Plan. Employers can use the “Advanced Controls” section to add controls that are applicable to their industry or business.

Is employee review and feedback always required in the development of the employer’s plan?

While the Department of Labor encourages all employers to engage their workforce on the adoption of a plan, an employer who utilizes one of the plans or templates published by the Commissioner of Labor is not required to have employees review the plan and provide feedback prior to adoption. As required by Section 2 of the HERO Act, which takes effect on November 1, 2021, employers who employ at least 10 employees are required to establish a workplace safety committee which is authorized, among other tasks, to review workplace policies relating to occupational safety and health.

If the employer makes alterations to the plan is it considered an “Alternative Plan” needing employee review and/or participation?

Modifications by the employer in the Controls or Advance Controls sections of the Department of Labor’s General Industry Template do not necessarily constitute an “alternative plan” for the purposes of the HERO Act and likely do not require additional employee participation. However, amendments to such templates that go beyond the open fields of such template likely do constitute an “alternative plan” requiring employee review and/or participation.

Will more industry specific templates be published?

While there are no current plans to publish more industry specific plans, the Department of Labor welcomes suggestions for future consideration, and will consider additional templates as well as amendments to the existing templates as such feedback is received.

Is the healthcare industry covered by the HERO Act?

It can be. Employers in the healthcare industry are **not** covered by the HERO Act if the employer is covered by a temporary or permanent standard adopted by the Occupational Safety and Health Administration (OSHA). However, every employer must make its own determination as to whether or not it, or any of its employees, is covered by a temporary or permanent OSHA standard. In the event that a temporary OSHA standard is no longer in effect, the employer previously covered by the OSHA standard will then be covered by the HERO Act.

Does the HERO Act Apply to public universities and schools?

No. The HERO Act does not apply to governmental entities such as public schools or universities. Public employers, however, are subject to the requirements of Section 27-c of the Labor Law, which requires the preparation of public employers for state disaster emergencies involving public health.

Is employer-provided housing and transportation covered under the HERO Act?

A “work site” under the Act is defined as any physical space that has been designated as the location where work is performed and over which an employer has the ability to exercise control. This generally includes employer-provided housing and transportation.

If the employer is based outside of New York State but has employees based in NY, are the NY employees covered by the HERO Act?

Yes, unless the employee within New York State is telecommuting or teleworking from a site at which the employer has no ability to exercise control (e.g. the employee’s home residence).

Will the Department of Labor be publishing HERO Act regulations?

Yes, the Department of Labor will be promulgating regulations for the HERO Act in accordance with the State Administrative Procedure Act.

Are independent contractors covered?

Employers are required to have an airborne infectious disease plan in place for all work locations over which they have the ability to exercise control, including a work site with independent contractors.

Does the written plan need to be distributed to independent contractors, individuals working for staffing agencies, and others broadly defined as “employees” under the HERO Act who would not traditionally be defined as employees?

Yes.

Is there DOL guidance to assist in determining what industry specific plan an employer should utilize?

Not at this time. Employers should adopt a plan that most closely applies to their industry and work site or use the Model Airborne Infectious Disease Exposure Prevention Plan.

Are employers required to add this plan to their employee handbook, if they have one?

Yes.

If an employer has multiple industries and environments, which template should be used?

Employers should select the most appropriate template and customize the controls section to add appropriate controls for the industry or work site(s) by assessing specific employee or contractor functions and unique circumstances and conditions of particular work sites to determine the appropriate template to utilize. The employer may also establish more than one plan for multiple work sites.

Which template is most appropriate for an office environment?

The Model Airborne Infectious Disease Exposure Prevention Plan is best suited to an office environment, but attention should be paid to ensure that controls and other aspects of the plan address the unique circumstances and conditions of particular work sites.

When does an employer’s airborne infectious disease plan need to go into effect?

Employers must follow their airborne infectious disease plan when a highly contagious communicable disease is designated by the Commissioner of Health as presenting a serious risk of harm to public health, as is currently the case with COVID-19. Employers should monitor the Department of Labor’s HERO Act website at dol.ny.gov/ny-hero-act for any updates.

If an employer develops an alternative plan for their work site, does it need be approved by the Department of Labor before it is adopted?

No. However, employers must ensure that their alternative plan equals or exceeds the minimum standards provided by the model standard.

Does the HERO Act apply to a business with no employees other than the owner?

No. The owner in such a scenario would not qualify as an “employer” as defined under the HERO Act and would not need to adopt a plan for their work site.

For more information, refer to the NY HERO Act standards.

New York State's Minimum Wage

The statewide \$15 minimum wage was enacted as part of the 2016-17 State Budget. The plan takes the needs of workers and businesses alike into account.

As of December 31, 2016, the first in a series of wage increases went into effect. Rates differ based on region and industry because the increases are calibrated to provide businesses ample time to adjust.

General Minimum Wage Rate Schedule

Location	12/31/16	12/31/17	12/31/18	12/31/19	12/31/20	2021*
NYC - Big Employers (of 11 or more)	\$11.00	\$13.00	\$15.00			
NYC - Small Employers (10 or less)	\$10.50	\$12.00	\$13.50	\$15.00		
Long Island & Westchester	\$10.00	\$11.00	\$12.00	\$13.00	\$14.00	\$15.00
Remainder of New York State Workers	\$9.70	\$10.40	\$11.10	\$11.80	\$12.50	\$13.20*

**Future increases will be based on an indexed schedule to be set by the Director of the Division of the Budget in consultation with the Department of Labor following an annual review of the impact.*