HERO Act Updates from the Business Council

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On Friday September 22nd, the Department of Labor, in an attempt to clarify masking requirements in the workplace under the HERO Act, updated the **Model Airborne Infectious Disease Prevention Plan**. The revisions are as follows:

4. Face Coverings: When in use, face coverings must cover the nose and mouth, and fit snugly, but comfortably, against the face. The face covering itself must not create a hazard (e.g., have features could get caught in machinery or cause severe fogging of eyewear). The face coverings must be kept clean and sanitary and changed when soiled, contaminated, or damaged.

1. [APPLICABLE FOR MOST WORKPLACES] Employees will wear appropriate face coverings in accordance with guidance from State Department of Health or the Centers for Disease Control and Prevention, as applicable.

2. [APPLICABLE FOR WORKPLACES where all individuals on premises, including but not limited to employees, are fully vaccinated – defined as having completed a federally authorized or approved vaccination series for an airborne infectious disease designated as a highly contagious communicable disease that presents a serious risk of harm to the public health (as is currently the case for COVID-19, pursuant to the Commissioner of Health's designation)] Appropriate face coverings are recommended, but not required, consistent with State Department of Health and the Centers for Disease Control and Prevention applicable guidance, as of September 16, 2021.

It's clear that the Department strongly recommends that all employees wear masks when indoors regardless of vaccination status. One could argue that the DOH/**CDC guidance** is just that, guidance - and does not include a mandate for universal mask wearing, but it is clearly the preference of the Department that HERO Act plans reflect such a requirement. There was no corresponding update to the **Airborne Infectious Disease Prevention Standard**. Industry templates have been updated.

Both the CDC and **OSHA** recommend face masks regardless of vaccination status, in areas of "substantial" or "high" rates of transmission. Employers should consider adopting their HERO Act plan to reflect these recommendations.