

STATE OF NEW YORK

3321--B

2023-2024 Regular Sessions

IN ASSEMBLY

February 2, 2023

Introduced by M. of A. JOYNER, LUNSFORD, MAMDANI -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to regulating the temperature of all indoor and outdoor worksites

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "temper-
2 ature extreme mitigation program (TEMP) act".

3 § 2. Legislative findings and intent. The legislature hereby finds and
4 declares that New Yorkers, working both in outdoor and indoor sites, are
5 exposed to extreme temperatures due to climate change. This involves
6 both skyrocketing heat in the summer and freezing cold in the winter.
7 Every year, New York city has high numbers of heat-related emergency
8 department visits, hospital admissions, and deaths. According to the New
9 York City Office of the Mayor, each year there are an estimated 450
10 heat-related ED visits, 150 heat-related hospital admissions, 10 heat-
11 stroke deaths, and 350 heat-exacerbated deaths, caused by heat worsening
12 existing chronic conditions.

13 Further, cold stress injuries have proven to be a concern for New
14 York's workers. In 2018 in the United States, there were 2,890 cases of
15 ice, sleet, and snow injuries; 14% of those were in the state of New
16 York (BLS). In 2018 in New York state, 50 injuries were related to expo-
17 sure to environmental cold. All 50 of those injuries were cases involv-
18 ing 31 or more days of missed work (BLS).

19 The legislature hereby finds and declares that the government is obli-
20 gated to ensure that employers provide safe conditions for their employ-
21 ees.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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§ 3. The labor law is amended by adding a new article 20-D to read as follows:

ARTICLE 20-D
TEMPERATURE REGULATION BY EMPLOYERS

Section 742. Scope.

743. Definitions.

744. Temperature protection standards.

745. Education and training.

746. Enforcement.

§ 742. Scope. The following industries will be held to the standards in this article:

1. Agriculture;
2. Construction;
3. Landscaping;
4. Commercial shipping;
5. Food service; and
6. Warehousing.

§ 743. Definitions. For the purposes of this article, the following terms shall have the following meanings:

1. "Employee" means any person providing labor or services within the scope of this article for remuneration for a public or private entity or business within the state, without regard to an individual's immigration status, and shall include, but not be limited to, part-time workers, independent contractors, day laborers, farmworkers and other temporary and seasonal workers. The term shall also include individuals working for staffing agencies, contractors or subcontractors on behalf of the employer at any individual worksite, as well as any individual delivering goods or transporting people at, to or from the worksite on behalf of the employer, regardless of whether delivery or transport is conducted by an individual or entity that would otherwise be deemed an employer under this article, or any person holding a position by appointment or employment in the service of a public employer within the scope of this article.

2. "Employer" means any individual, partnership, association, corporation, limited liability company, business trust, legal representative, public entity, or any organized group acting as employer within the scope of this article.

3. "Indoor worksite" means any enclosed work vehicles and any space between a floor and a ceiling bound on all sides by walls. A wall includes any door, window, retractable divider, garage door, or other physical barriers that is temporary or permanent, whether open or closed.

4. "Outdoor worksite" means all employers with employees performing work in an outdoor environment. The term outdoor worksite does not apply to incidental exposure, which exists when an employee is required to perform a work activity outdoors for not longer than fifteen minutes in any sixty-minute period.

5. "Outdoor temperature stress threshold" means a heat stress threshold of eighty or more degrees Fahrenheit and a cold threshold of sixty or below degrees Fahrenheit.

6. "Indoor temperature stress threshold" means a heat stress threshold of eighty or more degrees Fahrenheit and a cold threshold of sixty or below degrees Fahrenheit. In cases of offices, schools, or other indoor temperature regulated environments, the indoor temperature shall fall between sixty-eight point five and seventy-five degrees when the outdoor temperature is below fifty-five degrees, and when the outdoor temper-

1 ature is above eighty-five degrees, the indoor temperature shall fall
2 between seventy-five and eighty point five degrees.

3 7. "Heat illness" means a serious medical condition resulting from the
4 body's inability to cope with a particular heat load, and includes, but
5 is not limited to, heat cramps, heat exhaustion, heat syncope, and heat
6 stroke.

7 8. "Cold illness" means a serious medical condition resulting from the
8 body's inability to cope with cold temperatures.

9 9. "Personal protective equipment" or "PPE" means the necessary
10 protective equipment, gear, uniforms, and clothing, to withstand temper-
11 atures at or exceeding the stress thresholds.

12 § 744. Temperature protection standards. 1. Heat-specific standards.
13 The employer shall fulfill the following requirements when employees are
14 in an outdoor or indoor worksite and experiencing conditions at or
15 exceeding a heat stress threshold of eighty or more degrees Fahrenheit:

16 (a) Access to hydration. The employer shall provide access to one
17 quart of water per hour per employee at no cost to the employee and such
18 access shall be as close to the worksite as possible.

19 (b) Rest. The employer shall offer preventative breaks at the duration
20 and frequency of ten minutes in the shade for every two hours of outdoor
21 work and ten minutes in a cooler breakroom for indoor workers. The
22 breakroom temperature shall fall between seventy-five and eighty point
23 five degrees when the outdoor temperature is above eighty-five degrees.
24 Preventative breaks shall be paid.

25 (c) Medical monitoring. Employers shall closely monitor temperatures
26 and implement their workplace heat stress plan. If an employee exhibits
27 signs or reports symptoms of heat illness while taking a preventative
28 cool-down rest, during a preventative cool-down rest period, or at any
29 other time, the employer shall provide appropriate first aid or emergen-
30 cy response.

31 (d) Access to shade. (i) Shade shall be made available when the
32 temperature exceeds eighty degrees Fahrenheit and shall be as close to
33 the worksite as possible. When the outdoor temperature in the work area
34 exceeds eighty degrees Fahrenheit, the employer shall have and maintain
35 one or more areas with shade at all times while employees are present
36 that are either open to the air or provided with ventilation or cooling.
37 The amount of shade present shall be at least enough to accommodate the
38 number of employees on recovery or rest periods, so that they can sit in
39 a normal posture fully in the shade with at least four square feet per
40 resting employee. The shade shall be located as close as practicable to
41 the areas where employees are working. Subject to the same specifica-
42 tions, the amount of shade present during meal periods shall be at least
43 enough to accommodate the number of employees on the meal period who
44 remain onsite.

45 (ii) Shade shall be available when the temperature does not exceed
46 eighty degrees Fahrenheit. When the outdoor temperature in the work area
47 does not exceed eighty degrees Fahrenheit employers shall either provide
48 shade pursuant to subparagraph (i) of this paragraph or provide timely
49 access to shade upon an employee's request.

50 (iii) Employees shall be allowed and encouraged to take a preventative
51 cool-down rest in the shade when they feel the need to do so to protect
52 themselves from overheating. Such access to shade shall be permitted at
53 all times. An individual employee who takes a preventative cool-down
54 rest:

55 (1) Shall be monitored and asked if he or she is experiencing symptoms
56 of heat illness;

1 (2) Shall be encouraged to remain in the shade; and

2 (3) Shall not be ordered back to work until any signs or symptoms of
3 heat illness have abated, but in no event, less than five minutes in
4 addition to the time needed to access the shade.

5 (e) Personal protective equipment. Employers shall provide the neces-
6 sary protective equipment, gear, uniforms, and clothing, to withstand
7 temperatures at or exceeding the heat stress thresholds. This may
8 include, but is not limited to:

9 (i) Clothing with cooling and/or wicking features;

10 (ii) Ice vests and cooling rags;

11 (iii) Fans;

12 (iv) Air-conditioning, which shall be mandated at all indoor workplac-
13 es within the scope of this legislation, including but not limited to
14 delivery vehicles and warehouses;

15 (v) Sunscreen;

16 (vi) Hats; and

17 (vii) Anything deemed necessary by the department or a reasonable
18 request made by employees to withstand the heat stress threshold and
19 above.

20 (f) Vehicle standards. Employees who spend more than sixty minutes in
21 vehicles each day or whose worksite is considered a vehicle shall have
22 adequate air-conditioning available inside such vehicle.

23 (g) Worker acclimatization. Employers shall provide time for acclima-
24 tization of new and returning employees. When worksite temperatures are
25 above eighty degrees, employees shall only work twenty percent of their
26 normal duration on their first day and gradually increase work duration
27 over a two-week period.

28 2. Cold-specific standards. The employer shall fulfill the following
29 requirements when employees are in an outdoor or indoor worksite and
30 experiencing conditions at or exceeding the cold threshold of sixty or
31 below degrees Fahrenheit:

32 (a) Access to hydration. The employer shall provide access to one
33 quart of water per hour per employee at no cost to the employee.

34 (b) Rest. The employer shall offer preventative breaks at the duration
35 and frequency of ten minutes in a warm area for every two hours of
36 outdoor work and ten minutes in a warm breakroom for indoor workers.
37 The breakroom temperature shall fall between sixty-eight point five and
38 seventy-five degrees when the outdoor temperature is below sixty
39 degrees. Preventative breaks shall be paid.

40 (c) Medical monitoring. Employers shall closely monitor temperatures
41 and implement their workplace cold stress plan. If an employee exhibits
42 signs or reports symptoms of cold stress while taking a preventative
43 warm-up rest, during a preventative warm-up rest period, or at any other
44 time, the employer shall provide appropriate first aid or emergency
45 response.

46 (d) Access to warmth. (i) A warm location for breaks shall be made
47 available when the temperature is below sixty degrees Fahrenheit. When
48 the outdoor temperature in the work area is below sixty degrees Fahren-
49 heit, the employer shall have and maintain one or more areas with
50 adequate warmth at all times while employees are present that are
51 provided with ventilation and heating. The size of the warm location
52 shall be at least enough to accommodate the number of employees on
53 recovery or rest periods, with at least four square feet available per
54 resting employee. The rest location shall be located as close as prac-
55 ticable to the areas where employees are working. Subject to the same
56 specifications, access to a warm location shall be present during meal

1 periods and shall be at least enough to accommodate the number of
2 employees on the meal period who remain onsite.

3 (ii) Warm locations shall be available when the temperature is not
4 below sixty degrees Fahrenheit. When the outdoor temperature in the work
5 area is not below sixty degrees Fahrenheit employers shall either
6 provide warmth pursuant to subparagraph (i) of this paragraph or provide
7 timely access upon an employee's request.

8 (iii) Employees shall be allowed and encouraged to take a preventative
9 warm-up rest in the shade when they feel the need to do so to protect
10 themselves from cold stress. Such access shall be permitted at all
11 times. An individual employee who takes a preventative warm-up rest:

12 (1) Shall be monitored and asked if he or she is experiencing symptoms
13 of cold stress;

14 (2) Shall be encouraged to remain in the designated warm area; and

15 (3) Shall not be ordered back to work until any signs or symptoms of
16 cold stress have abated, but in no event, less than five minutes in
17 addition to the time needed to access warmth.

18 (e) Personal protective equipment. Employers shall provide the neces-
19 sary protective equipment, gear, uniforms, and clothing, to withstand
20 temperatures at or exceeding the cold stress thresholds. This may
21 include, but is not limited to:

22 (i) Clothing with heating features;

23 (ii) Gloves, hats, winter coats;

24 (iii) Heating; and

25 (iv) Anything deemed necessary by the department or reasonable request
26 made by employees to withstand the cold stress threshold and below.

27 (f) Vehicle standards. Employees who spend more than sixty minutes in
28 vehicles each day or whose worksite is considered a vehicle shall have
29 adequate heating available inside the vehicle.

30 (g) Worker acclimatization. Employers shall provide time for acclima-
31 tization of new and returning employees. When worksite temperatures are
32 below sixty degrees, employees shall only work twenty percent of their
33 normal duration on their first day of employment in which the temper-
34 ature is below sixty degrees and gradually increase work duration over a
35 two-week period.

36 § 745. Education and training. 1. Training. The department shall
37 create a training curriculum outlining the signs of cold stress and heat
38 illness and the necessary medical responses. Such training shall be
39 administered by the employer at time of hiring.

40 2. Mandated signage and materials. The department shall promulgate
41 signage and educational materials that are required to be made available
42 to employees by their employer in all languages in the state regarding
43 the following:

44 (a) Signs of heat illness and cold stress;

45 (b) Indoor and outdoor temperature stress thresholds;

46 (c) Employer-mandated protections from temperature stress thresholds;

47 (d) Examples of necessary PPE;

48 (e) Where employees can report an employer's lack of accommodation;
49 and

50 (f) Anything else deemed necessary by the department.

51 3. Whistleblower protection. An employer shall provide to every
52 employee written materials describing the protection from retaliatory
53 action for reporting a violation of this article provided pursuant to
54 article twenty-C of this chapter. Any employee who participates in the
55 activities established for worker protections and safety shall not be

1 subject to retaliation for any actions taken pursuant to their partic-
2 ipation.

3 4. The department shall establish a statewide outreach campaign to
4 educate employees on the heat and cold illness standards established and
5 ensure that employers are providing access to proper signage and materi-
6 als.

7 § 746. Enforcement. The department shall promulgate rules and regu-
8 lations to require the following:

9 1. Every employer shall collect and maintain data and records as
10 required by the department on all temperature-related illnesses and
11 fatalities which occur at an outdoor or indoor worksite.

12 2. Every employer shall submit reports of the data collected pursuant
13 to subdivision one of this section quarterly to the department and such
14 reports shall be published by the department on a searchable database.
15 Employers shall additionally make such reports available to any employee
16 or applicable union upon request within five business days. A tempera-
17 ture-related fatality on a construction site shall be deemed a work-re-
18 lated injury for the purposes of reporting pursuant to section forty-
19 four of this chapter.

20 3. Every employer shall submit for approval a written plan on how
21 temperature-related stress will be mitigated to the department each
22 quarter. Once approved by the department, an employer shall provide such
23 plan to all employees and applicable unions.

24 4. Every employer shall be subject to fines for not adhering to the
25 mandatory reporting and enforcement protocols. Employers shall be
26 required to pay penalties of no less than fifty dollars per day for
27 failing to create a plan and up to ten thousand dollars for not follow-
28 ing an adopted plan. The department shall administer notice and collect
29 all fines. All fines collected shall be allocated to the department's
30 temperature standards bureau.

31 5. The department shall establish a worker hotline and an online form
32 where employees can file complaints with the department regarding
33 temperature standards.

34 6. Any other reporting or enforcement protocols necessary to ensure
35 the protection of workers.

36 7. Every employer shall display a thermometer for employee use at
37 indoor and outdoor workplaces to monitor the temperature.

38 § 4. This act shall take effect immediately.