

# STATE OF NEW YORK

2681--B

2021-2022 Regular Sessions

## IN ASSEMBLY

January 19, 2021

Introduced by M. of A. REYES, LUPARDO, DE LA ROSA, L. ROSENTHAL, ROZIC, GOTTFRIED, BURDICK, SEAWRIGHT, BARRON, J. RIVERA, MONTESANO, ENGLE-BRIGHT, JACOBSON, TAYLOR, ZINERMAN, PERRY, MEEKS, CLARK, LUNSFORD, GONZALEZ-ROJAS, DINOWITZ, MAMDANI, SIMON, HEVESI, DICKENS, JACKSON, GALLAGHER, FERNANDEZ, COLTON, RAJKUMAR, EPSTEIN, SILLITTI, D. ROSENTHAL, CARROLL, MITAYNES, PHEFFER AMATO, QUART, BRONSON, NOLAN, FORREST, LAVINE, RODRIGUEZ, BENEDETTO, ABBATE, THIELE, ANDERSON, O'DONNELL, BARNWELL, BURGOS, CRUZ, SEPTIMO, NIOU, PICHARDO, DURSO, CYMBROWITZ, WALLACE, KIM, OTIS, HUNTER -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to preventing occupational exposure to an airborne infectious disease

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

1 Section 1. The labor law is amended by adding a new section 218-b to  
2 read as follows:

3 § 218-b. Prevention of occupational exposure to an airborne infectious  
4 disease. 1. For purposes of this section, the following terms shall  
5 have the following meanings:

6 (a) "Employee" shall mean any person providing labor or services for  
7 remuneration for a private entity or business within the state, without  
8 regard to an individual's immigration status, and shall include, but not  
9 be limited to, part-time workers, independent contractors, domestic  
10 workers, home care and personal care workers, day laborers, farmworkers  
11 and other temporary and seasonal workers. The term shall also include  
12 individuals working for staffing agencies, contractors or subcontractors  
13 on behalf of the employer at any individual work site, as well as any

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

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1 individual delivering goods or transporting people at, to or from the  
2 work site on behalf of the employer, regardless of whether delivery or  
3 transport is conducted by an individual or entity that would otherwise  
4 be deemed an employer under this chapter. The term shall not include  
5 employees of the state, any political subdivision of the state, a public  
6 authority, or any other governmental agency or instrumentality.

7 (b) "Work site" shall mean any physical space, including a vehicle,  
8 that has been designated as the location where work is performed. The  
9 term shall include employer-provided housing and employer-provided  
10 transportation at, to or from the work site but shall not include the  
11 residence of the employer or employee unless such residence has been  
12 provided by the employer and is used as the primary place of work or  
13 such residence is provided by an employer covered under the provisions  
14 of article nineteen-A of this chapter.

15 (c) "Supervisor" or "supervisory employee" shall mean any person who  
16 has the authority to direct and control the work performance of other  
17 employees, or who has the managerial authority to take corrective action  
18 regarding the violation of the law, rules or regulations. This term  
19 shall not include any employee who is a member of a collective bargain-  
20 ing unit that primarily represents employees not otherwise deemed to be  
21 a supervisor or supervisory employee as defined by this subdivision.

22 (d) "Employer" shall mean any person, entity, business, corporation,  
23 partnership, limited liability company, or association employing,  
24 hiring, or paying for the labor of any individual in any occupation,  
25 industry, trade, business, or service. The term shall not include the  
26 state, any political subdivision of the state, a public authority, or  
27 any other governmental agency or instrumentality.

28 (e) "Airborne infectious disease" shall mean any infectious viral,  
29 bacterial or fungal disease that is transmissible through the air in the  
30 form of aerosol particles or droplets and is designated a highly conta-  
31 gious communicable disease by the commissioner of health that presents a  
32 serious risk of harm to the public health.

33 2. The commissioner, in consultation with the department of health,  
34 shall create and publish, in both English and Spanish, a model airborne  
35 infectious disease exposure prevention standard for all work sites,  
36 differentiated by industry, to establish minimum requirements for  
37 preventing exposure to airborne infectious diseases in the workplace in  
38 order to protect the public and the workforce. The model infectious  
39 disease exposure prevention standard shall take into account the types  
40 of risks present at the work site, including the presence of third  
41 parties. The model standard shall explicitly specify and distinguish  
42 the extent to which the provisions are applicable for different levels  
43 of airborne infectious disease exposure, and shall take into consider-  
44 ation circumstances where a state of emergency has or has not been  
45 declared due to an airborne infectious disease, and distinctions in  
46 policies based on circumstances where a state of emergency has been  
47 declared due to an airborne infectious disease shall take into consider-  
48 ation all applicable federal standards to the extent practicable. The  
49 commissioner shall determine, in his or her discretion, which languages  
50 to publish the standard in addition to English and Spanish based on the  
51 number of individuals in the state population that speak each language,  
52 the prevalence of certain languages being spoken in particular indus-  
53 tries, and any other factor that the commissioner shall deem relevant.  
54 Such standard shall include, but not be limited to, establishing  
55 requirements on procedures and methods for:

56 (a) Employee health screenings;

1 (b) Face coverings;

2 (c) Required personal protective equipment ("PPE") applicable to each  
3 industry for eyes, face, head, and extremities, protective clothing,  
4 respiratory devices, and protective shields and barriers, which shall be  
5 provided, used, and maintained in a sanitary and reliable condition at  
6 the expense of the employer. The standard shall provide for a list of  
7 PPE that satisfies the requirements, based on hazard assessments for  
8 each industry;

9 (d) Accessible workplace hand hygiene stations and maintaining healthy  
10 hand hygiene and that employers provide adequate break times for workers  
11 to use handwashing facilities as needed;

12 (e) Regular cleaning and disinfecting of shared equipment and  
13 frequently touched surfaces such as workstations, touchscreens, tele-  
14 phones, handrails, and doorknobs, and all surfaces and washable items in  
15 other high-risk areas such as restrooms, dining areas/breakrooms, locker  
16 rooms, vehicles and sleeping quarters;

17 (f) Effective social distancing for employees and consumers or custom-  
18 ers, as the risk of illness may warrant, including options for social  
19 distancing such as sign postage or markers; increasing physical space  
20 between workers at the worksite; limiting capacity of customers or  
21 consumers; delivering services remotely or through curbside pick-up;  
22 reconfiguring spaces where workers congregate; flexible meeting and  
23 travel options; flexible worksites; or implementing flexible work hours  
24 such as staggered shifts;

25 (g) Compliance with mandatory or precautionary orders of isolation or  
26 quarantine that have been issued to employees, including the identifica-  
27 tion and provision of separate and appropriate accommodations for  
28 employees who reside in employer-provided housing in a manner consistent  
29 with mandatory or precautionary orders of isolation and quarantine that  
30 have been issued to employers and employees;

31 (h) Compliance with applicable engineering controls such as proper air  
32 flow, exhaust ventilation, or other special design requirements;

33 (i) Designation of one or more supervisory employees to enforce  
34 compliance with the airborne infectious disease exposure prevention plan  
35 and any other federal, state, or local guidance related to avoidance of  
36 spreading an airborne infectious disease as applicable to employees and  
37 third parties such as customers, contractors, and members of the public  
38 within the workplace. Non-supervisory line employees shall not bear  
39 responsibility for overseeing compliance with the requirements of the  
40 model policy;

41 (j) Compliance with any applicable laws, rules, regulations, stand-  
42 ards, or guidance on notification to employees and relevant state and  
43 local agencies of potential exposure to airborne infectious disease at  
44 the work site; and

45 (k) Verbal review of infectious disease standard, employer policies  
46 and employee rights under this section, except such review need not be  
47 provided to any individuals working for staffing agencies, contractors  
48 or subcontractors on behalf of the employer at any individual work  
49 site, as well as any individual delivering goods or transporting  
50 people at, to or from the work site on behalf of the employer, where  
51 delivery or transport is conducted by an individual or entity that  
52 would otherwise be deemed an employer under this chapter.

53 3. The model airborne infectious disease exposure prevention standard  
54 shall also include anti-retaliation requirements pursuant to subdivision  
55 eight of this section. The commissioner, in consultation with the  
56 department of health, shall update the model airborne infectious disease

1 exposure prevention standard as necessary provided that the commissioner  
2 shall inform employers of the changes.

3 4. (a) Every employer shall establish an airborne infectious disease  
4 exposure prevention plan either by adopting the model standard relevant  
5 to their industry promulgated pursuant to this section as its airborne  
6 infectious disease exposure prevention plan or by establishing an alter-  
7 native plan that equals or exceeds the minimum standards provided by the  
8 model standard.

9 (b) In any circumstance where an alternative airborne infectious  
10 disease exposure prevention plan is adopted, the employer shall develop  
11 such plan pursuant to an agreement with the collective bargaining repre-  
12 sentative, if any, or with meaningful participation of employees where  
13 there is no collective bargaining representative, for all aspects of the  
14 plan, and such plan shall be tailored and specific to hazards in the  
15 specific industry and work sites of the employer.

16 5. Every employer shall provide the airborne infectious disease expo-  
17 sure prevention plan to his or her employees, in writing in English and  
18 in the language identified by each employee as the primary language of  
19 such employees upon reopening after a period of closure due to airborne  
20 infectious disease and upon hiring. Businesses permitted to operate as  
21 of the effective date of this section shall provide such a plan to all  
22 employees upon the effective date of this act and upon hiring. When an  
23 employee identifies as his or her primary language a language for which  
24 a model document is not available from the commissioner, the employer  
25 shall comply with this paragraph by providing that employee with an  
26 English-language notice.

27 6. The airborne infectious disease exposure prevention plan shall be  
28 posted in a visible and prominent location within the worksite. An  
29 employer that provides an employee handbook to its employees shall, in  
30 addition, include the airborne infectious disease exposure prevention  
31 plan in its handbook.

32 7. Each employer shall make the airborne infectious disease exposure  
33 prevention plan available, upon request, to all employees and independ-  
34 ent contractors, employee representatives, collective bargaining repre-  
35 sentatives, and the commissioner and the commissioner of public health.

36 8. No employer, or his or her agent, or person acting as or on behalf  
37 of a hiring entity, or the officer or agent of any entity, business,  
38 corporation, partnership, or limited liability company, shall discrimi-  
39 nate, threaten, retaliate against, or take adverse action against any  
40 employee for:

41 (a) Exercising their rights under this section or under the applicable  
42 airborne infectious disease exposure prevention plan.

43 (b) Reporting violations of this section or the applicable airborne  
44 infectious disease exposure prevention plan to any state, local, or  
45 federal government entity, public officer or elected official.

46 (c) Reporting an airborne infectious disease exposure concern to, or  
47 seeking assistance or intervention with respect to airborne infectious  
48 disease exposure concerns, to their employer, state, local, or federal  
49 government entity, public officer or elected official.

50 (d) Refusing to work where such employee reasonably believes, in good  
51 faith, that such work exposes him or her, or other workers or the  
52 public, to an unreasonable risk of exposure to an airborne infectious  
53 disease due to the existence of working conditions that are inconsistent  
54 with laws, rules, policies, orders of any governmental entity, including  
55 but not limited to, the minimum standards provided by the model airborne  
56 infectious disease exposure prevention standard, provided that the

1 employee, another employee, or employee representative notified the  
2 employer of the inconsistent working conditions and the employer failed  
3 to cure the conditions or the employer had or should have had reason to  
4 know about the inconsistent working conditions and maintained the incon-  
5 sistent working conditions.

6 9. Nothing in this section shall be deemed to diminish the rights,  
7 privileges, or remedies of any employee under any collective bargaining  
8 agreement. The provisions of this section may be waived by a collective  
9 bargaining agreement, provided that for such waiver to be valid, it  
10 shall explicitly reference this section.

11 10. (a) If after investigation the commissioner finds that such  
12 employer or person has violated any provision of this section, the  
13 commissioner may, by an order which shall describe particularly the  
14 nature of the violation, assess a civil penalty of not less than fifty  
15 dollars per day for failure to adopt an airborne infectious disease  
16 exposure prevention plan, or not less than one thousand dollars nor more  
17 than ten thousand dollars for failure to abide by an adopted airborne  
18 infectious disease exposure prevention plan. Provided, however, that if  
19 the commissioner finds that the employer has violated the provisions of  
20 this section in the preceding six years, he or she may assess a civil  
21 penalty of not less than two hundred dollars per day for failure to  
22 adopt an airborne infectious disease exposure prevention plan, or not  
23 less than one thousand dollars nor more than twenty thousand dollars for  
24 failure to abide by an adopted airborne infectious disease exposure  
25 prevention plan. The commissioner may also order other appropriate  
26 relief including enjoining the conduct of any person or employer in  
27 addition to any other remedies permitted by this section.

28 (b) Any employee may bring a civil action seeking injunctive relief in  
29 a court of competent jurisdiction against an employer alleged to have  
30 violated the airborne infectious disease exposure prevention plan in a  
31 manner that creates a substantial probability that death or serious  
32 physical harm could result from a condition which exists, or from one or  
33 more practices, means, methods, operations or processes which have been  
34 adopted or are in use, by the employer at the work site, unless the  
35 employer did not and could not, with the exercise of reasonable dili-  
36 gence, know of the presence of the violation. The court shall have  
37 jurisdiction to restrain such violations and to order all appropriate  
38 relief, including enjoining the conduct of the employer; awarding costs  
39 and reasonable attorneys' fees to the employee; and ordering payment of  
40 liquidated damages of no greater than twenty thousand dollars, unless  
41 the employer proves a good faith basis to believe that the established  
42 health and safety measures were in compliance with the applicable  
43 airborne infectious disease standard. Where an action brought by an  
44 employee under the provisions of this section, or a defense, counter-  
45 claim, or crossclaim brought by an employer in response thereto, is  
46 found upon judgment to be completely without merit in law and undertaken  
47 primarily to harass or maliciously injure another, the court may in its  
48 discretion impose sanctions against the attorney or party who brought  
49 such action, defense, counterclaim or crossclaim.

50 11. The provisions and remedies of paragraph (b) of subdivision one  
51 and paragraphs (a) and (b) of subdivision two of section two hundred  
52 fifteen of this article shall be applicable to subdivision eight of this  
53 section. Where an action brought by an employee under the provisions of  
54 this section, or a defense, counterclaim, or crossclaim brought by an  
55 employer in response thereto, is found upon judgment to be completely  
56 without merit in law and undertaken primarily to harass or maliciously

1 injure another, the court may in its discretion impose sanctions against  
2 the attorney or party who brought such action, defense, counterclaim or  
3 crossclaim.

4 12. Where a violation of this section is alleged to have occurred, the  
5 commissioner or attorney general may apply in the name of the people of  
6 the state of New York for an order enjoining or restraining the commis-  
7 sion or continuance of the alleged unlawful acts. The commissioner, in  
8 consultation with the commissioner of health, shall promulgate rules and  
9 regulations necessary to ensure compliance with this chapter.

10 13. The commissioner, in consultation with the commissioner of health,  
11 shall adopt and amend rules and regulations to effectuate the provisions  
12 and purposes of this section.

13 § 2. The labor law is amended by adding a new section 27-d to read as  
14 follows:

15 § 27-d. Workplace safety committees. 1. For the purposes of this  
16 section, the following terms shall have the following meanings:

17 (a) "Employer" shall mean any person, entity, business, corporation,  
18 partnership, limited liability company, or an association employing at  
19 least ten employees. The term shall not include the state, any political  
20 subdivision of the state, a public authority, or any other governmental  
21 agency or instrumentality.

22 (b) "Employee" shall include all employees in the state, except for  
23 employees of the state, any political subdivision of the state, a public  
24 authority, or any other governmental agency or instrumentality.

25 2. Employers shall permit employees to establish and administer a  
26 joint labor-management workplace safety committee. Each workplace safety  
27 committee shall be composed of employee and employer designees, provided  
28 at least two-thirds are non-supervisory employees. Employee members of  
29 the committee shall be selected by, and from among, non-supervisory  
30 employees. Committees shall be co-chaired by a representative of the  
31 employer and non-supervisory employees. Where there is a collective  
32 bargaining agreement in place, the collective bargaining representative  
33 shall be responsible for the selection of employees to serve as members  
34 of the committee. Committees representing geographically distinct work-  
35 sites may also be formed as necessary.

36 3. No employer shall interfere with the selection of employees who  
37 shall serve on such committee or who serve as the workplace safety  
38 designee or with such employees' performance of the duties authorized  
39 under this section.

40 4. Each workplace safety committee and workplace safety designee shall  
41 be authorized to perform the following tasks, including but not limited  
42 to:

43 (a) Raise health and safety concerns, hazards, complaints and  
44 violations to the employer to which the employer must respond.

45 (b) Review any policy put in place in the workplace required by any  
46 provision of this chapter or any provision of the workers' compensation  
47 law and provide feedback to such policy in a manner consistent with any  
48 provision of law.

49 (c) Review the adoption of any policy in the workplace in response to  
50 any health or safety law, ordinance, rule, regulation, executive order,  
51 or other related directive.

52 (d) Participate in any site visit by any governmental entity responsi-  
53 ble for enforcing safety and health standards in a manner consistent  
54 with any provision of law.

1 (e) Review any report filed by the employer related to the health and  
2 safety of the workplace in a manner consistent with any provision of  
3 law.

4 (f) Regularly schedule a meeting during work hours at least once a  
5 quarter.

6 5. Employers shall permit safety committee designees to attend a  
7 training, without suffering a loss of pay, on the function of worker  
8 safety committees, rights established under this section, and an intro-  
9 duction to occupational safety and health.

10 6. Any employee who participates in the activities or establishment of  
11 a workplace safety committee shall not be subject to retaliation for any  
12 actions taken pursuant to their participation. Violations of this subdi-  
13 vision shall be deemed to be a violation of paragraph (a) of subdivision  
14 one of section two hundred fifteen of this chapter and the civil penal-  
15 ties and remedies of paragraph (b) of subdivision one and paragraphs (a)  
16 and (b) of subdivision two of section two hundred fifteen of this chap-  
17 ter shall be applicable to this subdivision.

18 7. Nothing in this section shall be deemed to diminish the rights,  
19 privileges, or remedies of any employee under any collective bargaining  
20 agreement. The provisions of this section may be waived by a collective  
21 bargaining agreement, provided that for such waiver to be valid, it  
22 shall explicitly reference this section.

23 8. The department shall adopt and amend rules and regulations to  
24 effectuate the provisions and purposes of this section.

25 § 3. Severability. If any provision of this act, or the application  
26 thereof to any person or circumstances, is held invalid or unconstitu-  
27 tional, that invalidity or unconstitutionality shall not affect other  
28 provisions or applications of this act that can be given effect without  
29 the invalid or unconstitutional provision or application, and to this  
30 end the provisions of this act are severable.

31 § 4. This act shall take effect on the thirtieth day after it shall  
32 have become a law; provided, however, that section two of this act shall  
33 take effect on the one hundred eightieth day after it shall have become  
34 a law. Effective immediately, the addition, amendment and/or repeal of  
35 any rule or regulation necessary for the implementation of this act on  
36 its effective date are authorized to be made and completed on or before  
37 such effective date.