STATE OF NEW YORK

7477

2021-2022 Regular Sessions

IN ASSEMBLY

May 10, 2021

Introduced by M. of A. REYES -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to preventing occupational exposure to an airborne infectious disease; and to amend a chapter of the laws of 2021 amending the labor law relating to preventing occupational exposure to an airborne infectious disease, as proposed in legislative bills numbers S.1034-B and A. 2681-B, in relation to the effectiveness thereof

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

Section 1. Section 218-b of the labor law, as added by a chapter of the laws of 2021 amending the labor law relating to preventing occupational exposure to an airborne infectious disease, as proposed in legislative bills numbers S.1034-B and A. 2681-B, is amended to read as follows:

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

(a) "Employee" shall mean any person providing labor or services for remuneration for a 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, domestic workers, home care and personal care workers, day laborers, farmworkers and other temporary and seasonal workers. The term shall also include individuals working for *digital applications or platforms,* staffing agencies, contractors or subcontractors on behalf of the employer at any individual work site, as well as any individual delivering goods or transporting people at, to or from the work site 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 chapter. The term shall not include employees *or independent*

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

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contractors of the state, any political subdivision of the state, a public authority, or any other governmental agency or instrumentality.

(b) "Work site" shall mean any physical space, including a vehicle, that has been designated as the location where work is performed **over which an employer has the ability to exercise control**. The term shall include employer-provided housing and employer-provided transportation at, to or from the work site but shall not include the residence of the employer or employee unless such residence has been provided by the employer and is used as the primary place of work or such residence is provided by an employer covered under the provisions of article nineteen-A of this chapter. **The term shall not include a telecommuting or telework site unless the employer has the ability to exercise control of such site.**

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

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

(e) "Airborne infectious disease" shall mean any infectious viral, bacterial or fungal disease that is transmissible through the air in the form of aerosol particles or droplets and is designated **by the commissioner of health** a highly contagious communicable disease [~~by the commissioner of health that presents a serious risk of harm to the public health~~] **that presents a serious risk of harm to the public health**.

2. The commissioner, in consultation with the department of health, shall create and publish, in both English and Spanish, a model airborne infectious disease exposure prevention standard for [~~all work sites, differentiated by industry, to~~] **industries representing a significant portion of the workforce, or those with unique characteristics requiring distinct standards, as determined by the commissioner, in consultation with the commissioner of health. The commissioner shall further create and publish, in English and in Spanish, a general model airborne infectious disease exposure prevention standard applicable to all worksites not included in the specific industry standards. Such model standards shall** establish minimum requirements for preventing exposure to airborne infectious diseases in the workplace in order to protect the public and the workforce. The model infectious disease exposure prevention [~~standard~~] **standards** shall take into account the types of risks present at [~~the~~] **any** work site **customarily associated with each covered industry**, including the presence of third parties. The model [~~standard~~] **standards** shall explicitly specify and distinguish the extent to which the provisions are applicable for different levels of airborne infectious disease exposure, and shall take into consideration circumstances where a state of emergency has or has not been declared due to an airborne infectious disease, and distinctions in policies based on circumstances where a state of emergency has been declared due to an airborne infectious disease shall take into consideration all applicable federal stan-

dards to the extent practicable. The commissioner shall determine, in his or her discretion, which languages to publish the [~~standard~~] **standards** in addition to English and Spanish based on the number of individuals in the state population that speak each language, the prevalence of certain languages being spoken in particular industries, and any other factor that the commissioner shall deem relevant. Such [~~standard~~] **standards** shall include, but not be limited to, establishing requirements on procedures and methods for:

(a) Employee health screenings;

(b) Face coverings;

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

(d) Accessible workplace hand hygiene stations and maintaining healthy hand hygiene and that employers provide adequate break times for [~~workers~~] **employees** to use handwashing facilities as needed;

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

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

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

(h) Compliance with applicable engineering controls such as proper air flow[~~,~~] **or** exhaust ventilation[~~, or other special design requirements~~];

(i) Designation of one or more supervisory employees to enforce compliance with the airborne infectious disease exposure prevention plan and any other federal, state, or local guidance related to avoidance of spreading an airborne infectious disease as applicable to employees and third parties such as customers, contractors, and members of the public within the workplace. [~~Non-supervisory line employees shall not bear~~] **No individual who is not a supervisory employee shall have** responsibility for overseeing compliance with the requirements of the [~~model policy~~] **airborne infectious disease exposure prevention plan**;

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

(k) Verbal review of infectious disease standard, employer policies and employee rights under this section, except such review need not be

provided to any individuals working for staffing agencies, contractors or subcontractors on behalf of the employer at any individual work site, as well as any individual delivering goods or transporting people at, to or from the work site on behalf of the employer, where delivery or transport is conducted by an individual or entity that would otherwise be deemed an employer under this chapter.

3. The model airborne infectious disease exposure prevention [~~standard~~] **standards** shall also include anti-retaliation requirements pursuant to subdivision eight of this section. The commissioner, in consultation with the department of health, shall update the model airborne infectious disease exposure prevention [~~standard~~] **standards** as necessary provided that the commissioner shall inform employers of the changes.

4. (a) [~~Every~~] **Within thirty days after the commissioner publishes the model general standard and the model standard relevant to the industry, each** employer shall establish an airborne infectious disease exposure prevention plan either by adopting the model standard relevant to their industry promulgated pursuant to this section as its airborne infectious disease exposure prevention plan or by establishing an alternative plan that equals or exceeds the minimum standards provided by the model standard. **No employee who is not a supervisory employee shall have responsibility for overseeing compliance with the requirements of such an airborne infectious disease exposure plan.**

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

5. Every employer shall provide the airborne infectious disease exposure prevention plan to his or her employees, in writing in English and in the language identified by each employee as the primary language of such employees [~~upon~~] **within thirty days after adoption of the plan, within fifteen days after** reopening after a period of closure due to airborne infectious disease and**, to a newly hired employee,** upon hiring **the new employee**. Businesses permitted to operate as of the effective date of this section shall provide such a plan to all employees [~~upon the effective date of this act and upon hiring~~] **within sixty days after the commissioner publishes the model standard relevant to the industry**. When an employee identifies as his or her primary language a language for which a model [~~document~~] **standard** is not available from the commissioner, the employer shall comply with this paragraph by providing that employee with an English-language notice.

6. The airborne infectious disease exposure prevention plan shall be posted in a visible and prominent location within [~~the~~] **each** worksite**, other than a vehicle**. An employer that provides an employee handbook to its employees shall, in addition, include the airborne infectious disease exposure prevention plan in its handbook.

7. Each employer shall make the airborne infectious disease exposure prevention plan available, upon request, to all employees and independent contractors, employee representatives, collective bargaining representatives, and the commissioner and the commissioner of [~~public~~] health.

8. No employer, or his or her agent, or person acting as or on behalf of a hiring entity, or the officer or agent of any entity, business, corporation, partnership, or limited liability company, shall discrimi-

nate, threaten, retaliate against, or take adverse action against any employee for:

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

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

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

(d) Refusing to work where such employee reasonably believes, in good faith, that such work exposes him or her, or other workers or the public, to an unreasonable risk of exposure to an airborne infectious disease due to the existence of working conditions that are inconsistent with laws, rules, policies, orders of any governmental entity, including but not limited to, the minimum standards provided by the model airborne infectious disease exposure prevention standard, provided that the employee, another employee, or employee representative notified the employer of the inconsistent working conditions and the employer failed to cure the conditions or the employer had or should have had reason to know about the inconsistent working conditions and maintained the inconsistent working conditions.

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

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

(b) Any employee may bring a civil action seeking injunctive relief in a court of competent jurisdiction against an employer alleged to have violated the airborne infectious disease exposure prevention plan in a manner that creates a substantial probability that death or serious physical harm could result **to the employee** from a condition which exists, or from one or more practices, means, methods, operations or processes which have been adopted or are in use, by the employer at the work site, unless the employer did not and could not, with the exercise of reasonable diligence, know of the presence of the violation. The court shall have jurisdiction to restrain such violations and to order all appropriate relief, including enjoining the conduct of the employer;

and awarding costs and reasonable attorneys' fees to the employee[~~; and ordering payment of liquidated damages of no greater than twenty thousand dollars, unless the employer proves a good faith basis to believe that the established health and safety measures were in compliance with the applicable airborne infectious disease standard~~]. Where an action brought by an employee under [~~the provisions of this section, or a defense, counterclaim, or crossclaim brought by an employer in response thereto, is found upon judgment to be completely without merit in law and undertaken primarily to harass or maliciously injure another, the court may in its discretion impose sanctions against the attorney or party who brought such action, defense, counterclaim or crossclaim.~~] this subdivision is found, at any time during the proceedings or upon judgment, to be frivolous by the court, the court may award to the employer costs and reasonable attorneys' fees. The costs and fees awarded may be assessed either against the employee or against the attorney for the employee, or against both, as may be determined by the court, based upon the circumstances of the case. Before bringing a civil action pursuant to this subdivision, an employee must give the employer notice of the alleged violation. An employee may not bring a civil action until thirty days after giving the employer notice of the alleged violation, except where an employee alleges with particularity that the employer has demonstrated an unwillingness to cure a violation in bad faith, and may not bring a civil action if the employer corrects the alleged violation. An employee must bring a civil action pursuant to this subdivision within six months from the date the employee had knowledge of the violation alleged in such civil action.

11. The provisions and remedies of paragraph (b) of subdivision one and paragraphs (a) and (b) of subdivision two of section two hundred fifteen of this article shall be applicable to subdivision eight of this section. Where an action brought by an employee under [~~the provisions of this section, or a defense, counterclaim, or crossclaim brought by an employer in response thereto, is found upon judgment to be completely without merit in law and undertaken primarily to harass or maliciously injure another, the court may in its discretion impose sanctions against the attorney or party who brought such action, defense, counterclaim or crossclaim.~~] this subdivision is found, at any time during the proceedings or upon judgment, to be frivolous by the court, the court may award to the employer costs and reasonable attorneys' fees. The costs and fees awarded may be assessed either against the employee or against the attorney for the employee, or against both, as may be determined by the court, based upon the circumstances of the case.

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

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

§ 2. Section 27-d of the labor law, as added by a chapter of the laws of 2021 amending the labor law relating to preventing occupational exposure to an airborne infectious disease as proposed in legislative bills numbers S.1034-B and A. 2681-B, is amended to read as follows:

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

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

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

2. Employers shall permit employees to establish and administer a joint labor-management workplace safety committee**, but not more than one committee per worksite, provided however that an employer that already has a workplace safety committee that is otherwise consistent with the requirements of this section, shall be exempted from creating an additional safety committee under this section**. Each workplace safety committee shall be composed of employee and employer designees, provided at least two-thirds are non-supervisory employees. Employee members of the committee shall be selected by, and from among, non-supervisory employees. Committees shall be co-chaired by a representative of the employer and non-supervisory employees. Where there is a collective bargaining agreement in place, the collective bargaining representative shall be responsible for the selection of employees to serve as members of the committee. Committees representing geographically distinct worksites may also be formed as necessary.

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

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

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

(b) Review any policy put in place in the workplace required by any provision of this chapter [~~or any provision of the workers' compensation law~~] **relating to occupational safety and health** and provide feedback to such policy in a manner consistent with any provision of law.

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

(d) Participate in any site visit by any governmental entity responsible for enforcing safety and health standards [~~in a manner consistent with any provision of law~~] **unless otherwise prohibited by law**.

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

(f) Regularly schedule a meeting during work hours at least once a quarter **that shall last no longer than two hours**.

5. Employers shall permit safety committee designees to attend a training **of no longer than four hours**, without suffering a loss of pay, on the function of worker safety committees, rights established under this section, and an introduction to occupational safety and health.

6. Any employee who participates in the activities or establishment of a workplace safety committee shall not be subject to retaliation for any actions taken pursuant to their participation. Violations of this subdivision shall be deemed to be a violation of paragraph (a) of subdivision one of section two hundred fifteen of this chapter and the civil penal-

ties and remedies of paragraph (b) of subdivision one and paragraphs (a) and (b) of subdivision two of section two hundred fifteen of this chapter shall be applicable to this subdivision.

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

8. The [~~department~~] **commissioner** shall adopt and amend rules and regulations to effectuate the provisions and purposes of this section.

§ 3. Section 4 of a chapter of the laws of 2021 amending the labor law relating to preventing occupational exposure to an airborne infectious disease as proposed in legislative bills numbers S.1034-B and A. 2681-B, is amended to read as follows:

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

§ 4. This act shall take effect immediately; provided that sections one and two of this act shall take effect on the same date and in the same manner as a chapter of the laws of 2021 amending the labor law relating to preventing occupational exposure to an airborne infectious disease, as proposed in legislative bills numbers S.1034-B and A. 2681-B, takes effect.