

# STATE OF NEW YORK

2681

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 -- 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

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

20 (b) "Work site" shall mean any physical space, including a vehicle,  
21 that has been designated as the location where work is performed. The  
22 term shall include employer-provided housing and employer-provided  
23 transportation at, to or from the work site.

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

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1 (c) "Supervisor" or "supervisory employee" shall mean any person who  
2 has the authority to direct and control the work performance of other  
3 employees, or who has the managerial authority to take corrective action  
4 regarding the violation of the law, rules or regulations. This term  
5 shall not include any member of a collective bargaining unit.

6 (d) "Employer" shall mean any person, entity, business, corporation,  
7 partnership, limited liability company, or association employing,  
8 hiring, or paying for the labor of any individual, whether directly or  
9 indirectly, in any occupation, industry, trade, business, or service.  
10 The term shall not include the state, any political subdivision of the  
11 state, a public authority, or any other governmental agency or instru-  
12 mentality.

13 2. The commissioner, in consultation with the department of health,  
14 shall create and publish, in both English and Spanish, a model airborne  
15 infectious disease exposure prevention standard for all work sites,  
16 differentiated by industry, to establish minimum requirements for  
17 preventing exposure to airborne infectious diseases in the workplace in  
18 order to protect the public. The model infectious disease exposure  
19 prevention standard shall take into account the types of risks present  
20 at the work site, including the presence of third parties. The commis-  
21 sioner shall determine, in his or her discretion, which languages to  
22 publish the standard in addition to English and Spanish based on the  
23 number of individuals in the state population that speak each language,  
24 the prevalence of certain languages being spoken in particular indus-  
25 tries, and any other factor that the commissioner shall deem relevant.  
26 Such standard shall include, but not be limited to, establishing  
27 requirements on procedures and methods for:

28 (a) Employee health screenings;

29 (b) Face coverings;

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

37 (d) Accessible workplace hand hygiene stations and maintaining healthy  
38 hand hygiene, which shall, at minimum, mandate that employers have at  
39 least a ninety day supply of hand hygiene materials and that employers  
40 provide adequate break times for workers to use handwashing facilities  
41 as needed;

42 (e) Regular cleaning and disinfecting of shared equipment and  
43 frequently touched surfaces such as workstations, touchscreens, tele-  
44 phones, handrails, and doorknobs, and all surfaces and washable items in  
45 other high-risk areas such as restrooms, dining areas/breakrooms, locker  
46 rooms, vehicles and sleeping quarters. Cleaning and disinfecting proto-  
47 cols shall mandate that the employer is responsible for ensuring  
48 adequate amounts of cleaning and disinfecting supplies, and select the  
49 least toxic products approved by the EPA under EPA List N;

50 (f) Effective social distancing for employees and consumers or custom-  
51 ers including sign postage or markers; increasing physical space between  
52 workers at the worksite; limiting capacity of customers or consumers;  
53 delivering services remotely or through curbside pick-up; reconfiguring  
54 spaces where workers congregate; flexible meeting and travel options;  
55 flexible worksites; or implementing flexible work hours such as stag-  
56 gered shifts;

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

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

9 (i) Designation of one or more supervisory employees to enforce  
10 compliance with the airborne infectious disease exposure prevention plan  
11 and any other federal, state, or local guidance related to avoidance of  
12 spreading an airborne infectious disease as applicable to employees and  
13 third parties such as customers, contractors, and members of the public  
14 within the workplace. Non-supervisory line employees shall not bear  
15 responsibility for compliance with the requirements of the model policy;

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

20 (k) Verbal review of infectious disease standard, employer policies  
21 and employee rights under this section.

22 3. The model airborne infectious disease exposure prevention standard  
23 shall also include anti-retaliation requirements pursuant to subdivision  
24 eight of this section. The commissioner, in consultation with the  
25 department of health, shall update the model airborne infectious disease  
26 exposure prevention standard as necessary provided that the commissioner  
27 shall inform employers of the changes.

28 4. (a) Every employer shall establish an airborne infectious disease  
29 exposure prevention plan either by adopting the model standard relevant  
30 to their industry promulgated pursuant to this section as its airborne  
31 infectious disease exposure prevention plan or by establishing an alter-  
32 native plan that equals or exceeds the minimum standards provided by the  
33 model standard.

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

41 5. Every employer shall provide the airborne infectious disease expo-  
42 sure prevention plan to his or her employees, in writing in English and  
43 in the language identified by each employee as the primary language of  
44 such employees upon reopening after a period of closure due to airborne  
45 infectious disease and upon hiring. Businesses permitted to operate as  
46 of the effective date of this act shall provide such a plan to all  
47 employees upon the effective date of this act and upon hiring. When an  
48 employee identifies as his or her primary language a language for which  
49 a model document is not available from the commissioner, the employer  
50 shall comply with this paragraph by providing that employee with an  
51 English-language notice.

52 6. The airborne infectious disease exposure prevention plan shall be  
53 posted in a visible and prominent location within the worksite. An  
54 employer that provides an employee handbook to its employees shall, in  
55 addition, include the airborne infectious disease exposure prevention  
56 plan in its handbook.

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

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

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

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

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

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

31 9. Nothing in this section shall be deemed to diminish the rights,  
32 privileges, or remedies of any employee under any collective bargaining  
33 agreement.

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

51 (b) Any employee may bring a civil action seeking injunctive relief in  
52 a court of competent jurisdiction against an employer alleged to have  
53 violated the airborne infectious disease exposure prevention plan in a  
54 manner that creates a substantial probability that death or serious  
55 physical harm could result from a condition which exists, or from one or  
56 more practices, means, methods, operations or processes which have been

1 adopted or are in use, by the employer at the work site, unless the  
2 employer did not and could not, with the exercise of reasonable dili-  
3 gence, know of the presence of the violation. The court shall have  
4 jurisdiction to restrain such violations and to order all appropriate  
5 relief, including enjoining the conduct of the employer; awarding costs  
6 and reasonable attorneys' fees to the employee; and ordering payment of  
7 liquidated damages of no greater than twenty thousand dollars, unless  
8 the employer proves a good faith basis to believe that the established  
9 health and safety measures were in compliance with the applicable  
10 airborne infectious disease standard.

11 11. The provisions and remedies of paragraph (b) of subdivision one of  
12 section two hundred fifteen of this chapter shall be applicable to  
13 subdivision eight of this section.

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

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

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

25 § 27-d. Workplace safety committees. 1. For the purposes of this  
26 section, the following terms shall have the following meanings:

27 (a) "Employer" shall mean any person, entity, business, corporation,  
28 partnership, limited liability company, or an association employing at  
29 least ten employees or having an annual payroll of over eight hundred  
30 thousand dollars and a workers' compensation experience modification  
31 rating of more than 1.20. The term shall not include the state, any  
32 political subdivision of the state, a public authority, or any other  
33 governmental agency or instrumentality.

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

37 2. Employers shall permit employees to establish and administer a  
38 joint labor-management workplace safety committee. Each workplace safety  
39 committee shall be composed of employee and employer designees, provided  
40 at least two-thirds are non-supervisory employees. Employee members of  
41 the committee shall be selected by, and from among, non-supervisory  
42 employees. Committees shall be co-chaired by a representative of the  
43 employer and non-supervisory employees. Where there is a collective  
44 bargaining agreement in place, the collective bargaining representative  
45 shall be responsible for the selection of employees to serve as members  
46 of the committee. Committees representing geographically distinct work-  
47 sites may also be formed as necessary.

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

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

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

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

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

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

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

14 (f) Regularly schedule a meeting during work hours at least once a  
15 quarter.

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

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

25 7. Nothing in this section shall prevent a collective bargaining agent  
26 from negotiating provisions of a collective bargaining agreement in  
27 conflict with the provisions of this section; provided, however, any  
28 agreement in conflict with this section shall specifically acknowledge  
29 the provisions of this section.

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

32 § 3. Severability. If any provision of this act, or the application  
33 thereof to any person or circumstances, is held invalid or unconstitu-  
34 tional, that invalidity or unconstitutionality shall not affect other  
35 provisions or applications of this act that can be given effect without  
36 the invalid or unconstitutional provision or application, and to this  
37 end the provisions of this act are severable.

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