

# STATE OF NEW YORK

1034--A

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## IN SENATE

January 6, 2021

Introduced by Sens. GIANARIS, BENJAMIN, BIAGGI, BRISPORT, BROOKS, BROUK, COONEY, GAUGHRAN, GOUNARDES, HINCHEY, HOYLMAN, JACKSON, KENNEDY, KRUEGER, MANNION, MAY, MAYER, RAMOS, REICHLIN-MELNICK, RIVERA, RYAN, SALAZAR, SANDERS, SAVINO, SKOUFIS, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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.

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

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

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

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

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

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

50 (a) Employee health screenings;

51 (b) Face coverings;

52 (c) Required personal protective equipment ("PPE") applicable to each  
53 industry for eyes, face, head, and extremities, protective clothing,  
54 respiratory devices, and protective shields and barriers, which shall be  
55 provided, used, and maintained in a sanitary and reliable condition at  
56 the expense of the employer. The standard shall provide for a list of

1 PPE that satisfies the requirements, based on hazard assessments for  
2 each industry;

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

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

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

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

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

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

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

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

47 3. The model airborne infectious disease exposure prevention standard  
48 shall also include anti-retaliation requirements pursuant to subdivision  
49 eight of this section. The commissioner, in consultation with the  
50 department of health, shall update the model airborne infectious disease  
51 exposure prevention standard as necessary provided that the commissioner  
52 shall inform employers of the changes.

53 4. (a) Every employer shall establish an airborne infectious disease  
54 exposure prevention plan either by adopting the model standard relevant  
55 to their industry promulgated pursuant to this section as its airborne  
56 infectious disease exposure prevention plan or by establishing an alter-

1 native plan that equals or exceeds the minimum standards provided by the  
2 model standard.

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

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

21 6. The airborne infectious disease exposure prevention plan shall be  
22 posted in a visible and prominent location within the worksite. An  
23 employer that provides an employee handbook to its employees shall, in  
24 addition, include the airborne infectious disease exposure prevention  
25 plan in its handbook.

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

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

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

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

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

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

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

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

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

45 11. The provisions and remedies of paragraph (b) of subdivision one of  
46 section two hundred fifteen of this chapter shall be applicable to  
47 subdivision eight of this section. Where an action brought by an  
48 employee under the provisions of this section, or a defense, counter-  
49 claim, or crossclaim brought by an employer in response thereto, is  
50 found upon judgment to be completely without merit in law and undertaken  
51 primarily to harass or maliciously injure another, the court may in its  
52 discretion impose sanctions against the attorney or party who brought  
53 such action, defense, counterclaim or crossclaim.

54 12. Where a violation of this section is alleged to have occurred, the  
55 commissioner or attorney general may apply in the name of the people of  
56 the state of New York for an order enjoining or restraining the commis-



1 sion or continuance of the alleged unlawful acts. The commissioner, in  
2 consultation with the commissioner of health, shall promulgate rules and  
3 regulations necessary to ensure compliance with this chapter.

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

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

9 § 27-d. Workplace safety committees. 1. For the purposes of this  
10 section, the following terms shall have the following meanings:

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

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

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

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

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

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

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

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

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

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

52 (f) Regularly schedule a meeting during work hours at least once a  
53 quarter.

54 5. Employers shall permit safety committee designees to attend a  
55 training, without suffering a loss of pay, on the function of worker

1 safety committees, rights established under this section, and an intro-  
2 duction to occupational safety and health.

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

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

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

15 § 3. Severability. If any provision of this act, or the application  
16 thereof to any person or circumstances, is held invalid or unconstitu-  
17 tional, that invalidity or unconstitutionality shall not affect other  
18 provisions or applications of this act that can be given effect without  
19 the invalid or unconstitutional provision or application, and to this  
20 end the provisions of this act are severable.

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