

STATE OF NEW YORK

1164

2021-2022 Regular Sessions

IN SENATE

January 7, 2021

Introduced by Sen. KAMINSKY -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law, in relation to the prevention of employees being exposed to excessive heat

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 excessive heat. 1. For
4 purposes of this section, the following terms shall have the following
5 meanings:

6 (a) "Covered employee" shall mean an individual employed by a covered
7 employer.

8 (b) "Covered employer" shall mean an employer that employs an individ-
9 ual to work at a covered workplace and shall include contractors,
10 subcontractors, temporary service firms and employee leasing entities.

11 (c) "Covered workplace" shall mean a workplace where work primarily
12 involves the delivery of goods and services to consumers or businesses.

13 (d) "Employer" shall have the same meaning as defined in section one
14 hundred ninety of this chapter.

15 (e) "Excessive heat" shall mean outdoor and indoor exposure to heat at
16 levels that exceed the capacities of the human body to maintain normal
17 body functions and may cause heat-related injury, illness or fatality,
18 including, but not limited to, heat stroke, heat exhaustion, heat
19 syncope, heat cramps and heat rashes.

20 2. The commissioner, in consultation with the commissioner of health,
21 shall create regulations which shall:

22 (a) establish high heat temperature maximum exposure levels for
23 covered employees which, if exceeded, shall trigger action to protect
24 covered employees from heat-related illness; and

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

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1 (b) ensure all covered employers comply with the requirements
2 described in this section with respect to occupational exposure to
3 excessive heat.

4 3. (a) A covered employer shall develop, implement and maintain an
5 effective written excessive heat-related illness prevention plan for
6 covered employees, which shall:

7 (1) be developed and implemented with the meaningful participation of
8 covered employees, employee representatives and collective bargaining
9 representatives, where applicable, for all aspects of the plan;

10 (2) be tailored and specific to hazards in the covered workplace;

11 (3) be in writing, in English and in the language understood by a
12 majority of employees, if such language is not English; and

13 (4) be made available, upon request, to such employees, the employee
14 representatives for such employees, the commissioner and the commission-
15 er of public health.

16 (b) Each excessive heat-related illness prevention plan required
17 pursuant to paragraph (a) of this subdivision shall include procedures
18 and methods for the following:

19 (1) initial and regular monitoring of employee exposure to heat to
20 determine whether an employee's exposure has been excessive;

21 (2) provision of potable water with a temperature of less than fifteen
22 degrees celsius or fifty-nine degrees fahrenheit;

23 (3) paid rest breaks and access to shade, cool-down areas or climate
24 controlled spaces;

25 (4) emergency response for any employee who has suffered injury as a
26 result of being exposed to excessive heat;

27 (5) acclimatization to areas where exposure to heat is present;

28 (6) time limitations for how long an employee may be exposed to heat
29 during the work day;

30 (7) a heat alert program implemented to provide notification when the
31 National Weather Service or other competent weather service forecasts
32 that a heat wave is likely to occur in the following day or days. Such
33 program shall include, but not be limited to, the following procedures
34 to be followed when an alert has been issued:

35 (i) postponing tasks that are not urgent until such heat wave is over;

36 (ii) increasing the total number of workers in order to reduce each
37 worker's heat exposure;

38 (iii) increasing rest allowances;

39 (iv) reminding workers to drink liquids in small amounts frequently to
40 prevent dehydration; and

41 (v) to the extent practicable, monitoring of the environmental heat at
42 job sites and resting places;

43 (8) hazard prevention, including, but not limited to, the following:

44 (i) engineering controls including, but not limited to, the isolation
45 of hot processes, the isolation of employees from sources of heat, local
46 exhaust ventilation, shielding from a radiant heat source, the insu-
47 lation of hot surfaces, air conditioning, cooling fans, evaporative
48 coolers and natural ventilation;

49 (ii) administrative controls that limit exposure to a hazard by
50 adjustment of work procedures or work schedules, including, but not
51 limited to, acclimatizing employees, rotating employees, scheduling work
52 earlier or later in the day, using work-rest schedules, reducing work
53 intensity or speed, changing required work clothing and using relief
54 workers; and

1 (iii) personal protective equipment including, but not limited to,
2 water-cooled garments, air-cooled garments, reflective clothing and
3 cooling vests;

4 (9) coordination of risk assessment efforts, plan development, and
5 implementation with other employers who have employees who work at a
6 covered workplace; and

7 (10) allowing for employees to contact their employer directly and
8 efficiently to communicate if such employee feels like they are suffer-
9 ing from a heat-related illness.

10 4. The commissioner, in consultation with the commissioner of health,
11 shall require a covered employer to provide annual training and educa-
12 tion to covered employees who may be exposed to high heat levels, which
13 shall cover the following:

14 (a) identified heat-related illness risk factors;

15 (b) personal factors that may increase susceptibility to heat-related
16 illness;

17 (c) signs and symptoms of heat-related illness;

18 (d) different types of heat-related illness;

19 (e) the importance of acclimatization and consumption of fluids;

20 (f) available engineering control measures;

21 (g) administrative control measures;

22 (h) the importance of reporting heat-related symptoms being experi-
23 enced by the employee or another employee;

24 (i) recordkeeping requirements and reporting procedures;

25 (j) emergency response procedures; and

26 (k) employee rights.

27 5. In addition to the training and education required by subdivision
28 four of this section, training and education shall be provided to
29 covered employees who are supervisors that shall cover the following
30 topics:

31 (a) proper procedure a supervisor is required to follow under this
32 section with respect to the prevention of employee exposure to excessive
33 heat;

34 (b) recognizing high-risk situations, including, but not limited to,
35 how to monitor weather reports and weather advisories and not assigning
36 an employee to situations that predictably compromise the safety of the
37 employee; and

38 (c) proper procedure to follow when an employee exhibits signs or
39 reports symptoms consistent with possible heat-related illness, includ-
40 ing emergency response procedures;

41 6. (a) Applicable education and training shall be provided for each
42 new covered employee prior to the employee's job assignment.

43 (b) The education and training required by subdivisions four and five
44 of this section shall:

45 (1) provide employees opportunities to ask questions, provide feedback
46 and request additional instruction, clarification or other follow-up;

47 (2) be provided in-person and by an individual with knowledge of heat-
48 related illness prevention and of the plan of the employer under this
49 section; and

50 (3) be appropriate in content and vocabulary to the language, educa-
51 tional level and literacy of the covered employees.

52 7. Each covered employer shall:

53 (a) maintain at all times:

54 (1) records related to each plan of the employer, including heat-re-
55 lated illness risk and hazard assessments and identification, evalu-
56 ation, correction and training procedures;

1 (2) data on all heat-related illnesses and deaths; and
2 (3) data on environmental and physiological measurements related to
3 heat; and

4 (b) make such records and data available upon request, to covered
5 employees and their representatives, the commissioner and the commis-
6 sioner of health for examination and copying.

7 8. (a) Each covered employer shall adopt a policy prohibiting any
8 person, including an agent of the employer, from discriminating or
9 retaliating against an employee for:

10 (1) exercising the rights of the employee under this act; or

11 (2) reporting violations of this section to any state, local or feder-
12 al government.

13 (b) No covered employer shall discriminate or retaliate against an
14 employee for:

15 (1) reporting a heat-related illness concern to, or seeking assistance
16 or intervention with respect to heat-related health symptoms from the
17 employer, local emergency services or a state, local or federal govern-
18 ment; or

19 (2) exercising any other rights of the employee under this section.

20 9. Nothing in this section shall be deemed to diminish the rights,
21 privileges, or remedies of any employee under any collective bargaining
22 agreement to the contrary. An employer may implement provisions which
23 are more or less generous than the provisions of this section related to
24 exposure to heat, when such implementation is pursuant to agreed-upon
25 provisions of a collective bargaining agreement.

26 § 2. This act shall take effect on the one hundred eightieth day after
27 it shall have become a law. Effective immediately, the addition, amend-
28 ment and/or repeal of any rule or regulation necessary for the implemen-
29 tation of this act on its effective date are authorized to be made and
30 completed on or before such effective date.