

# STATE OF NEW YORK

1164--A

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

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

4 (b) ensure all covered employers comply with the requirements  
5 described in this section with respect to occupational exposure to  
6 excessive heat.

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

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

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

14 (3) be in writing, in English and in the language understood by all of  
15 its employees, if such language is not English and the commissioner  
16 shall make such plan available to employers in the translations needed  
17 and as requested by employers and shall make such translations available  
18 on the department's website for each language required by executive  
19 order under language access directives; and

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

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

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

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

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

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

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

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

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

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

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

45 (iii) increasing rest allowances;

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

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

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

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

1 (ii) administrative controls that limit exposure to a hazard by  
2 adjustment of work procedures or work schedules, including, but not  
3 limited to, acclimatizing employees, rotating employees, scheduling work  
4 earlier or later in the day, using work-rest schedules, reducing work  
5 intensity or speed, changing required work clothing and using relief  
6 workers; and

7 (iii) personal protective equipment including, but not limited to,  
8 water-cooled garments, air-cooled garments, reflective clothing and  
9 cooling vests;

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

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

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

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

21 (b) personal factors that may increase susceptibility to heat-related  
22 illness;

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

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

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

26 (f) available engineering control measures;

27 (g) administrative control measures;

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

30 (i) recordkeeping requirements and reporting procedures;

31 (j) emergency response procedures; and

32 (k) employee rights.

33 5. In addition to the training and education required by subdivision  
34 four of this section, training and education shall be provided to  
35 covered employees who are supervisors that shall cover the following  
36 topics:

37 (a) proper procedure a supervisor is required to follow under this  
38 section with respect to the prevention of employee exposure to excessive  
39 heat;

40 (b) recognizing high-risk situations, including, but not limited to,  
41 how to monitor weather reports and weather advisories and not assigning  
42 an employee to situations that predictably compromise the safety of the  
43 employee; and

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

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

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

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

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

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

3 7. Each covered employer shall:

4 (a) maintain at all times:

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

8 (2) data on all heat-related illnesses and deaths; and

9 (3) data on environmental and physiological measurements related to  
10 heat; and

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

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

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

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

20 (b) No covered employer shall discriminate or retaliate against an  
21 employee for:

22 (1) reporting a heat-related illness concern to, or seeking assistance  
23 or intervention with respect to heat-related health symptoms from the  
24 employer, local emergency services or a state, local or federal govern-  
25 ment; or

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

27 9. The department shall create and publish a model heat-related  
28 illness prevention plan that employers may utilize in their adoption of  
29 a heat-related illness prevention plan required by this section, the  
30 model heat-related illness prevention plan can be the plan already  
31 developed and available online by the federal Occupational Safety and  
32 Health Administration (OSHA).

33 10. Nothing in this section shall be deemed to diminish the rights,  
34 privileges, or remedies of any employee under any collective bargaining  
35 agreement to the contrary. An employer may implement provisions which  
36 are more or less generous than the provisions of this section related to  
37 exposure to heat, when such implementation is pursuant to agreed-upon  
38 provisions of a collective bargaining agreement.

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