

STATE OF NEW YORK

3321

2023-2024 Regular Sessions

IN ASSEMBLY

February 2, 2023

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

AN ACT to amend the labor law, in relation to regulating the temperature of all indoor and outdoor worksites

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

1 Section 1. This act shall be known and may be cited as the "Worksite
2 Temperature Regulation Act".

3 § 2. Legislative findings and intent. The legislature hereby finds and
4 declares that New Yorkers, working both in outdoor and indoor sites, are
5 exposed to extreme temperatures due to climate change. This involves
6 both skyrocketing heat in the summer and freezing cold in the winter.
7 Every year, New York city has high numbers of heat-related emergency
8 department visits, hospital admissions, and deaths. According to the New
9 York City Office of the Mayor, each year there are an estimated 450
10 heat-related ED visits, 150 heat-related hospital admissions, 10 heat-
11 stroke deaths, and 350 heat-exacerbated deaths, caused by heat worsening
12 existing chronic conditions.

13 Further, cold stress injuries have proven to be a concern for New
14 York's workers. In 2018 in the United States, there were 2,890 cases of
15 ice, sleet, and snow injuries; 14% of those were in the state of New
16 York (BLS). In 2018 in New York state, 50 injuries were related to expo-
17 sure to environmental cold. All 50 of those injuries were cases involv-
18 ing 31 or more days of missed work (BLS).

19 The legislature hereby finds and declares that the government is obli-
20 gated to ensure that employers provide safe conditions for their employ-
21 ees.

22 § 3. The labor law is amended by adding a new article 20-D to read as
23 follows:

24 ARTICLE 20-D
25 TEMPERATURE REGULATION BY EMPLOYERS

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

LBD04582-02-3

Section 742. Scope.

743. Definitions.

744. Temperature protection standards.

745. Education and training.

746. Enforcement.

§ 742. Scope. The following industries will be held to the standards in this article:

1. Agriculture;

2. Construction;

3. Landscaping;

4. Delivery drivers; and

5. Food services workers.

§ 743. Definitions. For the purposes of this article, the following terms shall have the following meanings:

1. "Employee" means any person providing labor or services within the scope of this article 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, day laborers, farmworkers and other temporary and seasonal workers. The term shall also include individuals working for staffing agencies, contractors or subcontractors on behalf of the employer at any individual worksite, as well as any individual delivering goods or transporting people at, to or from the worksite 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 article. The term shall not include employees of the state, any political subdivision of the state, a public authority, or any other governmental agency or instrumentality.

2. "Employer" means any individual, partnership, association, corporation, limited liability company, business trust, legal representative, or any organized group acting as employer within the scope of this article.

3. "Indoor worksite" means any enclosed work vehicles and any space between a floor and a ceiling bound on all sides by walls. A wall includes any door, window, retractable divider, garage door, or other physical barriers that is temporary or permanent, whether open or closed.

4. "Outdoor worksite" means all employers with employees performing work in an outdoor environment. The term outdoor worksite does not apply to incidental exposure, which exists when an employee is required to perform a work activity outdoors for not longer than fifteen minutes in any sixty-minute period.

5. "Outdoor temperature stress threshold" mean a heat stress threshold of eighty or more degrees Fahrenheit and a cold threshold of sixty or below degrees Fahrenheit.

6. "Indoor temperature stress threshold" means a heat stress threshold of eighty or more degrees Fahrenheit and a cold threshold of sixty or below degrees Fahrenheit. In cases of offices, schools, or other indoor temperature regulated environments, the indoor temperature shall fall between sixty-eight point five and seventy-five degrees when the outdoor temperature is below fifty-five degrees, and when the outdoor temperature is above eighty-five degrees, the indoor temperature shall fall between seventy-five and eighty point five degrees.

7. "Heat illness" means a serious medical condition resulting from the body's inability to cope with a particular heat load, and includes, but

1 is not limited to, heat cramps, heat exhaustion, heat syncope, and heat
2 stroke.

3 8. "Cold illness" means a serious medical condition resulting from the
4 body's inability to cope with cold temperatures.

5 9. "Personal protective equipment" or "PPE" means the necessary
6 protective equipment, gear, uniforms, and clothing, to withstand temper-
7 atures at or exceeding the stress thresholds.

8 § 744. Temperature protection standards. 1. Heat-specific standards.
9 The employer shall fulfill the following requirements when employees are
10 in an outdoor or indoor worksite and experiencing conditions at or
11 exceeding a heat stress threshold of eighty or more degrees Fahrenheit:

12 (a) Access to hydration. The employer shall provide access to one
13 quart of water per hour per employee at no cost to the employee and such
14 access shall be as close to the worksite as possible.

15 (b) Rest. The employer shall offer preventative breaks at the duration
16 and frequency of ten minutes in the shade for every two hours of outdoor
17 work and ten minutes in a cooler breakroom for indoor workers. The
18 breakroom temperature shall fall between seventy-five and eighty point
19 five degrees when the outdoor temperature is above eighty-five degrees.
20 Preventative breaks shall be paid.

21 (c) Medical monitoring. Employers shall closely monitor temperatures
22 and implement their workplace heat stress plan. If an employee exhibits
23 signs or reports symptoms of heat illness while taking a preventative
24 cool-down rest, during a preventative cool-down rest period, or at any
25 other time, the employer shall provide appropriate first aid or emergen-
26 cy response.

27 (d) Access to shade. (i) Shade shall be made available when the
28 temperature exceeds eighty degrees Fahrenheit and shall be as close to
29 the worksite as possible. When the outdoor temperature in the work area
30 exceeds eighty degrees Fahrenheit, the employer shall have and maintain
31 one or more areas with shade at all times while employees are present
32 that are either open to the air or provided with ventilation or cooling.
33 The amount of shade present shall be at least enough to accommodate the
34 number of employees on recovery or rest periods, so that they can sit in
35 a normal posture fully in the shade with at least four square feet per
36 resting employee. The shade shall be located as close as practicable to
37 the areas where employees are working. Subject to the same specifica-
38 tions, the amount of shade present during meal periods shall be at least
39 enough to accommodate the number of employees on the meal period who
40 remain onsite.

41 (ii) Shade shall be available when the temperature does not exceed
42 eighty degrees Fahrenheit. When the outdoor temperature in the work area
43 does not exceed eighty degrees Fahrenheit employers shall either provide
44 shade pursuant to subparagraph (i) of this paragraph or provide timely
45 access to shade upon an employee's request.

46 (iii) Employees shall be allowed and encouraged to take a preventative
47 cool-down rest in the shade when they feel the need to do so to protect
48 themselves from overheating. Such access to shade shall be permitted at
49 all times. An individual employee who takes a preventative cool-down
50 rest:

51 (1) Shall be monitored and asked if he or she is experiencing symptoms
52 of heat illness;

53 (2) Shall be encouraged to remain in the shade; and

54 (3) Shall not be ordered back to work until any signs or symptoms of
55 heat illness have abated, but in no event, less than five minutes in
56 addition to the time needed to access the shade.

1 (e) Personal protective equipment. Employers shall provide the neces-
2 sary protective equipment, gear, uniforms, and clothing, to withstand
3 temperatures at or exceeding the heat stress thresholds. This may
4 include, but is not limited to:

5 (i) Clothing with cooling and/or wicking features;

6 (ii) Ice vests and cooling rags;

7 (iii) Fans;

8 (iv) Air-conditioning;

9 (v) Sunscreen;

10 (vi) Hats; and

11 (vii) Anything deemed necessary by the department or a reasonable
12 request made by employees to withstand the heat stress threshold and
13 above.

14 (f) Vehicle standards. Employees who spend more than sixty minutes in
15 vehicles each day or whose worksite is considered a vehicle shall have
16 adequate air-conditioning available inside such vehicle.

17 (g) Worker acclimatization. Employers shall provide time for acclima-
18 tization of new and returning employees. When worksite temperatures are
19 above eighty degrees, employees shall only work twenty percent of their
20 normal duration on their first day and gradually increase work duration
21 over a two-week period.

22 2. Cold-specific standards. The employer shall fulfill the following
23 requirements when employees are in an outdoor or indoor worksite and
24 experiencing conditions at or exceeding the cold threshold of sixty or
25 below degrees Fahrenheit:

26 (a) Access to hydration. The employer shall provide access to one
27 quart of water per hour per employee at no cost to the employee.

28 (b) Rest. The employer shall offer preventative breaks at the duration
29 and frequency of ten minutes in a warm area for every two hours of
30 outdoor work and ten minutes in a warm breakroom for indoor workers.
31 The breakroom temperature shall fall between sixty-eight point five and
32 seventy-five degrees when the outdoor temperature is below sixty
33 degrees. Preventative breaks shall be paid.

34 (c) Medical monitoring. Employers shall closely monitor temperatures
35 and implement their workplace cold stress plan. If an employee exhibits
36 signs or reports symptoms of cold stress while taking a preventative
37 warm-up rest, during a preventative warm-up rest period, or at any other
38 time, the employer shall provide appropriate first aid or emergency
39 response.

40 (d) Access to warmth. (i) A warm location for breaks shall be made
41 available when the temperature is below sixty degrees Fahrenheit. When
42 the outdoor temperature in the work area is below sixty degrees Fahren-
43 heit, the employer shall have and maintain one or more areas with
44 adequate warmth at all times while employees are present that are
45 provided with ventilation and heating. The size of the warm location
46 shall be at least enough to accommodate the number of employees on
47 recovery or rest periods, with at least four square feet available per
48 resting employee. The rest location shall be located as close as prac-
49 ticable to the areas where employees are working. Subject to the same
50 specifications, access to a warm location shall be present during meal
51 periods and shall be at least enough to accommodate the number of
52 employees on the meal period who remain onsite.

53 (ii) Warm locations shall be available when the temperature is not
54 below sixty degrees Fahrenheit. When the outdoor temperature in the work
55 area is not below sixty degrees Fahrenheit employers shall either

1 provide warmth pursuant to subparagraph (i) of this paragraph or provide
2 timely access upon an employee's request.

3 (iii) Employees shall be allowed and encouraged to take a preventative
4 warm-up rest in the shade when they feel the need to do so to protect
5 themselves from cold stress. Such access shall be permitted at all
6 times. An individual employee who takes a preventative warm-up rest:

7 (1) Shall be monitored and asked if he or she is experiencing symptoms
8 of cold stress;

9 (2) Shall be encouraged to remain in the designated warm area; and

10 (3) Shall not be ordered back to work until any signs or symptoms of
11 cold stress have abated, but in no event, less than five minutes in
12 addition to the time needed to access warmth.

13 (e) Personal protective equipment. Employers shall provide the neces-
14 sary protective equipment, gear, uniforms, and clothing, to withstand
15 temperatures at or exceeding the cold stress thresholds. This may
16 include, but is not limited to:

17 (i) Clothing with heating features;

18 (ii) Gloves, hats, winter coats;

19 (iii) Heating; and

20 (iv) Anything deemed necessary by the department or reasonable request
21 made by employees to withstand the cold stress threshold and below.

22 (f) Vehicle standards. Employees who spend more than sixty minutes in
23 vehicles each day or whose worksite is considered a vehicle shall have
24 adequate heating available inside the vehicle.

25 (g) Worker acclimatization. Employers shall provide time for acclima-
26 tization of new and returning employees. When worksite temperatures are
27 below sixty degrees, employees shall only work twenty percent of their
28 normal duration on their first day of employment in which the temper-
29 ature is below sixty degrees and gradually increase work duration over a
30 two-week period.

31 § 745. Education and training. 1. Training. The department shall
32 create a training curriculum outlining the signs of cold stress and heat
33 illness and the necessary medical responses. Such training shall be
34 administered by the employer at time of hiring.

35 2. Mandated signage and materials. The department shall promulgate
36 signage and educational materials that are required to be made available
37 to employees by their employer in all languages in the state regarding
38 the following:

39 (a) Signs of heat illness and cold stress;

40 (b) Indoor and outdoor temperature stress thresholds;

41 (c) Employer-mandated protections from temperature stress thresholds;

42 (d) Examples of necessary PPE;

43 (e) Where employees can report an employer's lack of accommodation;
44 and

45 (f) Anything else deemed necessary by the department.

46 3. Whistleblower protection. A employer shall provide to every employ-
47 ee written materials describing the protection from retaliatory action
48 for reporting a violation of this article provided pursuant to article
49 twenty-C of this chapter. Any employee who participates in the activ-
50 ities established for worker protections and safety shall not be subject
51 to retaliation for any actions taken pursuant to their participation.

52 4. The department shall establish a statewide outreach campaign to
53 educate employees on the heat and cold illness standards established and
54 ensure that employers are providing access to proper signage and materi-
55 als.

1 § 746. Enforcement. The department shall promulgate rules and regu-
2 lations to require the following:

3 1. Every employer shall collect and maintain data and records as
4 required by the department on all temperature-related illnesses and
5 fatalities which occur at an outdoor or indoor worksite.

6 2. Every employer shall submit reports of the data collected pursuant
7 to subdivision one of this section quarterly to the department and such
8 reports shall be published by the department on a searchable database.
9 Employers shall additionally make such reports available to any employee
10 or applicable union upon request within five business days. A tempera-
11 ture-related fatality on a construction site shall be deemed a work-re-
12 lated injury for the purposes of reporting pursuant to section forty-
13 four of this chapter.

14 3. Every employer shall submit for approval a written plan on how
15 temperature-related stress will be mitigated to the department each
16 quarter. Once approved by the department, an employer shall provide such
17 plan to all employees and applicable unions.

18 4. Every employer shall be subject to fines for not adhering to the
19 mandatory reporting and enforcement protocols. Employers shall be
20 required to pay penalties of no less than fifty dollars per day for
21 failing to create a plan and up to ten thousand dollars for not follow-
22 ing an adopted plan. The department shall administer notice and collect
23 all fines. All fines collected shall be allocated to the department's
24 temperature standards bureau.

25 5. The department shall establish a worker hotline and an online form
26 where employees can file complaints with the department regarding
27 temperature standards.

28 6. Any other reporting or enforcement protocols necessary to ensure
29 the protection of workers.

30 7. Every employer shall display a thermometer for employee use at
31 indoor and outdoor workplaces to monitor the temperature.

32 § 4. This act shall take effect immediately.