STATE OF NEW YORK

3321--B

2023-2024 Regular Sessions

IN ASSEMBLY

February 2, 2023

Introduced by M. of A. JOYNER, LUNSFORD, MAMDANI -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

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:

Section 1. This act shall be known and may be cited as the "temperature extreme mitigation program (TEMP) act".

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

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

The legislature hereby finds and declares that the government is obligated to ensure that employers provide safe conditions for their employees.

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

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

ARTICLE 20-D
TEMPERATURE REGULATION BY EMPLOYERS

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. Commercial shipping;
5. Food service; and
6. Warehousing.

§ 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 public or 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, or any person holding a position by appointment or employment in the service of a public employer within the scope of this article.

2. "Employer" means any individual, partnership, association, corporation, limited liability company, business trust, legal representative, public entity, 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" means 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 temper-

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

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

9. "Personal protective equipment" or "PPE" means the necessary protective equipment, gear, uniforms, and clothing, to withstand temperatures at or exceeding the stress thresholds.

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Ice vests and cooling rags;

(iii) Fans;

(iv) Air-conditioning, which shall be mandated at all indoor workplaces within the scope of this legislation, including but not limited to delivery vehicles and warehouses;

(v) Sunscreen;

(vi) Hats; and

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

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

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

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

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

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

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

(d) Access to warmth. (i) A warm location for breaks shall be made available when the temperature is below sixty degrees Fahrenheit. When the outdoor temperature in the work area is below sixty degrees Fahrenheit, the employer shall have and maintain one or more areas with adequate warmth at all times while employees are present that are provided with ventilation and heating. The size of the warm location shall be at least enough to accommodate the number of employees on recovery or rest periods, with at least four square feet available per resting employee. The rest location shall be located as close as practicable to the areas where employees are working. Subject to the same specifications, access to a warm location shall be present during meal

periods and shall be at least enough to accommodate the number of employees on the meal period who remain onsite.

(ii) Warm locations shall be available when the temperature is not below sixty degrees Fahrenheit. When the outdoor temperature in the work area is not below sixty degrees Fahrenheit employers shall either provide warmth pursuant to subparagraph (i) of this paragraph or provide timely access upon an employee's request.

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

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

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

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

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

(i) Clothing with heating features;

(ii) Gloves, hats, winter coats;

(iii) Heating; and

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

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

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

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

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

(a) Signs of heat illness and cold stress;

(b) Indoor and outdoor temperature stress thresholds;

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

(d) Examples of necessary PPE;

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

(f) Anything else deemed necessary by the department.

3. Whistleblower protection. An employer shall provide to every employee written materials describing the protection from retaliatory action for reporting a violation of this article provided pursuant to article twenty-C of this chapter. Any employee who participates in the activities established for worker protections and safety shall not be

subject to retaliation for any actions taken pursuant to their participation.

4. The department shall establish a statewide outreach campaign to educate employees on the heat and cold illness standards established and ensure that employers are providing access to proper signage and materials.

§ 746. Enforcement. The department shall promulgate rules and regulations to require the following:

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

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

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

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

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

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

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

§ 4. This act shall take effect immediately.