# STATE OF NEW YORK

4111

2023-2024 Regular Sessions

# IN ASSEMBLY

February 9, 2023

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

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

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

Section 1. The labor law is amended by adding a new section 218-c to read as follows:

**§ 218-c. Prevention of occupational exposure to excessive heat; construction employees. 1. For purposes of this section, the following terms shall have the following meanings:**

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

**(b) "Covered employer" shall mean an employer that employs an individual to work at a covered workplace and shall include contractors, subcontractors, temporary service firms and employee leasing entities.**

**(c) "Covered workplace" shall mean a workplace where work primarily involves the construction of buildings, infrastructure and industrial construction.**

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

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

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

**(a) establish high heat temperature maximum exposure levels for covered employees which, if exceeded, shall trigger action to protect 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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(b) ensure all covered employers comply with the requirements described in this section with respect to occupational exposure to excessive heat.

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

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

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

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

(4) be made available, upon request, to such employees, the employee representatives for such employees, the commissioner and the commissioner of health.

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

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

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

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

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

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

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

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

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

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

(iii) increasing rest allowances;

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

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

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

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

(ii) administrative controls that limit exposure to a hazard by adjustment of work procedures or work schedules, including, but not limited to, acclimatizing employees, rotating employees, scheduling work earlier or later in the day, using work-rest schedules, reducing work

intensity or speed, changing required work clothing and using relief workers; and

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

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

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

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

(a) identified heat-related illness risk factors;

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

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

(d) different types of heat-related illness;

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

(f) available engineering control measures;

(g) administrative control measures;

(h) the importance of reporting heat-related symptoms being experienced by the employee or another employee;

(i) recordkeeping requirements and reporting procedures;

(j) emergency response procedures; and

(k) employee rights.

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

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

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

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

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

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

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

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

(3) be appropriate in content and vocabulary to the language, educational level and literacy of the covered employees.

7. Each covered employer shall:

(a) maintain at all times:

(1) records related to each plan of the employer, including heat-related illness risk and hazard assessments and identification, evaluation, correction and training procedures;

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

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

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

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

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

(2) reporting violations of this section to any state, local or federal government.

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

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

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

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

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

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.