

STATE OF NEW YORK

1604--D

2023-2024 Regular Sessions

IN SENATE

January 13, 2023

Introduced by Sens. RAMOS, BROUK, CHU, CLEARE, COMRIE, FERNANDEZ, GONZALEZ, HARCKHAM, MAY, MAYER, PARKER, SALAZAR, SCARCELLA-SPANTON, STAVISKY, WEBB -- 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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, 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:

1 Section 1. This act shall be known and may be cited as the "temper-
2 ature extreme mitigation program (TEMP) 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 skyrocketing heat in the summer. Every year, New York city has high
7 numbers of heat-related emergency department visits, hospital admis-
8 sions, and deaths. According to the New York City Office of the Mayor,
9 each year there are an estimated 450 heat-related ED visits, 150 heat-
10 related hospital admissions, 10 heat-stroke deaths, and 350 heat-exacer-
11 bated deaths, caused by heat worsening existing chronic conditions.

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

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

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

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ARTICLE 20-DTEMPERATURE REGULATION BY EMPLOYERSSection 742. Scope.743. Definitions.744. Heat protection standards.745. Cold protection standards.746. Education and training.747. Enforcement.

§ 742. Scope. 1. The following covered industries will be held to the standards in this article:

(a) Agriculture;

(b) Construction, unless the employer is party to a: (i) collective bargaining agreement or (ii) project labor agreement with a bona fide building and construction trades council;

(c) Landscaping;

(d) Car wash service;

(e) Commercial shipping;

(f) Food service; and

(g) Warehousing.

2. For the purposes of this article, outdoor worksites of the covered industries in paragraphs (a), (b), (c), and (d) of subdivision one of this section shall be subject to the provisions herein. For the purposes of this article, indoor worksites of the covered industries in paragraphs (e), (f), and (g) of subdivision one of this section shall be subject to the provisions herein.

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

1. "Employee" means any person within a covered industry 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 working in an industry identified in this article. 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 a covered industry identified in 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.

1 5. "Heat stress threshold" means a heat stress threshold of eighty or
2 more degrees Fahrenheit. For the purposes of indoor temperature regu-
3 lated environments, the indoor temperature shall fall between sixty-
4 eight and seventy-five degrees Fahrenheit, to the extent practicable.

5 6. "Heat illness" means a serious medical condition resulting from the
6 body's inability to cope with extreme heat temperature stress thresh-
7 olds, and includes, but is not limited to, heat cramps, heat exhaustion,
8 heat syncope, and heat stroke.

9 7. "Cold stress threshold" means a threshold temperature of sixty
10 degrees Fahrenheit or below. For the purposes of indoor temperature
11 regulated environments, the indoor temperature shall fall between
12 sixty-eight and seventy-five degrees Fahrenheit, to the extent practica-
13 ble.

14 8. "Cold illness" means a serious medical condition resulting from the
15 body's inability to cope with extreme cold stress thresholds.

16 9. "Personal protective equipment" or "PPE" means the necessary
17 protective equipment, gear, and uniforms to withstand extreme heat at or
18 exceeding the heat stress thresholds.

19 § 744. Heat protection standards. The employer shall fulfill the
20 following requirements when employees are in an outdoor or indoor work-
21 site and experiencing conditions at or exceeding a heat stress thresh-
22 old:

23 1. Access to hydration. The employer shall provide access to potable
24 drinking water from a sanitary source and kept at sixty degrees or cool-
25 er at no cost to the employee. The water shall be located as close as
26 practicable to, but no more than a quarter mile from, the areas where
27 employees are working. Water shall be provided at the beginning of the
28 work shift to provide one quart per employee per hour for drinking for
29 the entire shift; provided, however, that an employer may begin the
30 shift with smaller quantities of water where such employer has effective
31 procedures for replenishment during the shift as needed to allow employ-
32 ees to drink one quart or more per hour.

33 2. Medical monitoring. Employers shall closely monitor temperatures
34 and implement their workplace heat stress plan. If an employee exhibits
35 signs or reports symptoms of heat illness while taking a preventative
36 break pursuant to subdivision four of this section, or at any other
37 time, the employer shall make a reasonable effort to provide the worker
38 with access to first aid or other treatment.

39 3. Access to shade. (a) With respect to outdoor sites, shade shall be
40 made available while employees are present when the temperature exceeds
41 eighty degrees Fahrenheit and shall be as close to the worksite as
42 reasonably possible. When the outdoor temperature in the work area
43 exceeds eighty degrees Fahrenheit, the employer shall have and maintain
44 one or more areas with shade at all times while employees are present
45 that are either open to the air or provided with ventilation or cooling.
46 The amount of shade present shall be at least enough to accommodate the
47 number of employees on preventative breaks, so that they can sit in a
48 normal posture fully in the shade with at least four square feet per
49 resting employee.

50 (b) Where the employer can demonstrate that it is infeasible or unsafe
51 to have a shade structure, or otherwise to have shade present on a
52 continuous basis, the employer may utilize alternative procedures for
53 providing access to shade if the alternative procedures provide equiv-
54 alent protection.

55 4. Preventative breaks. (a) Employees shall be allowed and encouraged
56 to take paid preventative breaks when they feel the onset of heat

illness. Employees shall notify their employer as soon as possible about such onset and a preventative break shall be offered to such employees. Such preventative break may include access to shade. An individual employee who takes a preventative break:

(i) Shall be monitored and asked if they are experiencing symptoms of heat illness;

(ii) Shall be encouraged to remain in the shade, where applicable under subdivision three of this section; and

(iii) 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 shade where applicable.

(b) With respect to outdoor sites, where the temperature reaches or exceeds ninety-five degrees Fahrenheit, the employer shall allow and encourage employees to take a minimum ten minute preventative cool-down rest period every two hours.

(c) Preventative breaks shall not affect any job quota set by employers; such quotas shall be adjusted to accommodate for preventative breaks and no employee shall be faced with unlawful retaliation, pursuant to section seven hundred forty-seven of this article, as a result of diminished job quotas.

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

(a) Fans, if possible;

(b) Air-conditioning, which shall be mandated in all delivery vehicles and warehouses in an industry identified in this article; and

(c) Anything additional deemed necessary by the department to combat extreme heat.

6. Vehicle standards. Employees who spend more than sixty minutes in workplace or employer provided vehicles each day or whose worksite is considered an employer provided vehicle shall have adequate air-conditioning available inside such vehicle.

§ 745. Cold protection standards. The employer shall fulfill the following requirements when employees are in an outdoor or indoor worksite and experiencing conditions at or exceeding a cold stress threshold:

1. Access to hydration. The employer shall provide access to potable drinking water from a sanitary source and kept at sixty degrees or cooler at no cost to the employee. The water shall be located as close as practicable to, but no more than a quarter mile from, the areas where employees are working. Water shall be provided at the beginning of the work shift to provide one quart per employee per hour for drinking for the entire shift; provided, however, that an employer may begin the shift with smaller quantities of water where such employer has effective procedures for replenishment during the shift as needed to allow employees to drink one quart or more per hour.

2. Medical monitoring. Employers shall closely monitor temperatures and implement their workplace cold stress plan. If an employee exhibits signs or reports symptoms of cold illness while taking a preventative break pursuant to subdivision four of this section, or at any other time, the employer shall make a reasonable effort to provide the worker with access to first aid or other treatment.

3. Access to warmth. (a) With respect to outdoor sites, a heated indoor area shall be made available while employees are present when the temperature is sixty degrees Fahrenheit or below. The temperature of

1 such heated indoor area shall fall between sixty-eight and seventy-five
2 degrees Fahrenheit and shall be as close to the worksite as reasonably
3 possible. The heated indoor area shall be at least large enough to
4 accommodate the number of employees on preventative breaks, so that they
5 can sit in a normal posture fully in the heated indoor area with at
6 least four square feet per resting employee.

7 (b) Where the employer can demonstrate that it is infeasible or unsafe
8 to have a heated indoor area, or otherwise to have a heated area avail-
9 able on a continuous basis, the employer may utilize alternative proce-
10 dures for providing access to warmth if the alternative procedures
11 provide equivalent protection.

12 4. Preventative breaks. (a) Employees shall be allowed and encouraged
13 to take paid preventative breaks when they feel the onset of cold
14 illness. Employees shall notify their employer as soon as possible about
15 such onset and a preventative break shall be offered to such employees.
16 Such preventative break may include access to warmth. An individual
17 employee who takes a preventative break:

18 (i) Shall be monitored and asked if they are experiencing symptoms of
19 cold illness;

20 (ii) Shall be encouraged to remain in the warmth, where applicable
21 under subdivision three of this section; and

22 (iii) Shall not be ordered back to work until any signs or symptoms of
23 cold illness have abated, but in no event, less than five minutes in
24 addition to the time needed to access warmth where applicable.

25 (b) With respect to outdoor sites, where the temperature reaches below
26 twenty degrees Fahrenheit, the employer shall allow and encourage
27 employees to take a minimum ten minute preventative rest period every
28 two hours.

29 (c) Preventative breaks shall not affect any job quota set by employ-
30 ers; such quotas shall be adjusted to accommodate for preventative
31 breaks and no employee shall be faced with unlawful retaliation, pursu-
32 ant to section seven hundred forty-seven of this article, as a result of
33 diminished job quotas.

34 5. Personal protective equipment. Employers shall provide the neces-
35 sary protective equipment, gear, and uniforms to withstand temperatures
36 at or below the cold stress thresholds to the extent practicable. This
37 may include, but is not limited to:

38 (a) Heating systems, which shall be mandated in all delivery vehicles
39 and warehouses in an industry identified in this article; and

40 (b) Anything additional deemed necessary by the department to combat
41 extreme cold.

42 6. Vehicle standards. Employees who spend more than sixty minutes in
43 workplace or employer provided vehicles each day or whose worksite is
44 considered an employer provided vehicle shall have an adequate heating
45 system available inside such vehicle.

46 § 746. Education and training. 1. Training. The department shall
47 create a training curriculum outlining the signs of heat illness and the
48 available medical responses. Such training shall be administered by the
49 employer at time of hiring or the employee's training fund if a member
50 of organized labor.

51 2. Mandated signage and materials. The department shall promulgate
52 signage and educational materials that are required to be made available
53 to employees by their employer in the twelve most common languages
54 spoken in the state regarding the following:

55 (a) Signs of heat illness;

56 (b) Heat stress thresholds;

1 (c) Employer required protections from heat stress thresholds;
2 (d) Where employees can report an employer's lack of accommodation;
3 and

4 (e) Anything else deemed necessary by the department.

5 3. Unlawful retaliation. For the purposes of this article, there
6 shall be a rebuttable presumption of unlawful retaliation if an employer
7 in any manner discriminates, retaliates, or takes any adverse action
8 against any employee within ninety days of the employee initiating a
9 complaint pursuant to this article.

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

14 § 747. Enforcement. The department shall promulgate rules and regu-
15 lations to require the following:

16 1. Every employer in a covered industry shall collect and maintain
17 data and records as required by the department on all heat-related
18 illnesses and fatalities which occur at an outdoor or indoor worksite.

19 2. Every employer in a covered industry shall submit reports of the
20 data collected pursuant to subdivision one of this section annually to
21 the department and such reports shall be published by the department on
22 a searchable database. Employers shall make such reports available to
23 any employee or applicable labor organization upon request within ten
24 business days. An extreme heat-related fatality on a construction site
25 shall be deemed a work-related injury for the purposes of reporting
26 pursuant to section forty-four of this chapter.

27 3. Every employer in a covered industry shall submit for approval a
28 written plan on how heat-related stress will be mitigated to the depart-
29 ment. Once approved by the department, an employer shall provide such
30 plan to all employees and applicable labor organizations on an annual
31 basis.

32 4. Every employer in a covered industry shall be subject to fines for
33 not adhering to the mandatory reporting and enforcement protocols.
34 Employers shall be required to pay penalties of no less than fifty
35 dollars per day for failing to implement heat protection standards as
36 set forth in this article. The department shall administer notice and
37 collect all fines.

38 5. The department shall establish a worker hotline and an online form
39 where employees can file complaints with the department regarding heat
40 protection standards.

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

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