

# STATE OF NEW YORK

1604--E

2023-2024 Regular Sessions

## IN SENATE

January 13, 2023

Introduced by Sens. RAMOS, BRISPORT, BROUK, CHU, CLEARE, COMRIE, FERNANDEZ, GIANARIS, GONZALEZ, HARCKHAM, MAY, MAYER, PARKER, RIVERA, SALAZAR, SCARCELLA-SPANTON, SERRANO, 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 -- 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.

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

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

3 ARTICLE 20-D

4 TEMPERATURE REGULATION BY EMPLOYERS

5 Section 742. Scope.

6 743. Definitions.

7 744. Heat protection standards.

8 745. Education and training.

9 746. Enforcement.

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

12 (a) Agriculture;

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

16 (c) Landscaping;

17 (d) Car wash service;

18 (e) Commercial shipping;

19 (f) Food service; and

20 (g) Warehousing.

21 2. For the purposes of this article, outdoor worksites of the covered  
22 industries in paragraphs (a), (b), (c), and (d) of subdivision one of  
23 this section shall be subject to the provisions herein. For the purposes  
24 of this article, indoor worksites of the covered industries in para-  
25 graphs (e), (f), and (g) of subdivision one of this section shall be  
26 subject to the provisions herein.

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

29 1. "Employee" means any person within a covered industry providing  
30 labor or services within the scope of this article for remuneration for  
31 a public or private entity or business within the state, without regard  
32 to an individual's immigration status, and shall include, but not be  
33 limited to, part-time workers, independent contractors, day laborers,  
34 farmworkers and other temporary and seasonal workers working in an  
35 industry identified in this article. The term shall also include indi-  
36 viduals working for staffing agencies, contractors or subcontractors on  
37 behalf of the employer at any individual worksite, as well as any  
38 individual delivering goods or transporting people at, to or from the  
39 worksite on behalf of the employer, regardless of whether delivery or  
40 transport is conducted by an individual or entity that would otherwise  
41 be deemed an employer under this article, or any person holding a posi-  
42 tion by appointment or employment in the service of a public employer  
43 within the scope of this article.

44 2. "Employer" means any individual, partnership, association, corpo-  
45 ration, limited liability company, business trust, legal representative,  
46 public entity, or any organized group acting as employer within a  
47 covered industry identified in this article.

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

53 4. "Outdoor worksite" means all employers with employees performing  
54 work in an outdoor environment. The term outdoor worksite does not apply  
55 to incidental exposure, which exists when an employee is required to

1 perform a work activity outdoors for not longer than fifteen minutes in  
2 any sixty-minute period.

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

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

11 7. "Personal protective equipment" or "PPE" means the necessary  
12 protective equipment, gear, and uniforms to withstand extreme heat at or  
13 exceeding the heat stress thresholds.

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

18 1. Access to hydration. The employer shall provide access to potable  
19 drinking water at no cost to the employee. The water shall be located  
20 as close as practicable to the areas where employees are working. Water  
21 shall be provided at the beginning of the work shift to provide one  
22 quart per employee per hour for drinking for the entire shift; provided,  
23 however, that an employer may begin the shift with smaller quantities of  
24 water where such employer has effective procedures for replenishment  
25 during the shift as needed to allow employees to drink one quart or more  
26 per hour.

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

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

44 (b) Where the employer can demonstrate that it is infeasible or unsafe  
45 to have a shade structure, or otherwise to have shade present on a  
46 continuous basis, the employer may utilize alternative procedures for  
47 providing access to shade if the alternative procedures provide equiv-  
48 alent protection.

49 4. Preventative breaks. (a) Employees shall be allowed and encouraged  
50 to take paid preventative breaks when they feel the onset of heat  
51 illness. Employees shall notify their employer as soon as possible about  
52 such onset and a preventative break shall be offered to such employees.  
53 Such preventative break may include access to shade. An individual  
54 employee who takes a preventative break:

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

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

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

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

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

14 (a) Fans, if possible;

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

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

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

23 § 745. Education and training. 1. Training. The department shall  
24 create a training curriculum outlining the signs of heat illness and the  
25 available medical responses. Such training shall be administered by the  
26 employer at time of hiring or the employee's training fund if a member  
27 of organized labor.

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

32 (a) Signs of heat illness;

33 (b) Heat stress thresholds;

34 (c) Employer required protections from heat stress thresholds;

35 (d) Where employees can report an employer's lack of accommodation;  
36 and

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

38 3. Unlawful retaliation. For the purposes of this article, there  
39 shall be a rebuttable presumption of unlawful retaliation if an employer  
40 in any manner discriminates, retaliates, or takes any adverse action  
41 against any employee within ninety days of the employee initiating a  
42 complaint pursuant to this article.

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

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

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

52 2. Every employer in a covered industry shall submit reports of the  
53 data collected pursuant to subdivision one of this section annually to  
54 the department and such reports shall be published by the department on  
55 a searchable database. Employers shall make such reports available to  
56 any employee or applicable labor organization upon request within ten

1 business days. An extreme heat-related fatality on a construction site  
2 shall be deemed a work-related injury for the purposes of reporting  
3 pursuant to section forty-four of this chapter.

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

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

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

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

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