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:

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 skyrocketing heat in the summer. 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.

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.

LBD04582-21-4

§ 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. Heat protection standards.
745. Education and training.
746. 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.

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

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

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

§ 744. Heat 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 heat stress threshold:

1. Access to hydration. The employer shall provide access to potable drinking water at no cost to the employee. The water shall be located as close as practicable to 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 heat stress plan. If an employee exhibits signs or reports symptoms of heat 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 shade. (a) With respect to outdoor sites, shade shall be made available while employees are present when the temperature exceeds eighty degrees Fahrenheit and shall be as close to the worksite as reasonably 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 preventative breaks, so that they can sit in a normal posture fully in the shade with at least four square feet per resting employee.

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

4. Preventative breaks. (a) Employees shall be allowed and encouraged 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.

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

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 the twelve most common languages spoken in the state regarding the following:

(a) Signs of heat illness;

(b) Heat stress thresholds;

(c) Employer required protections from heat stress thresholds;

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

(e) Anything else deemed necessary by the department.

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

4. Outreach campaign. The department shall establish a statewide outreach campaign to educate employees on the heat 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 in a covered industry shall collect and maintain data and records as required by the department on all heat-related illnesses and fatalities which occur at an outdoor or indoor worksite.

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

business days. An extreme heat-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 in a covered industry shall submit for approval a written plan on how heat-related stress will be mitigated to the department. Once approved by the department, an employer shall provide such plan to all employees and applicable labor organizations on an annual basis.

4. Every employer in a covered industry 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 implement heat protection standards as set forth in this article. The department shall administer notice and collect all fines.

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

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

§ 4. This act shall take effect on the ninetieth 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.