

# STATE OF NEW YORK

3321--C

2023-2024 Regular Sessions

## IN ASSEMBLY

February 2, 2023

Introduced by M. of A. JOYNER, LUNSFORD, MAMDANI, SHRESTHA, GLICK, REYES, DeSTEFANO -- 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 -- 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:

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:

### ARTICLE 20-D

#### TEMPERATURE REGULATION BY EMPLOYERS

##### Section 742. Scope.

##### 743. Definitions.

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

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1       744. Heat protection standards.

2       745. Education and training.

3       746. Enforcement.

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

6       (a) Agriculture;

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

10       (c) Landscaping;

11       (d) Commercial shipping;

12       (e) Food service; and

13       (f) Warehousing.

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

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

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

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

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

46       4. "Outdoor worksite" means all employers with employees performing  
47 work in an outdoor environment. The term outdoor worksite does not apply  
48 to incidental exposure, which exists when an employee is required to  
49 perform a work activity outdoors for not longer than fifteen minutes in  
50 any sixty-minute period.

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

55       6. "Heat illness" means a serious medical condition resulting from  
56 the body's inability to cope with extreme temperature stress thresholds,

1 and includes, but is not limited to, heat cramps, heat exhaustion, heat  
2 syncope, and heat stroke.

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

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

10 1. Access to hydration. The employer shall provide access to potable  
11 drinking water at no cost to the employee. The water shall be located  
12 as close as practicable to the areas where employees are working. Water  
13 shall be provided at the beginning of the work shift to provide one  
14 quart per employee per hour for drinking for the entire shift provided  
15 however that an employer may begin the shift with smaller quantities of  
16 water where such employer has effective procedures for replenishment  
17 during the shift as needed to allow employees to drink one quart or more  
18 per hour.

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

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

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

41 4. Preventative breaks. (a) Employees shall be allowed and encouraged  
42 to take preventative breaks when they feel the onset of heat illness.  
43 Employees shall notify their employer as soon as possible about such  
44 onset and a preventative break shall be offered to such employees. Such  
45 preventative break may include access to shade. An individual employee  
46 who takes a preventative break:

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

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

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

54 (b) With respect to outdoor sites, where the temperature reaches or  
55 exceeds ninety-five degrees Fahrenheit, the employer shall allow and

1 encourage employees to take a minimum ten minute preventative cool-down  
2 rest period every two hours.

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

7 (a) Fans, if possible;

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

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

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

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

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

25 (a) Signs of heat illness;

26 (b) Heat stress thresholds;

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

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

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

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

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

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

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

45 2. Every employer in a covered industry shall submit reports of the  
46 data collected pursuant to subdivision one of this section annually to  
47 the department and such reports shall be published by the department on  
48 a searchable database. Employers shall make such reports available to  
49 any employee or applicable labor organization upon request within ten  
50 business days. An extreme heat-related fatality on a construction site  
51 shall be deemed a work-related injury for the purposes of reporting  
52 pursuant to section forty-four of this chapter.

53 3. Every employer in a covered industry shall submit for approval a  
54 written plan on how heat-related stress will be mitigated to the depart-  
55 ment. Once approved by the department, an employer shall provide such

1 plan to all employees and applicable labor organizations on an annual  
2 basis.

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

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

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

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