

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:

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

3 § 218-c. Prevention of occupational exposure to excessive heat;
4 construction employees. 1. For purposes of this section, the following
5 terms shall have the following meanings:

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

8 (b) "Covered employer" shall mean an employer that employs an individ-
9 ual to work at a covered workplace and shall include contractors,
10 subcontractors, temporary service firms and employee leasing entities.

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

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

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

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

23 (a) establish high heat temperature maximum exposure levels for
24 covered employees which, if exceeded, shall trigger action to protect
25 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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1 (b) ensure all covered employers comply with the requirements
2 described in this section with respect to occupational exposure to
3 excessive heat.

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

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

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

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

17 (4) be made available, upon request, to such employees, the employee
18 representatives for such employees, the commissioner and the commission-
19 er of health.

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

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

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

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

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

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

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

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

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

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

42 (iii) increasing rest allowances;

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

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

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

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

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

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

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

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

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

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

16 (a) identified heat-related illness risk factors;

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

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

20 (d) different types of heat-related illness;

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

22 (f) available engineering control measures;

23 (g) administrative control measures;

24 (h) the importance of reporting heat-related symptoms being experi-
25 enced by the employee or another employee;

26 (i) recordkeeping requirements and reporting procedures;

27 (j) emergency response procedures; and

28 (k) employee rights.

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

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

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

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

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

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

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

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

52 (3) be appropriate in content and vocabulary to the language, educa-
53 tional level and literacy of the covered employees.

54 7. Each covered employer shall:

55 (a) maintain at all times:

1 (1) records related to each plan of the employer, including heat-re-
2 lated illness risk and hazard assessments and identification, evalu-
3 ation, correction and training procedures;

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

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

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

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

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

14 (2) reporting violations of this section to any state, local or feder-
15 al government.

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

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

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

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

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

35 § 2. This act shall take effect on the one hundred eightieth day after
36 it shall have become a law. Effective immediately, the addition, amend-
37 ment and/or repeal of any rule or regulation necessary for the implemen-
38 tation of this act on its effective date are authorized to be made and
39 completed on or before such effective date.