

STATE OF NEW YORK

8935--A

IN ASSEMBLY

January 30, 2024

Introduced by M. of A. BRONSON, ZINERMAN, OTIS, SHIMSKY, LUNSFORD, RAGA, STECK, GIBBS, BURDICK, ARDILA, GONZALEZ-ROJAS, GLICK -- read once and referred to the Committee on Labor -- recommitted to the Committee on Labor in accordance with Assembly Rule 3, sec. 2 -- 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.

§ 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. Cold protection standards.

746. Education and training.

747. Enforcement.

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

LBD04582-18-4

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

3 (a) Agriculture;

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

7 (c) Landscaping;

8 (d) Car wash service;

9 (e) Commercial shipping;

10 (f) Food service; and

11 (g) Warehousing.

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

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

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

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

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

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

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

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

7. "Cold stress threshold" means a threshold temperature of sixty degrees Fahrenheit or below. 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.

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

9. "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 work-site and experiencing conditions at or exceeding a heat 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 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

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

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

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

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

17 (a) Fans, if possible;

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

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

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

26 § 745. Cold protection standards. The employer shall fulfill the
27 following requirements when employees are in an outdoor or indoor work-
28 site and experiencing conditions at or exceeding a cold stress thresh-
29 old:

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

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

46 3. Access to warmth. (a) With respect to outdoor sites, a heated
47 indoor area shall be made available while employees are present when the
48 temperature is sixty degrees Fahrenheit or below. The temperature of
49 such heated indoor area shall fall between sixty-eight and seventy-five
50 degrees Fahrenheit and shall be as close to the worksite as reasonably
51 possible. The heated indoor area shall be at least large enough to
52 accommodate the number of employees on preventative breaks, so that they
53 can sit in a normal posture fully in the heated indoor area with at
54 least four square feet per resting employee.

55 (b) Where the employer can demonstrate that it is infeasible or unsafe
56 to have a heated indoor area, or otherwise to have a heated area avail-

1 able on a continuous basis, the employer may utilize alternative proce-
2 dures for providing access to warmth if the alternative procedures
3 provide equivalent protection.

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

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

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

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

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

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

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

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

32 (b) Anything additional deemed necessary by the department to combat
33 extreme cold.

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

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

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

47 (a) Signs of heat illness;

48 (b) Heat stress thresholds;

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

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

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

53 3. Unlawful retaliation. For the purposes of this article, there
54 shall be a rebuttable presumption of unlawful retaliation if an employer
55 in any manner discriminates, retaliates, or takes any adverse action

1 against any employee within ninety days of the employee initiating a
2 complaint pursuant to this article.

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

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

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

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

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

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

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

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

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