

STATE OF NEW YORK

8935--B

IN ASSEMBLY

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Introduced by M. of A. BRONSON, ZINERMAN, OTIS, SHIMSKY, LUNSFORD, RAGA, STECK, GIBBS, BURDICK, ARDILA, GONZALEZ-ROJAS, GLICK, DILAN, McDONALD, HEVESI, REYES, KELLES, BURGOS, SEPTIMO, CLARK, GUNTHER, SHRESTHA, COLTON, ANDERSON, L. ROSENTHAL, LUCAS, FORREST -- 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 -- reported and referred to the Committee on Codes -- 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.
15 § 3. The labor law is amended by adding a new article 20-D to read as
16 follows:
17 ARTICLE 20-D
18 TEMPERATURE REGULATION BY EMPLOYERS
19 Section 742. Scope.
20 743. 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) Car wash service;

12 (e) Commercial shipping;

13 (f) Food service; and

14 (g) Warehousing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (a) Fans, if possible;

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

12 (c) Anything additional deemed necessary by the department to combat
13 extreme heat.

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

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

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

27 (a) Signs of heat illness;

28 (b) Heat stress thresholds;

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

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

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

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

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

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

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

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

55 3. Every employer in a covered industry shall submit for approval a
56 written plan on how heat-related stress will be mitigated to the depart-

1 ment. Once approved by the department, an employer shall provide such
2 plan to all employees and applicable labor organizations on an annual
3 basis.

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

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

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

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