

# STATE OF NEW YORK

1604

2023-2024 Regular Sessions

## IN SENATE

January 13, 2023

Introduced by Sen. RAMOS -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

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 "Worksite  
2 Temperature Regulation 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 both skyrocketing heat in the summer and freezing cold in the winter.  
7 Every year, New York city has high numbers of heat-related emergency  
8 department visits, hospital admissions, and deaths. According to the New  
9 York City Office of the Mayor, each year there are an estimated 450  
10 heat-related ED visits, 150 heat-related hospital admissions, 10 heat-  
11 stroke deaths, and 350 heat-exacerbated deaths, caused by heat worsening  
12 existing chronic conditions.

13 Further, cold stress injuries have proven to be a concern for New  
14 York's workers. In 2018 in the United States, there were 2,890 cases of  
15 ice, sleet, and snow injuries; 14% of those were in the state of New  
16 York (BLS). In 2018 in New York state, 50 injuries were related to expo-  
17 sure to environmental cold. All 50 of those injuries were cases involv-  
18 ing 31 or more days of missed work (BLS).

19 The legislature hereby finds and declares that the government is obli-  
20 gated to ensure that employers provide safe conditions for their employ-  
21 ees.

22 § 3. The labor law is amended by adding a new article 20-D to read as  
23 follows:

24 ARTICLE 20-D  
25 TEMPERATURE REGULATION BY EMPLOYERS

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

LBD04582-02-3

1 Section 742. Scope.

2 743. Definitions.

3 744. Temperature protection standards.

4 745. Education and training.

5 746. Enforcement.

6 § 742. Scope. The following industries will be held to the standards  
7 in this article:

8 1. Agriculture;

9 2. Construction;

10 3. Landscaping;

11 4. Delivery drivers; and

12 5. Food services workers.

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

15 1. "Employee" means any person providing labor or services within the  
16 scope of this article for remuneration for a private entity or business  
17 within the state, without regard to an individual's immigration status,  
18 and shall include, but not be limited to, part-time workers, inde-  
19 pendent contractors, day laborers, farmworkers and other temporary  
20 and seasonal workers. The term shall also include individuals working  
21 for staffing agencies, contractors or subcontractors on behalf of the  
22 employer at any individual worksite, as well as any individual deliv-  
23 ering goods or transporting people at, to or from the worksite on  
24 behalf of the employer, regardless of whether delivery or transport  
25 is conducted by an individual or entity that would otherwise be deemed  
26 an employer under this article. The term shall not include employees  
27 of the state, any political subdivision of the state, a public authori-  
28 ty, or any other governmental agency or instrumentality.

29 2. "Employer" means any individual, partnership, association, corpo-  
30 ration, limited liability company, business trust, legal representative,  
31 or any organized group acting as employer within the scope of this arti-  
32 cle.

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

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

43 5. "Outdoor temperature stress threshold" mean a heat stress threshold  
44 of eighty or more degrees Fahrenheit and a cold threshold of sixty or  
45 below degrees Fahrenheit.

46 6. "Indoor temperature stress threshold" means a heat stress threshold  
47 of eighty or more degrees Fahrenheit and a cold threshold of sixty or  
48 below degrees Fahrenheit. In cases of offices, schools, or other indoor  
49 temperature regulated environments, the indoor temperature shall fall  
50 between sixty-eight point five and seventy-five degrees when the outdoor  
51 temperature is below fifty-five degrees, and when the outdoor temper-  
52 ature is above eighty-five degrees, the indoor temperature shall fall  
53 between seventy-five and eighty point five degrees.

54 7. "Heat illness" means a serious medical condition resulting from the  
55 body's inability to cope with a particular heat load, and includes, but

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

3 8. "Cold illness" means a serious medical condition resulting from the  
4 body's inability to cope with cold temperatures.

5 9. "Personal protective equipment" or "PPE" means the necessary  
6 protective equipment, gear, uniforms, and clothing, to withstand temper-  
7 atures at or exceeding the stress thresholds.

8 § 744. Temperature protection standards. 1. Heat-specific standards.  
9 The employer shall fulfill the following requirements when employees are  
10 in an outdoor or indoor worksite and experiencing conditions at or  
11 exceeding a heat stress threshold of eighty or more degrees Fahrenheit:

12 (a) Access to hydration. The employer shall provide access to one  
13 quart of water per hour per employee at no cost to the employee and such  
14 access shall be as close to the worksite as possible.

15 (b) Rest. The employer shall offer preventative breaks at the duration  
16 and frequency of ten minutes in the shade for every two hours of outdoor  
17 work and ten minutes in a cooler breakroom for indoor workers. The  
18 breakroom temperature shall fall between seventy-five and eighty point  
19 five degrees when the outdoor temperature is above eighty-five degrees.  
20 Preventative breaks shall be paid.

21 (c) 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 cool-down rest, during a preventative cool-down rest period, or at any  
25 other time, the employer shall provide appropriate first aid or emergen-  
26 cy response.

27 (d) Access to shade. (i) Shade shall be made available when the  
28 temperature exceeds eighty degrees Fahrenheit and shall be as close to  
29 the worksite as possible. When the outdoor temperature in the work area  
30 exceeds eighty degrees Fahrenheit, the employer shall have and maintain  
31 one or more areas with shade at all times while employees are present  
32 that are either open to the air or provided with ventilation or cooling.  
33 The amount of shade present shall be at least enough to accommodate the  
34 number of employees on recovery or rest periods, so that they can sit in  
35 a normal posture fully in the shade with at least four square feet per  
36 resting employee. The shade shall be located as close as practicable to  
37 the areas where employees are working. Subject to the same specifica-  
38 tions, the amount of shade present during meal periods shall be at least  
39 enough to accommodate the number of employees on the meal period who  
40 remain onsite.

41 (ii) Shade shall be available when the temperature does not exceed  
42 eighty degrees Fahrenheit. When the outdoor temperature in the work area  
43 does not exceed eighty degrees Fahrenheit employers shall either provide  
44 shade pursuant to subparagraph (i) of this paragraph or provide timely  
45 access to shade upon an employee's request.

46 (iii) Employees shall be allowed and encouraged to take a preventative  
47 cool-down rest in the shade when they feel the need to do so to protect  
48 themselves from overheating. Such access to shade shall be permitted at  
49 all times. An individual employee who takes a preventative cool-down  
50 rest:

51 (1) Shall be monitored and asked if he or she is experiencing symptoms  
52 of heat illness;

53 (2) Shall be encouraged to remain in the shade; and

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

1 (e) Personal protective equipment. Employers shall provide the neces-  
2 sary protective equipment, gear, uniforms, and clothing, to withstand  
3 temperatures at or exceeding the heat stress thresholds. This may  
4 include, but is not limited to:

5 (i) Clothing with cooling and/or wicking features;

6 (ii) Ice vests and cooling rags;

7 (iii) Fans;

8 (iv) Air-conditioning;

9 (v) Sunscreen;

10 (vi) Hats; and

11 (vii) Anything deemed necessary by the department or a reasonable  
12 request made by employees to withstand the heat stress threshold and  
13 above.

14 (f) Vehicle standards. Employees who spend more than sixty minutes in  
15 vehicles each day or whose worksite is considered a vehicle shall have  
16 adequate air-conditioning available inside such vehicle.

17 (g) Worker acclimatization. Employers shall provide time for acclima-  
18 tization of new and returning employees. When worksite temperatures are  
19 above eighty degrees, employees shall only work twenty percent of their  
20 normal duration on their first day and gradually increase work duration  
21 over a two-week period.

22 2. Cold-specific standards. The employer shall fulfill the following  
23 requirements when employees are in an outdoor or indoor worksite and  
24 experiencing conditions at or exceeding the cold threshold of sixty or  
25 below degrees Fahrenheit:

26 (a) Access to hydration. The employer shall provide access to one  
27 quart of water per hour per employee at no cost to the employee.

28 (b) Rest. The employer shall offer preventative breaks at the duration  
29 and frequency of ten minutes in a warm area for every two hours of  
30 outdoor work and ten minutes in a warm breakroom for indoor workers.  
31 The breakroom temperature shall fall between sixty-eight point five and  
32 seventy-five degrees when the outdoor temperature is below sixty  
33 degrees. Preventative breaks shall be paid.

34 (c) Medical monitoring. Employers shall closely monitor temperatures  
35 and implement their workplace cold stress plan. If an employee exhibits  
36 signs or reports symptoms of cold stress while taking a preventative  
37 warm-up rest, during a preventative warm-up rest period, or at any other  
38 time, the employer shall provide appropriate first aid or emergency  
39 response.

40 (d) Access to warmth. (i) A warm location for breaks shall be made  
41 available when the temperature is below sixty degrees Fahrenheit. When  
42 the outdoor temperature in the work area is below sixty degrees Fahren-  
43 heit, the employer shall have and maintain one or more areas with  
44 adequate warmth at all times while employees are present that are  
45 provided with ventilation and heating. The size of the warm location  
46 shall be at least enough to accommodate the number of employees on  
47 recovery or rest periods, with at least four square feet available per  
48 resting employee. The rest location shall be located as close as prac-  
49 ticable to the areas where employees are working. Subject to the same  
50 specifications, access to a warm location shall be present during meal  
51 periods and shall be at least enough to accommodate the number of  
52 employees on the meal period who remain onsite.

53 (ii) Warm locations shall be available when the temperature is not  
54 below sixty degrees Fahrenheit. When the outdoor temperature in the work  
55 area is not below sixty degrees Fahrenheit employers shall either

1 provide warmth pursuant to subparagraph (i) of this paragraph or provide  
2 timely access upon an employee's request.

3 (iii) Employees shall be allowed and encouraged to take a preventative  
4 warm-up rest in the shade when they feel the need to do so to protect  
5 themselves from cold stress. Such access shall be permitted at all  
6 times. An individual employee who takes a preventative warm-up rest:

7 (1) Shall be monitored and asked if he or she is experiencing symptoms  
8 of cold stress;

9 (2) Shall be encouraged to remain in the designated warm area; and

10 (3) Shall not be ordered back to work until any signs or symptoms of  
11 cold stress have abated, but in no event, less than five minutes in  
12 addition to the time needed to access warmth.

13 (e) Personal protective equipment. Employers shall provide the neces-  
14 sary protective equipment, gear, uniforms, and clothing, to withstand  
15 temperatures at or exceeding the cold stress thresholds. This may  
16 include, but is not limited to:

17 (i) Clothing with heating features;

18 (ii) Gloves, hats, winter coats;

19 (iii) Heating; and

20 (iv) Anything deemed necessary by the department or reasonable request  
21 made by employees to withstand the cold stress threshold and below.

22 (f) Vehicle standards. Employees who spend more than sixty minutes in  
23 vehicles each day or whose worksite is considered a vehicle shall have  
24 adequate heating available inside the vehicle.

25 (g) Worker acclimatization. Employers shall provide time for acclima-  
26 tization of new and returning employees. When worksite temperatures are  
27 below sixty degrees, employees shall only work twenty percent of their  
28 normal duration on their first day of employment in which the temper-  
29 ature is below sixty degrees and gradually increase work duration over a  
30 two-week period.

31 § 745. Education and training. 1. Training. The department shall  
32 create a training curriculum outlining the signs of cold stress and heat  
33 illness and the necessary medical responses. Such training shall be  
34 administered by the employer at time of hiring.

35 2. Mandated signage and materials. The department shall promulgate  
36 signage and educational materials that are required to be made available  
37 to employees by their employer in all languages in the state regarding  
38 the following:

39 (a) Signs of heat illness and cold stress;

40 (b) Indoor and outdoor temperature stress thresholds;

41 (c) Employer-mandated protections from temperature stress thresholds;

42 (d) Examples of necessary PPE;

43 (e) Where employees can report an employer's lack of accommodation;  
44 and

45 (f) Anything else deemed necessary by the department.

46 3. Whistleblower protection. A employer shall provide to every employ-  
47 ee written materials describing the protection from retaliatory action  
48 for reporting a violation of this article provided pursuant to article  
49 twenty-C of this chapter. Any employee who participates in the activ-  
50 ities established for worker protections and safety shall not be subject  
51 to retaliation for any actions taken pursuant to their participation.

52 4. The department shall establish a statewide outreach campaign to  
53 educate employees on the heat and cold illness standards established and  
54 ensure that employers are providing access to proper signage and materi-  
55 als.

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

3 1. Every employer shall collect and maintain data and records as  
4 required by the department on all temperature-related illnesses and  
5 fatalities which occur at an outdoor or indoor worksite.

6 2. Every employer shall submit reports of the data collected pursuant  
7 to subdivision one of this section quarterly to the department and such  
8 reports shall be published by the department on a searchable database.  
9 Employers shall additionally make such reports available to any employee  
10 or applicable union upon request within five business days. A tempera-  
11 ture-related fatality on a construction site shall be deemed a work-re-  
12 lated injury for the purposes of reporting pursuant to section forty-  
13 four of this chapter.

14 3. Every employer shall submit for approval a written plan on how  
15 temperature-related stress will be mitigated to the department each  
16 quarter. Once approved by the department, an employer shall provide such  
17 plan to all employees and applicable unions.

18 4. Every employer shall be subject to fines for not adhering to the  
19 mandatory reporting and enforcement protocols. Employers shall be  
20 required to pay penalties of no less than fifty dollars per day for  
21 failing to create a plan and up to ten thousand dollars for not follow-  
22 ing an adopted plan. The department shall administer notice and collect  
23 all fines. All fines collected shall be allocated to the department's  
24 temperature standards bureau.

25 5. The department shall establish a worker hotline and an online form  
26 where employees can file complaints with the department regarding  
27 temperature standards.

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

30 7. Every employer shall display a thermometer for employee use at  
31 indoor and outdoor workplaces to monitor the temperature.

32 § 4. This act shall take effect immediately.