

STATE OF NEW YORK

1604--F

2023-2024 Regular Sessions

IN SENATE

January 13, 2023

Introduced by Sens. RAMOS, BRISPORT, BROUK, CHU, CLEARE, COMRIE, FERNANDEZ, GIANARIS, GONZALEZ, HARCKHAM, JACKSON, MAY, MAYER, PARKER, RIVERA, SALAZAR, SCARCELLA-SPANTON, SERRANO, STAVISKY, WEBB -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Finance -- 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.

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

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

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

6 ARTICLE 20-D

7 TEMPERATURE REGULATION BY EMPLOYERS

8 Section 742. Scope.

9 743. Definitions.

10 744. Heat protection standards.

11 745. Education and training.

12 746. Enforcement.

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

15 (a) Agriculture;

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

19 (c) Landscaping;

20 (d) Car wash service;

21 (e) Commercial shipping;

22 (f) Food service; and

23 (g) Warehousing.

24 2. For the purposes of this article, outdoor worksites of the covered
25 industries in paragraphs (a), (b), (c), and (d) of subdivision one of
26 this section shall be subject to the provisions herein. For the purposes
27 of this article, indoor worksites of the covered industries in para-
28 graphs (e), (f), and (g) of subdivision one of this section shall be
29 subject to the provisions herein.

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

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

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

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

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

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

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

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

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

21 1. Access to hydration. The employer shall provide access to potable
22 drinking water at no cost to the employee. The water shall be located
23 as close as practicable to the areas where employees are working. Water
24 shall be provided at the beginning of the work shift to provide one
25 quart per employee per hour for drinking for the entire shift; provided,
26 however, that an employer may begin the shift with smaller quantities of
27 water where such employer has effective procedures for replenishment
28 during the shift as needed to allow employees to drink one quart or more
29 per hour.

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

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

47 (b) Where the employer can demonstrate that it is infeasible or unsafe
48 to have a shade structure, or otherwise to have shade present on a
49 continuous basis, the employer may utilize alternative procedures for
50 providing access to shade if the alternative procedures provide equiv-
51 alent protection.

52 4. Preventative breaks. (a) Employees shall be allowed and encouraged
53 to take paid preventative breaks when they feel the onset of heat
54 illness. Employees shall notify their employer as soon as possible about
55 such onset and a preventative break shall be offered to such employees.

1 Such preventative break may include access to shade. An individual
2 employee who takes a preventative break:

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

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

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

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

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

18 (a) Fans, if possible;

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

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

23 6. Vehicle standards. Employees who spend more than sixty minutes in
24 workplace or employer provided vehicles each day or whose worksite is
25 considered an employer provided vehicle shall have adequate air-condi-
26 tioning available inside such vehicle, provided however that agricul-
27 tural machinery including tractors, seeders, and harvesting equipment
28 shall be exempt from this provision unless otherwise determined by the
29 commissioner.

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

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 the twelve most common languages
38 spoken in the state regarding the following:

39 (a) Signs of heat illness;

40 (b) Heat stress thresholds;

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

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

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

45 3. Unlawful retaliation. For the purposes of this article, there
46 shall be a rebuttable presumption of unlawful retaliation if an employer
47 in any manner discriminates, retaliates, or takes any adverse action
48 against any employee within ninety days of the employee initiating a
49 complaint pursuant to this article.

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

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

1 1. Every employer in a covered industry shall establish, maintain, and
2 preserve for three years contemporaneous, true, and accurate records on
3 all heat-related illnesses and fatalities which occur at an outdoor or
4 indoor worksite to ensure compliance with commissioner requests for
5 data.

6 2. Every employer in a covered industry shall develop a written plan
7 on how heat-related stress will be mitigated. An employer shall provide
8 such plan to all employees and applicable labor organizations on an
9 annual basis.

10 3. Every employer in a covered industry shall be required to pay
11 penalties of no less than fifty dollars per day for failing to implement
12 heat protection standards as set forth in this article. The department
13 shall administer notice and collect all fines.

14 4. The department shall establish a worker hotline and an online form
15 where employees can file complaints with the department regarding heat
16 protection standards.

17 5. Any other reporting or enforcement protocols necessary to ensure
18 the protection of workers.

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