

STATE OF NEW YORK

1034--B

Cal. No. 119

2021-2022 Regular Sessions

IN SENATE

January 6, 2021

Introduced by Sens. GIANARIS, BAILEY, BENJAMIN, BIAGGI, BRISPORT, BROOKS, BROUK, COONEY, GAUGHRAN, GOUNARDES, HINCHEY, HOYLMAN, JACKSON, KENNEDY, KRUEGER, LIU, MANNION, MAY, MAYER, PARKER, RAMOS, REICHLIN-MELNICK, RIVERA, RYAN, SALAZAR, SANDERS, SAVINO, SEPULVEDA, SKOUFIS, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the labor law, in relation to preventing occupational exposure to an airborne infectious disease

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-b to
2 read as follows:

3 § 218-b. Prevention of occupational exposure to an airborne infectious
4 disease. 1. For purposes of this section, the following terms shall
5 have the following meanings:

6 (a) "Employee" shall mean any person providing labor or services for
7 remuneration for a private entity or business within the state, without
8 regard to an individual's immigration status, and shall include, but not
9 be limited to, part-time workers, independent contractors, domestic
10 workers, home care and personal care workers, day laborers, farmworkers
11 and other temporary and seasonal workers. The term shall also include
12 individuals working for staffing agencies, contractors or subcontractors
13 on behalf of the employer at any individual work site, as well as any
14 individual delivering goods or transporting people at, to or from the
15 work site on behalf of the employer, regardless of whether delivery or

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

LBD06114-11-1

1 transport is conducted by an individual or entity that would otherwise
2 be deemed an employer under this chapter. The term shall not include
3 employees of the state, any political subdivision of the state, a public
4 authority, or any other governmental agency or instrumentality.

5 (b) "Work site" shall mean any physical space, including a vehicle,
6 that has been designated as the location where work is performed. The
7 term shall include employer-provided housing and employer-provided
8 transportation at, to or from the work site but shall not include the
9 residence of the employer or employee unless such residence has been
10 provided by the employer and is used as the primary place of work or
11 such residence is provided by an employer covered under the provisions
12 of article nineteen-A of this chapter.

13 (c) "Supervisor" or "supervisory employee" shall mean any person who
14 has the authority to direct and control the work performance of other
15 employees, or who has the managerial authority to take corrective action
16 regarding the violation of the law, rules or regulations. This term
17 shall not include any employee who is a member of a collective bargain-
18 ing unit that primarily represents employees not otherwise deemed to be
19 a supervisor or supervisory employee as defined by this subdivision.

20 (d) "Employer" shall mean any person, entity, business, corporation,
21 partnership, limited liability company, or association employing,
22 hiring, or paying for the labor of any individual in any occupation,
23 industry, trade, business, or service. The term shall not include the
24 state, any political subdivision of the state, a public authority, or
25 any other governmental agency or instrumentality.

26 (e) "Airborne infectious disease" shall mean any infectious viral,
27 bacterial or fungal disease that is transmissible through the air in the
28 form of aerosol particles or droplets and is designated a highly conta-
29 gious communicable disease by the commissioner of health that presents a
30 serious risk of harm to the public health.

31 2. The commissioner, in consultation with the department of health,
32 shall create and publish, in both English and Spanish, a model airborne
33 infectious disease exposure prevention standard for all work sites,
34 differentiated by industry, to establish minimum requirements for
35 preventing exposure to airborne infectious diseases in the workplace in
36 order to protect the public and the workforce. The model infectious
37 disease exposure prevention standard shall take into account the types
38 of risks present at the work site, including the presence of third
39 parties. The model standard shall explicitly specify and distinguish
40 the extent to which the provisions are applicable for different levels
41 of airborne infectious disease exposure, and shall take into consider-
42 ation circumstances where a state of emergency has or has not been
43 declared due to an airborne infectious disease, and distinctions in
44 policies based on circumstances where a state of emergency has been
45 declared due to an airborne infectious disease shall take into consider-
46 ation all applicable federal standards to the extent practicable. The
47 commissioner shall determine, in his or her discretion, which languages
48 to publish the standard in addition to English and Spanish based on the
49 number of individuals in the state population that speak each language,
50 the prevalence of certain languages being spoken in particular indus-
51 tries, and any other factor that the commissioner shall deem relevant.
52 Such standard shall include, but not be limited to, establishing
53 requirements on procedures and methods for:

54 (a) Employee health screenings;

55 (b) Face coverings;

1 (c) Required personal protective equipment ("PPE") applicable to each
2 industry for eyes, face, head, and extremities, protective clothing,
3 respiratory devices, and protective shields and barriers, which shall be
4 provided, used, and maintained in a sanitary and reliable condition at
5 the expense of the employer. The standard shall provide for a list of
6 PPE that satisfies the requirements, based on hazard assessments for
7 each industry;

8 (d) Accessible workplace hand hygiene stations and maintaining healthy
9 hand hygiene and that employers provide adequate break times for workers
10 to use handwashing facilities as needed;

11 (e) Regular cleaning and disinfecting of shared equipment and
12 frequently touched surfaces such as workstations, touchscreens, tele-
13 phones, handrails, and doorknobs, and all surfaces and washable items in
14 other high-risk areas such as restrooms, dining areas/breakrooms, locker
15 rooms, vehicles and sleeping quarters;

16 (f) Effective social distancing for employees and consumers or custom-
17 ers, as the risk of illness may warrant, including options for social
18 distancing such as sign postage or markers; increasing physical space
19 between workers at the worksite; limiting capacity of customers or
20 consumers; delivering services remotely or through curbside pick-up;
21 reconfiguring spaces where workers congregate; flexible meeting and
22 travel options; flexible worksites; or implementing flexible work hours
23 such as staggered shifts;

24 (g) Compliance with mandatory or precautionary orders of isolation or
25 quarantine that have been issued to employees, including the identifica-
26 tion and provision of separate and appropriate accommodations for
27 employees who reside in employer-provided housing in a manner consistent
28 with mandatory or precautionary orders of isolation and quarantine that
29 have been issued to employers and employees;

30 (h) Compliance with applicable engineering controls such as proper air
31 flow, exhaust ventilation, or other special design requirements;

32 (i) Designation of one or more supervisory employees to enforce
33 compliance with the airborne infectious disease exposure prevention plan
34 and any other federal, state, or local guidance related to avoidance of
35 spreading an airborne infectious disease as applicable to employees and
36 third parties such as customers, contractors, and members of the public
37 within the workplace. Non-supervisory line employees shall not bear
38 responsibility for overseeing compliance with the requirements of the
39 model policy;

40 (j) Compliance with any applicable laws, rules, regulations, stand-
41 ards, or guidance on notification to employees and relevant state and
42 local agencies of potential exposure to airborne infectious disease at
43 the work site; and

44 (k) Verbal review of infectious disease standard, employer policies
45 and employee rights under this section, except such review need not be
46 provided to any individuals working for staffing agencies, contractors
47 or subcontractors on behalf of the employer at any individual work
48 site, as well as any individual delivering goods or transporting
49 people at, to or from the work site on behalf of the employer, where
50 delivery or transport is conducted by an individual or entity that
51 would otherwise be deemed an employer under this chapter.

52 3. The model airborne infectious disease exposure prevention standard
53 shall also include anti-retaliation requirements pursuant to subdivision
54 eight of this section. The commissioner, in consultation with the
55 department of health, shall update the model airborne infectious disease

1 exposure prevention standard as necessary provided that the commissioner
2 shall inform employers of the changes.

3 4. (a) Every employer shall establish an airborne infectious disease
4 exposure prevention plan either by adopting the model standard relevant
5 to their industry promulgated pursuant to this section as its airborne
6 infectious disease exposure prevention plan or by establishing an alter-
7 native plan that equals or exceeds the minimum standards provided by the
8 model standard.

9 (b) In any circumstance where an alternative airborne infectious
10 disease exposure prevention plan is adopted, the employer shall develop
11 such plan pursuant to an agreement with the collective bargaining repre-
12 sentative, if any, or with meaningful participation of employees where
13 there is no collective bargaining representative, for all aspects of the
14 plan, and such plan shall be tailored and specific to hazards in the
15 specific industry and work sites of the employer.

16 5. Every employer shall provide the airborne infectious disease expo-
17 sure prevention plan to his or her employees, in writing in English and
18 in the language identified by each employee as the primary language of
19 such employees upon reopening after a period of closure due to airborne
20 infectious disease and upon hiring. Businesses permitted to operate as
21 of the effective date of this section shall provide such a plan to all
22 employees upon the effective date of this act and upon hiring. When an
23 employee identifies as his or her primary language a language for which
24 a model document is not available from the commissioner, the employer
25 shall comply with this paragraph by providing that employee with an
26 English-language notice.

27 6. The airborne infectious disease exposure prevention plan shall be
28 posted in a visible and prominent location within the worksite. An
29 employer that provides an employee handbook to its employees shall, in
30 addition, include the airborne infectious disease exposure prevention
31 plan in its handbook.

32 7. Each employer shall make the airborne infectious disease exposure
33 prevention plan available, upon request, to all employees and independ-
34 ent contractors, employee representatives, collective bargaining repre-
35 sentatives, and the commissioner and the commissioner of public health.

36 8. No employer, or his or her agent, or person acting as or on behalf
37 of a hiring entity, or the officer or agent of any entity, business,
38 corporation, partnership, or limited liability company, shall discrimi-
39 nate, threaten, retaliate against, or take adverse action against any
40 employee for:

41 (a) Exercising their rights under this section or under the applicable
42 airborne infectious disease exposure prevention plan.

43 (b) Reporting violations of this section or the applicable airborne
44 infectious disease exposure prevention plan to any state, local, or
45 federal government entity, public officer or elected official.

46 (c) Reporting an airborne infectious disease exposure concern to, or
47 seeking assistance or intervention with respect to airborne infectious
48 disease exposure concerns, to their employer, state, local, or federal
49 government entity, public officer or elected official.

50 (d) Refusing to work where such employee reasonably believes, in good
51 faith, that such work exposes him or her, or other workers or the
52 public, to an unreasonable risk of exposure to an airborne infectious
53 disease due to the existence of working conditions that are inconsistent
54 with laws, rules, policies, orders of any governmental entity, including
55 but not limited to, the minimum standards provided by the model airborne
56 infectious disease exposure prevention standard, provided that the

1 employee, another employee, or employee representative notified the
2 employer of the inconsistent working conditions and the employer failed
3 to cure the conditions or the employer had or should have had reason to
4 know about the inconsistent working conditions and maintained the incon-
5 sistent working conditions.

6 9. Nothing in this section shall be deemed to diminish the rights,
7 privileges, or remedies of any employee under any collective bargaining
8 agreement. The provisions of this section may be waived by a collective
9 bargaining agreement, provided that for such waiver to be valid, it
10 shall explicitly reference this section.

11 10. (a) If after investigation the commissioner finds that such
12 employer or person has violated any provision of this section, the
13 commissioner may, by an order which shall describe particularly the
14 nature of the violation, assess a civil penalty of not less than fifty
15 dollars per day for failure to adopt an airborne infectious disease
16 exposure prevention plan, or not less than one thousand dollars nor more
17 than ten thousand dollars for failure to abide by an adopted airborne
18 infectious disease exposure prevention plan. Provided, however, that if
19 the commissioner finds that the employer has violated the provisions of
20 this section in the preceding six years, he or she may assess a civil
21 penalty of not less than two hundred dollars per day for failure to
22 adopt an airborne infectious disease exposure prevention plan, or not
23 less than one thousand dollars nor more than twenty thousand dollars for
24 failure to abide by an adopted airborne infectious disease exposure
25 prevention plan. The commissioner may also order other appropriate
26 relief including enjoining the conduct of any person or employer in
27 addition to any other remedies permitted by this section.

28 (b) Any employee may bring a civil action seeking injunctive relief in
29 a court of competent jurisdiction against an employer alleged to have
30 violated the airborne infectious disease exposure prevention plan in a
31 manner that creates a substantial probability that death or serious
32 physical harm could result from a condition which exists, or from one or
33 more practices, means, methods, operations or processes which have been
34 adopted or are in use, by the employer at the work site, unless the
35 employer did not and could not, with the exercise of reasonable dili-
36 gence, know of the presence of the violation. The court shall have
37 jurisdiction to restrain such violations and to order all appropriate
38 relief, including enjoining the conduct of the employer; awarding costs
39 and reasonable attorneys' fees to the employee; and ordering payment of
40 liquidated damages of no greater than twenty thousand dollars, unless
41 the employer proves a good faith basis to believe that the established
42 health and safety measures were in compliance with the applicable
43 airborne infectious disease standard. Where an action brought by an
44 employee under the provisions of this section, or a defense, counter-
45 claim, or crossclaim brought by an employer in response thereto, is
46 found upon judgment to be completely without merit in law and undertaken
47 primarily to harass or maliciously injure another, the court may in its
48 discretion impose sanctions against the attorney or party who brought
49 such action, defense, counterclaim or crossclaim.

50 11. The provisions and remedies of paragraph (b) of subdivision one
51 and paragraphs (a) and (b) of subdivision two of section two hundred
52 fifteen of this article shall be applicable to subdivision eight of this
53 section. Where an action brought by an employee under the provisions of
54 this section, or a defense, counterclaim, or crossclaim brought by an
55 employer in response thereto, is found upon judgment to be completely
56 without merit in law and undertaken primarily to harass or maliciously

1 injure another, the court may in its discretion impose sanctions against
2 the attorney or party who brought such action, defense, counterclaim or
3 crossclaim.

4 12. Where a violation of this section is alleged to have occurred, the
5 commissioner or attorney general may apply in the name of the people of
6 the state of New York for an order enjoining or restraining the commis-
7 sion or continuance of the alleged unlawful acts. The commissioner, in
8 consultation with the commissioner of health, shall promulgate rules and
9 regulations necessary to ensure compliance with this chapter.

10 13. The commissioner, in consultation with the commissioner of health,
11 shall adopt and amend rules and regulations to effectuate the provisions
12 and purposes of this section.

13 § 2. The labor law is amended by adding a new section 27-d to read as
14 follows:

15 § 27-d. Workplace safety committees. 1. For the purposes of this
16 section, the following terms shall have the following meanings:

17 (a) "Employer" shall mean any person, entity, business, corporation,
18 partnership, limited liability company, or an association employing at
19 least ten employees. The term shall not include the state, any political
20 subdivision of the state, a public authority, or any other governmental
21 agency or instrumentality.

22 (b) "Employee" shall include all employees in the state, except for
23 employees of the state, any political subdivision of the state, a public
24 authority, or any other governmental agency or instrumentality.

25 2. Employers shall permit employees to establish and administer a
26 joint labor-management workplace safety committee. Each workplace safety
27 committee shall be composed of employee and employer designees, provided
28 at least two-thirds are non-supervisory employees. Employee members of
29 the committee shall be selected by, and from among, non-supervisory
30 employees. Committees shall be co-chaired by a representative of the
31 employer and non-supervisory employees. Where there is a collective
32 bargaining agreement in place, the collective bargaining representative
33 shall be responsible for the selection of employees to serve as members
34 of the committee. Committees representing geographically distinct work-
35 sites may also be formed as necessary.

36 3. No employer shall interfere with the selection of employees who
37 shall serve on such committee or who serve as the workplace safety
38 designee or with such employees' performance of the duties authorized
39 under this section.

40 4. Each workplace safety committee and workplace safety designee shall
41 be authorized to perform the following tasks, including but not limited
42 to:

43 (a) Raise health and safety concerns, hazards, complaints and
44 violations to the employer to which the employer must respond.

45 (b) Review any policy put in place in the workplace required by any
46 provision of this chapter or any provision of the workers' compensation
47 law and provide feedback to such policy in a manner consistent with any
48 provision of law.

49 (c) Review the adoption of any policy in the workplace in response to
50 any health or safety law, ordinance, rule, regulation, executive order,
51 or other related directive.

52 (d) Participate in any site visit by any governmental entity responsi-
53 ble for enforcing safety and health standards in a manner consistent
54 with any provision of law.

1 (e) Review any report filed by the employer related to the health and
2 safety of the workplace in a manner consistent with any provision of
3 law.

4 (f) Regularly schedule a meeting during work hours at least once a
5 quarter.

6 5. Employers shall permit safety committee designees to attend a
7 training, without suffering a loss of pay, on the function of worker
8 safety committees, rights established under this section, and an intro-
9 duction to occupational safety and health.

10 6. Any employee who participates in the activities or establishment of
11 a workplace safety committee shall not be subject to retaliation for any
12 actions taken pursuant to their participation. Violations of this subdi-
13 vision shall be deemed to be a violation of paragraph (a) of subdivision
14 one of section two hundred fifteen of this chapter and the civil penal-
15 ties and remedies of paragraph (b) of subdivision one and paragraphs (a)
16 and (b) of subdivision two of section two hundred fifteen of this chap-
17 ter shall be applicable to this subdivision.

18 7. Nothing in this section shall be deemed to diminish the rights,
19 privileges, or remedies of any employee under any collective bargaining
20 agreement. The provisions of this section may be waived by a collective
21 bargaining agreement, provided that for such waiver to be valid, it
22 shall explicitly reference this section.

23 8. The department shall adopt and amend rules and regulations to
24 effectuate the provisions and purposes of this section.

25 § 3. Severability. If any provision of this act, or the application
26 thereof to any person or circumstances, is held invalid or unconstitu-
27 tional, that invalidity or unconstitutionality shall not affect other
28 provisions or applications of this act that can be given effect without
29 the invalid or unconstitutional provision or application, and to this
30 end the provisions of this act are severable.

31 § 4. This act shall take effect on the thirtieth day after it shall
32 have become a law; provided, however, that section two of this act shall
33 take effect on the one hundred eightieth day after it shall have become
34 a law. Effective immediately, the addition, amendment and/or repeal of
35 any rule or regulation necessary for the implementation of this act on
36 its effective date are authorized to be made and completed on or before
37 such effective date.