

S.1604-E (Ramos)/A.8935-A (Bronson)

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BILL S.1604-E (Ramos)/A.8935-A (Bronson)
SUBJECT TEMP Act - Provides for the regulation of all indoor and outdoor worksites
DATE May 22, 2024
OPPOSE

These two bills – S.1604-E (Ramos) and A.8935-A (Bronson) – though not, ‘same as,’ are both intended to regulate employee exposure to temperature extremes in both indoor and outdoor worksites and are both referred to as the “Temperature Extreme Mitigation Program (TEMP) Act. The Business Council, on behalf of its more than 3,200 members, opposes both of these bills.

These bills impose significant administrative and financial obligations on employers that are duplicative of already existing federal employee safety obligations under the Occupational Safety and Health Act (OSHA). Imposing such significant additional burdens will not make workers safer and will only contribute to the perception of New York not being “business friendly.”

Under the General Duty Clause, Section 5(a)(1) of the Occupational Safety and Health Act of 1970, employers are required to provide their employees with a place of employment that "is free from recognized hazards that are causing or likely to cause death or serious harm to employees." The courts have interpreted OSHA's general duty clause to mean that an employer has a legal obligation to provide a workplace free of conditions or activities that either the employer or industry recognizes as hazardous and that cause, or are likely to cause, death or serious physical harm to employees when there is a feasible method to abate the hazard. This includes heat and cold related hazards.

Consequently, any employer who knowingly exposes a worker to extreme heat or cold conditions as a condition of employment is already liable for significant fines and penalties under current federal law.

OSHA requires all such employers to engage in certain activities to ensure employee safety in such conditions. These include:

- 1. Management Commitment and Employee Involvement.** The manager or management team leads the way, by setting policy, assigning and supporting responsibility, setting an example and involving employees.

2. **Worksite Analysis.** The worksite is continually analyzed to identify all existing and potential hazards.
3. **Hazard Prevention and Control.** Methods to prevent or control existing or potential hazards are put in place and maintained.
4. **Training for Employees, Supervisors and Managers.** Managers, supervisors and employees are trained to understand and deal with worksite hazards.

In the area of Hazard Prevention and Control, employers must take steps to mitigate risks to extreme heat and cold. These steps include:

1. **Engineering Controls** – Employers must take steps, if possible, to remove the risk entirely from the job.
2. **Administrative Controls** – if the risk is an essential function of the job, the employer must develop and implement workplace rules that ensure employees are protected. In cases of heat/cold exposure, these may include requiring frequent breaks in shaded/heated environments, mandatory hydration, etc.
3. **Personal Protective Equipment** – And as a last line of defense, employers must provide personal protective equipment (PPE) sufficient to protect the employee. Examples may include appropriate uniforms, fans, etc.

Not only do these two bills not improve upon existing requirements to protect employees, but they are also lacking in many areas:

1. Both are limited to only certain industries. All workers in all industries deserve the protection from heat/cold illnesses provided by OSHA.
2. They rely only on temperature as a metric. There are no ties to physical exertion/level of activity, or even levels of hydration, which can mitigate illness. This is especially true for so-called “cold illness” (which is not defined). For example, the level of exertion/activity can mitigate impacts from exposure to cold.
3. While the bills provide for required hydration, breaks, etc., there are no provisions for employer enforcement of these activities through the disciplinary process.
4. While the Department of Labor is tasked with developing a training program outlining the signs of heat/cold illness, it does not seem that such a training curriculum would be specific to employers, workplaces, or operations as is required under OSHA.
5. Signage requirements are unclear for situations when employees work out of the “worksite.”
6. Air conditioning requirements in buildings and vehicles are not supported by science (and in fact, heaters are not similarly required in S.1604-E (Ramos)).

And again, there is no provision to allow employers to discipline employees who ignore employer regulations and training on their use.

7. Neither bill requires employee participation in the selection of appropriate personal protective equipment (PPE) as is required by OSHA.
8. The data collection provisions of each bill are again duplicative of OSHA injury/illness reporting requirements and, in some cases, may be contrary to current negotiated labor agreements.

New York employers want to protect the safety and well-being of their employees and take seriously their obligations under OSHA. These bills do nothing to improve employee safety and only provide unnecessary and duplicative administrative and financial burdens on employers already struggling under a difficult business environment.

For these reasons, The Business Council opposes these bills.