



June 3, 2024

Speaker Carl Heastie
Legislative Office Building, Room 932
Albany, NY 12248

Senate Majority Leader Andrea Stewart-Cousins
Legislative Office Building, Room 907
Albany, NY 12247

Assembly Minority Leader Will Barclay
Legislative Office Building, Room 933
Albany, NY 12248

Senate Minority Leader Rob Ortt
Capitol Building, Room 315
Albany, NY 12247

Dear Leaders, Senators, and Assemblymembers,

We, the undersigned organizations, representing tens of thousands of businesses of all sectors and sizes across New York, support practical and feasible measures to protect workers from heat-related hazards and illnesses. The bill as drafted, however, would impose requirements that are overly broad and onerous. For these reasons, further detailed below, we write to respectfully request your rejection of A.8935-C / S.1604-F, the "Temperature Extreme Mitigation Program (TEMP) Act."

While we understand and appreciate the intent of this bill, business owners value their employees and strive to provide a safe and healthy workplace. This includes ensuring employees are protected from heat-related illnesses and injuries. Employers make these determinations based on the unique and ever-changing circumstances which includes unpredictable weather conditions. These determinations made by businesses, including small business owners, are guided and enforced by federal employee safety obligations under the Occupational Safety and Health Act (OSHA).

Under the OSHA General Duty Clause, Section 5(a)(1) of 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 General Duty Clause extends to heat-related hazards; therefore, requiring employers to provide adequate resources to prevent employees from suffering serious harm or injury related to heat. Additionally, under OSHA's personal protective equipment (PPE) standard, employers are required to conduct a hazard assessment to determine the appropriate PPE to protect employees, which includes in situations where employees must work in the heat. These federal requirements accomplish all the same objectives of this legislation but without the impractical requirements of this bill. Any employer who deliberately exposes workers to extreme or dangerous heat conditions is already liable for significant fines and penalties under current federal law.

This legislation is far too rigid and unworkable in many situations and circumstances. It would be nearly impossible for business owners to medically monitor the activities and symptoms of every employee at a worksite. Further, unless the business owner is a trained medical professional, they should not be administering medical treatment. This puts both the employer and the employee at risk. If medical treatment is performed and creates a worsened medical situation, business owners' risk being liable for damages in civil court.

In any situation, there needs to be flexibility and the opportunity for employers and employees to use realistic approaches to ensure safety, instead, this legislation imposes far too excessive and inflexible requirements and would have a detrimental impact on businesses' operations. It is unreasonable to require "at least enough shade to accommodate the number of employees on preventative breaks, so that they can sit in a normal posture fully in the shade with at least four-square feet per resting employee." This does not take into consideration the location of the worksite, the amount of space available, or the number of employees. Also, this bill mandates air-conditioning in "all delivery vehicles," which would assumably include an employee's personal vehicle. A business owner should not be held responsible for installing air conditioning in an employee's personal automobile.

Furthermore, direct medical monitoring during preventative breaks is impossible in many circumstances and would drastically change business operations, particularly for small business owners. The owner of a small landscaping company may be at one location

performing lawn care duties, while employees are at other separate locations. On an 80-degree day, the small business owner would need to directly supervisor employees, meaning everyone would need to be at the same location at the same time. This would undoubtedly lead to the small business owner cutting hours.

There is also no consideration in this legislation for the variance in heat thresholds and other weather conditions, such as humidity, cloud cover, or wind. An 80-degree weather day in New York State may be a beautiful summer day for workers in certain industries, which creates the challenge of directing employees to use air conditioning, seek shade, or drink water. This bill is silent on whether employers can take disciplinary actions against employees who ignore the mandated policies and training.

Lastly, the legislation as drafted imposes a provision making it unlawful for an employer to take an adverse action against any employee within ninety days of the employee initiating a complaint pursuant to the bill. While the undersigned wholly agree that there shall not be any retaliation against an employee, this language fails to recognize the seasonal nature of certain industry sectors including transportation, agriculture, landscaping, and e-commerce. This provision needs further consideration and delineation to ensure that unintended consequences are not encountered.

This legislation not only puts additional costs on businesses, small and large, but impacts businesses' bottom lines and their ability to sell their goods and services. Imposing these additional significant and impractical burdens on businesses will only contribute to New York's difficult and costly business environment, which has forced businesses and residents to invest elsewhere. The state must focus on working with the business community to improve the business climate for job creators large and small.

Thank you for your time and consideration, should you have questions on any aspect of our concerns, please do not hesitate to reach out.

Sincerely,

Associated Builders and Contractors, Empire State
Associated General Contractors of New York State
Buffalo Niagara Partnership
The Business Council of New York State
The Business Council of Westchester
Capital Region Chamber
Empire State Forest Products Association
Food Industry Alliance of New York
Greater Binghamton Chamber of Commerce
Greater Rochester Chamber of Commerce
MACNY, The Manufacturers Association of Central New York

National Federation of Independent Business (NFIB)
New York Association of Convenience Stores
New York Construction Materials Association
New York Farm Bureau
New York Fire Sprinkler Contractors Association
New York Green Industry Council
Northeast Dairy Producers Association
Northeastern Retail Lumber Association
Retail Council New York State
Rochester Technology and Manufacturing Association (RTMA)
Trucking Association of New York
Upstate United

CC:

Entire New York State Senate
Entire New York State Assembly