



S.1034-A (Gianaris) / A.2681-A (Reyes)

STAFF CONTACT : Frank Kerbein | Director, Center for Human Resources | 518.455.7180

BILL S.1034-A (Gianaris) / A.2681-A (Reyes)
SUBJECT Occupational Exposure to an Airborne Infectious Disease Mandates
DATE February 24, 2021
OPPOSE

The Business Council opposes S.1034-A (Gianaris) / A.2681-A (Reyes), which would create a new mandate on businesses, large and small, as they struggle to recover from the effects of the COVID-19 pandemic. From the very beginning, New York's employer community has worked with the government to ensure compliance with safety provisions and with doing its large part to help stop the spread of COVID-19. New York's businesses have performed this task with vigor and great success. As the Governor has cited numerous times, the vast majority of COVID-19 transmissions are occurring in homes and very few are happening in New York's many businesses. New York State's own data shows that private business transmissions for employees and the public at large totals less than 5 percent of all transmissions in the state.

The proposed legislation is duplicative as all employers already bear the burden and responsibility to keep their workers safe from infectious disease -airborne or otherwise. Several OSHA standards and directives are directly applicable to protecting workers against transmission of infectious agents. These include OSHA's General Duty Clause, the Bloodborne Pathogens standard (29 CFR 1910.1030) which provides protection of workers from exposures to blood and body fluids that may contain bloodborne infectious agents; OSHA's Personal Protective Equipment standard (29 CFR 1910.132) and Respiratory Protection standard (29 CFR 1910.134) which provide protection for workers when exposed to contact, droplet and airborne transmissible infectious agents.

In addition, as the result of an Executive Order signed by President Biden on January 21, 2021, the Secretary of Labor has recently issued Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace and has been directed to consider whether any emergency temporary standards on COVID-19, including with respect to masks in the workplace, are necessary, and if such standards are determined to be necessary, issue them by March 15, 2021. The new guidance provides for many of the same employee participation rights and protections as this bill.

The proposed legislation goes further by requiring employers to permit 'workplace safety committees' – going as far as to mandate the composition and duties of such a committee in identifying and remedying workplace safety issues. Again, this obligation is already borne by employers. OSHA has long recognized the role employees play in identifying and correcting unsafe working conditions. Section 11(c) of the Occupational Safety and Health Act of 1970, 29 USC 660(c), prohibits employers from retaliating against employees for exercising a variety of rights guaranteed under the OSH Act, such as filing a safety or health complaint with OSHA, raising a health and safety concern with their employers, participating in an OSHA inspection, or reporting a work-related injury or illness. And again, the recent guidance and anticipated COVID standard require employee participation in creating a safe and healthful work environment.

In short, this bill does nothing new to improve employee safety nor change the role of the employee in maintaining a workplace free from hazards like airborne infectious disease. It would only add a significant administrative burden and cost on employers at a time when they can least afford it.

For these reasons, The Business Council opposes this bill on behalf of its 2,300 members.