STATE OF NEW YORK

6738

2017-2018 Regular Sessions

IN ASSEMBLY

March 16, 2017

Introduced by M. of A. BARNWELL -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to mandatory training and qualifications of persons engaged in the construction and demolition of buildings

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Article 23 of the labor law is amended by adding a new section 819-a to read as follows:

§ 819-a. Apprenticeship training and qualifications. 1. For purposes of this section:

(a) "apprentice" shall mean a worker who is employed and registered to learn a skilled trade through a department or United States department of labor registered apprenticeship program;

(b) "apprenticeship program" shall mean a plan containing all terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, and registered with the department or the United States department of labor; and

(c) "bona fide construction site safety training program" shall mean a training program authorized and approved by the commissioner for the trade or craft for which a person is employed that provides a minimum number of required hours for completion in safety related instruction and a minimum number of required hours of on the job training commensurate with, at least, one year of apprenticeship training in accordance with the standards set forth in section eight hundred fifteen of this article and paragraph (4) of subdivision (c) of section 601.5 of the New York codes, rules and regulations.

2. (a) All workers before working at or on, a building site, or demolition site, four or more stories, or forty or more feet (12 192 mm) in height, must complete a bona fide construction site safety training program, and either be a registered apprentice, or graduated from an

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

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apprenticeship program, or be an experiences, trained, and skilled person that has received training commensurate with that required for registered apprentices including related instruction and on the job training in accordance with the standards set forth in section eight hundred fifteen of this article and paragraph (4) of subdivision (c) of section 601.5 of the New York codes, rules and regulations.

(b) All workers employed at a building site, or demolition site, four or more stories, or forty or more feet (12 192 mm) in height, must have successfully completed, within the previous five calendar years, a course that is at least ten hours in length and approved by the United States department of labor occupational safety and health administration (OSHA) in construction industry safety and health, or by the commissioner covering substantially the same material. However, a worker need not take a subsequent course that is at least ten hours in length and approved by OSHA in construction industry safety and health, or a subsequent course approved by the commissioner covering substantially the same material, provided the worker has, within the previous five calendar years, accumulated at least five safety education units (SEU) for construction safety and health through training courses offered by a safety training program conducted by a department approved training provider registered apprenticeship program. A worker shall be credited one SEU for every four hours of construction safety and health related training completed, with a maximum of two SEUs assigned for any single course. Such SEU courses shall be conducted by, or under the supervision of OSHA authorized construction safety trainers. Instructors who are not OSHA authorized construction trainers must be experienced in presenting the related course subject matter, and use a curriculum approved by their supervising OSHA authorized construction safety trainer.

(c) Each worker who works at a building site, or at a demolition site, that is four or more stories, or forty or more feet (12 192mm) in height, and/or a site that satisfies other criteria as the commissioner may establish by rule, must be:

(i) a registered apprentice as defined in this article or a graduate of an apprenticeship program as defined in this article, registered by the department or United States department of labor in the trade for which such worker is employed, or

(ii) an experienced, trained, and skilled person that has received training commensurate with that required for registered apprentices including relate instruction and on the job training in accordance with the standards set forth in section eight hundred fifteen of this article and paragraph (4) of subdivision (c) of section 601.5 of the New York codes, rules and regulations.

(d) If at any time, any individual, contractor, sub-contractor, developer, limited liability company (LLC), limited liability partnership (LLP), partnership, corporation, or any other legal entity employs and/or hires any worker on a building site, demolition site, or any project site, which is four or more stories, or forty or more feet (12 182 mm) in height, and such worker is not a registered apprentice, or has not completed an apprenticeship program, or is not an experienced, trained, and skilled person that has received training commensurate with that required for registered apprentices including related instruction and on the job training in accordance with the standards set forth in section eight hundred fifteen of this article and paragraph (4) of subdivision (c) of section 601.5 of the New York codes, rules and regulations, and has not completed a bona fide construction site safety

training program or its equivalent approved by the commissioner, the project shall immediately terminate, and all permits, contracts, or any other legal documents allowing such construction, modification, or demolition, will be revoked permanently, and such individual, and all contractors, sub-contractors, developers, and all members, managers, directors, or any authorized person of the LLC, LLP, partnership, developer, corporation, or any other legal entity responsible for the hiring of such worker who hasn't completed such qualifications and requirements as mandated by this article, shall be responsible for a violation of this section.

(e) Before any building or demolition work occurs on projects in which the site is four or more stories, or forty or more feet (12 192 mm) in height, each individual person, contractor, sub-contractor, LLC, LLP, corporation, partnership, developer, or any other legal entity responsible or involved on or with such building or demolition project, shall disclose to the commissioner the names and residence addresses of all members, managers, directors, and any authorized person of such LLC, LLP, corporation, partnership, developer, partnership, and/or legal entity.

(f) Any individual person, contractor, sub-contractor, developer, LLC, LLP, partnership, corporation, or any other legal entity who knowingly or intentionally hires a worker, or allows such worker, who is not a registered apprentice as defined in this article, or who is not a worker who has completed an apprenticeship program as defined in this article, or who is not an experienced, trained, and skilled person that has received training commensurate with that required for registered apprentices including related instruction and on the job training in accordance with the standards set forth in section eight hundred fifteen of this article and paragraph (4) of subdivision (c) of section 601.5 of the New York codes, rules and regulations, and who has not completed a bona fide construction site safety training program or its equivalent approved by the commissioner pursuant to this article, to work on any building project, demolition project, or any other type of project in which the site is four or more stories, or forty or more feet (12 192 mm) in height, such individual, contractor, sub-contractor, developer, LLC, LLP, partnership, corporation, or any other legal entity, shall forever be barred from receiving, obtaining, or being granted a license, application, permit, contract, right, or any other type of document, legal or not, that allows such individual, contractor, sub-contractor, developer, LLC, LLP, partnership, corporation, or any other legal entity who violates this article from building, demolishing, modifying, working on, overseeing, volunteering, hiring any individuals such as, but not limited to, a contractor, or any sub-contractors, or profiting, on any project in which the site is four or more stories, or forty or more feet (12 192 mm) in height.

(g) No permit, contract, license, right, application, or any other type of legal or non-legal document granting the right to build, construct, modify, or demolish any building, for which work is done on a site which is four or more stories, or forty or more feet (12 192 mm) in height, shall be awarded to any person, contractor, sub-contractor, developer, LLC, LLP, corporation, partnership, or any other legal entity, who has ever previously knowingly or intentionally hired or allowed a worker, to work on any project in which the site was four or more stories, or forty or more feet (12 192 mm) in height, who was not a registered apprentice as defined in this article, or who was not a worker who has completed an apprenticeship program as defined in this arti-

cle, or who was not an experienced, trained, and skilled person that has received training commensurate with that required for registered apprentices including related instruction and on the job training in accordance with the standards set forth in section eight hundred fifteen of this article and paragraph (4) of subdivision (c) of section 601.5 of the New York codes, rules and regulations, and who had not completed a bona fide construction site safety training program or its equivalent approved by the commissioner pursuant to this article.

(h) At no time after a building, or demolition project begins in which the site is four or more stories, or forty or more feet (12 192 mm) in height, shall a person, contractor, sub-contractor, developer, LLC, LLP, corporation, partnership, or any other legal entity have an individual as manager, member, director, stock holder, or anyone authorized by such person, contractor, sub-contractor, developer, LLC, LLP, corporation, partnership, or any other legal entity who has ever been knowingly or intentionally hired, or allowed such an individual worker to work on, any project in which the site was four or more stories, or forty or more feet (12 192 mm) in height, when such worker did not have the proper qualifications and training pursuant to this article. If such an individual becomes a manager, member, director, stockholder or collects financial resources or any other financial benefit from such contractor, sub-contractor, developer, LLC, LLP, corporation, partnership, or any other legal entity, the project shall immediately be terminated and all permits, rights, applications, licenses, contracts, and any other legal or non-legal documents allowing the construction, modification, project, and/or demolition, shall be terminated.

(i) Upon completion of a bona fide construction site safety training program, and an apprenticeship program as required by the commissioner pursuant to the standards set forth in section eight hundred fifteen of this article and paragraph (4) of subdivision (c) of section 601.5 of the New York codes, rules and regulations, the worker shall receive and must be provided paperwork from the commissioner proving completion of such programs and requirements. The commissioner must provide documentation to an apprentice, proving such apprentice is a worker who is employed and registered to learn a skilled trade through a department or United States department of labor registered apprenticeship program. The commissioner must also provide documentation to other qualifying individuals, proving that such an individual is an experienced, trained, and skilled person that has received training commensurate with that required for registered apprentices including related instruction and on the job training in accordance with the standards set forth in section eight hundred fifteen of this article and paragraph (4) of subdivision (c) of section 601.5 of the New York codes, rules and regulations.

(j) Before the hiring of any worker on projects which the site is four or more stories, or forty or more feet (12 192 mm) in height, the person, contractor, sub-contractor, developer, LLC, LLP, corporation, partnership, or any other legal entity, responsible for the hiring of such individual worker must request from such worker, and be provided paperwork from such worker, proving such worker completed a bona fide construction site safety training program, and is either a registered apprentice, or completed an apprenticeship program, or, is an experienced, trained, and skilled person that has received training commensurate with that required for registered apprentices including related instruction and on the job training in accordance with the standards set forth in section eight hundred fifteen of this article and paragraph (4) of subdivision (c) of section 601.5 of the New York codes, rules and

regulations. Only the documentation provided to the worker by the commissioner shall be sufficient for proof of completion of the requirements and qualifications of this article. If a worker does not provide this documentary proof, the individual worker shall not be hired.

(k) On projects which the site is four or more stories, or forty or more feet (12 192 mm) in height, any individual person, contractor, sub-contractor, developer, LLC, LLP, corporation, partnership, or any other legal entity, who knowingly or intentionally hires a worker, or allows a worker, who has not completed a bona fide construction site safety training program and who is not a registered apprentice, or who has not completed an apprenticeship program, or who is not an experienced, trained, and skilled person that has received training commensurate with that required for registered apprentices including related instruction and on the job training in accordance with the standards set forth in section eight hundred fifteen of this article and paragraph (4) of subdivision (c) of section 601.5 of the New York codes, rules and regulations, to work on such a project, such individual, contractor, sub-contractor, developer, LLC, LLP, corporation, partnership, or any other legal entity shall be fined by the commissioner twenty-five thousand dollars per violation of hiring such a worker who has not completed the requirements or qualifications in this article. The individual, contractor, sub-contractor, developer, LLC, LLP, corporation, partnership, or any other legal entity, responsible for the hiring and/or supervision of the workers on the project shall be fined fifty thousand dollars, per day, per worker, if such worker is allowed to work on a project four or more stories, or forty or more feet (12 192 mm) in height, who has not completed a bona fide construction site safety training program and who is not a registered apprentice, or who has not completed an apprenticeship program, or who is not an experienced, trained, and skilled person that has received training commensurate with that required for registered apprentices including related instruction and on the job training in accordance with the standards set forth in section eight hundred fifteen of this article and paragraph (4) of subdivision (c) of section 601.5 of the New York codes, rules and regulations.

(l) On projects which the site is four or more stories, or forty or more feet (12 192 mm) in height, it shall not be a defense for any individual person, contractor, sub-contractor, developer, LLC, LLP, corporation, partnership, or any other legal entity, responsible for hiring, or supervising workers, to maintain they did not know such worker did not complete a bona fide construction site safety training program, and that the worker was not a registered apprentice; that the worker had not completed an apprenticeship program; or that the worker did not have the experience, training, and skill as a person that has received training commensurate with that required for registered apprentices including related instruction and on the job training in accordance with the standards set forth in section eight hundred fifteen of this article and paragraph (4) of subdivision (c) of section 601.5 of the New York codes, rules and regulations, because the individual or entity in charge of hiring and/or supervision did not ask, or was not provided such proof of completion of such requirements and qualifications by the worker. Not asking the worker for proof of compliance with such requirements and qualifications under this article, yet still hiring such worker, or allowing the worker to work on such a project, shall be treated as the individual person, contractor, sub-contractor, developer, LLC, LLP, corporation, partnership, or any other legal entity, knowingly or inten-

tionally hiring an individual worker, or allowing such worker to work on such project, without being provided proof of the requirements and qualifications of this article.

(m) Nothing in this article, shall prevent additional fines or prosecution of any individual person, contractor, sub-contractor, developer, LLC, LLP, corporation, partnership, or any other legal entity, for any violation of this section, or any other section under this article.

§ 2. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

§ 3. This act shall take effect immediately.