

STATE OF NEW YORK

5965--A

2019-2020 Regular Sessions

IN ASSEMBLY

February 20, 2019

Introduced by M. of A. DE LA ROSA, COLTON, ARROYO, TAYLOR, REYES, McDO-
NOUGH, ROZIC, EPSTEIN, SEAWRIGHT, CRUZ, BUCHWALD, BENEDETTO, BARNWELL,
DenDEKKER, RICHARDSON, LENTOL, MOSLEY, DeSTEFANO, BARRON, JACOBSON,
DARLING, L. ROSENTHAL, ENGLEBRIGHT, SIMOTAS, BYRNE, BRABENEC, McMAHON,
WALLACE, SIMON, LUPARDO, ABINANTI, JAFFEE, SCHMITT -- Multi-Sponsored
by -- M. of A. DINOWITZ -- read once and referred to the Committee on
Labor -- recommitted to the Committee on Labor in accordance with
Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered
reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to establishing a registry of
workplace fatalities in the construction industry to record informa-
tion pertaining to all incidents under which an employee performing
construction work suffers a work-related fatal injury

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

1 Section 1. The labor law is amended by adding a new section 44 to read
2 as follows:

3 § 44. Workplace fatality registry; construction. 1. Registry. The
4 department shall create and maintain a registry of workplace fatalities
5 in the construction industry, which shall include information regarding
6 all incidents under which an employee performing construction work
7 suffers a work-related fatal injury in the workplace. Such registry
8 shall include the information reported to the department pursuant to
9 subdivisions three and four of this section, in addition to any informa-
10 tion deemed pertinent by the commissioner as a result of any investi-
11 gation, hearing, or other proceedings of the department.

12 2. Definitions. For the purposes of this section:

13 a. "Employee" shall include, but not be limited to, direct employees,
14 contracted employees, subcontracted employees, independent contractors,
15 temporary or contingency workers, apprentices, interns, volunteers, or
16 any other persons who perform duties at the direction and discretion of

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

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1 an employer or who provide services pursuant to a contract in the work-
2 place.

3 b. "Employer" shall include a direct employer, contractor, or subcon-
4 tractor. In the absence of a formal hiring agreement, the person who
5 directs or provides compensation to the employee shall be considered the
6 employer unless such person is also directed and compensated by another.
7 In such cases, the persons successively above the employee in the
8 employment chain shall be considered the employer. In the instance of
9 the death of an intern or volunteer, the entity directing such intern or
10 volunteer in his or her duties as such shall be considered the employer.

11 c. "Workplace" shall include, but not be limited to, any location
12 where an employee performs any work-related duty in the course of his or
13 her employment, or any other site where the employee may be as a result
14 of employer direction.

15 d. "Construction" shall include, but not be limited to, any work
16 involving the construction, reconstruction, alteration, rehabilitation,
17 repair, renovation, demolition, or installation of any building, struc-
18 ture, or improvement, or in relation to the excavation of or other
19 development or improvement to any land.

20 3. Seventy-two-hour reports. a. Each county coroner, medical examiner
21 or other authorized official whose role is to register deaths, when
22 making the determination as to the cause and manner of death, shall
23 determine whether such death was the result of a work-related fatal
24 injury in the workplace and report all such workplace fatalities in the
25 construction industry to the department within seventy-two hours of such
26 determination.

27 b. Information to be reported within seventy-two hours shall include,
28 but not be limited to:

29 (i) the name of the employee;

30 (ii) the age of the employee;

31 (iii) the cause of death;

32 (iv) the manner of death;

33 (v) the location of death;

34 (vi) the name of the employer;

35 (vii) the business address of the employer;

36 (viii) the name of the official or medical personnel making the decla-
37 ration of death;

38 (ix) the name of the person or persons charged with making the deter-
39 mination of the cause and manner of death; and

40 (x) contact information for the office making notification to the
41 department, including contact information for the person or persons
42 making the declaration of death, the person or persons determining the
43 cause of death, and the person or persons determining the manner of
44 death.

45 4. Ninety-day reports. a. Upon receiving a report pursuant to subdi-
46 vision three of this section, the department shall notify the employer
47 that such death was determined to be the result of a work-related fatal
48 injury in the workplace and shall require the employer to submit addi-
49 tional information regarding such workplace fatality. The employer shall
50 provide such information to the department no later than ninety days
51 after receiving such notification.

52 b. Information to be reported within ninety days shall include, but
53 not be limited to:

54 (i) the name of the employer;

55 (ii) the business address of the employer;

56 (iii) the stated business purpose or industry of the employer;

- 1 (iv) the name and age of the employee;
- 2 (v) the ethnicity of the employee;
- 3 (vi) the nationality of the employee;
- 4 (vii) the immigration status of the employee, if known;
- 5 (viii) the craft, trade or occupation of the employee; and
- 6 (ix) the union status of the employee.

7 5. Investigation. The department in its jurisdiction may also:

8 a. conduct an investigation into any work-related fatal injury in the
9 workplace involving an employee performing construction work;

10 b. request additional information from an employer in relation to such
11 employee or such workplace fatality; and

12 c. request information as to whether criminal or civil charges have
13 been filed against the employer in the death of the employee, including:

14 (i) the details of such criminal or civil charges including the charg-
15 ing officer or agency; and

16 (ii) the actual criminal or civil charge or charges.

17 6. Reporting system. The department shall establish a telephone
18 reporting system for the information required to be reported pursuant to
19 subdivisions three and four of this section. The department shall also
20 establish an online electronic information reporting system for the
21 information required to be reported pursuant to this section within
22 twelve months of the effective date of this section.

23 7. Failure to report. Failure by any employer to report the informa-
24 tion required pursuant to subdivision four of this section within ninety
25 days of notification by the department that such death was the result of
26 a work-related fatal injury in the workplace shall be subject to a fine
27 of not less than one thousand dollars nor more than two thousand five
28 hundred dollars per failure to make such report.

29 8. Accessibility of registry. The department shall establish and main-
30 tain an online database to make available all information and data
31 regarding all workplace fatalities in the construction industry reported
32 to the registry pursuant to this section. Such information shall be
33 provided in the aggregate and shall be electronically accessible and
34 searchable to the public, provided however, that in no event shall an
35 employee's name or other personal identifying information be included in
36 such database. The department shall update the database with the infor-
37 mation reported to the registry pursuant to this section within five
38 business days of the receipt of such reports by the department.

39 § 2. This act shall take effect on the one hundred twentieth day after
40 it shall have become a law; provided, however, that any death subject to
41 the provisions of this act that occurs on or after the day on which this
42 act shall have become a law shall be subject to the reporting provisions
43 of this act and shall be reported within thirty days after such death.
44 Effective immediately, the addition, amendment and/or repeal of any rule
45 or regulation necessary for the implementation of this act on its effec-
46 tive date are authorized to be made and completed on or before such
47 effective date.