STATE OF NEW YORK

3314--A

Cal. No. 216

2019-2020 Regular Sessions

IN SENATE

February 5, 2019

Introduced by Sens. SANDERS, BROOKS, JACKSON, KENNEDY, SAVINO, SKOUFIS, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the penal law, in relation to crimes involving the death or injury of a worker

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

Section 1. Short title. This act shall be known and may be cited as "Carlos' law".

§ 2. Paragraph (c) of subdivision 2 of section 20.20 of the penal law, as amended by chapter 671 of the laws of 1986, is amended to read as follows:

(c) The conduct constituting the offense is engaged in by an agent of the corporation while acting within the scope of his employment and in behalf of the corporation, and the offense is (i) a misdemeanor or a violation, (ii) one defined by a statute which clearly indicates a legislative intent to impose such criminal liability on a corporation, [~~or~~] (iii) any offense set forth in title twenty-seven of article seventy-one of the environmental conservation law**, or (iv) an offense set forth in section 120.05, 120.10, 122.05, 122.10, 122.15, 125.10, 125.11, 125.15, 125.20, 125.21, 125.22, 125.25, 125.26 or 125.27 of this chapter**.

§ 3. Subdivision 5 of section 60.27 of the penal law is amended by adding a new paragraph (c) to read as follows:

(c) If an employer, person acting in a supervisory role on behalf of an employer, or as an agent, with delegated power, of a person in a position of authority and responsibility is convicted of violating section 122.10 or 122.15 of this chapter, the court may order restitu-

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

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tion or reparation in excess of the amounts specified in paragraphs (a) and (b) of this subdivision.

§ 4. Paragraphs (a) and (b) of subdivision 1 of section 80.10 of the penal law, as amended by section 28 of subpart A of part H of chapter 55 of the laws of 2014, are amended to read as follows:

(a) Ten thousand dollars, when the conviction is of a felony; provided, however, that when the conviction is of section 120.05, 120.10, 122.10, 122.15, 125.10, 125.11, 125.15, 125.20, 125.21, 125.22, 125.25, 125.26 or 125.27 of this chapter, such fine may be up to five hundred thousand dollars;

(b) Five thousand dollars, when the conviction is of a class A misdemeanor or of an unclassified misdemeanor for which a term of imprisonment in excess of three months is authorized; provided, however, that when the conviction is of section 122.05 of this chapter, such fine may be up to three hundred thousand dollars;

§ 5. The penal law is amended by adding a new article 122 to read as follows:

ARTICLE 122
WORKPLACE SAFETY

Section 122.00 Definitions.
122.05 Endangering the welfare of a worker in the third degree.
122.10 Endangering the welfare of a worker in the second degree.
122.15 Endangering the welfare of a worker in the first degree.
122.20 Enforcement.

§ 122.00 Definitions.

For purposes of this article:

1. "Worker" shall mean a person who is paid, receives or is owed any compensation, wages or remuneration for labor, whether as an employee, consultant, independent contractor or otherwise.

2. "Workplace" shall mean a place of work or work location, where a worker performs work related duties, that is subject to one or more federal, state or local laws, standards, rules, orders or regulations that sets forth a safety protocol or procedure designed to assure safe and healthful working conditions for workers.

3. "Supervisor" shall mean any person, partnership, labor broker, general contractor, joint stock company, trust, corporation, limited liability company or association or other business entity employing any individual in any occupation, industry, trade, business or service and shall also mean and include any subcontractor or permit or license holder, involved or formerly involved, to any degree, in the planning, contracting, delivery of goods or services, the hiring or supervising of workers, or any similar activity that exercises control over personnel and/or the job site.

4. "Remuneration" shall mean commissions, bonuses, any benefits in lieu of cash wages, reasonable money value of board, rent, housing, lodging, or any similar benefit.

§ 122.05 Endangering the welfare of a worker in the third degree.

A person is guilty of endangering the welfare of a worker in the third degree when, being the supervisor of a worker working at a job site or a person acting in a supervisory role on behalf of a supervisor of a worker working at a job site, and acting with criminal negligence, he or she exposes such worker to a risk of physical injury.

Endangering the welfare of a worker in the third degree is a class A misdemeanor.

§ 122.10 Endangering the welfare of a worker in the second degree.

A person is guilty of endangering the welfare of a worker in the second degree when, being the supervisor of a worker working at a job site or a person acting on behalf of a supervisor of a worker working at a job site, and acting with criminal negligence, he or she exposes such worker to a risk of physical injury and thereby causes serious physical injury to such worker.

Endangering the welfare of a worker in the second degree is a class E felony.

§ 122.15 Endangering the welfare of a worker in the first degree.

A person is guilty of endangering the welfare of a worker in the first degree when, being the supervisor of a worker working at a job site or a person acting on behalf of a supervisor of a worker working at a job site, and acting with criminal negligence, he or she exposes such worker to a risk of physical injury and thereby causes the death of such worker.

Endangering the welfare of a worker in the first degree is a class D felony.

§ 122.20 Enforcement.

The attorney general, along with the district attorney of the county in which the offense was committed, shall have jurisdiction to prosecute the offenses contained in this article.

§ 6. This act shall take effect on the thirtieth day after it shall have become a law.