

STATE OF NEW YORK

8828

IN SENATE

July 20, 2020

Introduced by Sen. RAMOS -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the labor law, in relation to establishing a registry of workplace fatalities in the construction industry to record information 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 Assembly, 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
17 an employer or who provide services pursuant to a contract in the work-
18 place.

19 b. "Employer" shall include a direct employer, contractor, or subcon-
20 tractor. In the absence of a formal hiring agreement, the person who
21 directs or provides compensation to the employee shall be considered the
22 employer unless such person is also directed and compensated by another.
23 In such cases, the persons successively above the employee in the
24 employment chain shall be considered the employer. In the instance of
25 the death of an intern or volunteer, the entity directing such intern or
26 volunteer in his or her duties as such shall be considered the employer.

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

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

5 d. "Construction" shall include, but not be limited to, any work
6 involving the construction, reconstruction, alteration, rehabilitation,
7 repair, renovation, demolition, or installation of any building, struc-
8 ture, or improvement, or in relation to the excavation of or other
9 development or improvement to any land.

10 3. Seventy-two-hour reports. a. Each county coroner, medical examiner
11 or other authorized official whose role is to register deaths, when
12 making the determination as to the cause and manner of death, shall
13 determine whether such death was the result of a work-related fatal
14 injury in the workplace and report all such workplace fatalities in the
15 construction industry to the department within seventy-two hours of such
16 determination.

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

19 (i) the name of the employee;
20 (ii) the age of the employee;
21 (iii) the cause of death;
22 (iv) the manner of death;
23 (v) the location of death;
24 (vi) the name of the employer;
25 (vii) the business address of the employer;
26 (viii) the name of the official or medical personnel making the decla-
27 ration of death;
28 (ix) the name of the person or persons charged with making the deter-
29 mination of the cause and manner of death; and
30 (x) contact information for the office making notification to the
31 department, including contact information for the person or persons
32 making the declaration of death, the person or persons determining the
33 cause of death, and the person or persons determining the manner of
34 death.

35 4. Ninety-day reports. a. Upon receiving a report pursuant to subdi-
36 vision three of this section, the department shall notify the employer
37 that such death was determined to be the result of a work-related fatal
38 injury in the workplace and shall require the employer to submit addi-
39 tional information regarding such workplace fatality. The employer shall
40 provide such information to the department no later than ninety days
41 after receiving such notification.

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

44 (i) the name of the employer;
45 (ii) the business address of the employer;
46 (iii) the stated business purpose or industry of the employer;
47 (iv) the name and age of the employee;
48 (v) the ethnicity of the employee;
49 (vi) the nationality of the employee;
50 (vii) the immigration status of the employee, if known;
51 (viii) the craft, trade or occupation of the employee; and
52 (ix) the union status of the employee.

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

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

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

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

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

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

8 6. Reporting system. The department shall establish a telephone
9 reporting system for the information required to be reported pursuant to
10 subdivisions three and four of this section. The department shall also
11 establish an online electronic information reporting system for the
12 information required to be reported pursuant to this section within
13 twelve months of the effective date of this section.

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

20 8. Accessibility of registry. The department shall establish and main-
21 tain an online database to make available all information and data
22 regarding all workplace fatalities in the construction industry reported
23 to the registry pursuant to this section. Such information shall be
24 provided in the aggregate and shall be electronically accessible and
25 searchable to the public, provided however, that in no event shall an
26 employee's name or other personal identifying information be included in
27 such database. The department shall update the database with the infor-
28 mation reported to the registry pursuant to this section within five
29 business days of the receipt of such reports by the department.

30 § 2. This act shall take effect on the one hundred twentieth day after
31 it shall have become a law; provided, however, that any death subject to
32 the provisions of this act that occurs on or after the day on which this
33 act shall have become a law shall be subject to the reporting provisions
34 of this act and shall be reported within thirty days after such death.
35 Effective immediately, the addition, amendment and/or repeal of any rule
36 or regulation necessary for the implementation of this act on its effec-
37 tive date are authorized to be made and completed on or before such
38 effective date.