

STATE OF NEW YORK

974

2021-2022 Regular Sessions

IN ASSEMBLY

January 6, 2021

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

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 a worker performing construction work suffers a work-related fatal injury; and to amend a chapter of the laws of 2020 amending the labor law relating 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, as proposed in legislative bills numbers S. 8828 and A. 5965-A, in relation to the effectiveness thereof

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

- 1 Section 1. Section 44 of the labor law, as added by a chapter of the
2 laws of 2020 amending the labor law relating to establishing a registry
3 of workplace fatalities in the construction industry to record informa-
4 tion pertaining to all incidents under which an employee performing
5 construction work suffers a work-related fatal injury, as proposed in
6 legislative bills numbers S. 8828 and A. 5965-A, is amended to read as
7 follows:
8 § 44. Workplace fatality registry; construction. 1. Registry. The
9 department shall create and maintain a registry of workplace fatalities
10 in the construction industry, which shall include information regarding
11 all incidents under which [~~an employee~~] a worker performing construction
12 work suffers a work-related fatal injury in the workplace. Such regis-
13 try shall include the information reported to the department pursuant to
14 subdivisions three and four of this section, in addition to any informa-
15 tion deemed pertinent by the commissioner as a result of any investi-
16 gation, hearing, or other proceedings of the department.
17 2. Definitions. For the purposes of this section:

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

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1 a. [~~Employee~~] "Worker" shall include, but not be limited to, direct
2 employees, contracted employees, subcontracted employees, independent
3 contractors, temporary or contingency workers, apprentices, interns,
4 volunteers, or any other persons who perform duties at the direction and
5 discretion of [~~an employer~~] a contractor or who provide services pursu-
6 ant to a contract in the workplace.

7 b. [~~Employer~~] "Contractor" shall include a direct employer, contrac-
8 tor, or subcontractor. In the absence of a formal hiring agreement, the
9 person who directs or provides compensation to the [~~employee~~] worker
10 shall be considered the [~~employer~~] contractor unless such person is also
11 directed and compensated by another. In such cases, the persons succes-
12 sively above the [~~employee~~] worker in the employment chain shall be
13 considered the [~~employer~~] contractor. In the instance of the death of
14 an intern or volunteer, the entity directing such intern or volunteer in
15 his or her duties as such shall be considered the [~~employer~~] contractor.

16 c. "Workplace" shall include, but not be limited to, any location
17 where [~~an employee~~] a worker performs any work-related duty in the
18 course of his or her employment, or any other site where the [~~employee~~]
19 worker may be as a result of [~~employer~~] contractor direction.

20 d. "Construction" shall include, but not be limited to, any work
21 involving the construction, reconstruction, alteration, rehabilitation,
22 repair, renovation, demolition, or installation of any building, struc-
23 ture, or improvement, or in relation to the excavation of or other
24 development or improvement to any land.

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

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

- 34 (i) the name of the [~~employee~~] worker;
35 (ii) the age of the [~~employee~~] worker;
36 (iii) the cause of death;
37 (iv) the manner of death;
38 (v) the location of death;
39 (vi) the name of the [~~employer~~] contractor;
40 (vii) the business address of the [~~employer~~] contractor;
41 (viii) the name of the official or medical personnel making the decla-
42 ration of death;
43 (ix) the name of the person or persons charged with making the deter-
44 mination of the cause and manner of death; and
45 (x) contact information for the office making notification to the
46 department, including contact information for the person or persons
47 making the declaration of death, the person or persons determining the
48 cause of death, and the person or persons determining the manner of
49 death.

50 4. Ninety-day reports. a. Upon receiving a report pursuant to subdi-
51 vision three of this section, the department shall notify the [~~employer~~]
52 contractor that such death was determined to be the result of a work-re-
53 lated fatal injury in the workplace and shall require the [~~employer~~]
54 contractor to submit additional information regarding such workplace
55 fatality. The [~~employer~~] contractor shall provide such information to

1 the department no later than ninety days after receiving such notifica-
2 tion.

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

5 (i) the name of the [employer] contractor;

6 (ii) the business address of the [employer] contractor;

7 (iii) the stated business purpose or industry of the [employer]
8 contractor;

9 (iv) the name and age of the [employee] worker;

10 (v) the ethnicity of the [employee] worker, if known;

11 (vi) the nationality of the [employee] worker, if known;

12 (vii) the immigration status of the [employee] worker, if known;

13 (viii) the craft, trade or occupation of the [employee] worker; and

14 (ix) the union status of the [employee] worker.

15 5. Investigation. The department in its [jurisdiction] sole discretion
16 may also:

17 a. conduct an investigation into any work-related fatal injury in the
18 workplace involving [an employee] a worker performing construction work;

19 b. request additional information from [an employer] a contractor in
20 relation to such [employee] worker or such workplace fatality; and

21 c. request information as to whether criminal or civil charges have
22 been filed against the [employer] contractor in the death of the
23 [employee] worker, including:

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

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

27 6. Reporting system. The department shall establish a [telephone]
28 reporting system for the information required to be reported pursuant to
29 subdivisions three and four of this section. ~~[The department shall also~~
30 ~~establish an online electronic information reporting system for the~~
31 ~~information required to be reported pursuant to this section within~~
32 ~~twelve months of the effective date of this section.]~~

33 7. Failure to report. Failure by any [employer] contractor to report
34 the information required pursuant to subdivision four of this section
35 within ninety days of notification by the department that such death was
36 the result of a work-related fatal injury in the workplace shall be
37 subject to a fine of not less than one thousand dollars nor more than
38 two thousand five hundred dollars per failure to make such report.

39 8. Accessibility of registry. The department shall establish and main-
40 tain an online database to make available all information and data
41 regarding all workplace fatalities in the construction industry reported
42 to the registry pursuant to this section. Such information shall be
43 provided in the aggregate and shall be electronically accessible and
44 searchable to the public, provided however, that in no event shall [an
45 employee's] a worker's name or other personal identifying information be
46 included in such database. The department shall update the database with
47 the information reported to the registry pursuant to this section within
48 five business days of the receipt of such reports by the department.

49 § 2. Section 2 of a chapter of the laws of 2020 amending the labor law
50 relating to establishing a registry of workplace fatalities in the
51 construction industry to record information pertaining to all incidents
52 under which an employee performing construction work suffers a work-re-
53 lated fatal injury, as proposed in legislative bills numbers S. 8828
54 and A. 5965-A, is amended to read as follows:

55 § 2. This act shall take effect ~~[on the one hundred twentieth day]~~ one
56 year after it shall have become a law; provided, however, that any death

1 subject to the provisions of this act that occurs on or after the day on
2 which this act shall have become a law shall be subject to [~~the report-~~
3 ~~ing provisions~~] subdivisions 3 and 4 of section 44 of the labor law, as
4 added by section one of this act and shall be reported to the department
5 of labor within thirty days after such death. Effective immediately,
6 the addition, amendment and/or repeal of any rule or regulation neces-
7 sary for the implementation of this act on its effective date are
8 authorized to be made and completed on or before such effective date.

9 § 3. This act shall take effect immediately, provided, however,
10 section one of this act shall take effect on the same date and in the
11 same manner as a chapter of the laws of 2020 amending the labor law
12 relating to establishing a registry of workplace fatalities in the
13 construction industry to record information pertaining to all incidents
14 under which an employee performing construction work suffers a work-re-
15 lated fatal injury, as proposed in legislative bills numbers S. 8828 and
16 A. 5965-A, takes effect.