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:

Section 1. Section 44 of the labor law, as added by 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, is amended to read as follows:

§ 44. Workplace fatality registry; construction. 1. Registry. The department shall create and maintain a registry of workplace fatalities in the construction industry, which shall include information regarding all incidents under which [~~an employee~~] a worker performing construction work suffers a work-related fatal injury in the workplace. Such registry shall include the information reported to the department pursuant to subdivisions three and four of this section, in addition to any information deemed pertinent by the commissioner as a result of any investigation, hearing, or other proceedings of the department.

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

b. [~~"Employer"~~] **"Contractor"** shall include a direct employer, contractor, or subcontractor. In the absence of a formal hiring agreement, the person who directs or provides compensation to the [~~employee~~] **worker** shall be considered the [~~employer~~] **contractor** unless such person is also directed and compensated by another. In such cases, the persons successively above the [~~employee~~] **worker** in the employment chain shall be considered the [~~employer~~] **contractor**. In the instance of the death of an intern or volunteer, the entity directing such intern or volunteer in his or her duties as such shall be considered the [~~employer~~] **contractor**.

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

d. "Construction" shall include, but not be limited to, any work involving the construction, reconstruction, alteration, rehabilitation, repair, renovation, demolition, or installation of any building, structure, or improvement, or in relation to the excavation of or other development or improvement to any land.

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

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

(i) the name of the [~~employee~~] **worker**;

(ii) the age of the [~~employee~~] **worker**;

(iii) the cause of death;

(iv) the manner of death;

(v) the location of death;

(vi) the name of the [~~employer~~] **contractor**;

(vii) the business address of the [~~employer~~] **contractor**;

(viii) the name of the official or medical personnel making the declaration of death;

(ix) the name of the person or persons charged with making the determination of the cause and manner of death; and

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

4. Ninety-day reports. a. Upon receiving a report pursuant to subdivision three of this section, the department shall notify the [~~employer~~] **contractor** that such death was determined to be the result of a work-related fatal injury in the workplace and shall require the [~~employer~~] **contractor** to submit additional information regarding such workplace fatality. The [~~employer~~] **contractor** shall provide such information to

the department no later than ninety days after receiving such notification.

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

(i) the name of the [~~employer~~] **contractor**;

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

(iii) the stated business purpose or industry of the [~~employer~~] **contractor**;

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

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

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

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

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

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

5. Investigation. The department in its [~~jurisdiction~~] **sole discretion** may also:

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

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

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

(i) the details of such criminal or civil charges including the charging officer or agency; and

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

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

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

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

§ 2. Section 2 of 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, is amended to read as follows:

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

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

§ 3. This act shall take effect immediately, provided, however, section one of this act shall take effect on the same date and in the same manner as 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, takes effect.