

## Another Law Will Increase Construction Costs in New York

Article By:

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New York recently enacted legislation known as Carlos' Law, which increases penalties for corporate liability for the death of, or serious injury to, an employee. The bill, S.621B / A.4947B, was named after Carlos Moncayo, a construction worker killed in a trench collapse on a New York City construction project. Moncayo's employer repeatedly flouted safety rules and ignored warnings of dangerous conditions on its construction site before failing to properly support the trench that collapsed and killed Moncayo. Moncayo's employer was convicted for his death, but the penalty was light. The company was sentenced to pay only \$10,000, the maximum penalty at the time for any company convicted of a felony in New York State. The legislature responded with Carlos' Law, which increases accountability for "employers," and expands the scope of "employees" covered.

The corporate criminal law, NY Penal § 20.20(2)(c)(iv), imposes liability on an employer when "the conduct constituting the offense is engaged in by an agent of the corporation while acting within the scope of his employment and on behalf of the corporation, and the offense is . . . in relation to a crime involving the death or serious physical injury of an employee where the corporation acted negligently, recklessly, intentionally, or knowingly." An "agent" of an employer is any "director, officer or employee of a corporation, or any other person who is authorized to act on behalf of the corporation." § 20.20(a). An "employee" now includes any person providing labor or services for remuneration for a private entity or business within New York State without regard to an individual's immigration status, and includes part-time workers, independent contractors, apprentices, day laborers and other workers. § 10.00 (22). The penalties for criminal corporate liability for the death or serious injury of an employee now include maximums of \$500,000 when centered on a felony, and \$300,000 when centered on a misdemeanor. § 80.10(1)(a) and (b).

Construction costs in New York City are already exorbitant due, in part, to current laws and regulations. Carlos' Law will increase costs for all construction projects in New York. Insurance costs will rise to cover the increased risks on all employers, the vast majority of which already consistently enforce and pay for strict safety procedures and protocols for their employees. These increased costs may put smaller companies out of business and may lead to less overall construction work in the state. Another concern is the impact on liability insurance coverage for victims. Insurance companies may be able to disclaim coverage for an injured worker if a criminal proceeding is brought against the employer. This could reduce an injured worker's ability to recover damages. While the increased criminal fines paid to the state sounds good, how much of a fine will go to increasing safety for victims and their families?

When it passed, the legislature represented that Carlos' Law will have no fiscal implications for state and local governments. ([legislative memo in support](#)). This is difficult to believe considering that increased insurance costs on employers typically get passed on to, and paid by, both private and public construction project owners. There is little doubt that Carlos' Law will increase construction project costs; hopefully, an increase in worker safety follows suit.

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