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# Introduction to Workers Compensation and New York Labor "Scaffold" law, and how they apply to NY construction

When we study the loss experience of cooperative or apartment buildings, we note that the most serious losses that occur are directly related to the work performed by contractors and their subcontractors. New York statutes and common law make the building owner responsible for not only his or her own negligence but also responsible for providing a "safe place to work" for the contractors, subcontractors and vendors employees.

## Workers Compensation

Workers Compensation was created to help an injured employee of a contractor. It pays for all medical costs the injured employee incurs from the worksite accident, and it pays the employee for lost compensation while unable to work, due to the injury. There are additional significant lump sum payments to seriously injured workers. Workers Compensation was created to avoid the need for injured employees to have to sue their employers to collect these benefits. It eliminated the inefficiency of having to hire an attorney to prove employer negligence. By cutting-out lawsuits, Workers Compensation efficiently takes care of the injured employee.

The current abuses of the system were created over the last 10-15 years as more and more attorneys in New York realized there was a "loop-hole" that allowed an employee to sue for injuries on a jobsite when the accident was height-related. When subcontractor employees are injured, instead of suing their employer, which is prohibited due to the existence of Workers Compensation, they utilize the "Scaffold Law" to sue the building owner, or the General Contractor that hired the Subcontractor. New York attorneys have pushed the envelope of the definition of "heights" to include: a hammer falling off a ladder, a worker falling into a hole, even an injury from stepping off a stool. And, many judges and juries have supported the broader interpretation. What makes the abuse of this law even worse is that there is no defense. Labor Law 240/241 creates Absolute Liability on the building owner or General Contractor. Even if the employee is at fault, there is absolutely no defense.

## Summary of NY (Scaffolding Law) Labor Law

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New York State's Labor Law (NYLL) represents an onerous burden for property owners and managing agents in New York, making them financially liable for virtually any work-related accident on their premises. So as building owners, unit owners, tenants and managing agents routinely hire contractors to do work on their properties, they routinely face huge liability exposures.

Section 240 is known as the **Scaffolding Law**. This is the law that involves accidents from heights, such as falls from ladders or objects falling onto workers. Height has been defined by the courts as the last rung in a ladder, or about ten inches. Labor Law 240 states that the responsibility of keeping workers safe when working from significant heights should be placed on construction companies, property owners, and contractors and not the workers. Owners and contractors should provide appropriate safety measures and guards to all workers (examples include: safety harnesses, lanyards, barricades, fencing, netting, and safety railings). The law also states that scaffolding must be able to hold four times the amount of weight it is expected to bear.

To meet the eligibility requirements of Labor Law 240, the injured construction worker must have been engaged in one of the following activities:

- Altering
- Building Erection
- Cleaning
- Demolition
- Erection of blocks, braces, handers, hoists, irons, ladders, pulleys, ropes, slings, stays, or similar types of equipment
- Painting
- Pointing a building
- Repairing

Court rulings of fall related accidents are broadly defined and effect applicability of the law. The result is litigation against those hiring, supervising or subcontracting the injured workers for work performed on such things as ladders, scaffolds, roofs, stairs, open platforms and even stools. Individuals that are injured from falling objects such as tools, materials, debris being raised, lowered, or secured, are subject to the law. The courts have now expanded the interpretation to include injuries resulting from falling objects whose base is on the same level as the injured worker (for example, injuries resulting from a box, crate, equipment tipping over and striking a worker).

The interpretation of Labor Law 240 has been extremely liberal to the benefit of the worker. This has put all Labor Law 240 claims in the category of strict liability. Insurance companies can only mitigate the claim payment, not deny the claim, because of contributory negligence of the worker.

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**Protection From New York Scaffold Law**

The building owner cannot transfer his/her responsibility for losses for which he or she is negligent but can limit the exposure for acts of the contractor and subcontractors as well as the exposure of "Scaffold Law" losses.

To insulate themselves from high-value lawsuits brought by injured workers, building owners and managing agents should enter into hold harmless and indemnification agreements, backed up by the contractors' own insurance, which transfers liability for such injuries from themselves to the contractors and subcontractors whose negligence caused the injuries. Failure to do so can cost building owners millions of dollars.

USE RISK TRANSFER TACTICS

Using written contracts to transfer the risk of liability and damages from you to your contractors can protect you from claims of serious injury and potentially large damage awards.

Listed below are various items that must be addressed prior to allowing a contractor or vendor on your premises:

- Hold Harmless and Indemnification Agreements

Every contract between you and your general contractors, as well every contract between your general contractors and their subcontractors, must contain a clause requiring the general contractors and their subcontractors to "defend," "indemnify," and "hold harmless" the unit owner, building owner and the managing agent from liability, loss or other damages that arise because of any of the contractors' work. It is important that this agreement be properly worded, dated and executed before the work begins.

- Insurance Procurement Requirement

Contractors and their subcontractors must agree to add unit owner, building owners and their managing agents as additional insureds to their insurance policies for any liability arising out of their work. The limits of these policies should be at least $1 million for a primary commercial general liability (CGL) policy and S3 million for an umbrella policy.

Also, the additional insured coverage should be written on a "primary and non-contributory basis."

- Insurance Requirements and Certificates of Insurance

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While it is common practice to request a Certificate of Insurance (COI) from contractors and subcontractors, the certificate alone does not confer or prove the existence of additional-insured coverage on your behalf.

A proven "best practice" is to require your contractors to submit a copy of their primary liability and umbrella policies or an Acord 855 NY for review by an insurance professional. All COI's and insurance policies must be provided to the building owner or managing agent before the work begins. The COI and insurance policies should also show that the building owner and managing agent are named on the primary and umbrella policies as additional insureds.

**SUMMARY**

Before allowing work to commence on your premises, require the contractor and vendor to have the Indemnity Agreement and Insurance Requirements listed in his contract with you. Also, require the contractor to provide a copy of his or her policy with the Contractor Insurance Endorsement attached naming you as an additional insured.

The end result of following these procedures will be a reduction in losses caused by the contractor/vendor, his employees or any subcontractor, which would otherwise end up being a loss on your insurance. By protecting yourself, you will be reducing your losses, which will ultimately save you dollars on your insurance.