

II. WHO IS PROTECTED

Plaintiff must be employed and working in the furtherance of erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure.

A. Employed

The plaintiff must be employed. Plaintiff must demonstrate that they were permitted to work on a building or structure and that they were hired by someone, whether it be the contractor, owner or an agent of either. Therefore, where one is merely a volunteer, they will not be given § 240 protection. In *D'Argenio v. Village of Homer*, 202 A.D.2d 883, 609 N.Y.S.2d 9 (3d Dep't 1994), an inmate injured while participating in a community service release program was found to be a volunteer and not an employee for the purposes of the statute.

The issue of whether a plaintiff is employed may often be difficult to resolve. In *Sequin v. Massena Aluminum Recovery*, 229 A.D.2d 839, 645 N.Y.S.2d 630 (3d Dep't 1996), the plaintiff, an independent contractor came to an agreement on price and the scope of the work contemplated. The plaintiff went to the property to estimate the cost of materials and while doing so fell from the roof of the building. The defendant claimed that he had not authorized plaintiff to go to the building and make the estimates. The Third Department found this to be unavailing and found that the plaintiff was entitled to the protection of the statute because an agreement to do the work had already been reached. See also *Marchese v. Grossarth*, 232 A.D.2d 924, 648 N.Y.S.2d 810 (3d Dep't 1996) (where tenant of the apartment building hired a cable installer without the knowledge of the owner of the building, court found that when the installer fell from a ladder in the building, he was not an "employee" of the owner and the tenant could not be seen as an "agent" of the owner for 240 purposes).

However, in a commercial setting, the Third Department held that an owner couldn't complain that he was unaware of his tenants' hiring of a contractor in order to avoid liability under § 240. All that must be shown is that the individual was "employed". See *Lawyer v. Rotterdam Ventures, Inc.*, 204 A.D.2d 878, 612 N.Y.S.2d 682 (3d Dep't 1994).

B. Working in the Furtherance Of

The Court of Appeals in *Martinez v. City of New York*, 93 N.Y.2d 322, 712 N.E.2d 689, 690 N.Y.S.2d 524 (1999) rejected the long held standard that tasks deemed "necessary and incidental" to one of the enumerated items (which will be discussed in more detail below) falls under the protection afforded by the statute. The plaintiff in *Martinez* was an environmental inspector hired during the design phase of an asbestos abatement project to locate, identify and catalog asbestos for removal from school buildings. Plaintiff was injured when he fell from a desk while trying to reach a pipe above a closet. The Court of Appeals affirmed the Appellate Court denial of 240(1) summary judgment since plaintiff was not injured during "erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure". To hold otherwise, they found, would enlarge the statute beyond its Legislative intent. See *Adams v. Pfizer*, 293 A.D.2d 291, 740 N.Y.S.2d 315 (1st Dept. 2002) (where worker fell from a motorized scaffold on his employer's premises while constructing a mock-up for subsequent

renovation, the court found that plaintiff was not involved in "construction" work within the meaning of the statute); See also *Adair v. Bestek Lighting & Staging Corp.*, 298 A.D.2d 153, 748 N.Y.S.2d 362 (1st Dep't. 2002) (plaintiff's fall from a "man-lift" while focusing overhead lights was not protected activity within the statute since construction work on the stage was complete and the lights were fully installed).

In *Prats v The Port Authority of New York and New Jersey*, 100 N.Y.2d 878 (2003) worker fell from a ladder while helping another worker inspecting equipment while carrying out a contract requiring the leveling of floors, laying of concrete, and rebuilding of walls to replace large air filtering systems in a large office building. The Court of Appeals held the work was not easily distinguishable from other parts of the construction project. The inspection was not in anticipation of the contract work, nor did it occur after the work was done. The worker's activity fell within the protections of N.Y. Lab. Law §240(1) because of (1) the worker's position as a mechanic who routinely undertook an activity specifically protected under the statute, (2) his employment with a company engaged in a contract to carry out an activity protected under the statute, and (3) his participation in a protected activity during the specific project and at the same site where the injury occurred. It was not pragmatic or consistent with the spirit of the statute to isolate the moment of injury and ignore the general context of the worker's work. He was engaged in a process involving the building's alteration, and his work went beyond mere maintenance.

The question whether a particular inspection falls within §240(1) must be determined on a case-by-case basis, depending on the context of the work. Here, a confluence of factors brings plaintiff's activity within the statute: his position as a mechanic who routinely undertook an enumerated activity, his employment with a company engaged under a contract to carry out an enumerated activity, and his participation in an enumerated activity during the specific project and at the same site where the injury occurred.

1. Erection

Erection of structure or building is a protected activity under § 240. This activity is self-evident and has not generated many debates.

2. Demolition

Demolition is also a relatively uncomplicated word. However, in *Sabovic v. The State of New York*, 229 A.D.2d 586, 645 N.Y.S.2d 860 (2d Dep't 1996), where a wall collapse was involved, the court held that even though the collapse was part of a demolition project, if the wall is at the same level as the work site the plaintiff is on, it is not considered a falling object for the purposes of § 240. Thus, the statute did not apply.

3. Repairing

The protection afforded pursuant to § 240 extends to workers performing repair work and not merely routine maintenance. See *Greenwood v. Shearson Lehman*, 238 A.D.2d 311, 656 N.Y.S.2d 295 (2d Dep't 1997) (where plaintiff was injured while searching for a ceiling leak in

an area of a building that was not under construction, the court held that plaintiff's work was routine maintenance and dismissed the § 240 claim).

In determining whether the work being performed constitutes repairs or routine maintenance, it has been held that the paramount issue is whether the item being worked on was inoperable or malfunctioning prior to the commencement of the work. See *Craft v. Clark Trading Corp.*, 257 A.D.2d 886, 684 N.Y.S.2d 48 (3d Dep't 1999). Thus, changing of a light bulb itself is not "repairing of a building or structure. See *Smith v. Shell Oil*, 85 N.Y.2d 1000, 645 N.E.2d 1210, 630 N.Y.S.2d 962 (1995).

However, in *Piccione v. 1165 Park Ave., Inc.*, 177 Misc.2d 1037, 677 N.Y.S.2d 891 (Sup. Ct. N.Y. Cty. 1998), plaintiff's work on a fluorescent light fixture performed from a ladder, which involved replacing the ballast and sockets, disconnecting the wires, stripping them, entailed more than merely changing a light bulb and constituted repairs within the meaning of § 240. In *Thompson v. 1701 Corp.*, 51 A.D.3d 904 (2d Dept 2008), the Appellate Division, Second Department ruled that a plaintiff could not recover under §240 after falling off a ladder while changing a screw in a "door-closer". The work was considered to be only routine maintenance, and hence not a protected activity.

4. Altering

The Court of Appeals has held that "altering" within the meaning of §240(1), requires making a significant change to the configuration or composition of a building or structure. See *Joblon v. Solow*, 91 N.Y.2d 457, 695 N.E.2d 237, 672 N.Y.S.2d 286 (1998). In *Joblon*, the Court determined that plaintiff's work, which required him to stand on a ladder to hang an electrical clock on a wall, was more than routine maintenance. The facts demonstrated that plaintiff was required to bring an electrical power supply capable of supporting the clock, by extending the wiring within the utility room and chiseling a hole through a concrete wall. As such, the work was more than a simple routine activity and significant enough to fall within the statute.

Following *Joblon*, the court in *DiGiulo v. Migliore*, 258 A.D.2d 903, 685 N.Y.S.2d 379 (4th Dep't 1999), held that plaintiff, who was injured when he fell from a ladder while turning a satellite dish assembly and running cable into the building to connect it to the receiver, was engaged in "altering" a building or structure.

However, in *Downes v. Boom Studio, Inc.*, 248 A.D.2d 150, 669 N.Y.S.2d 569 (1st Dep't 1998), the court found that a photographer's assistant who fell from a ladder while adjusting a backdrop was not engaged in altering a building or structure. Similarly, in *Czaska v. Lenn Lease Limited*, 251 A.D.2d 965, 674 N.Y.S.2d 559 (4th Dep't 1998), the court found that insulating windows by stapling sheets of plastic over them was routine maintenance and not altering a building or structure.

It has also been held that installation or transfer of cable wire onto a utility pole, which is considered a structure, constitutes an alteration. See *Dedario v. New York Telephone Co.*, 62

A.D.2d 1001, 557 N.Y.S.2d 794 (2d Dep't 1990); *Tauriello v. New York Telephone Co.*, 199 A.D.2d 377, 605 N.Y.S.2d 373 (2d Dep't 1993).

5. Cleaning

Cleaning of a building or structure, which is covered under Labor Law § 240, has been defined by the courts to require more than “truly domestic” routine household cleaning. See *Chapman v. International Business Machines Corp.*, 253 A.D.2d 123, 686 N.Y.S.2d 888 (3d Dep't, 1999). In *Brown v. Christopher Street Owners Corp.*, 88 N.Y.2d 875, 663 N.E.2d 1251, 645 N.Y.S.2d 449 (1996), the Court of Appeals held that a self-employed window washer, hired solely by apartment tenant, to clean windows as part of domestic cleaning was not engaged in an activity covered by § 240, unlike the case of a large, nonresidential structure such as a school. See also *Cruz v. Bridge Harbor*, 249 A.D.2d 44, 671 N.Y.S.2d 72 (1st Dep't 1998) citing *Terry v. Young*, 168 A.D.2d 399, 563 N.Y.S.2d 408 (1st Dept 1990) (cleaning windows as a new condominium complex is not routine household cleaning and thus covered by § 240).

Removal of snow and ice from a roof has also been held to constitute a form of cleaning, and thus, a worker injured when he fell from a roof while attempting to remove accumulated snow and ice was entitled to the protection of the scaffolding law. See *Nephew v. Barcomb*, 260 A.D.2d 821, 688 N.Y.S.2d 751 (3d Dept 1999); see also *Chapman v. International Business Machines Corp.*, 253 A.D.2d 123, 686 N.Y.S.2d 888 (3d Dep't, 1999) (janitorial employee who fell from a collapsed table while cleaning overhead light fixtures in conference room of commercial building was “cleaning” a building within meaning of scaffolding statute, even though no construction or renovation work was occurring); *Vasey v. Pyramid Co. of Buffalo*, 258 A.D.2d 906, 685 N.Y.S.2d 362 (4th Dep't 1999) (injuries sustained by worker, who was dusting and cleaning mini-ledges and bulkheads in shopping mall at height of approximately 35 to 40 feet, when he accidentally maneuvered manlift or “knuckleboom” he was operating onto a decorative tree grate, causing lit to tip over and worker to crash to floor, resulted from fall from height while engaged in activity of cleaning a building, and thus came within scope of § 240).

6. Painting in a Construction or Renovation Setting

It is not merely the act of painting which is afforded protection under § 240, but also the work intimately associated with the actual painting. See *Livecchi v. Eastman Kodak Co.*, 258 A.D.2d 916, 685 N.Y.S.2d 515 (4th Dept 1999) (worker established violation of scaffolding law in connection with his fall from ladder while preparing room for painting; as a matter of law, the ladder did not provide proper protection, and evidence established violation of scaffolding law was a proximate cause of accident); *Serpe v. Eyriz productions, Inc.*, 243 A.D.2d 375, 663 N.Y.S.2d 542 (1st Dep't 1997) (ceiling painter who fell through unprotected hold in the floor was covered by § 240 despite the fact that the actual work he was performing did not involve an elevated risk).

7. Pointing as in Bricks and Masonry Work

Under §240, the term, “pointing”, has not generated much confusion.

What Activity Constitutes An “Alteration” Under Labor Law § 240(1)?

Case	Activity	Protected
<i>Belding v. Verizon N.Y., Inc.</i> , 14 N.Y.3d 751, 925 N.E.2d 577 (2010)	Applying bomb blast film to windows in the lobby of a commercial building.	YES
<i>Sanatass v. Consol. Investing Co.</i> , 10 N.Y.3d 333, 858 N.Y.S.2d 67 (2008)	Installing an air conditioning unit to a ceiling by drilling holes and affixing metal rods to the ceiling.	YES
<i>Munoz v. DJZ Realty, LLC</i> , 5 N.Y.3d 747, 800 N.Y.S.2d 866 (2005)	Applying a new advertisement to the face of a billboard on top of a building.	NO
<i>Panek v. Cnty. of Albany</i> , 99 N.Y.2d 452, 758 N.Y.S.2d 267 (2003)	Removing two 200-pound air handlers bolted to the ceiling of an air traffic control tower.	YES
<i>Prats v. Port Auth. of N.Y. & N.J.</i> , 100 N.Y.2d 878, 768 N.Y.S.2d 178 (2003)	Inspecting an air handling unit, where the inspection was contemporaneous with both prior and ongoing work done by plaintiff that involved alteration.	YES
<i>Joblon v. Solow</i> , 91 N.Y.2d 457, 672 N.Y.S.2d 286 (1998)	Installing an electric wall clock.	YES
<i>Weininger v. Hagedorn & Co.</i> , 91 N.Y.2d 958, 672 N.Y.S.2d 840 (1998)	Running computer and telephone cable through the ceiling.	YES
<i>Mutadir v. 80-90 Maiden Lane Del LLC</i> , 2013 WL 5827726 (1st Dep't 2013)	Installing slot boards to support shelves in a supermarket, where plaintiff was employed by a company hired to take enumerated activities and had worked at the job site for three months prior demolishing and reconstructing the interior of the building.	YES
<i>Kochman v. City of New York</i> , 2013 WL 5526095 (1st Dep't 2013)	Running and affixing new wires to the roof of a building so as to move a line circuit in a garage.	YES
<i>Amendola v. Rheedlen 125th St.</i> , LLC, 105 A.D.3d 426, 963 N.Y.S.2d 30 (1st Dep't 2013)	Installing window shades by screwing brackets into the ceiling and inserting the shades.	NO
<i>Bodtman v. Living Manor Love, Inc.</i> , 105 A.D.3d 434, 963 N.Y.S.2d 35 (1st Dep't 2013)	Drilling several holes to attach a temporary sign to a building roof.	NO
<i>Santiago v. Rusciano & Son, Inc.</i> , 92 A.D.3d 585, 938 N.Y.S.2d 557 (1st Dep't 2012)	Boarding up windows to make a building uninhabitable and protect it from vandalism in anticipation of demolition.	YES
<i>Masullo v. 1199 Hous. Corp.</i> , 63 A.D.3d 430, 881 N.Y.S.2d 47 (1st Dep't 2009)	Running electrical cable from a construction trailer to a building where a waterproofing project was being conducted.	YES
<i>Widawski v. 217 Elizabeth St. Corp.</i> , 40 A.D.3d 483, 838 N.Y.S.2d 496 (1st Dep't 2007)	Dismantling an overhead electrical box in preparation for removing an eight-foot bakery mixer bolted to the floor.	NO

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<i>Rhodes-Evans v. 111 Chelsea LLC</i> , 44 A.D.3d 430, 843 N.Y.S.2d 237 (1st Dep't 2007)	Splicing fiber optic cable in a cable box located in a parking garage to provide services to a new tenant in the building.	NO
<i>Campbell v. City of New York</i> , 32 A.D.3d 703, 821 N.Y.S.2d 166 (1st Dep't 2006)	Splicing an amplifier box into a cable television line.	YES
<i>Anderson v. Schwartz</i> , 24 A.D.3d 234, 808 N.Y.S.2d 26 (1st Dep't 2005)	Removing an aluminum sign temporarily bolted to the side of a building.	NO
<i>Maes v. 408 W. 39 LLC</i> , 24 A.D.3d 298, 808 N.Y.S.2d 613 (1st Dep't 2005)	Removing a large banner advertisement bolted to the side of a building.	NO
<i>Robinson v. City of New York</i> , 22 A.D.3d 293, 802 N.Y.S.2d 48 (1st Dep't 2005)	Helping a co-worker clear wires from a forklift being used to construct a new building.	YES
<i>Sarigul v. N.Y. Tel. Co.</i> , 4 A.D.3d 168, 772 N.Y.S.2d 653 (1st Dep't 2004)	Stripping insulation from pre-existing cable wire.	YES
<i>Samuel v. Simone Dev. Co.</i> , 13 A.D.3d 112, 786 N.Y.S.2d 163 (1st Dep't 2004)	Installing carpeting to soundproof walls in a recording studio.	YES
<i>Acosta v. Banco Popular</i> , 308 A.D.2d 48, 762 N.Y.S.2d 64 (1st Dep't 2003)	Bolting a duplicate key box to the wall of a bank vault with a drill hammer and a chipping hammer.	NO
<i>Smith v. 21 W. LLC Ltd. Liab. Co.</i> , 308 A.D.2d 312, 764 N.Y.S.2d 181 (1st Dep't 2003)	Removing an air conditioning unit by cutting through pin rods that secured the unit to the ceiling.	YES
<i>Adair v. Bestek Lighting and Staging Corp.</i> , 298 A.D.2d 153, 748 N.Y.S.2d 362 (1st Dep't 2002)	Focusing overhead lights above a temporary stage in preparation for a performance.	NO
<i>Della Croce v. City of New York</i> , 297 A.D.2d 257, 746 N.Y.S.2d 484 (1st Dep't 2002)	Attaching a bulletin board to a locker room wall.	NO
<i>Gallagher v. Resnick</i> , 107 A.D.3d 942, 968 N.Y.S.2d 151 (2d Dep't 2013)	Taking measurements of a building's exterior in preparation for fabricating raw materials for the building's reconstruction.	YES
<i>Vasquez v. C2 Dev. Corp.</i> , 105 A.D.3d 729, 963 N.Y.S.2d 675 (2d Dep't 2013)	Moving a fluorescent light fixture from one area of the ceiling to another.	YES
<i>McLean v. 405 Webster Ave. Assocs.</i> , 98 A.D.3d 1090, 951 N.Y.S.2d 185 (2d Dep't 2012)	Installing microconduct, a protective casing, on fiber optic cables in a building's dumbwaiter shaft.	YES

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<i>Gonzalez v. Woodbourne Arboretum, Inc.</i> , 100 A.D.3d 694, 954 N.Y.S.2d 113 (2d Dep't 2012)	Replacing a worn-out component in a machine that otherwise operated.	NO
<i>Panico v. Advanstar Commc'ns, Inc.</i> , 92 A.D.3d 656, 938 N.Y.S.2d 168 (2d Dep't 2012)	Hanging a light fixture on a ticket booth at a motorcycle show.	NO
<i>Schick v. 200 Blydenburgh, LLC</i> , 88 A.D.3d 684, 930 N.Y.S.2d 604 (2d Dep't 2011)	Running and attaching wires to provide telephone service to a new tenant in a warehouse.	YES
<i>D'Alto v. 22-24 129th St., LLC</i> , 76 A.D.3d 503, 906 N.Y.S.2d 79 (2d Dep't 2010)	Climbing down a cement truck parked outside a construction site after mixing the cement in preparation for construction.	YES
<i>Travers v. RCPI Landmark Props., LLC</i> , 74 A.D.3d 956, 906 N.Y.S.2d 563 (2d Dep't 2010)	Moving speakers lowered by forklift to a stage.	NO
<i>Fuchs v. Austin Mall Assocs., LLC</i> , 62 A.D.3d 746, 879 N.Y.S.2d 166 (2d Dep't 2009)	Replacing an elevator ceiling where the work involved disconnecting electrical wiring to remove the old ceiling, and installing a new ceiling with new lighting fixtures.	YES
<i>LaGiudice v. Sleepy's Inc.</i> , 67 A.D.3d 969, 890 N.Y.S.2d 564 (2d Dep't 2009)	Installing an electrical exit sign where the work involved drilling and pulling electrical cable through the ceiling.	YES
<i>Lucas v. Fulton Realty Partners, LLC</i> , 60 A.D.3d 1004, 876 N.Y.S.2d 480 (2d Dep't 2009)	Dismantling and removing steel storage cases bolted to the floor and walls of a building.	YES
<i>Rico-Castro v. Do & Co N.Y. Catering, Inc.</i> , 60 A.D.3d 749, 874 N.Y.S.2d 576 (2d Dep't 2009)	Cutting barbed wire on top of a 12-foot fence bolted to a warehouse floor, in preparation for moving the fence by drilling holes into the floor.	YES
<i>Becker v. ADN Design Corp.</i> , 51 A.D.3d 834, 858 N.Y.S.2d 745 (2d Dep't 2008)	Running wires in an attic crawl space as part of re-wiring a building's telephone system.	YES
<i>Destefano v. City of New York</i> , 39 A.D.3d 581, 835 N.Y.S.2d 275 (2d Dep't 2007)	Installing a temporary boiler in a building.	YES
<i>Holler v. City of New York</i> , 38 A.D.3d 606, 832 N.Y.S.2d 86 (2d Dep't 2007)	Assisting in installing a hoist motor used to lift scenery at a theatre in preparation for a new show.	NO
<i>Fitzpatrick v. State</i> , 25 A.D.3d 755, 809 N.Y.S.2d 515 (2d Dep't 2006)	Replacing a photo cell that controlled a parking lot's automatic lighting, where the plaintiff's other work involved replacing an old lighting fixture with a new fixture that accepted long-lasting incandescent bulbs.	YES

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<i>Lijo v. City of New York</i> , 31 A.D.3d 503, 818 N.Y.S.2d 569 (2d Dep't 2006)	Fixing overhead electric wires that had been knocked down, where the plaintiff's other work involved repairing/altering an underground sewer line.	YES
<i>Rodriguez v. 1-10 Indus. Assocs., LLC</i> , 30 A.D.3d 576, 816 N.Y.S.2d 383 (2d Dep't 2006)	Pulling an electrical cable from a ceiling.	NO
<i>Hatfield v. Bridgedale, LLC</i> , 28 A.D.3d 608, 814 N.Y.S.2d 659 (2d Dep't 2006)	Applying an advertisement to a billboard on top of a building.	NO
<i>Lioce v Theatre Row Studios</i> , 7 A.D.3d 493, 776 N.Y.S.2d 89 (2d Dep't 2004)	Designing a lighting plan and installing lights for a theater production.	NO
<i>Aguilar v. Henry Marine Serv., Inc.</i> , 12 A.D.3d 542, 785 N.Y.S.2d 95 (2d Dep't 2004)	Retrieving soder to use in servicing a tugboat, which included replacing the bulwark, reconditioning wheels and shafts, and installing new fendering and deck winches.	YES
<i>Cuddon v. Olympic Bd. of Managers</i> , 300 A.D.2d 616, 752 N.Y.S.2d 715 (2d Dep't 2002)	Installing insulation on an air conditioning unit.	YES
<i>Scotti v. Fed'n Dev. Corp.</i> , 289 A.D.2d 322, 734 N.Y.S.2d 573 (2d Dep't 2001)	Installing a telecommunications system.	YES
<i>Rogala v. Van Bourgondien</i> , 263 A.D.2d 535, 693 N.Y.S.2d 204 (2d Dep't 1999)	Installing and replacing window screens at a motel.	NO
<i>Bedassee v. 3500 Snyder Ave. Owners, Corp.</i> , 266 A.D.2d 250, 698 N.Y.S.2d 289 (2d Dep't 1999)	Installing cable wire.	YES
<i>Luthi v. Long Island Res. Corp.</i> , 251 A.D.2d 554, 674 N.Y.S.2d 747 (2d Dep't 1999)	Running borrowed microphone cable through the ceiling to be used at an event, without permanently attaching it.	NO
<i>Randall v. Time Warner Cable, Inc.</i> , 81 A.D.3d 1149, 916 N.Y.S.2d 656 (3d Dep't 2011)	Replacing a filter on overhead cable wires, where plaintiff's prior work that day involved drilling and running wiring through walls to upgrade a subscriber's cable and internet service.	YES
<i>Len v. State</i> , 74 A.D.3d 1597, 906 N.Y.S.2d 622 (3d Dep't 2010)	Raising a moveable dam to turn it into a bridge.	NO
<i>Jones v. Village of Dannemora</i> , 27 A.D.3d 844, 811 N.Y.S.2d 186 (3d Dep't 2006)	Remove sludge from the side of a lagoon in a treatment plant, in preparation for a different employer to install a new aeration system.	NO
<i>Hodges v. Boland's Excavating and Topsoil, Inc.</i> , 24 A.D.3d 1089, 807 N.Y.S.2d 421 (3d Dep't 2005)	Attaching a chute to the conveyer end of a power screen used to screen gravel and make sand.	NO

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<i>Smith v. Innovative Dynamics, Inc.</i> , 24 A.D.3d 1000, 809 N.Y.S.2d 216 (3d Dep't 2005)	Installing a camera on top of a pole to test a solar-powered infrared camera system used to detect ice on highways.	YES
<i>Tassone v. Mid-Valley Oil Co. Inc.</i> , 291 A.D.2d 623, 738 N.Y.S.2d 103 (3d Dep't 2002)	Installing a satellite communication system, where the work involved mounting the dish on the roof and running wire through the building.	YES
<i>Smith v. Pergament Enters. of S.I.</i> , 271 A.D.2d 870, 706 N.Y.S.2d 505 (3d Dep't 1999)	Running computer cables through holes cut in the walls.	YES
<i>Custer v. Jordan</i> , 107 A.D.3d 1555, 968 N.Y.S.2d 754 (4th Dep't 2013)	Installing siding on a home.	YES
<i>Saint v. Syracuse Supply Co.</i> , 2013 WL 5496123 (4th Dep't 2013)	Changing the advertisement on a billboard.	NO
<i>Zolfaghari v. Hughes Network Sys., LLC</i> , 99 A.D.3d 1234, 952 N.Y.S.2d 367 (4th Dep't 2012)	Removing a satellite dish from a bracket and face plate attached to the outside wall of a gas station.	NO
<i>Ferris v. Benbow Chem. Packaging, Inc.</i> , 74 A.D.3d 1831, 905 N.Y.S.2d 394 (4th Dep't 2010)	Installing a pipe system used to clean storage tanks.	YES
<i>Andrews v. N.W. Auto Mall</i> , 67 A.D.3d 1466, 888 N.Y.S.2d 451 (4th Dep't 2009)	Installing a security system in a building.	YES
<i>Smith v. CSX Transp., Inc.</i> , 30 A.D.3d 1003, 818 N.Y.S.2d 369 (4th Dep't 2006)	Unlocking a rusted bullet lock on a railroad car.	NO
<i>Wormuth v. Freeman Interiors, Ltd.</i> , 34 A.D.3d 1329, 824 N.Y.S.2d 855 (4th Dep't 2006)	Installing draperies in a home.	NO
<i>Schroeder v. Kalenak Painting & Paperhanging, Inc.</i> , 27 A.D.3d 1097, 811 N.Y.S.2d 240 (4th Dep't 2006)	Installing wallpaper.	NO
<i>Enge v. Ontario Cnty. Airport Mgmt. Co.</i> , 26 A.D.3d 896, 809 N.Y.S.2d 345 (4th Dep't 2006)	Running telephone wires from a hanger to a new office building, where the work involved splicing wires, drilling holes, and feeding the wire through.	YES
<i>Cooper v. Time Warner Entm't-Advance/Newhouse P'ship</i> , 16 A.D.3d 1037, 791 N.Y.S.2d 795 (4th Dep't 2005)	Installing high-speed internet on computers in an individual residence, where plaintiff's work consisted of checking signals on equipment and a utility pole.	NO

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<i>Chizh v. Hillside Campus Meadows Assocs., LLC</i> , 4 A.D.3d 743, 772 N.Y.S.2d 184 (4th Dep't 2004)	Removing, repairing, and reinstalling a single window screen at an apartment complex.	NO
<i>Scally v. Reg'l Indus. P'ship</i> , 9 A.D.3d 865, 780 N.Y.S.2d 457 (4th Dep't 2004)	Cleaning debris off the top of an air conditioning unit on a flatbed truck, where plaintiff's work involved removing and replacing air conditioning units on a roof.	YES
<i>Lang v. Charles Mancuso & Son, Inc.</i> , 298 A.D.2d 960, 747 N.Y.S.2d 663 (4th Dep't 2002)	Replacing beverage supply lines at a restaurant.	YES
<i>Primavera v. Benderson Family 1968 Trust</i> , 294 A.D.2d 923, 741 N.Y.S.2d 816 (4th Dep't 2002)	Installing duct work on a building.	YES
<i>Enright v. Buffalo Tech. Bldg. B P'Ship</i> , 278 A.D.2d 927, 718 N.Y.S.2d 764 (4th Dep't 2000)	Replacing windows whose thermal seals had failed, causing them to fog.	YES
<i>Di Giulio v. Migliore</i> , 258 A.D.2d 903, 685 N.Y.S.2d 379 (4th Dep't 1999)	Tuning a satellite dish and running cable to connect it to a receiver inside the building.	YES

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⁴ *McLean v. 405 Webster Ave. Assocs.*, 98 A.D.3d 1090, 951 N.Y.S.2d 185 (2d Dep't 2012) (holding that installing microconduct to protect fiber optic cable in a building's dumbwaiter shaft constituted alteration).

⁵ *Belding v. Verizon N.Y., Inc.*, 14 N.Y.3d 751, 753, 925 N.E.2d 577, 577, 898 N.Y.S.2d 539, 539 (2010) (holding that the bomb blast film “significantly altered the configuration or composition of the structure by changing the way the lobby windows react to explosions, impacts and the elements”).

⁶ N.Y. LAB. LAW § 240(1) (McKinney 2013).

⁷ 91 N.Y.2d 457, 672 N.Y.S.2d 286 (1998).

⁸ *Id.* at 465, 672 N.Y.S.2d at 290.

⁹ *Id.*

¹⁰ 91 N.Y.2d 958, 672 N.Y.S.2d 840 (1998).

¹¹ *Id.* at 959, 672 N.Y.S.2d at 841.

¹² 110 A.D.3d 477, 973 N.Y.S.2d 114 (1st Dep't 2013).

¹³ *Id.* at 478, 973 N.Y.S.2d at 116. ¹⁴ 81 A.D.3d 1149, 916 N.Y.S.2d 656 (3d Dep't 2011). ¹⁵ See also *Tassone v. Mid-Valley Oil Co.*, 291 A.D.2d 623, 738 N.Y.S.2d 103 (3d Dep't 2002) (holding that mounting a satellite dish and running wire through a hole drilled in the roof was sufficient to constitute alteration).

¹⁶ 26 A.D.3d 896, 809 N.Y.S.2d 345 (4th Dep't 2006).

¹⁷ 16 A.D.3d 1037, 791 N.Y.S.2d 795 (4th Dep't 2005).

¹⁸ 44 A.D.3d 430, 843 N.Y.S.2d 237 (1st Dep't 2007).

¹⁹ 99 N.Y.2d 452, 758 N.Y.S.2d 267 (2003).

²⁰ 100 N.Y.2d 878, 768 N.Y.S.2d 178 (2003).

²¹ *Panek*, 99 N.Y.2d at 457, 758 N.Y.S.2d at 270.

²² *Id.* at 458, 758 N.Y.S.2d at 270.

²³ *Id.* Likewise, in *Sanatass v. Consolidated Investing Co.*, 10 N.Y.3d 333, 858 N.Y.S.2d 67 (2008), the Court found that installing an air conditioning unit by drilling holes and affixing metal rods to the ceiling easily qualified as altering the building.

²⁴ *Prats*, 100 N.Y.2d at 883, 768 N.Y.S.2d at 181.

²⁵ *Id.*

²⁶ See *Martinez v. City of New York*, 93 N.Y.2d 322, 690 N.Y.S.2d 524 (1999).

²⁷ *Prats*, 100 N.Y.2d at 881, 768 N.Y.S.2d at 180.

²⁸ 5 N.Y.3d 747, 800 N.Y.S.2d 866 (2005).

²⁹ *Id.* at 748, 800 N.Y.S.2d at 866. In *Belding*, the Court distinguished *Munoz* by reasoning that plaintiff's work installing the bomb blast film was a one-time permanent job that had more of a structural effect than changing a billboard advertisement.

³⁰ 105 A.D.3d 434, 963 N.Y.S.2d 35 (1st Dep't 2013).

³¹ 24 A.D.3d 234, 808 N.Y.S.2d 26 (1st Dep't 2005).

³² 297 A.D.2d 257, 746 N.Y.S.2d 484 (1st Dep't 2002).

³³ 38 A.D.3d 606, 832 N.Y.S.2d 86 (2d Dep't 2007).

³⁴ *Acosta v. Banco Popular*, 308 A.D.2d 48, 762 N.Y.S.2d 64 (1st Dep't 2003).

³⁵ *Id.* at 51, 762 N.Y.S.2d at 66. For two important Court of Appeals' decisions on the issue of routine maintenance, see *Smith v. Shell Oil Co.*, 85 N.Y.2d 1000, 630 N.Y.S.2d 962 (1995) and *Esposito v. New York City Industrial Development Agency*, 1 N.Y.3d 526, 770 N.Y.S.2d 682 (2003).