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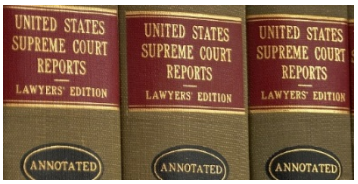

INTRODUCTION TO NEW YORK STATE LABOR LAW SECTION 200, 440(1), AND 241(6)

FACULTY

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Terrence T. Kossegi, Esq. is a senior trial attorney in the Queens Tort Division of the Law Department since 2002. In his career He handles all aspects of pre-trial, trial and post-trial municipal civil defense litigation. He is currently a Senior Counsel attorney trying municipal tort actions. His Trial experience includes over 40 verdicts in Supreme Court civil rights, trip/slip and fall, wrongful death, labor law, MVA and damages only cases. Also an in-house instructor for Labor Law, Ethics and National Institute of Trial Advocacy trial program for first and second year City attorneys. He has taken 4 verdicts in Labor Law cases and prepared a winning Labor Law Respondent's brief in the Second Department. In 2013 he received the Law Department's Edith Spivack Special Recognition Award. He also worked in the Law Department's Family Court division for two years trying Juvenile Delinquency cases as a Prosecutor from 2000-2002.

An Introduction to New York State Labor Law

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This course provides an overview of New York State Labor Law sections 200, 240(1), and 241(6) as it applies against the City of New York in construction personal injury cases. The Labor Law statutes, particularly Sections 240(1) and 241(6), were passed in the early 1900s when it became apparent to New York's legislature that construction companies, who would realize greater profits when they finished the job as quickly and cheaply as possible, would prioritize economic concerns over their workers' safety. The statutes were enacted to compel safe working conditions, and thus to reduce the incidence and severity of injury.

LABOR LAW ARTICLE 7 –General Provisions
§ 200 General duty to protect the health and safety of employees: enforcement

LABOR LAW

§200 **General duty to protect the health and safety of employees: Enforcement**

a. All places shall be constructed to provide reasonable and adequate protection
to all persons employed therein
or lawfully frequenting such places.

All machinery
shall be placed
to provide reasonable and adequate protection
to all such persons.

The board may make rules to carry into effect
the provisions of this section.

Synopsis:

1. Codification of common law.

2. Referred to as "safe place to work" statute.

3. Reasonable protection for those employed or lawfully frequenting area (for example, the delivery man).

4. Two different types of cases See PJI 2:216

a. Injuries arising from means and method of the work: The Court of Appeals has held that the owner or general contractor may be liable only if it exercised supervision or control of the work that led to the injury, O'Sullivan v IDI Const. Co., Inc., 7 NY3d 805 (2006)

b. Injury arises out of a defective condition on the premises, an owner may be held liable if it had actual or constructive knowledge of the unsafe condition or caused and created said condition even if it did not supervise or control the work. Chowdhury v. Rodriguez, 57 AD3d 121 (2d Dept. 2008)

5. Be aware that there are special sections of the Labor Law that apply to special types of work, window washers, high voltage workers, see Labor Law Article 7, 8, and 9.

Case law:

a. **Control→** Injuries arising from means and matter of the work: (usually in City cases only viable against the General Contractors or Sub-contractors) [1]

Lombardi v. Stout, 80 NY2d 290 (1992)

The court held that the landowner could not be held liable in the absence of supervisory control. The court rejected plaintiff's argument that the landowner had visited the work site prior to the accident and saw the unsecured ladder.

See also Tukshaitov v. Young Men's and Women's Hebrew Assn., 180 A.D.3d 1101 (2d Dep't 2020); Astrakhan v. City of New York, 184 A.D.3d 444 (1st Dep't 2020)

b. **Notice→** Injury arises out of a defective condition on the premises (most common type of cases against City as landowner)

[1] There is a current split in the departments in regards to "matter and means" labor law cases. In the First Department, an owner or General Contractor must "actually exercise control" over the means and methods of the work. *See, e.g.* Hughes v. Tishman Constr. Corp., 40 A.D.3d 305 (1st Dep't 2007). However, in the Second Department, an owner or GC may be liable if it had authority to control the means and methods of the work. *See* Ortega v. Puccia, 57 A.D.3d 54 (2d Dep't 2008).

Monroe v. City of New York, 67 AD2d 89 (2d Dept. 1970)

When an owner invites workmen onto his premises, he owes a duty to provide them with a safe place to work and, to be charged with negligence for breach of that duty, the owner must have notice, either actual or constructive, of the dangerous condition that caused the accident. Here, the defect that caused plaintiff's accident was a latent one which could not have been discovered by a reasonable inspection.

EXCEPT when the owner causes and creates the defective condition
Chowdhury v. Rodriguez, 57 AD3d 121 (2d Dept. 2008)

***Note: Similar to premises liability cases, a defendant claiming there was no constructive notice of a defect must present evidence showing the last time the location was cleaned and/or inspected. See Kolakowski v. 10839 Assoc., 185 A.D.3d 427 (1st Dep't 2020)**

c. Persons Covered by Statute

Maddox v. City of New York, 108 AD2d 42
(2d Dept. 1985)

Statute defines employee as mechanic, workingman or laborer working for another for hire. Elliot Maddox, a professional baseball player**,** can hardly be characterized in these terms and does not fall within the protected class of individuals.

d. Comparative negligence

Siragusa v. State, 117 AD2d 986 (4th Dept. 1986)

Claims pursuant to Labor Law §200 are subject to defense of comparative negligence.

e. Owner→ an owner is almost always an owner for labor law purposes

But See Albanese v. City of New York, 5 N.Y.3d 217 (2005)

An owner of real property is not always the owner for labor law purposes. Plaintiffs argued that the city was an owner because the accident occurred on an arterial highway. The Court of Appeals found that state construction was ongoing at the time of the worker's injury. While arterial highways by definition implicated both state and local interests, the city exercised no function comparable to planning and placing signage with respect to the scaffolding on the project. The State was in charge of the project, and the city had no say as to which contractor or consultants were hired. The city did not perform any of the work. The city's role was largely confined to its

regulatory responsibilities arising out of its work permits. That limited involvement could not subject the city to absolute liability under the New York Labor Law for an injury allegedly resulting from the height of a scaffold placed by state contractors.

City is not the owner when work is done on an arterial highway pursuant to state contract. Coelho v. City of New York, 176 A.D.3d 1162 (2d Dep't 2019). "…New York State Department of Transportation was in charge of the project…the City was not a party to the contract…the City did not perform any construction…and did not supervise, direct or control any aspect of the work."

LABOR LAW ARTICLE 10 – Building Construction, Demolition, and Repair Work
§ 240 Scaffolding and other devices for use of employees

§240 **Scaffolding & other devices for use of employees**

1. All contractors and owners and their agents
(except owners of one and two family dwellings…)

in erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure

shall furnish or erect, or cause to be furnished or erected

for performance of such labor,

scaffolding, hoists, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices.

which shall be constructed to give proper protection to person so employed.

No liability for engineer, architects, landscape architects who do not control work.

Historical Note:
Amendment substituted "All contractors and owners and their agents" for "A person employing or directing another to perform labor of any kind" and deleted "or directed" following person so employed."

1980 Amendment inserted "except owners of one and two family dwellings…"

Synopsis: Known as the Scaffolding Law, this section imposes a non-delegable duty on owners and contractors to provide safety devices to protect workers from gravity-related accidents. In order to prevail, plaintiff need only establish a breach of the statute and that the violation was the proximate cause of the injury. §240 is a self-executing statute because it is implemented without regard to external rules. This means it does not require that a standard or rule be violated in order to impose liability, unlike Labor Law §241(6). Comparative negligence is not a defense.

The only defenses are: (1) that the injured worker was "recalcitrant" in refusing to obey directions by his superiors regarding use of the readily available safety equipment provided or (2) the worker's negligent actions in the performance of the assigned duty was the sole proximate in causing the accident. Nevertheless, such defenses would fail if the safety equipment provided was inadequate or the worker was not made aware of its availability, regardless of the worker's conduct.

Notwithstanding the non-delegable nature of the duty, an owner/lessor may bargain with a contractor to provide a written contract of insurance for the benefit of the owner/lessee, at the contractor's expense. The City frequently does have the benefit of such contracts with its contractors. Under certain circumstances the owner/lessor will also have the benefit of a cross claim for "common law" indemnification when the contractor controls the means, methods and equipment for the performance of the labor. Generally the contract benefits should be alleged as a cross claim in the City's Answer.

Case law:

a. Legislative intent

Rocha v. State, 45 AD2d 633 (3rd Dept. 1974)

First case to construe 1969 amendment. Court held that intent of Legislature was for injured worker to recover if scaffold was defective and placed non-delegable duty on owners and general contractors.

b. NOT SO ABSOLUTE "Absolute liability"

Haimes v. New York Telephone, 46 NY2d 132 (1978)

Plaintiff, a self-employed, independent contractor, was killed when the ladder he was standing on fell. Plaintiff supplied all the equipment for the job, including the ladder.

Court of Appeals found absolute liability against the owner of building although owner exercised no control over work performed. The Court cited 1969 amendment as basis for its decision.

Compare Haimes, with Blake v. Neighborhood Housings Services of New York City, 1 N.Y.3d 280 (2003). The plaintiff, a self-employed contractor who supplied the means, method and equipment, an extension ladder, was injured when the ladder retracted. Motions for summary judgment were denied and the jury found the ladder was "so constructed and operated as to give proper protection to the plaintiff". Trial court refused to set aside the verdict and directed a verdict for defendant, which was affirmed. The Court of Appeals did not overrule Haimes, Bland v. Manocherian, 66 NY2d 452 (1985); Zimmer v. Chemung County Performing Arts, Inc., 65 NY2d 513 (1985), expressly, but decided the case on the grounds that the plaintiff's method of erecting the ladder was the sole proximate cause of the collapse of the extension ladder. The Court in Blake, held: "Throughout our section §240(1) jurisprudence we have stressed two points in applying the doctrine of strict (or absolute) liability. First, that liability is contingent on a statutory violation and proximate cause. (citation omitted) [S]econd, that when those elements are established, contributory negligence cannot defeat the plaintiff's claim (citations omitted)" 1 N.Y.3d 280 at p.287.

And more recently in Singh v. City of NewYork, 113 AD3d 605 (2d Dept. 2014) holding that the mere fact that plaintiff fell from a ladder does not, in and of itself, establish a violation of 240(1). Finding issues of fact as to whether the subject ladder was inadequately secured and whether the injured plaintiff's actions were the sole proximate cause of the accident. Citing Blake.

c. Legislative Purpose

Zimmer v. Chemung County Performing Arts, Inc., 65 NY2d 513 (1985)

Court imposed absolute liability on building owner, and several contractors for ironworker's injuries sustained when he fell while erecting steel skeleton. No safety devices were provided to ironworker at site and absence of safety device was proximate cause of injures

Court reviews Legislative history of §§ 240 and 241. Purpose of statue is to place responsibility for safety practices at building construction sites on the owner and general contractor, instead of on the workers who are not in a position to protect themselves.

d. Contributory fault or assumption of the risk

Crawford v. Leimzider, 100 AD2d 586 (2d Dept. 1984)

Plaintiff was hired by defendant contractor to install siding on a building. Plaintiff brought his own scaffolding, which collapsed while he was on it. The owners moved to amend their answer to assert a cross-claim against plaintiff for contributory negligence. The Court held that an injured workman's contributory fault or assumption of the risk may not be asserted as a defense to absolute liability of owner and general contractor.

e. Sole proximate cause

The Court in Blake also held: "Defendant is not liable under Labor Law § 240(1) where there is no evidence of a violation and the proof reveals that the plaintiff's own negligence was the sole proximate cause of the accident. … Conversely, if the plaintiff is solely to blame for the injury, it necessarily means that there has been no statutory violation." 1 N.Y.3d 280 at p. 290.

f. Extension of the Law

Smith v. Jesus People, 113 AD2d 980 (3rd Dept. 1985)

§ 240 extends to cover situation where defective scaffolding falls on worker and injures him. (Contradicts earlier caselaw.)

g. Structure

Lombardi v. Stout, 80 NY2d 290 (1992)

Held that a worker who fell from a tree during construction on property stated a cause of action under § 240(1) because tree removal was part of renovation.

h. **Construction Site**

Joblon v. Solow, 91 NY2d 457 (1998)

Court of Appeals dispensed with the requirement that the injured party be engaged in work on a construction site. Plaintiff was a staff electrician who was installing an electric wall clock in an office. The Court found that Labor Law §240 applied because plaintiff had been "altering" the building when he broke a hole in a concrete wall separating two rooms.

i. Burden of Proof

"Devices" are not defined in the section. Whether there is a device, which can be "so constructed as to give proper protection," is a question of fact for a jury. Proof by plaintiff that a device existed and collapsed or failed with out an explanation of why it collapsed or failed, gives rise to a presumption of defect and judgment as a matter of law without rebutting the presumption (see, Blake, supra, at page 289 and the cases cited therein.) It is the defendant's burden of proof [most likely by defendant's expert witness] to explain the collapse or failure in order to get the issue to the jury. The burden of proof in a Labor Law case is the same as a general civil case - preponderance of evidence.

d. **Repair vs. Routine Maintenance**

Repairs are afforded the protection of the statute, while routine maintenance is not. The Court of Appeals has distinguished routine maintenance from repairs covered under the statute and has held that individuals engaged in routine maintenance are not afforded the extraordinary protections of §240 (1). Esposito v. N.Y. City Indus. Dev. Agency, 1 NY 3d 526 (2003)

In distinguishing between what constitutes repair as opposed to routine maintenance, courts will consider such factors as 'whether the work in question was occasioned by an isolated event as opposed to a recurring condition'; whether the object being replaced was "a worn-out component" in something that was otherwise "operable"; and whether the device or component that was being fixed or replaced was intended to have a limited life span or to require periodic adjustment or replacement Soriano v. St. Mary's Indian Orthodox Church of Rockland, 118 AD3d 524 (1st Dept. 2014)

But see possible defenses:

a. Persons not covered

Whelen v. Warwick Valley Civic and Social Club,
63 AD2d 649 (2d Dept. 1978)

Plaintiff was a member of defendant organization who was injured in a fall from a ladder while working voluntarily on storage building owned by defendant. Court held volunteer not within class of persons protected by § 240(1).

b. Not gravity related

Rocovich v. Consolidated Edison, 78 NY2d 509 (1991)

Court looks at the nature of the hazard that the legislature intended to address. Cites language of § 240 (1) in determination that the contemplated hazards are those related to the effect of gravity.

In Narducci v. Manhasset Bay Assoc. 96 N.Y.2d 259 (2001) the Court of Appeals emphasized that "not every worker who falls at a construction site, and not any object that falls on a worker, gives rise to the extraordinary protections of Labor Law § 240(1)."

Masullo v. City of New York, 253 AD2d 541 (2d Dept. 1998)

The work in which plaintiff was involved was totally unrelated to the hazard, an uncovered manhole. The Court granted the City's motion for summary judgment.

Runner v. New York Stock Exchange 13 NY3d 599 (2009)

Employee was injured while acting as a counterweight to a 800-pound reel of wire that was being moved down a set of stairs. As the reel descended, it pulled plaintiff into a metal bar. Court of Appeals held that the applicability of Labor Law §240 (1) in a falling object case doesn't depend upon whether an object has hit a worker. The relevant inquiry is whether the harm flows directly from the application of the force of gravity to the object. The Court found a violation of Labor Law §240 (1) since the harm flowed directly from the application of gravity.

Melo v. Consolidated Edison Co. of NY, 246 AD2d 459 (1st Dept. 1998)
The statute does not impose liability even if the injury is caused by a malfunctioning hoist, or other enumerated safety devices, absent elevation differentials. Here, one end of the vertically positioned steel plate was resting on the ground when it toppled over, striking plaintiff's foot.

Melber v. 6333 Main Street, 91 NY2d 759 (1998)
The Court of Appeals held that plaintiff did not encounter a hazard contemplated by the statute. Plaintiff tripped over an electrical conduit while wearing 42 inch stilts.

c. Type of work performed

Martinez v. City of New York, 93 NY2d 323 (1999)
The Court of Appeals held that plaintiff's tasks were not within the types of work enumerated in the statute. Plaintiff's tasks were merely investigatory. Thus, plaintiff was not a person "employed" to carry out repairs within the meaning of the statute.

d. Material not being hoisted or secured at a height

Narducci v. Manhasset Bay Assoc., 96 NY2d 259 and Capparelli v. Zausmer Frisch Assoc., 96 NY2d 259 (2001)

In these two cases, decided together, the Court of Appeals found that a plaintiff must show that an object fell, while being hoisted or secured, because of the absence or inadequacy of a safety device of the kind enumerated in the statute.

e. Not the proximate cause i.e. accident did not happen due to an elevation related differential, Bernal v. City of New York, 217 AD2d 568 (2d Dept. 1995)

There exist questions of fact as to whether the violation of this statutory provision was a proximate cause of the plaintiff's injuries because conflicting testimony had been introduced as to how the accident happened.

Alava v. City of New York, 246 AD2d 614 (2d Dept. 1998)

Inconsistent versions of the happening of the accident given by the plaintiff at his deposition and in an affidavit raise an issue of fact as to his credibility.

See Blake v. Neighborhood Housings Services of New York City, 1 N.Y.3d 280 (2003) and its progeny.

f. Recalcitrant worker

In Cahill v. Triboro Bridge and Tunnel Authority, 4 N.Y.3d 35 (2004), the Court of Appeals found the plaintiff to have been a recalcitrant worker, that is, the plaintiff failed to establish that there was a violation of the statute and failed to demonstrate that his conduct was not the sole proximate cause of his injuries. The Court established a four-point test, defendant's burden of proof, necessary to shift the burden to plaintiff to prove a violation and rebut the claim of sole proximate cause.

4 point test from Cahill

1) Plaintiff had adequate safety devices available;
2) Plaintiff knew that the safety devices were available and he was expected to use them;
3) Plaintiff chose for no good reason not to use them; and
4) Had he not made that choice he would not have been injured;

Gallagher v. New York Post, 14 NY3d 83 (2010) Liability under §240 (1) does not attach when the safety devices that

plaintiff alleges were absent were readily available at the work site, albeit not in the immediate vicinity of the accident, and plaintiff knew he was expected to use them but for no good reason chose not to do so, causing an accident. In such cases, plaintiff's own conduct is the sole proximate cause of his injury. (In Gallagher, the Court denied summary judgment to the defendants since the devices were not readily available to the plaintiff)

Biaca-Neto v Boston Rd. II Hous. Dev. Fund Corp., 34 N.Y.3d 1166 (2020) Denying Defendant's summary judgment motion based on recalcitrant worker/sole proximate cause defense finding that the general contractor's standing order directing workers not to enter the building through the cut-outs is insufficient to grant summary judgment. With respect to sole proximate cause defense the Court held that, "a factfinder should determine whether plaintiff's statement that he 'wasn't supposed to pass through there' unambiguously establishes that he knew he was expected to use the safety devices."

g. Indemnification→Pass through liability

Guillory v. Nautilus Real Estate, Inc., 208 AD2d 336 (1st Dept. 1995) The owner did not have the authority to control or supervise the work, even though it knew about the dangerous debris and did not inform the contractor who was in control of the work. Thus, the owner's liability is vicarious and the owner may recover against the contractor who was the negligent party under the theory of implied indemnification.

h. Limitations on the right of indemnification – "grave injury"

Workers Compensation Law § 11. Alternative remedy.
The liability of an employer prescribed by the last preceding section [Workers Compensation Insurance Benefits] shall be exclusive and in place of any other liability whatsoever, to such employee, his or her personal representatives, spouse, parents, dependents, distributes, or any person otherwise entitled to recover damages, contribution or indemnity, at common law or otherwise, on account of such injury or death or liability arising therefrom, except that if an employer fails to secure the payment of compensation for his or her injured employees and their dependents as provided in section fifty of this chapter, an injured employee, or his or her legal representative in case of death results from the injury, may, at his or her option, elect to claim compensation under this chapter, or to maintain an action in the courts for damages on account of such injury; and in such an action it shall not be necessary to plead or prove freedom from contributory negligence nor may the defendant plead as a defense that the injury was caused by the negligence of a fellow servant nor that the employee assumed the risk of his or her employment, nor that the injury was due to the contributory negligence of the employee.

* *

For purposes of this section the terms "indemnity" and "contribution" shall not include a claim or cause of action for contribution or indemnification based upon a provision in a written contract entered into prior to the accident or occurrence by which the employer had expressly agreed to contribution to or indemnification of the claimant or person asserting the cause of action for the type of loss suffered.

An employer shall not be liable for contribution or indemnity to any third person based upon liability for injuries sustained by an employee acting within the scope of his or her employment for such employer unless such third person proves through competent medical evidence that such employee has sustained a "grave injury" which shall mean only one or more of the following: death, permanent and total loss of use or amputation of an arm, leg, hand or foot, loss of multiple fingers, loss of multiple toes, paraplegia or quadriplegia, total and permanent blindness, total and permanent deafness, loss of nose, loss of ear, permanent and severe facial disfigurement, loss of an index finger or an acquired injury to the brain caused by an external physical force resulting in permanent total disability. **(Remember this is only a defense against Common Law Indemnification)**

History: eff Sept 10, 1996 BEWARE OF THE APPLICATION OF PRIOR CASE LAW

Notes:

Section 1. Legislative intent. When New York's workers' compensation law was enacted in 1914 it signified the culmination of agreement between labor and management designed to provide timely payment of disability and medical benefits to injured workers at a reasonable cost to employers.

It is the intent of the legislature that the workers' compensation law be interpreted and implemented in the spirit in which it was first enacted so that a safe workplace is ensured, workers obtain necessary medical care benefits and compensation for workplace injuries, and employers obtain a degree of economic protection from devastating lawsuits. It is the specific intent of this legislature to enact a package of statutory provisions that are balanced and which seek to affirm the spirit of cooperation between labor and management that distinguished the workers' compensation law's enactment. It is the further intent of the legislature to create a system which protects injured workers and delivers wage replacement benefits in a fair, equitable and efficient manner, while reducing time-consuming bureaucratic delays, and repealing equitable share contribution (codified under Article 14 of CPLR) except in cases of grave injury.

LABOR LAW ARTICLE 10 - Building Construction, Demolition, and Repair Work
§ 241 Construction, excavation and demolition work

§ 241 **Construction, excavation and demolition work**

All contractors and owners
(except one and two family)
when constructing or demolishing buildings
or
doing any excavation in connection therewith
shall comply with:

1. If floors arched or filing of fireproof material, floors to be completed as building progresses

2. If not, under flooring shall be laid as each story progresses

3. If durable flooring not used, two stories below story worked on, shall be planked over

4. If floor beams of iron or steel, entire tier of iron or steel beams shall be planked over

5. If elevators, etc, used, openings in each floor shall be enclosed except two sides for taking off material and those sides shall have adjustable barrier

6. **All areas in which construction, excavation, demolition is being performed shall be so constructed for reasonable safety to persons employed or lawfully frequenting such places.**

7. Board of Standards & Appeals (now industrial board of appeals) may make rules to provide for protection for workmen and owners and constructors shall comply

Historical Note:

Prior to 1962

Subdivisions 1-5 requirements for floors 6 and 7 rules by Board of Standards & Appeals

Case law held that strict liability applied to 1-5, but 6 and 7 had same interpretation as § 200, common law standard of negligence.

In 1962

Section 241 was reduced to one paragraph sounding like § 200 and construed similarly to § 200.

In 1969

Section 241 revised and put in its present form (see p. 18)

Today 1-5, absolute liability: 7, similar to § 200

§ 241(6) is main source of Personal Injury Construction litigation including claims against the City

Synopsis: Subdivision 6 provides that **owners and general contractors have a non-delegable duty to provide reasonable protection for workers, regardless of control or notice of a dangerous condition.** The statute is not self-executing. It requires that a standard or rule promulgated under 12 NYCRR Part 23 be violated in order to impose liability. Comparative negligence is a defense and liability may be shifted to the responsible party by contractual or common law indemnification. Under Labor Law § 241(6) a standard or rule promulgated under 12 NYCRR Part 23 "the Industrial Code, must have been found to have been violated in order to impose liability. Violations of OSHA or PESH regulations cannot serve as a basis for liability.

Case law on § 241(6)

a. Buildings

Page v. State of New York, 73 AD2d 479, aff'd, 56 NY2d 605 (1982) Settled conflicting decisions from Second, Third, and Fourth Departments when held that Legislature did not intend to restrict the application of § 241 to work in connection with buildings.

b. Non-delegable duty

Allen v. Cloutier, 44 NY2d 290 (1978)

Court held that 1969 legislation fashions **non-delegable duty** on an owner or contractor for a breach of duties imposed by subdivisions 1 through 6 of §241 irrespective of their control or supervision of the construction site.

Court stated that while the duty imposed by section 241 may not be delegated, the burden may be shifted to the party actually responsible for the accident either by apportionment of damages under Dole v. Dow Chemical Co., 30 NY2d 143 (1972) or by contractual language requiring indemnification by injured worker's employer.

Long v. Forest-Fehlhaber, 55 NY2d 154 (1982)

Plaintiff, an experienced construction worker, tripped over exposed electrical conduit in pitch-black passageway. Court characterized Allen's construction of 241(6) as "overliteral" and stated that the proper meaning of the phrase "absolute liability" in this context was related to the non-delegable nature of the duty owed by the owner or contractor. Although this duty attaches irrespective of control or supervision of the work site, the Court found that common law standards of negligence apply to §241(6) because the violation here was one promulgated by the State Board of Standards and Appeals regarding sufficient illumination. Since a violation of administrative rules cannot rise to the level of negligence as a matter of law, comparative negligence was a permissible defense in such an action.

Rizzuto v. Wenger, 91 NY2d 343 (1998)

Court of Appeals reversed the Appellate Division and found that the general contractor should not be granted summary judgment by reason of its absence of control or lack of notice for an opportunity to cure the dangerous condition.

c. Owners of property

Morton v. State of New York, 15 NY3d 50 (2010)

Ownership of the premises where the accident occurred is not enough to impose liability on an owner. "[T]hat is, ownership is a necessary condition, but not a sufficient one." There must be some "nexus" between the property owner and the plaintiff. The "nexus" can come in a number of forms: a lease to the plaintiff's employer, an easement, a contract, or a permit to perform work on a roadway.

d. Construction, Demolition, or Excavation

Sarigul v. N.Y. Tel. Co., 4 AD3d 168 (1st Dept. 2004) and Koch v. E.C.H. Holding Corp., 248 AD2d 510 (2d Dept 1998)

Accidents arising from mere maintenance work in a non-construction, non-demolition, or non-excavation context are not protected. The accident must arise out of work connected to construction, demolition, or excavation.

e. New York Codes, Rules and Regulations as predicate

Ross v. Curtis – Palmer, 81 NY2d 494 (1993)

Court held that § 240(1) was intended for elevation-related hazards where accident was proximately caused by absence of adequate scaffold or other required safety device. In its analysis of § 241(6), the Court considered plaintiff's claim relying on rules or regulations in the New York Codes, Rules and Regulations and the general nature of the cited regulations (similar to common law). Court holds that to permit plaintiff to use broad, non-specific regulatory standard as predicate for action under § 241(6) would distort scheme of liability.

St. Louis v. Town of N. Elba, 16 NY3d 411 (2011)

Court held that "[t]he Industrial Code should be sensibly interpreted and applied to effectuate its purpose of protecting construction laborers against hazards in the work place [citations omitted]." Therefore, when determining whether a particular piece of equipment is covered by an Industrial Code provision, courts must "take into consideration the function of the piece of equipment, and not merely the name, when determining the applicability of a regulation.

Morris v. Pavarini Constr., 9 NY3d 47 (2007)

Court held that, "The interpretation of the regulation presents a question of law, but the meaning of specialized terms in such a regulation is a question on which a court must sometimes hear evidence before making its determination."

Rizzuto v. L.A. Wenger Contr. Co., 91 NY2d 343 (1998)

OSHA regulations cannot serve as a valid predicate for a Labor Law § 241(6) against an owner or general contractor.

f. Comparative negligence

Long v. Forest-Fehlhaber, 55 NY2d 154 (1982)

Plaintiff, an experienced construction worker, tripped over exposed electrical conduit in pitch-black passageway. Although a non-delegable duty attaches irrespective of control or supervision of the work site, the Court found that common law standards of negligence apply to §241(6) because the violation is one promulgated by the State Board of Standards and Appeals. Since a violation of administrative rules cannot rise to the level of negligence as a matter of law, comparative negligence is a permissible defense.

An Introduction to New York State Labor Law

Instructor: Terry Kossegi

Overview

- Labor Law 200
- Labor Law 240
- Labor Law 241(6)

Labor Law § 200

- General Duty to Protect the Health and Safety of Employees
  - All places shall be constructed to provide reasonable and adequate protection to all persons employed therein or lawfully frequenting such places.
  - All machinery shall be placed to provide reasonable and adequate protection to all such persons.

Labor Law § 200 (cont'd)

- Codification of common law.
- Referred to as "safe place to work" statute.
- Reasonable protection for those employed or lawfully frequenting area (for example, the delivery man).
- Be aware that there are special sections of the Labor Law that apply to special types of work, window washers, high voltage workers, see Labor Law Article 7, 8, and 9.

Types of Labor Law 200 Cases

- Means and Method of Work

- Defective condition on Premises

Means and Method of Work

- These cases involve situations where an employee was injured due to the nature of the work or the way the work was done
- Owner cannot be held liable in the absence of supervisory control
- 1st Dep't- owner or GC must exercise actual control
- 2d Dep't- owner may be liable if it had the authority to control work

Defective Condition on Premises

- Most common types of cases against City as landowner
- Analysis is similar to premises liability
  - Notice
  - Cause and Create

Miscellaneous

- Statute defines employee
- Comparative negligence is an available defense

Labor Law § 240

- "Scaffolding Law"
- "All contractors and owners and their agents (except owners of one and two family dwellings…) in erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for performance of such labor, scaffolding, hoists, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices, which shall be constructed to give proper protection to person so employed."

Labor Law § 240 (cont'd)

- Imposes non-delegable duty on owners and contractors to provide safety devices to protect workers from gravity-related accidents
- Plaintiff need only establish
  - Breach
  - Proximate cause
- NO COMPARATIVE NEGLIGENCE
- Repairs are covered; routine maintenance is not

Defenses under LL 200

- Injured person not covered under the statute
- Not “gravity related” incident
- Type of work not covered
- Material not being “hoisted” or “secured”
- Sole proximate cause defense
- Recalcitrant worker
- Indemnification- pass through liability

Recalcitrant Worker

- Cahill v. Triboro Bridge and Tunnel Authority, 4 N.Y.3d 35 (2004)
  - Four Point Test
    1. Plaintiff had adequate safety devices available
    2. Plaintiff knew that the safety devices were avaialable and he was expected to use them
    3. Plaintiff chose, for no good reason, not to use them; and
    4. Had he not made that choice, he would not have been injured

Indemnity

- Liability will pass through the owner, to the Contractor
- BUT SEE
  - Workers Compensation Law §11- “grave injury”

Labor Law § 241(6)

- All contractors and owners (except one and two family) when constructing or demolishing buildings or doing any excavation in connection therewith shall comply with:
  - 6. All areas in which construction, excavation, demolition is being performed shall be so constructed for reasonable safety to persons employed or lawfully frequenting such places

Labor Law § 241(6) (cont'd)

- Owners and GCs have non-delegable duty to provide reasonable protection for workers, regardless of control or notice
- Requires a standard or rule under 12 NYCRR Part 23 be violated in order to impose liability
- Comparative negligence IS a valid defense
- Accident must have arrived out of work connected to construction, demo, or excavation

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