

New York State Labor Law for Building Owners and Tenants

Property owners and their tenants often hire contractors to perform construction, renovation, maintenance and repair services. In New York, commercial property owners face certain legal risks as a result of two statutory provisions in the state's labor law:

- Section 240(1), known as the "Scaffold Law," makes owners liable for certain height-related injuries that occur during construction, demolition, or repair work .
- Section 241(6) makes owners liable for injuries that occur on construction sites because the contractor failed to follow applicable safety laws.

In this Risk Control Fact Sheet you'll find general recommendations that you can follow as a building or property owner to manage your liabilities under these laws.

Become Familiar with the Law

Although Sections 240 and 241 of the New York Labor Law create significant liability, they do not apply to all building owners, all contractor activities and all accident scenarios. For example, both sections of the law specifically exclude" owners of one- and two-family dwellings who contract for but do not direct or control work. .. " There has also been significant litigation concerning the scope and coverage of the laws.

You can view the New York Labor Law at the state Legislature's Web site:

<http://public.leginfo.state.ny.us/menuf.cgi>

Follow the links to: **Laws of New York > Labor > Article 10 > Section 240/Section 241.**

Hire Competent Contractors

Methodically evaluate the capabilities, capacity and competence of all potential contractors and service providers prior to hiring. Selecting the right contractor is essential to controlling risks, since the liability provisions only come into play when an accident occurs. Selecting contractors with strong safety records and procedures can reduce the likelihood of an accident.

When evaluating contractors, consider these factors: company experience; management skills; operational and hiring procedures; safety record; current projects and backlog; financial strength. Be certain to verify the accuracy of the information before you make your final selection.

Protect Yourself in the Contract

Whether you're a property owner or a tenant, use a written contract to allocate and transfer contractor-related risks. At a minimum, the contract should require that the service provider follow safe work practices and comply with applicable labor laws. Include an indemnification ("hold harmless") provision, and establish minimum insurance requirements for the contractor. A written indemnification provision is especially important because New York's workers compensation law specifically prohibits third-party recovery actions against employers for most worker injuries absent prior written indemnification.

If the contractor will be using subcontractors, hold these subcontractors to the same contractual requirements. Also, it is important that tenants, as well as any contractors hired by tenants, be held to the same contractual requirements. The contract should also require that the contractor's insurance be primary over any other valid and collectible insurance.

Have all contracts reviewed by competent legal counsel. The contract will be essential for determining obligations and liabilities should an injury occur. Legal review reduces the likelihood that a court will refuse to enforce a contract or contract term because it failed to comply with the minimum legal requirements for the state.

You can obtain sample wording for contracts from:

American Institute of Architects

<http://www.aia.org/documents/about/overview.asp>

1-800-AIA-3 837

Associated General Contractors of America

<http://www.agc.org/contractdocuments/>

(703) 548-3118

Require Evidence of Financial Responsibility

Again, as an owner or tenant you should require proof that the contractor has sufficient financial resources to satisfy any potential obligations that may occur. This is typically done by requiring the contractor to provide proof that they have the insurance required by the contract and that the insurance is in force. Common forms of proof are either certificates of insurance or copies of the insurance policies themselves. If you're a property owner, verify the policy information to make sure that it's accurate and acceptable.

Insurance coverages that the contractor has in place should include General Liability, Workers Compensation, Automobile and Umbrella. The limits of liability should be at least as much as those on your own insurance policies; and you should be named as an additional insured on the contractor's General Liability policy. Obtain qualified guidance from a professional insurance agent and legal counsel in specifying the coverages and limits to be in place, and in reviewing the contractor's insurance policies or certificates of insurance. The same financial responsibility requirements should be in place for tenants, as well as contractors hired by tenants.

Keep Complete Records

Maintain a file for each contractor and each tenant, containing all of the above-noted documents. Do not permit any contractor to perform service for your company or tenant unless their related documentation is current and complete. And maintain these documents for at least the longest statute of limitations or statute of repose that applies. Legal counsel can help you determine the applicable statutes of limitation and repose.

Be sure to store paper records in UL- Listed/FM -Approved fire-resistant cabinets. You should also back up electronic records periodically, with backup copies stored off-site.

Examples of Labor Law Claims

These situations from case files illustrate the need to have the above-noted controls in place at all times:

- A retail business that sells gifts and novelties hired a contractor to renovate their store. No written contract was in place with this contractor, and no certificate of insurance was obtained. One of the contractor's employees was working on a scaffold that was not provided with guardrails. Approximately one week prior to the accident, the store owner notified the contractor that the scaffold was not safe and that guardrails should be installed. Guardrails were never installed. The employee later fell 10 feet to the floor, sustaining a serious leg fracture. The accident was witnessed by an employee of the store owner. **Because of the lack of a written contract and certificate of insurance, the contractor's employee was able to submit a claim for \$495,000 against the store owner .**
- A wholesale bakery business hired a self-employed plumber to repair a leaking pipe on their loading dock. There was no written contract and the plumber had no insurance. Using the bakery's ladder, possibly to inspect the pipe, the plumber fell to the floor and sustained multiple leg fractures. The ladder allegedly had no shoes to prevent slippage; there were no known witnesses. **The lack of a written contract and of insurance enabled the contractor to submit a claim for \$730,000 against the bakery.**
- The owner of a five-story commercial building hired a contractor to renovate an office area. While a written purchase order was used, it did not contain an indemnification clause. The contractor, who did not have insurance, hired a day laborer "off the books." Working on an improperly erected scaffold owned and erected by the contractor, the contractor's employee lost his balance, fell six feet to the floor and fractured his foot. **Because there was no indemnification clause and no insurance~ the contractor's employee submitted a claim against the building owner for \$61 0~000.**

In Summary

Whenever you hire repair, maintenance or construction service providers you should institute the following management procedures:

1. Require each service provider involved to supply you with current certificate(s) of insurance, with appropriate limits of liability, for their General Liability, Workers Compensation, Automobile, and Umbrella coverages. In relation to their General Liability coverage, you should be named as an additional insured.
2. Require a written contract for work performed. The contract should indicate that the contractor's insurance is primary over any other valid and collectible insurance, and the contract should also include an appropriate indemnity or hold harmless clause.
3. Maintain adequate records for each service provider, containing the above-noted documents.
You should maintain these records for a minimum of seven to ten years after the completion of the contracted services.
4. No repair, maintenance or construction service providers should be permitted to perform services for you unless their required documentation is current and complete.
5. Qualified guidance is required from your professional insurance agent and your legal counsel in obtaining proof of insurance, determining necessary coverage limits and creating the contract mentioned above.

Parts of this fact sheet were adapted from material provided by the Engineering & Safety Service of the Insurance Services Office (ISO).