

NEWYORK LABOR LAW UPDATE

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NEW YORK LABOR LAW UPDATE

- PART I: Applicable Statutes- Labor Law Sections 200, 241(6) and 240
- PART II: Recent Appellate Division and Court of Appeals Cases

Part I: Applicable Statutes- Labor Law Sections 200, 241(6) and 240

1

Section 200-
Codification of
Common Law
Negligence.

2

Section 240- The
Scaffold Law

3

Section 241(6)-
Violations Based on
NYS Industrial
Code.

1. Applicable Statutes- Labor Law Section 200

- A. All places to which this chapter applies shall be so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein or lawfully frequenting such places.
- B. A codification of common law negligence principles
- C. Applies to more than just construction workers
- D. Two categories:
 - 1- defect in the premises
 - 2- defect in work/equipment.



- E. Comparative negligence is a defense



2. Applicable Statutes- Labor Law Section 240(1)

All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, in the 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 the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed.



2. Applicable Statutes- Labor Law Section 240(1)
 - A. Strict liability: no comparative fault and no Article 16 apportionment
 - B. One and two-family home exception
 - C. Accident must involve one of the protected activities
 - D. Work must be on a building or structure
 - E. Gravity-related risks

2. Applicable Statutes- Labor Law Section 240(1)

- A. Two broad categories: falling worker and falling objects
- B. But not all falling workers and not all falling objects
- C. Sole proximate cause- *Blake* decision: difficult to prove
- D. Recalcitrant worker- also difficult to prove



3. Applicable Statutes- Labor Law Section 241(6)

All areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, equipped, guarded, arranged, operated and conducted as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places. The commissioner may make rules to carry into effect the provisions of this subdivision, and the owners and contractors and their agents for such work, except owners of one and two-family dwellings who contract for but do not direct or control the work, shall comply therewith.



3. Applicable Statutes- Labor Law Section 241(6)

- A. Non-delegable duty. Liability of owner and GC not based on fault but on existence of regulatory violations.
- B. The Industrial Code- specific sections must be pleaded and proven. Not all sections establish liability- general v. specific.
- C. Comparative negligence is a defense.



PART II: Twelve Recent Cases

Some things to consider:

1. Who was involved?
2. Where did it happen?
3. What were they working on?
4. What were they doing?
5. What were they working with (or without)?
6. Who was telling them what to do?
7. Who had the authority to tell them what to do?
8. What could possibly go wrong here?

COURT OF APPEALS

Biaca-Neto v Boston Rd. II Hous. Dev. Fund Corp., 2020 NY Slip Op 01116 [Court of Appeals, 2020]



Plaintiff climbed on side of scaffold, to gain access to interior of building.

- Access to building in this fashion was expressly prohibited.
- Plaintiff gave several different versions of the accident- ER records, WC report, statements to other workers.
- Important finding- no defects in the scaffold.
- LL 240 cause of action reinstated by Court of Appeals!!
- No proof that prohibition against going through window cuts was expressly told to plaintiff
- Vigorous dissent.

APPELLATE DIVISION, THIRD DEPARTMENT

Smith v State of NY, ___AD3d___, 2020 NY Slip Op 01414 [2020]



Plaintiff's decedent fell off platform that was being disassembled under bridge that was being painted. Two cables snapped, causing platform to cave in and collapse. Decedent fell into the water and drowned.

- Decedent was not wearing available life jacket. Wearing harness and lanyard but was not tied off to available anchorage points. Defendant argued sole proximate cause.
- Lower court granted summary judgment to plaintiff on LL 240 cause of action.
- Affirmed. AD3rd said failure to use available safety equipment could not have been SOLE proximate cause- "precipitating event was the failure of the platform itself"

APPELLATE DIVISION, FIRST DEPARTMENT

Gallegos v. Bridge Land Vestry, LLC 2020 WL 6787505



Plaintiff was injured when a stone slab weighing more than half a ton fell on his legs. The stone slab was being hoisted by a crane, when the stone came loose from the slings and straps that were being used to secure the load.

- Plaintiff's motion for SJ on LL 240 was denied because plaintiff did not establish that the stone fell because of absence or inadequacy of a safety device.
- Reversed! AD 1st said that either sling itself or way it was used failed to provide proper protection.
- SJ motion made before plaintiff's EBT!
- AD 1st said NOT premature

APPELLATE DIVISION, FIRST DEPARTMENT

Touray v HFZ 11 Beach St. LLC, ___AD3d___, 2020 NY Slip Op 01029 [2020]

Plaintiff using A-frame cart to move 16 cement boards weighing 100lbs each; wheel on cart got stuck; plaintiff and co-workers pushed/pulled on cart to free it; unsecured load of cement boards fell off of cart and on to plaintiff's leg.

- The cement boards fell about 12-15". Was that a "physically significant elevation differential" under *Runner* case?
- Does the weight of the boards matter?
- What about the fact that the boards were not secured?
- SJ to plaintiff granted by the lower court...and affirmed by the AD1st.





APPELLATE DIVISION, FIRST DEPARTMENT

**Sinera v. Embassy House et al, 132 N.Y.S.3d 609
(November, 2020)**

Plaintiff fell off of a ladder that was missing one of its “feet”. This was one of several ladders available. Plaintiff said that he noticed that the ladder was “wobbly” when he first started using it. Plaintiff moved for SJ on LL 240

- Lower court granted the motion; AD 1st affirmed
- No evidence that plaintiff *knew* that he selected a defective ladder. [Also, defective ladder should not have remained available to plaintiff and others at the site.]
- Continued use of ladder after noticing that it was “wobbly” was, at most, comparative negligence, and not a defense to LL 240 claim.
- How do we *know* that the ladder was missing one of its feet?
- Early investigation- find the ladder!!



APPELLATE DIVISION, FIRST DEPARTMENT

**Sotarriba v 346 W. 17th St. LLC, 179 A.D.3d 599
(January, 2020)**

Plaintiff claimed that he fell off of a ladder. Defendants claimed plaintiff fell while trying to climb over a barricade blocking access to an unprotected stairwell opening. Plaintiff moved for SJ on LL 240

- Lower court granted the motion; AD 1st affirmed
- Even under defendant's version of accident, there was still a LL 240 violation. Decision to ignore the barricade was comparative negligence and not a defense to the LL 240 claim.
- Court also reinstated LL 241(6) claim- found that IC Section 23-1.7(b)(1) was applicable: "hazardous opening".
- Also held no grave injury, so C/L claims v. employer dismissed.



APPELLATE DIVISION, FIRST DEPARTMENT

**Kehoe v 61 Broadway Owner LLC, 186 A.D.3d 1143
(September, 2020)**

Plaintiff, elevator repair man, claimed that he fell off of permanently affixed ladder in elevator shaft because the ladder “vibrated”. Defendants claimed such a ladder is not subject to LL 240; also claimed routine maintenance, not construction work and that plaintiff was sole proximate cause.

- AD 1st held ladder was subject to LL 240, but question of fact whether there was a violation.
- Also held this was construction work and not routine maintenance
- Also held that failure to use harness was not sole proximate cause of accident- at most, comparative negligence
- No evidence that plaintiff knew he was supposed to use a harness, or that he ignored “specific instructions” to do so.



APPELLATE DIVISION, SECOND DEPARTMENT

**Campanello v Cinquemani, 117 N.Y.S.3d 262
(January, 2020)**

Plaintiff hired by defendant homeowner's cousin to do tree removal at an owner-occupied single-family residence in Suffolk County. Plaintiff using a chain saw to remove branches from a downed tree; co-worker using excavator to move another downed tree, the branches of which allegedly struck plaintiff.

- Lower court dismissed the Labor Law claims, based upon the single-family home exception.
- AD 2nd upheld the dismissal, saying that Labor Law exception applied.
- Visiting the work site, providing plans for the area to be worked on, making general decisions, and reviewing the progress of the work were "no more extensive than would be expected of the ordinary homeowner".



APPELLATE DIVISION, SECOND DEPARTMENT

**Von Hegel v Brixmor Sunshine Sq., LLC, 180 A.D.3d 727
(February, 2020)**

Plaintiff working on the renovation of a Ruby Tuesday restaurant in Medford, L.I. Ladder that he was working on was leaned up against a wall; feet of the ladder slipped out from underneath the plaintiff. Lower court granted plaintiff's motion for SJ.

- Ad 2nd affirmed: "Whether a device provides proper protection is a question of fact, **except when the device collapses, moves, falls, or otherwise fails to support the plaintiff and his or her materials**"
- Availability of other ladders, through plaintiff's employer, did not take case out of LL 240.
- Absence of evidence that ladder was defective did not mean plaintiff was sole proximate cause.

APPELLATE DIVISION, FIRST DEPARTMENT

Gutierrez v 610 Lexington Prop., LLC, 179 A.D.3d 513, January, 2020



Plaintiff was being passed a 200-pound concrete form from co-workers on a scaffold above the plaintiff. Plaintiff was unable to control the form's descent, which caused plaintiff to fall backwards and sustain injury. Defendant's version: plaintiff was actually being handed a much lighter piece of plywood which had a protruding nail that scratched plaintiff and caused him to lose balance.

- AD 1st said BOTH versions of accident are covered by LL 240.
- Cited *Runner* case: risk arising from a physically significant elevation differential.
- "A co-worker is not a safety device contemplated by the statute."

APPELLATE DIVISION, FIRST DEPARTMENT

Lind v Tishman Constr. Corp. of NY,
AD3d, 2020 NY Slip Op 01026 [2020]

Plaintiff on an “articulating lift” at WTC site, backing down a ramp. Hit the brakes but lift skidded due to “slippery sludge” on the ramp. Lift crashed into a curb.

- Was Tishman a proper LL 240 defendant?
- Was the articulating lift a “safety device” under LL 240?
- Was this a gravity-related accident, or was it caused by the “slippery sludge” on the ramp?
- AD1st found that the lift was a safety device that failed to protect the plaintiff from an elevation-related risk, so SJ granted to plaintiff on the LL 240 cause of action



APPELLATE DIVISION, FIRST DEPARTMENT (October, 2020)

Mikeshina v. Tishman Construction & Atlantic Scaffolding

\$28 million scaffolding system at the Javits Center, built by Atlantic for Tishman. Plaintiff, a union painter, was walking up set of scaffold stairs- lifeline got caught on end of handrail on scaffold stairs and plaintiff fell on to steps of scaffold stairs.

- LL 240 dismissed- fell ON to the scaffold, not off of it.
- LL 241(6) dismissed- no applicable Industrial Code sections.
- LL 200 and C/L negligence both dismissed- no defect found in the scaffold
- OSHA provision: "The ends of stair-rail systems and handrails shall be constructed so that they do not constitute a projection hazard."
- OSHA violation will NOT support a LL 241(6) claim- has to be an IC Section.
- But an OSHA violation can be some evidence of negligence, on LL 200 and C/L negligence claims.
- Affirmed by 1st Department



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THANK YOU FOR ATTENDING

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