



# A PATH FORWARD: RECENT LABOR LAW RULINGS PROVIDE SIGNS OF HOPE FOR OWNERS, GENERAL CONTRACTORS

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Several recent appellate court rulings in New York could indicate a shift in how courts are viewing cases involving Section 240 of [New York State Labor Law](#), also known as Scaffold Law.

As all New York property owners and general contractors know, Scaffold Law has presented a wide range of legal, insurance and risk management challenges over the past several years. While originally passed to protect construction workers from serious falls, falling objects and other elevation-related accidents, the Scaffold Law evolved into a major area of risk and has led to several multi-million-dollar lawsuits.

The Scaffold Law imposes strict liability on property owners and general contractors in the event of an elevation-related accident on a job site. Even if the worker was partially at fault for the accident, property owners and contractors can find themselves being held liable for damages.

Until recently, property owners and general contractors had little legal recourse when targeted by a lawsuit. This led to increases in defense costs and multi-million-dollar claims as well as increased insurance costs that drive up overall construction costs in New York. These additional expenses elevate the total construction costs of a given project by as much as [10% on average](#), according to a report from the General Contractors Association of New York. However, recent rulings are suggesting this could be changing.

## FAVORABLE RECENT CASE RULINGS

Last year, the New York Court of Appeals issued [three significant decisions](#) in cases involving plaintiffs falling off ladders. The courts' language in these decisions indicate that New York courts should use a broader analysis when assessing whether an actual Labor Law violation has occurred during these types of accidents and consider whether the plaintiff could be at partial fault for the accident by not performing certain safety checks. Further, these rulings indicate courts must remember that a plaintiff's fall at a workplace does not automatically mean a violation of Labor Law 240(1) has occurred.



This represents a significant shift from prior rulings where courts almost automatically ruled in favor of plaintiffs whenever an elevation-related accident occurred. Based on the language of these recent rulings, it appears courts are now interested in pursuing more vigorous investigations into what safety precautions were taken, the events leading up to the accident, and ultimately which party is responsible for the accident.

## DEFENSE IS THE BEST OFFENSE

These rulings could open the door for property owners and general contractors to better protect themselves from these lawsuits. Given this environment, it's now more important than ever for property owners and general contractors to implement additional risk management measures to protect workers on the job. When it comes to NY Labor Law, defense is the best offense. Taking these steps today could save property owners and general contractors millions of dollars in claims, legal fees and settlements down the line should an unfortunate accident take place on their job site.

Here are a few steps property owners and general contractors can take today:

- 1. Create a robust safety program** and regularly update it with the latest safety guidance. These programs should include clear language around elevation risks and how workers can best protect themselves from a potential accident.
- 2. Implement and exhaustively train** staff about the safety program. Creating a plan is just step one. Safety teams must regularly train staff on safety best practices and constantly remind workers on how to protect themselves.
- 3. Create an incident response plan** before an accident takes place. When an accident happens, general contractors and property owners do not want to be caught flat footed. They must have a clear plan in place so that they can hit the ground running to collect evidence, secure witness statements, and help workers get the healthcare they need. Evidence and witness statements will be essential should an accident ever result in a lawsuit.
- 4. Build a strong return to work (RTW) program** that helps workers recover quickly. It's important for anyone impacted to feel appreciated and that their health is being prioritized. This means communicating regularly, ensuring they have access to care, and perhaps putting them back to work in office or administrative roles while their injuries heal.
- 5. Sign risk-transfer agreements** to contractually transfer potential Scaffold Law liability to subcontractors. By writing appropriate language into their contracts, including hold-harmless provisions and broad indemnity agreements, property owners and contractors can shield themselves from liability in the event of an accident.

## SEEK OUT THE RIGHT GUIDANCE

While the legal environment around New York Scaffold Law continues to unfold, elevation-related accidents can still present general contractors and property owners with serious legal headaches. It remains crucial these parties seek guidance from an insurance broker well-versed with the exposures, claims and legal precedent surrounding the complex Scaffold Law. A knowledgeable broker can ensure property owners and general contractors have the proper support they need before and after a potential accident occurs.

With a comprehensive plan in place and expert team resources, property owners and general contractors can be better prepared for accidents that result in lawsuits, thus protecting themselves from a potentially devastating financial situation.

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