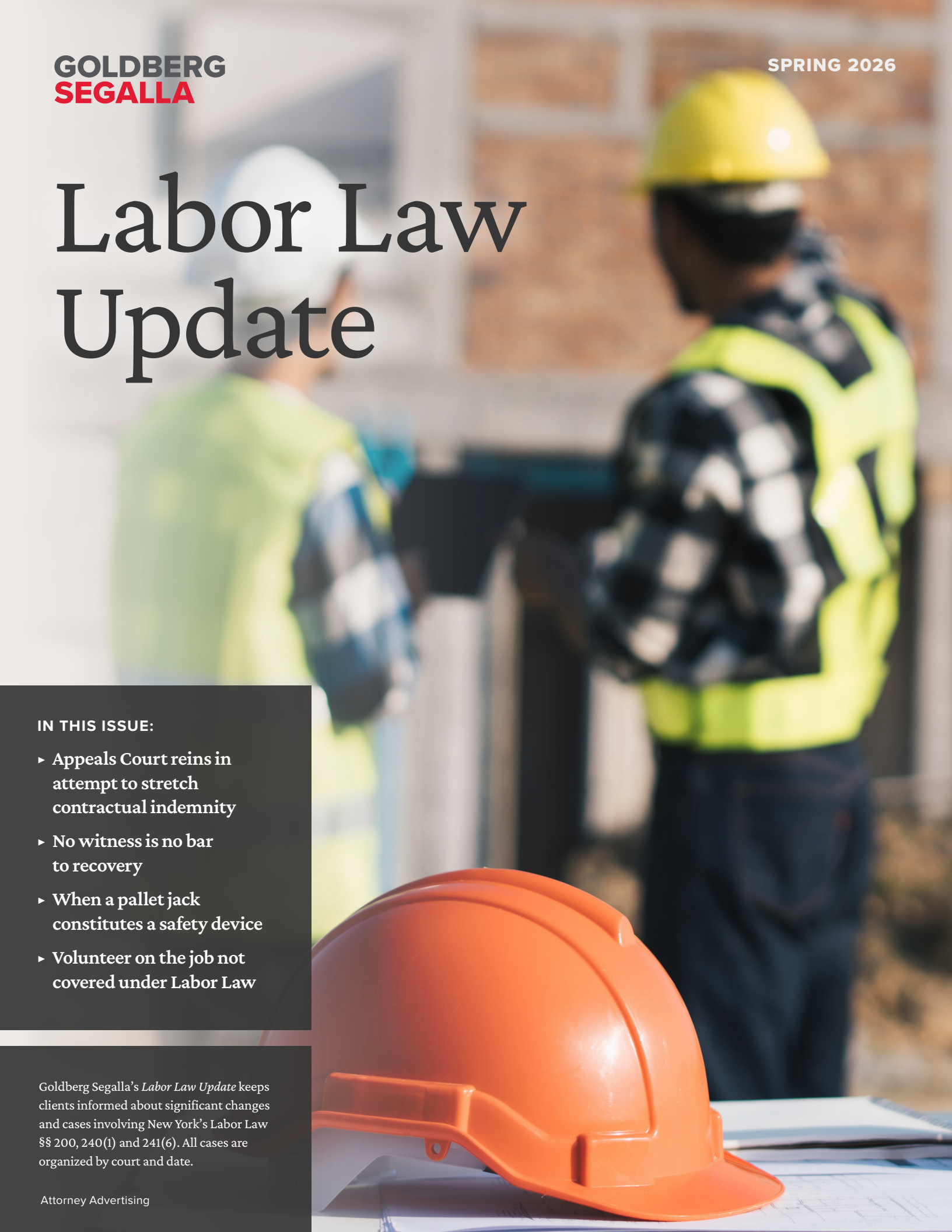
GOLDBERG SEGALLA

SPRING 2026

Labor Law Update



IN THIS ISSUE:

Goldberg Segalla's *Labor Law Update* keeps clients informed about significant changes and cases involving New York's Labor Law §§ 200, 240(1) and 241(6). All cases are organized by court and date.

EDITOR'S NOTE

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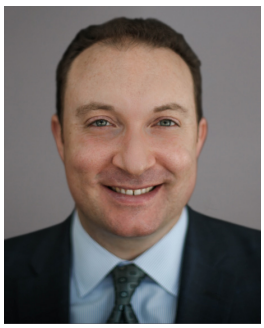

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The first half of 2026 brings with it both clarity and complexity across New York's Labor Law landscape. Courts continue to wrestle with the outer limits of statutory protections while the New York Legislature enacts procedural reforms that materially change how construction-related litigation must be strategized and defended. As ever, our goal is to distill these developments into practical guidance for claims professionals, carriers, risk managers, and counsel navigating an increasingly demanding environment.

One of the most significant decisions this term is the Court of Appeals' opinion in *Dibrino v. Rockefeller Center North, Inc.*[1], which reinforces long-standing limits on contractual indemnification and the narrow contours of the *Espinal*[2] exceptions. The court declined invitations to expand both doctrines, holding that a subcontractor cannot be forced to indemnify for an accident bearing only an attenuated connection to its "performance of the work" as defined in the subcontract. DAL Electrical Corporation's unattended and allegedly defective ladder – though used by the plaintiff – did not trigger any of the agreement's indemnity provisions because the plaintiff's conduct fell wholly outside DAL's contractual scope. Likewise, the court reaffirmed that leaving equipment accessible, even unsafely, does not constitute "launching a force or instrument of harm" absent an affirmative act of wrongdoing. The decision reflects a shift toward tighter, contract-anchored limits on indemnity, confirming that courts will not allow parties to stretch risk-transfer clauses beyond their defined scope.

Just as the judiciary has been refining substantive doctrines, the legislature has been reshaping the procedural structure of third-party practice itself. The AVOID Act, originally enacted in December 2025, sought to curb strategic delay tactics by imposing cascading impleader deadlines. The Act's original version threatened to be too unwieldy in practice. Recognizing the need for clarity, the legislature amended the statute on February 13, 2026, replacing the multi-tier timeline with a single, bright-line 90-day deadline to implead third-party defendants following service of an answer. The amendment also restores an important measure of judicial discretion: post-deadline impleader is now permitted upon a showing of good cause or where the interests of justice demand it, and post note-of-issue impleader is allowed on the same grounds. Crucially, the statute preserves a separate 90-day window for impleader of the plaintiff's employer tied to the discovery of the identity of the plaintiff's employer or of a "grave injury," and continues to bar consolidation of severed third-party actions. These changes provide much-needed procedural coherence, but they also leave no room for delay. Early investigation, rapid liability analysis, and coordinated approval processes are more essential than ever. More information can be found on our website via **this link**.

Taken together, *Dibrino* and the revised AVOID Act reflect a legal environment that is evolving in ways both favorable and cautionary for owners, contractors, carriers, and counsel. Courts are scrutinizing the text of agreements with renewed rigor, making careful drafting and disciplined contract management essential. At the same time, statutory procedure now demands front-loaded evaluation of potential impleaders – long before discovery clarifies the contours of exposure. Our team has already integrated these developments into our rapid-response protocols, training modules, and claim-evaluation tools, and we encourage all construction-industry stakeholders to do the same.

As always, we hope you find this Spring 2026 edition to be a practical, forward-looking resource. Should you have any questions regarding the cases or topics discussed, or if you would like support implementing new timeline controls and risk-transfer strategies, please do not hesitate to contact us.

1 *Dibrino v. Rockefeller Ctr. N., Inc.,* 2025 N.Y. Slip Op. 07077, 2025 N.Y. LEXIS 2158 (N.Y. Dec. 18, 2025)

2 *Espinal v. Melville Snow Contractors, Inc.,* 98 N.Y.2d 136, 773 N.E.2d 485, 746 N.Y.S.2d 120 (N.Y. 2002)

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TOPICS: *Contractual indemnification, Espinal exceptions*

DIBRINO V. ROCKEFELLER CTR. N., INC.

2025 NY Slip Op 07077
December 18, 2025

The plaintiff was injured while working at a construction site when he fell from an allegedly defective ladder that wobbled. At the time of the accident, the plaintiff was using a ladder owned by another contractor at the jobsite, DAL Electrical Corporation (DAL), rather than a ladder provided by his employer. The trial court granted the plaintiff's summary judgment motion under Labor Law § 240(1). The owner and general contractor at the jobsite were also granted summary judgment on their cross claims for contractual indemnification claims against DAL. The First Department modified the trial court's order by denying the owner/general contractor's cross motion for summary judgment on the contractual indemnification claim, and they were then granted leave to appeal to the Court of Appeals.

The Court of Appeals agreed with the First Department that none of the contractual indemnification provisions required DAL to indemnify the owner/general contractor because the nexus between DAL's performance of the work and plaintiff's use of the ladder were too attenuated and beyond the scope of DAL's contractual obligations. The Court of Appeals examined the language of the indemnification provisions, noting that indemnification obligation was triggered when the claim "result[s] from" as a "result of" or "arises out of" DAL's contractually defined work. The Court of Appeals held that the contract made clear that the claims must arise from DAL's work, and the plaintiff's use of the ladder did not fall within the scope of the work defined in the contract.

The Court of Appeals further held that DAL did not have a duty of care to the plaintiff as it was an independent contractor and there were no exceptions to the general rule that a contract alone generally would not give rise to a duty to third parties. Further, none of the exceptions to the general rule, as delineated in *Espinal v. Melville Snow Contractors,* 98 N.Y.2d 136 (2002) applied. Specifically, DAL did not (1) launch a force or instrument of harm, (2) plaintiff did not detrimentally rely on DAL's continued performance of its duties, and (3) DAL did not entirely displace another party's duty to maintain the premises safely.

PRACTICE NOTE: Contractual indemnification provisions – even when broadly written – remain limited by the contract's defined scope of "work" and will be construed narrowly to avoid surplusage. Unauthorized use of another subcontractor's equipment does not create a sufficient nexus to trigger indemnity, nor does leaving defective equipment unattended constitute "launching a force or instrument of harm" under *Espinal*. This case reins in attempts to stretch contractual indemnity to incidents only tangentially related to a subcontractor's work.

TOPICS: *Labor Law § 241(6), 12 NYCRR § 23-1.7(e)(1) and (2), Integral to the work*

PEREIRA V. 504 W 34, LLC

240 A.D.3d 417
July 1, 2025

The plaintiff, a concrete worker, alleged that as he walked across the site of a construction project on his way to do work on the story below, he tripped on a floor laid with a net or wire mesh used to internally reinforce poured and hardened concrete. According to the plaintiff, the area of wire mesh that he tripped on was upright and sticking out because it was not properly tied down. The defendants moved for summary judgment to dismiss plaintiff's Labor Law § 241(6) claim predicated on Industrial Code § 23-1.7(e)(1) (Tripping and other hazards/passageways). The First Department held that, even though the plaintiff encountered the wire mesh on his way to his work area on the eighth floor, he did not trip in a "passageway" within the meaning of § 23-1.7(e)(1), but rather, in an open working area as defined in § 23-1.7(e)(2). The First Department further held that the Supreme Court properly declined to dismiss the plaintiff's Labor Law § 241(6) claim predicated on Industrial Code § 23-1.7(e)(2) (Tripping and other hazards/working areas) because the plaintiff raised an issue of fact as to whether the upright wire mesh was a "sharp projection" in that it was "clearly defined or distinct." The plaintiff also raised an issue of fact as to whether the wire mesh, if inadequately secured or covered as alleged by the plaintiff, was integral to the building's structural concrete work.

PRACTICE NOTE: The plaintiff raised material issues of fact to defeat the defendants' summary judgment motion, as to his Labor Law § 241(6) claim, as predicated on § 23-1.7(e), where the plaintiff tripped in a "work area" and the wire mesh over which the plaintiff tripped was a "sharp projection." It is important to consider these factors when evaluating a claim under Industrial Code § 23-1.7(e).

TOPICS: *Labor Law §§ 200, 240(1) and 241(6), Statutory agent, Enumerated activity*

RODRIGUEZ V. RIVERSIDE CTR. SITE 5 OWNER LLC

240 A.D.3d 452
July 17, 2025

The plaintiff was injured while working as a delivery truck driver for the third-party defendant. The plaintiff had just completed delivering tiles for other employees to install when he stepped and fell into a two-foot by three-foot hole near a temporary loading ramp. Labor Law § 240(1) protects persons engaged "In the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure." The court held that the task the plaintiff was performing at the time of the accident is not dispositive of whether they were engaged in a protected activity for the purposes of this statute. Rather, the inquiry includes whether the plaintiff's employer was contracted to perform the kind of work enumerated in the statute and whether the plaintiff was performing work "necessary and incidental to" a protected activity. The court found that delivering and unloading tile at a job site was "necessary and incidental to the protected activity" and, therefore, the plaintiff was protected by Labor Law § 240(1). The court further found that the electrical contractor was entitled to summary judgment on all Labor Law claims because it was not a statutory agent of an owner or general contractor. "To be treated as a statutory agent the subcontractor must have been delegated the supervision and control either over the specific work area involved or the work which gave rise to the injury. If the subcontractor's area of authority is over a different portion of the work or a different area than the one in which the plaintiff was injured, there can be no liability under this theory." The court found that the electrical contractor's work was limited to providing the installation of temporary lighting and did not encompass tile work or maintaining the temporary ramp or surrounding areas where the accident occurred.

PRACTICE NOTE: A plaintiff's work is covered by the Labor Law if it is "necessary and incidental to" a protected activity. A subcontractor is a statutory agent of an owner or general contractor and a proper Labor Law defendant only if the subcontractor supervised and controlled either the specific work area where the accident occurred or the plaintiff's work that gave rise to the injury.

TOPICS: *Labor Law § 240(1), Falling object, De minimis height differential*

PALUMBO V. CITIGROUP TECH., INC.

240 A.D.3d 455
July 24, 2025

The plaintiff alleged he was injured while standing on a stack of two pallets approximately 10 ½ to 20 in. high to use an elevated wet saw, when his foot broke through one of the wooden slats of the top pallet, causing him to lose his balance and fall to the ground. The First Department modified the lower court's decision to grant the plaintiff's partial summary judgment on the Labor Law § 240 (1) claim and deny the defendants' motion for summary judgment on that cause of action because the evidence showed the plaintiff's fall was the result of exposure to an elevation-related hazard – the stack of pallets used to facilitate the plaintiff's access to the wet saw, which itself had been placed at an elevation because of a modification made to address a tenant complaint about water run-offs from the wet saw. The First Department expressly indicated that "[t]here is no bright-line minimum height differential that determines whether an elevation hazard exists" and references several decisions where violations of Labor Law § 240 (1) predicated upon falls from similar heights were found. Furthermore, the defendant's senior superintendent admitted the makeshift pallet structure was an "improper work platform" that was "against the most basic safety rules."

PRACTICE NOTE: Decisions concerning what constitutes a physically significant vs. a de minimus height differential are fact specific and are continuing to evolve.

TOPICS: *Labor Law § 240(1), Safety equipment, Scaffold, Prima facie case*

NAVARRO V. JOY CONSTRUCTION CORP.

241 A.D.3d 446
August 28, 2025

The plaintiff was injured when he fell from a partially constructed hanging scaffold as it was being hoisted. The First Department affirmed the trial court's decision to grant the plaintiff's motion for summary judgment on his Labor Law § 240(1) claim, finding that he established a prima facie entitlement to summary judgment with his testimony that he was not given a proper anchorage point to tie off his safety vest, and the defendant failed to submit evidence that a roof-affixed lifeline would not have prevented his fall. The First Department also found that the defendant did not submit credible evidence as to the necessity of hoisting the suspended scaffold to complete the project, or that the plaintiff's testimony was inconsistent so as to raise an issue of credibility or support a finding that he was the sole proximate cause of his accident.

PRACTICE NOTE: To defeat a plaintiff's motion for summary judgment, it is not enough to show that the defendant provided safety equipment. You must also submit evidence that safety equipment could be used effectively and/or that the plaintiff was the sole proximate cause of their injuries.

TOPICS: *Labor Law § 240(1), Falling object, De minimis height differential, Labor Law § 241(6), Industrial Code § 23-1.28(b)*

HERNANDEZ V. PORT AUTH. OF N.Y. & N.J.

241 A.D.3d 1069
September 4, 2025

A sheet metal worker was injured when he attempted to move a dolly loaded with sheets of Masonite that weighed approximately 1200 pounds away from the area where he needed to work. The plaintiff moved the dolly only a short distance when it suddenly stopped and tipped over onto plaintiff. Photographs taken of the cart's wheels showed they were cracked and had an embedded nail. The First Department held that the plaintiff was properly granted partial summary judgment on the Labor Law § 240 (1) claim. Although the elevation difference was relatively short, the weight of the Masonite brought the accident within the protections of the statute. In light of that determination, the contentions regarding the plaintiff's Labor Law § 241(6) claim were rendered academic. However, the First Department agreed with the motion court that summary judgment was properly granted in the plaintiff's favor based on Industrial Code § 23-1.28(b), based on photographs of the wheels and the testimony of multiple witnesses from different trades which established the dolly was in a defective condition in violation of Industrial Code § 23-1.28(b).

PRACTICE NOTE: Even though a height differential may be small, an improperly secured load – particularly one comprised of heavy objects – can still lead to Labor Law liability.

TOPICS: *Labor Law § 240(1), Force of gravity, Labor Law § 241(6), Ramps, 12 NYCRR § 23-1.22(b)(3), Common law negligence, Contractual indemnification*

SANTIAGO V. GENTING N.Y. LLC

241 A.D.3d 1097
September 11, 2025

The plaintiff and his coworkers were using two dollies to move a crate of glass panels towards a hoist elevator. The entrance to the elevator was not level to the ground and a ramp was used to span the gap, resulting in a one-inch lip where the ramp contacted the ground. As the plaintiff and his coworkers attempted to wheel the crate over the lip, the ramp wobbled, and the glass panels inside the crate shifted towards the plaintiff, striking his right hand inside of the crate and breaking the crate. The First Department held that the Supreme Court properly denied the plaintiff's motion for summary judgment, per Labor Law § 240(1), and properly granted the defendants' motion for summary judgment to dismiss the plaintiff's Labor Law § 240(1) claim. The First Department held that the plaintiff's accident did not "flow from the application of the force of gravity," but was instead the result of the glass panel's lateral movement inside the crate. The First Department further held that the Supreme Court properly denied the defendants' motion for summary judgment as to the plaintiff's Labor Law § 241(6) claim, predicated on Industrial Code § 23-1.22(b)(3) (structural runways, ramps and platforms) because there were issues of fact as to whether the wobbling described by the plaintiff was the kind of "excessive spring or deflection" proscribed by the regulation, and whether any such "excessive spring or deflection" was a proximate cause of the plaintiff's accident. The defendant/third-party defendant was not entitled to summary judgment dismissing the plaintiff's common law negligence claim against it and the plaintiff was not entitled to summary judgment as to the defendant/third-party defendant's liability on that claim because there were issues of fact as to whether it launched a force or instrument of harm that caused the plaintiff's injury. Issues of fact existed as to whether the crate that the plaintiff was moving was defective and the way the crate was packed caused the plaintiff's injuries. Summary judgment on the defendants' contractual indemnification claim against the defendant/third-party defendant was denied as there were issues of fact regarding the liability of the defendants and the defendant/third-party defendant.

PRACTICE NOTE: Labor Law § 240(1) will not apply when a plaintiff's injury or accident did not flow from the application of the force of gravity, but was instead the result of a material's lateral movement inside a crate.

TOPICS: *Safety device, Accident reports and medical records*

GATES V. NEW YORK UNIV.

241 A.D.3d 1122
September 23, 2025

The plaintiff was injured when he was caused to fall onto a piece of steel conduit as a result of the ladder upon which he was descending wobbled. Although the court found there was nothing inherently defective in the ladder, it nevertheless affirmed an award of summary judgment to the plaintiff on his Labor Law § 240(1) claim noting that the ladder was an inappropriate safety device given the configuration of the job site and known depressions and

uneven conditions on the floor. The court further rejected the defendants' attempts to use accident reports and medical records to create an issue of fact based upon inconsistent statements, finding that while the statements may have been incomplete, they were not inconsistent.

PRACTICE NOTE: Safety devices must be evaluated both in terms of their own structural integrity as well as the appropriateness of the device given the physical conditions and layout of the job site.

TOPICS: *Labor Law § 240(1), Scaffold, Contractual indemnification*

RAMOS V. FORD FOUND

242 A.D.3d 429
October 2, 2025

The plaintiff was struck by a foot brace component to a scaffold that fell several stories from where a co-worker was dismantling the upper levels of the scaffold. The plaintiff established his prima facie entitlement to summary judgment on his Labor Law § 240(1) claim as the gravitational force generated by the falling object warranted the use of a safety device enumerated in the statute, such as overhead protection. The First Department also found that the defendants should have been granted conditional contractual indemnification against the plaintiff's employer, as there was some evidence in the record to suggest potential involvement of the general contractor in the directive to dismantle the scaffold.

PRACTICE NOTE: Labor Law § 240(1) imposes strict liability against owners and general contractors. To defeat a summary judgment motion, the defendant must show that a proper safety device was provided for the work being performed. Additionally, in order to successfully transfer risk on a contractual indemnification claim, the moving party must be free from negligence as per General Obligations Law § 5-322.1.

TOPICS: *Labor Law § 241(6), Industrial Code violation §§ 23-1.5(c)(3) and 23-1.12(c)(1), Actual notice*

RODRIGUEZ V. FGI GROUP

242 A.D.3d 431
October 2, 2025

The plaintiff was injured while using a handheld demolition saw that did not have a self-adjusting guard over the blade. The plaintiff claimed that his handheld saw continued to run even after he released the saw's power trigger, and as a result, caused a laceration to his knee. The First Department found that the plaintiff's motion for summary judgment on Labor Law § 241(6) should have been granted. The court found that an authenticated photograph of the demolition saw and the expert affidavit submitted by the plaintiff established that the saw lacked a self-adjusting guard in violation of Industrial Code §§ 23-1.2(c)(1) and 23-1.5(c)(3).

PRACTICE NOTE: The plaintiff was granted summary judgment prior to the time third-party discovery was complete. The court noted that the plaintiff was entitled to summary judgment on the 241(6) claim, even though no defendants had been deposed, noting the time period between the time that the plaintiff's action commenced January 2021, when the plaintiff was deposed in September 2023, and the time that the plaintiff moved for summary judgment in May 2024. The court noted the defendants' "fail[ed] to use the time and the opportunity they had to obtain whatever third-party testimony needed in order to oppose plaintiff's motion." This is an important reminder, particularly with the signing of the AVOID Act and stricter deadlines for commencing third-party actions.

TOPICS: *Labor Law §§ 240(1) and 241(6), Ladder, Gravity-related risk*

EISNER V. POSILLICO CIV., INC.

242 A.D.3d 449
October 7, 2025

The plaintiff was injured when he fell from a ladder while performing statutorily covered construction work. The Appellate Division unanimously upheld the Supreme Court's decision granting summary judgment to the plaintiff on his Labor Law §§ 240(1) and

241(6) claims. The plaintiff's testimony established prima facie that the defendants failed to provide a safety device to ensure that the ladder would be stable while the plaintiff used it to perform his work and the First Department indicated that the plaintiff was not required to show that the ladder itself was defective. The court further held that the plaintiff's Labor Law § 241(6) claim was academic in light of the granting of partial summary judgment on his § 240(1) claim.

PRACTICE NOTE: A plaintiff's negligence is not a defense to Labor Law § 240(1). However, if the evidence establishes that a plaintiff was provided with an adequate safety device and failed to use it, or that he used a safety device improperly, the court may find a question of fact sufficient to defeat the plaintiff's summary judgment motion.

TOPICS: *Labor Law § 200, Labor Law § 241(6), Trip and fall*

MURILLO V. DOWNTOWN NYC OWNER LLC

242 A.D.3d 488
October 9, 2025

The plaintiff was injured on a worksite when he tripped while pushing a container filled with debris. The First Department held that the trial court properly dismissed the plaintiff's Labor Law § 241(6) claim as the plaintiff cannot recover for being injured by the hazardous condition that he was tasked with remedying. The court also held that trial court correctly dismissed the plaintiff's common law negligence and Labor Law § 200 claim, as the plaintiff's nonparty employer was solely responsible for cleaning the debris, thus the defendants had no liability for injuries arising from the performance of that work.

PRACTICE NOTE: Plaintiffs may not recover for injuries that arise from the hazards they are specifically tasked with remedying. Construction site owners and operators should have contracts that clearly allocate responsibility to establish when a duty to remedy hazardous conditions does not apply.

TOPICS: *Labor Law § 240(1), Sole proximate cause, Statutory agent, Labor Law § 200, Common law negligence*

SIMON V. 4 WORLD TRADE CTR. LLC

242 A.D.3d 530
October 14, 2025

The plaintiff, a laborer on a renovation project, was injured when large, thick glass panes were compacted in the back of a waste removal truck, which created a build-up of kinetic energy and caused some glass to burst out of the truck, striking and toppling other large glass panes that rested on a nearby A-frame cart behind which the plaintiff had crouched for protection. The First Department held that the Supreme Court properly denied the plaintiff's motion for partial summary judgment as to liability on his Labor Law § 240(1) claim because triable issues of fact existed as to whether his injuries resulted from a failure to employ appropriate protective devices as required by statute. The defendants' argument that the plaintiff's own conduct in placing himself behind the A-frame cart was the sole proximate cause of his accident was unavailing. The plaintiff's conduct merely presented issues of comparative negligence which is not a defense where a Labor Law § 240(1) violation proximately caused the plaintiff's injury. The plaintiff's Labor Law § 200 and common law negligence claims against the owner-defendants should have been dismissed given the absence of evidence that they supervised or controlled the means and methods of the plaintiff's work.

PRACTICE NOTE: A plaintiff's conduct that presents issues of comparative negligence is not a defense to a Labor Law § 240(1) claim. A defendant is not a statutory agent under Labor Law § 200 where there is no evidence that authority was delegated to control a plaintiff's work. Labor Law § 200 and common law negligence claims against an owner defendant will be dismissed where there is an absence of evidence that they supervised or controlled the means and methods of the plaintiff's injury-causing work.

TOPICS: *Labor Law § 240(1), Foreseeable risk, Falling object*

MOISES-ORTIZ V. FDB ACQUISITION LLC

242 A.D.3d 550
October 16, 2025

A construction worker at an excavation site was struck by a piece of concrete that fell from an adjacent building's foundation. The First Department modified the trial court decision and granted the plaintiff's motion for summary judgment on his Labor Law § 240(1) claim, finding that the incident was foreseeable and thus summary judgment was appropriate. The court found that the plaintiff established that his injuries were caused by a lack of safety devices to secure the foundation of the adjacent building, and that the defendant failed to brace or shore up the poor condition of the concrete. The First Department also found that the *Misseritti v. Mark IV Constr. Co.* decision was distinguishable as this case involved an excavated site which put the foundation at an elevated position and required that the foundation be secured to prevent it from falling.

PRACTICE NOTE: Excavation work that puts the site below the grade of adjacent structures must ensure workers are protected from potential risks that the excavation may cause.

TOPICS: *Labor Law § 241(6), Labor Law § 200, Industrial Code violations*

LEMA V. 1148 CORP.

242 A.D.3d 579
October 21, 2025

The plaintiff was performing stripping and repaneling work in an elevator cab when he was injured in a flashfire triggered by a spark from an overheating lacquer spray compressor. The First Department affirmed the trial court's ruling that granted the plaintiff partial summary judgment on the Labor Law § 241(6) claim, finding that Industrial Code § 23-1.7(g) applied since the plaintiff was using flammable solvents in a confined, unventilated space – activity which drew complaints from tenants over the smell and necessitated testing of the air space each day the solvents were used. Additionally, the court found the plaintiff established

that the defendant violated Industrial Code § 12-1.7(a) because evidence established the proximity of the faulty compressor to the elevator cabs was a proximate cause of his burn injuries. The court also held that the trial court properly denied the defendant's motion for summary judgment of the plaintiff's common law negligence and Labor Law § 200 claims as triable issues of fact existed as to whether the defendant directly supervised or controlled the means and methods of the injury-producing work.

PRACTICE NOTE: Working with flammable materials in confined or poorly ventilated spaces presents a risk for liability under Industrial Code § 23-1.7(g). Site owners, managers, and contractors should ensure proper air testing and provide ventilation. Additionally, non-structural work such as painting and refinishing can constitute protected work under Labor Law § 241(6).

TOPICS: *Labor Law § 240(1), Scaffold, Recalcitrant worker, Labor Law § 200, Common law negligence, Contractual indemnification*

PERALTA V. HUNTER ROBERTS CONSTR. GROUP LLC

242 A.D.3d 646
October 28, 2025

A carpenter was injured while working at a construction site framing new apartment buildings when the scaffolding he was working on collapsed underneath him, and he fell approximately five feet to the concrete floor. Through his testimony and the Incident Report which stated the temporary wood scaffolding he was working on collapsed underneath him, the plaintiff established prima facie entitlement to summary judgment on his Labor Law § 240(1) claim. The defendants' reliance on the recalcitrant worker defense was misplaced because that defense requires showing that the plaintiff refused to use a safety device which was provided to him and that the scaffolding, if properly constructed, constituted adequate protection. The defendants' motion to dismiss the plaintiff's common law negligence and Labor Law § 200 claims should have been granted because the defendants did not control the means and methods of the plaintiff's work. The plaintiff testified that his employer told him what to erect and what equipment to use. The defendants were also entitled to summary judgment on their contractual indemnification claim against a third-party defendant. Although the third-party defendant's primary insurer accepted the defendants' claim and was providing coverage, the third-party defendant was also required to designate the defendants as additional insureds on an excess policy that would be "primary and non-contributory," which the third-party defendant failed to do.

PRACTICE NOTE: When a plaintiff uses a makeshift scaffold, he or she may be entitled to summary judgment under Labor Law § 240(1) if no other appropriate safety device was provided onsite. Additionally, where a contract requires a subcontractor to designate certain parties as additional insureds on an excess policy that would be "primary and non-contributory," but failed to obtain this endorsement in the policy, the aggrieved parties can be entitled to contractual indemnification for amounts outside the subcontractor's primary policy limit.

TOPICS: *Labor Law § 240(1), Fall from a ladder*

PILAPANTA V. HUDSON 888 OWNER, LLC

242 A.D.3d 673
October 30, 2025

The plaintiff alleges that he was drilling metal framing material into the ceiling, with both of his feet on the fourth step of an A-frame ladder, when he felt the ladder suddenly move and fall for an unknown reason, causing him to fall with it. The First Department reversed the Supreme Court's order, denying the plaintiff's motion for partial summary judgment on his Labor Law § 240(1) claim. The First Department noted that the plaintiff testified the ladder was locked and stable, but suddenly moved for no apparent reason, causing him to fall off the ladder and that this raised the presumption of a Labor Law § 240(1) violation. The plaintiff's medical records did not contradict the plaintiff's consistent testimony that he fell because the ladder suddenly moved. The plaintiff's supervisor's testimony that the ladder was still standing when he arrived at the scene does not undermine the plaintiff's proof that the ladder shifted unexpectedly or that it was an inadequate safety device for the task at hand.

PRACTICE NOTE: The courts routinely grant summary judgment under Labor Law § 240(1) where a plaintiff claims a ladder shifts or moves for an unknown reason. It is important to show that the work being performed by the plaintiff could be done safely by using a ladder, or to show that other adequate safety devices were available to the plaintiff and he chose not to use them despite instruction to use the alternative devices.

TOPICS: *Labor Law § 240(1), Summary judgment*

ROSARIO V. GENTRY TENANTS CO-OP

242 A.D.3d 677
October 30, 2025

The plaintiff claimed he was injured while transporting a hot water tank that weighed from 300 to 500 pounds up a short set of stairs using a hand truck. Further, the plaintiff alleged that a coworker who was helping to transport the hot water tank cut his hand on the hot water tank as he tried to pull the hand truck up the steps, causing that worker to release the handle of the hand truck, which in turn caused the water tank to fall on the plaintiff. Other coworkers that were assisting with the transport of the hot water tank testified that they could not recall any such event or that the plaintiff merely lost his footing before the water tank was righted. These conflicting witness accounts, including an issue of witness credibility arising out of one man's testimony that the plaintiff offered him money to support his version of the events, warranted denial of the plaintiff's motion for summary judgment. The court held that it was impossible to rule as a matter of law that the hot water tank was improperly secured or that the water tank falling on the plaintiff was proximately caused by a gravitational force due to the contrasting versions of the events testified to by the various witnesses.

PRACTICE NOTE: A plaintiff in the Labor Law § 240(1) case is not entitled to a judgment on liability where there are conflicting versions of how the accident occurred and where there are material issues of witness credibility. A court will generally not determine issues of credibility on a summary judgment motion and will find that there is a question of fact.

TOPICS: *Labor Law § 240(1), Labor Law § 241(6), Default judgment, Meritorious defense, Scaffold ladder, Improper ladder placement, Law office failure*

CANALES DIAZ V. CITY OF NEW YORK

243 A.D.3d 403
November 6, 2025

The defendants moved to vacate a default judgment that had granted the plaintiff's partial summary judgment under Labor Law §§ 240(1) and 241(6). The defendants' counsel asserted that her failure to oppose the motion stemmed from a sudden family medical emergency requiring immediate travel abroad. The court accepted this as a reasonable excuse amounting to law office failure. However, the motion to vacate failed because the defendants did not present a meritorious defense to the Labor Law § 240(1) claim. The plaintiff's evidence – which included a worker affidavit, expert affidavit, and post-accident photographs – was found to establish that the plaintiff fell from a scaffold ladder that was not clamped to the scaffold platform, was placed improperly behind a windowsill, and was too short to permit safe descent. The supervisor's notarized statement offered by the defendants failed to rebut or meaningfully contest any of these conditions and did not challenge the credibility of the plaintiff's account.

PRACTICE NOTE: A party seeking to vacate a default must show both a reasonable excuse and a meritorious defense. In a Labor Law § 240(1) case a court may find no meritorious defense where the record shows improper ladder placement, lack of securement, or a ladder too short for the task.

TOPICS: *Labor Law § 240(1), Sole proximate cause*

DASILVA V. SUPER P57, LLC

243 A.D.3d 469
November 18, 2025

The plaintiff fell when an unsecured plank suddenly shifted and tipped, causing him to drop approximately three to four-and-a-half feet onto a metal awning below. The First Department determined that this was not a de minimis height and Labor Law § 240(1) applied. The court further held that the plaintiff established a violation of the statute because the fall-prevention system in use was improperly designed since there were no tie-off points located at least two feet above the plank where the plaintiff was positioned, and the restraint system in place failed to prevent him from forcefully striking the awning beneath the makeshift platform. The First Department rejected the defendants' arguments that the plaintiff was the sole proximate cause of his injuries. The defendants contended that the plaintiff was reckless in moving about the plank, did not tie down the plank with available clamps and/or ropes located in a shanty, and did not utilize a scissor lift that was on the worksite. The defendants offered no evidence to show the plaintiff deliberately disobeyed a direct instruction to use the clamps/tie-downs that were in the shanty, which was conduct that must be shown to support a recalcitrant worker defense. The First Department also justified its holding by pointing to the lack of evidence in the record, including from the defendants' expert, to show that a scissor lift would have allowed workers to safely perform their work. Further, the existence of multiple safety device shortcomings that led to the plaintiff's accident logically barred any argument that the plaintiff was the sole proximate cause of his injury.

PRACTICE NOTE: Issues of fact as to whether a plaintiff was the sole proximate cause of his accident can preclude summary judgment as to Labor Law § 240(1). To establish this defense, a defendant must establish all elements of an affirmative defense of sole proximate cause, including showing that an adequate safety device was available onsite, that the plaintiff was aware of the location of the safety device, that the device was easily accessible to the plaintiff, and that the plaintiff was aware that he should have been using that safety device.

TOPICS: *Labor Law § 240(1), Fall on stairs, Gravity-related risk*

HEALY V. TRINITY HUDSON HOLDINGS

243 A.D.3d 474
November 18, 2025

The Appellate Division reversed the Supreme Court's decision and held the defendants established prima facie entitlement to summary judgment dismissal of the plaintiff's Labor Law § 240(1) claim. The plaintiff used a ladder to work on the ceiling above a platform in a meeting room. The platform had two access points – a ramp on one side and a two-step staircase on the opposite side. After he completed his work, the plaintiff safely descended the ladder and stepped onto the surface of the platform. Then, as he descended the two-step staircase, he missed a step and fell. There is no Labor Law § 240(1) liability where the plaintiff's injuries are unrelated to the failure of a safety device, such as a ladder, to protect the plaintiff from a gravity-related hazard.

PRACTICE NOTE: A plaintiff's fall on a staircase does not provide a basis for a Labor Law § 240(1) claim. There is no liability pursuant to Labor Law § 240(1) when a worker's injuries are not related to the failure of a safety device, such as a ladder.

TOPICS: *Labor Law § 240(1), Ladder, Prima facie case*

MOLINA V. CHATHAM TOWERS INC.

243 A.D.3d 482
November 18, 2025

The plaintiff was a construction worker that was injured after falling from an unsecured A-frame ladder that he was standing on to remove insulation covering from ceiling pipes. The First Department reversed the trial court's decision and granted the plaintiff's motion for summary judgment on their Labor Law § 240(1) claim. The court found that the plaintiff submitted prima facie evidence that his injuries were proximately caused by a violation of Labor Law § 240(1) because the defendant failed to provide a safety device to secure the ladder. The defendant failed to raise a triable issue of fact in opposition as the supervisor's testimony did not contradict the plaintiff's testimony or call his credibility into question, and the fact that there were no witnesses to the accident did not bar the plaintiff from recovery.

PRACTICE NOTE: In Labor Law § 240(1) actions, an unsecured ladder that shifts and causes plaintiff to fall is prima facie evidence of a statutory violation and does not require a finding that the ladder was defective. A lack of witnesses to the accident does not bar recovery, the defendant must

present evidence that the plaintiff's testimony is not credible.

TOPICS: *Labor Law § 241(6), Tripping and other hazards, Industrial Code § 23-1.7(e)(1) and (2)*

O'BRIEN V. TECTONIC BLDRS. INC.

244 A.D.3d 421
December 2, 2025

The plaintiff tripped on the front edge of a makeshift ramp used by workers as a passageway from a storage space to the retail space under renovation. The ramp was damaged a day prior to plaintiff's accident when a heavy mechanical lift was moved over it, which caused the nose of the ramp at its lower end to be lifted two to three inches off the cement floor. The First Department reversed the lower court's decision, holding the plaintiff's motion for partial summary judgment on his Labor Law § 241(6) claim should have been granted. The appellate court held that the hazard was a proximate cause of the plaintiff's injury and that the ramp at issue constituted a passageway under Industrial Code § 23-1.7(e)(1), as well as a working area under § 23-1.7(e)(2). Additionally, the two- to three-inch raised nose of the damaged ramp amounted to an "obstruction or condition which could cause tripping" under Section 23-1.7(e)(1), as well as a "sharp projection" within the meaning of Section 23-1.7(e)(2), as the projection hazard was clearly defined and distinct from the surrounding floor surface.

PRACTICE NOTE: In a Labor Law § 241(6) claim, the plaintiff must plead and prove a violation of a sufficiently specific Industrial Code provision.

TOPICS: *Labor Law § 240(1), Labor Law § 241(6), Labor Law § 200, Industrial Code, Supervision and control, Contractual indemnification*

BORDONARO V. E.C. PROVINI CO., INC.

244 A.D.3d 472
December 9, 2025

The plaintiff was a carpenter who was also serving as a foreman when he was injured while unloading a 1000-pound cabinet from a truck using a pallet jack. The cabinet's dimensions approximated the size of the truck's liftgate, which was four feet above street level. The plaintiff requested a forklift for the task, but the request was denied. As he attempted to maneuver the cabinet, it "got away," pushing him and causing him to fall from the liftgate to the street below. The First Department held that triable issues of fact existed under Labor Law § 240(1), finding that a jury could determine whether the pallet jack was an inadequate safety device for maneuvering such a large, heavy cabinet on an elevated platform. The court dismissed the plaintiff's Labor Law § 241(6) claims, finding no evidence that the pallet jack violated the Industrial Code provisions cited. It also dismissed the Labor Law § 200 and common-law negligence claims against most defendants because there was no evidence of supervision, control, or an unsafe premises condition. The exception was for the defendant who denied the plaintiff's request for a forklift and who provided on-site supervision, which raised triable issues as to § 200 liability.

PRACTICE NOTE: A pallet jack may constitute a safety device within the meaning of Labor Law § 240(1) when used on an elevated platform. Where the device is arguably inadequate for the task, the question is usually one for a jury.

TOPICS: *Labor Law § 240(1), Falling object, Negligence triggers*

GARCIA V. 100 CHURCH FEE OWNER, LLC

244 A.D.3d 480
December 9, 2025

The plaintiff, a laborer, was building a scaffold inside an elevator shaft at the basement floor level when he was struck by a welding clamp that was dropped from the eighth floor. The First Department affirmed the award of summary judgment to plaintiff on his Labor Law § 240(1) claims, finding that the plaintiff submitted evidence that the welding clamp was an object that required securing and that the absence of adequate safety devices to protect him from falling objects proximately caused his injuries. The court further directed that the plaintiff's Labor Law § 200 claim should have been dismissed against the property owner as the evidence established the plaintiff's injuries arose solely from the means and methods of the work, and also established that the property owner did not coordinate, control or supervise the work. Finally, the court found that summary judgment on the defendants' claims for common law and contractual indemnity were properly denied where issues of fact existed with regard to individual entities' negligence and a finding of negligence was required in order to trigger the indemnity obligation.

PRACTICE NOTE: When litigating indemnity provisions in construction contracts, it is critical to pay close attention not just to the existence of a potential obligation, but the precise language triggering a party's duty to defend and indemnify another entity.

TOPICS: *Labor Law § 241(6), Industrial Code § 23, Comparative negligence*

MATHER V. HFZ KIK 30TH ST. OWNER LLC

244 A.D.3d 539
December 11, 2025

The plaintiff was injured when an excavator pushing a dumpster without a rig caused the dumpster to slide into him and pin him between it and another dumpster. The First Department affirmed the trial court's decision granting the plaintiff's motion for partial summary judgment, finding that it was undisputed that the excavator operator violated Industrial Code § 23-9.4(e) by not using a rig to secure the dumpster to the excavator. The court rejected the defendant's argument that the plaintiff walking between the dumpsters constituted comparative negligence and would bar summary judgment. The plaintiff 's testimony, corroborated by video and photographic evidence, established that this was the only way he could stay within the operator's line of sight. Additionally, even if the plaintiff was partially at fault, it would not bar him from entitlement to summary judgment as comparative negligence is not a defense to Labor Law § 241(6) liability.

PRACTICE NOTE: Failure to properly secure a load being moved with heavy machinery constitutes a violation of Industrial Code § 23-9.4(e). The plaintiff's comparative negligence is not a defense.

TOPICS: *Special employee, Integral to the work defense*

CEJA V. POSILLICO CIV., INC.

244 A.D.3d 514
December 11, 2025

The plaintiff, a laborer, tripped and fell on a one- to two-foot square piece of asphalt as he moved from an excavation trench to an equipment truck. The First Department affirmed the dismissal of the plaintiff's Labor Law claims against the gas line subcontractor finding that, pursuant to clear contractual agreements, a separate mechanical contractor had actually employed the plaintiff but surrendered control over its workers, and that the gas line contractor assumed supervision and control, rendering the plaintiff a special employee subject to the exclusivity provisions of workers' compensation law. The court further found that questions of fact existed concerning the plaintiff's Labor Law § 241(6) claims and the defendants' integral to the work defense, specifically whether the asphalt debris could have been mitigated by defendants without making the injury-producing work impossible to perform, as well as with regard to whether the path on which the plaintiff tripped constituted a passageway within the meaning of the Industrial Code, as certain elements of the job site otherwise restricted the plaintiff's movement between the trench and the truck.

PRACTICE NOTE: Early investigation into direct control and supervision of work is critical in order to determine whether special employee defenses can be successfully advanced, which can be successful even where evidence establishes actual employment by a separate entity.

TOPICS: *Labor Law § 200, Labor Law § 240(1), Labor Law § 241(6), Scaffold, Safety device*

LLERENA V. 975 PARK AVE. CORP.

244 A.D.3d 536
December 11, 2025

The plaintiff was injured while working on a suspended scaffold when the scaffold suddenly moved causing him to fall onto the floor of the scaffold. The First Department modified the trial court's ruling to grant the plaintiff partial summary judgment on his Labor Law § 240(1) claim because the plaintiff's injuries were the direct result of the inadequately secured scaffold moving, causing the plaintiff to be injured by a safety device intended to protect him from a gravity-related risk. The court also found that the trial court should have granted the general contractor's motion for summary judgment on the plaintiff's common law negligence and Labor Law § 200 claims as they did not have sufficient control over the plaintiff's work.

PRACTICE NOTE: Movement of a suspended scaffold constitutes the failure of a safety device and can result in liability for an elevation-related risk. This applies even when a worker is injured by the safety device and does not fall off the scaffold.

TOPICS: *Labor Law § 241(6), Industrial Code violations, Slip and fall*

JOSEPH V. MEMORIAL HOSPITAL FOR CANCER & ALLIED DISEASES

244 A.D.3d 594
December 18, 2025

The plaintiff was injured when he slipped in a puddle of water that leaked from a ceiling pipe in a dimly lit room. The First Department reversed the trial court's decision to grant the plaintiff partial summary judgment on his Labor Law § 241(6) claim because there was an issue of fact as to whether the plaintiff was engaged in construction work when he slipped. Although the plaintiff claims that he was engaged in work as part of the construction project, he could not recall specifics of the work he was assigned and the project manager testified that work was "essentially completed," the building had been "turned over," and it had a certificate of occupancy and was fully occupied at the time.

PRACTICE NOTE: Labor Law § 241(6) actions require proof that the plaintiff was engaged in "construction work" at the time of injury, and while Industrial Code § 23-1.7(d) and 23-1.30 violations may apply they can't be resolved as a matter of law if questions about work status remain a triable issue of fact.

TOPICS: *Labor Law § 240(1), Elevated work platforms, Stairways as elevation devices*

COCHANCELA V. SUTTON PLACE S. CORP.

244 A.D.3d 619
December 23, 2025

The plaintiff was injured on the seventh floor of a construction project while carrying a 70- to 75-pound, four-foot by eight-foot sheetrock board down a service stairway. He was required to use both hands to control the board, preventing him from grasping the handrail. As he descended the stairs, he mis-stepped or lost balance and fell. The First Department affirmed summary judgment for the plaintiff under Labor Law § 240(1), finding that the defendants failed to provide an adequate safety device for the task of carrying a large, unwieldy board down an elevated work platform, the stairway. The court reiterated that stairways may qualify as elevated work platforms for Labor Law § 240(1) purposes where they are the sole means of access to the work area and gravity-related risks are present.

PRACTICE NOTE: Even permanent building features, such as stairways, fall within the ambit of Labor Law § 240(1) when they function as elevated work platforms that expose a worker to gravity-related risks. Where a worker cannot maintain a handhold due to the nature of the load, the absence of a safety device can be deemed a proximate cause of the accident for purposes of Labor Law § 240(1).

TOPICS: *Labor Law § 241(6), Industrial Code §§ 23-1.12(c)(1) and 23-9.2(a), Contractual indemnification*

GUAMAN V. 240 W. 44TH ST. TWO LLC

244 A.D.3d 621
December 23, 2025

The plaintiff alleged the power saw he was using "jumped back" and that its guard failed to retract, causing serious lacerations to his wrist. The First Department held the Supreme Court properly granted the plaintiff's motion for summary judgment on his Labor Law § 241(6) claim and rejected defenses offered by the defendants because the plaintiff cannot be the sole proximate cause of his accident where he was merely working

with the tools provided to him. The First Department, however, determined the lower court erred in dismissing the defendant-appellants' contractual indemnity cross-claim against Ground Force. The relevant contract contained a broadly worded indemnity clause providing that Ground Force shall indemnify the appellants "to the fullest extent permitted by law" "from any and all claims… including attorney's fees [and] costs…arising out of or in connection with or as a consequence of the performance of the Work of the Subcontractor under this agreement." The lower court's dismissal of the plaintiff's complaint against Ground Force did not render the appellants' cross-claim against it moot, and the First Department directed that the cross-claim be converted to a third-party claim.

PRACTICE NOTE: A party seeking dismissal of third-party claims based on a contract must make a prima facie showing through documentary evidence that it was not contractually obligated to indemnify the party asserting the claim. The courts look to the specific language contained in each contract to determine whether a party is entitled to indemnification for the alleged accident.

TOPICS: *Labor Law § 240(1), Ladder, Gravity-related risk*

ORTIZ V. CITY OF NEW YORK

244 A.D.3d 624
December 23, 2025

The First Department affirmed the lower court's decision granting the plaintiff summary judgment on his Labor Law § 240(1) claim. The plaintiff testified he was provided with an unsecured A-frame ladder, which suddenly moved and tilted while he was working on it, causing him to fall. The evidence that the ladder collapsed for no apparent reason raises the presumption that the ladder was insufficient to give proper protection under the statute. The appellate court cited to prior caselaw that it is not relevant that the ladder was stable and free of defects. Additionally, the First Department rejected the defendants' argument that the plaintiff's statement to hospital personnel that he "slid[] down [the] ladder after misstepping" raised an issue of fact, as it was not inconsistent with his testimony that the ladder shifted unexpectedly and tipped over with him. Further, the First Department rejected the affidavit of the defendants' expert and held it did not raise a triable issue of fact on the Labor Law § 240(1) claim. The expert opined that the accident could not have occurred as the plaintiff described it, as he could not have done his work while standing on the ladder in the manner he described. However, the First Department indicated there is no requirement for Labor Law § 240(1) purposes that the plaintiff know exactly what caused the accident, or know what caused the ladder to move.

PRACTICE NOTE: Where an A-frame ladder is alleged to have been unstable or to have wobbled during use, courts will consistently find such circumstances sufficient to impose liability upon the defendants.

TOPICS: *Unsecured load, Evidentiary form*

CERDA V. CYDONIA W71, LLC

244 A.D.3d 617
December 23, 2025

The plaintiff was injured when he was struck by an improperly secured plank that fell from the extended platform of a scaffold. The First Department affirmed the granting of the plaintiff's motion for summary judgment, finding that he demonstrated that the plank was improperly secured and the failure to properly secure it proximately caused his injuries. The court further rejected the defendant's attempt to establish a question of fact through apparent contradictions between the plaintiff's affidavit and unsworn statements in an uncertified medical record.

PRACTICE NOTE: When attempting to use medical records to contradict factual claims, it is critical to ensure that a proper evidentiary predicate is established through a business record certification and testimony authenticating the substantive provider notes.

TOPICS: *Labor Law § 240(1), Ladder*

RUIZ V. EWAN

240 A.D.3d 541
July 2, 2025

The plaintiff was injured during the construction of a home when a ladder he was descending slipped out from under him, causing him to fall 10 to 12 feet to a balcony below. The Second Department reversed the trial court's denial of the plaintiff's motion for summary judgment on his Labor Law § 240(1). The Second Department held that the plaintiff was entitled to judgment as a matter of law on the issue of liability on the grounds that: (1) deposition testimony of the plaintiff and a non-party witness showed that the plaintiff was exposed to an elevation risk under Labor Law § 240(1); (2) the ladder slipped out from under the plaintiff as he descended from the roof; (3) the ladder fell away from the wall; and (4) the inadequately secured ladder was a proximate cause of the plaintiff's injuries.

PRACTICE NOTE: With respect to accidents involving ladders, liability will be imposed when the evidence shows that the ladder was inadequately secured and that the failure to secure the ladder was a substantial factor in causing the plaintiff's injuries.

TOPICS: *Labor Law §§ 240(1) and 241(6), Common law indemnification*

ROSARIO V. HORIZON NETWORKS, INC.

240 A.D.3d 537
July 2, 2025

The plaintiff sustained injuries when he fell from an unsecured A-frame ladder while installing security cameras on the exterior façade of the premises. The plaintiff was hired to perform the installation by the defendant, who sold the security cameras to the defendant lessee. The Second Department affirmed the trial court's denial of the plaintiff's motion for summary judgment on his Labor Law § 240(1) claim and held that there were triable issues of fact regarding how the accident occurred, specifically whether the ladder collapsed or the plaintiff simply slipped or slid down the ladder. The Second Department reversed the trial court's granting of the owner and lessee defendants' motion for summary judgment dismissing the plaintiff's Labor Law § 241(6) claim and held that there were triable issues of fact regarding a potential violation of 12 NYCRR § 23-1.21(e)(3) (which requires securing ladders at certain heights) and whether such violation proximately caused the accident. The Second Department affirmed the trial court's denial of the owner and lessee defendants' motion for summary judgment on their cross-claim for common law indemnification against the defendant who sold the security cameras and held that there were triable issues of fact regarding whether that defendant supervised or controlled the work that led to the plaintiff's injuries.

PRACTICE NOTE: To establish a violation under Labor Law § 240(1) arising from a fall from a ladder, there must be evidence that the ladder was defective or inadequately secured and that the defect, or the failure to secure the ladder, was a substantial factor in causing the plaintiff's injuries. Industrial Code 12 NYCRR § 23-1.21(e)(3) requires that a stepladder be secured while work is being performed from a step of the stepladder 10 feet or more above the footing. Liability for indemnification may only be imposed against those parties who exercise actual supervision.

TOPICS: *Labor Law § 240(1), Sole proximate cause*

ACOSTA V. SHANAHAN GROUP, LLC

240 A.D.3d 557
July 9, 2025

In this Labor Law § 240(1) action, the plaintiff was injured when a rafter he was standing on collapsed beneath him. The defendant's motion for summary judgment argued that the plaintiff was the sole proximate cause because he could have used an available ladder to complete his work. The Second Department affirmed the denial of the defendant's motion, holding that although the injured plaintiff testified that he could probably have reached the area where he needed to work using an available ladder, the defendant's evidence did not definitively establish that the injured plaintiff could have accomplished his task using that ladder or that the plaintiff knew that he was expected to use the ladder to accomplish the task. Since the defendant failed to show that the plaintiff's conduct was the sole proximate cause of his injury, triable issues remained. The plaintiff's motion for summary judgment was denied as untimely.

PRACTICE NOTE: In order to establish a sole proximate cause defense, the defendant must first establish compliance with the Labor Law and that it supplied adequate safety devices to provide proper protection.

TOPICS: *Labor Law § 200, Supervision*

NOVEGIL PERALTA V. RETTIG

240 A.D.3d 796
July 23, 2025

The plaintiff was injured when he fell off a ladder while working on a construction project. The plaintiff sued the property owner and concrete subcontractor for violations of Labor Law §§ 200, 240(1), and 241(6), and common law negligence. The trial court properly granted that branch of the concrete subcontractor's motion which was for summary judgment, because it demonstrated it was not an owner, general contractor, or agent with supervisory control over the plaintiff's work. More importantly, the evidence showed the concrete subcontractor was not present at the site on the accident date, had no supervisory authority over the plaintiff, and did not provide any equipment to him. The concrete subcontractor showed that the plaintiff's employer provided all of the ladders, equipment, and tools used by the plaintiff, and that they directed the plaintiff's work at all times.

PRACTICE NOTE: This case continues to demonstrate the importance of having evidence to show who provided the tools and equipment used by plaintiff, as well as what entity exercised supervisory control over the means and manner of plaintiff's work. Contractors should be acutely aware of how they can establish that they were not responsible for supervising work performed by other entities.

TOPICS: *Labor Law § 240(1), Elevation-related risk, Gravity-related risk, Burden of proof*

JOYA V. E 31 PARTNERS, LLC

240 A.D.3d 861
July 30, 2025

The plaintiff was injured while disassembling a plywood fence at a worksite. He and another worker were holding the fence while a third worker removed nails. During this process, a plywood sheet fell and struck the plaintiff on the head. The Second Department reversed the grant of summary judgment in favor of the plaintiff, holding that the plaintiff did not submit evidence concerning either his height or the height and weight of the plywood sheet, and therefore failed to establish that the accident arose from a gravity-related or elevation-related hazard within the scope of a Labor Law § 240(1) claim.

PRACTICE TIP: In order to establish that a falling object constitutes a hazard encompassed by Labor Law § 240(1), the plaintiff must establish that the height at which the object was to be secured posed a significant risk arising from that elevation.

TOPICS: *Labor Law § 240(1), Medical records as business records hearsay exceptions*

PILLCO V. 160 DIKEMAN ST., LLC

245 A.D.3d 49
July 30, 2025

The plaintiff, a construction worker, sustained injuries when he fell from an A-frame ladder while removing sheetrock from a ceiling at a construction site. The Second Department affirmed the trial court's denial of the plaintiff's motion for summary judgment on his Labor Law § 240(1) claim and held that the plaintiff's description as to the manner in which his accident occurred contained in his post-accident hospital record was admissible under the business records exception to the hearsay rules as relevant to assist with the plaintiff's diagnosis and treatment and to assist the doctors in understanding the medical aspects of the plaintiff's case. The plaintiff stated to his treating doctors that he felt a pull as he was picking up a heavy object, but did not state that he fell from a ladder or fell at all. The court also held that: (1) the medical record itself was sufficient to indicate that the plaintiff was the source of the information; and (2) the plaintiff's statement raised a triable issue of fact as to whether the accident occurred in the manner alleged by the plaintiff.

PRACTICE NOTE: A plaintiff's statements to his/her post-accident medical providers regarding how the alleged accident occurred may be utilized as a defense to the plaintiff's Labor Law § 240(1) claim to the extent that the statements meet one of the applicable hearsay exceptions.

TOPICS: *Labor Law §§ 240(1) and 241(6), Labor Law § 200, Supervision, Means and methods*

ZAMPKO V. HOUGHTALING

240 A.D.3d 943
July 30, 2025

The plaintiff sustained injuries when a ladder he was using to access the roof of an automotive repair shop owned or controlled by the defendants fell away from the building as he was stepping onto the roof, causing him to fall to the ground. The Second Department reversed the trial court's granting of the defendants' cross-motion for summary judgment dismissing the plaintiff's Labor Law § 240(1) and § 241(6) claims and held that issues of fact remained as to whether the arrangement between the plaintiff and the defendants bore the "traditional hallmarks of an employment relationship." The Second Department affirmed the trial court's dismissal of the plaintiff's common law negligence and Labor Law § 200 claim and held that the defendants demonstrated that they lacked sufficient supervisory control over the plaintiff's work to subject them to liability.

PRACTICE NOTE: A volunteer who offers his/her services gratuitously cannot claim the protection of the Labor Law. Where a plaintiff's claim implicates the means and methods of the work, an owner or a contractor will not be held liable under Labor Law § 200 unless it has the authority to supervise or control the performance of the work. A defendant has the authority to control the work when that defendant bears the responsibility for the manner in which the work is performed.

TOPICS: *Labor Law § 240(1), Sole proximate cause, Labor Law § 241(6), Lighting, Slippery condition, Labor Law § 200, Dangerous condition, Notice*

ARAUJO V. MONADNOCK CONSTR., INC.

241 A.D.3d 470
August 6, 2025

The plaintiff was utilizing an A-frame ladder in a closed position because the workspace was too confined to use it in an open position. The ladder wobbled to the right, causing him to fall backward. The plaintiff also claimed the floor was slippery and wet with the ladder's feet in about two or three inches of standing water. The plaintiff brought an action alleging violations of Labor Law §§ 200, 240(1) and 241(6). The defendants raised a triable issue of fact as it relates to Labor Law § 240(1) regarding whether the plaintiff's misuse of the ladder was the sole proximate cause of the accident. Regarding § 241(6), triable issues of fact existed as to whether the slippery condition or the condition of the ladder itself were the proximate causes of the occurrence. The defendants were not entitled to dismissal of the Labor Law § 200 claim, as they failed to establish that they lacked actual or constructive notice of the alleged slippery condition and whether this condition was the proximate cause of the incident.

PRACTICE NOTE: The presence of issues of fact regarding the proximate cause of an occurrence prevents summary judgment on Labor Law allegations.

TOPICS: *Labor Law § 240(1), Falling object, Sole proximate cause, Common law negligence*

CLAESEN V. VRD CONTRACTING, INC.

241 A.D.3d 494
August 6, 2025

The plaintiff was injured when an unsecured spackle bucket fell from a scaffold and struck him as he and his coworkers were moving the scaffold. The Second Department found that the plaintiff established a Labor Law § 240(1) violation be-

cause the bucket required securing during the work. However, the court also found that the defendants raised a triable issue as to whether the plaintiff was the sole proximate cause for failing to confirm the scaffold was clear before moving it. It was the plaintiff's responsibility to make sure that the scaffolding was clear prior to the move. The court also denied a defendant subcontractor's motion to dismiss the common law negligence claims, noting that a defendant that is not an owner, general contractor, or agent pursuant to the Labor Law with regard to a plaintiff's work may nonetheless be held liable to the plaintiff if the work the subcontractor created the condition that caused the plaintiff's injury. The court found that the subcontractor had failed to eliminate triable issues as to whether it created the hazardous condition because the subcontractor's workers were using the scaffolding the day before to complete spackling work.

PRACTICE NOTE: When defending against a Labor Law § 240(1) claim and asserting a sole proximate cause defense, it is critical to provide evidentiary support that the plaintiff was given direct instruction with regard to proper safety procedures, which were contrary to the actions he/she took.

TOPICS: *Statutory agent, Labor Law § 240(1), Supervision and control, Ladder*

BATIS V. 85 JAY STREET (BROOKLYN), LLC

241 A.D.3d 621
August 13, 2025

The plaintiff alleged that he was standing on a ladder when the ladder suddenly moved, causing him to fall. The plaintiff subsequently moved for summary judgment on Labor Law § 240(1). In reversing the lower court, the Second Department held that the plaintiff was entitled to summary judgment on the issue of liability, as he established that his accident was caused when the unsecured ladder moved. Further, the plaintiff was also entitled to judgment over the construction manager defendant as he demonstrated that the construction manager, who had the authority to supervise and control the injury-producing work, was a statutory agent under the Labor Law.

PRACTICE NOTE: A construction manager can be considered a statutory agent under the Labor Law if it is established that he has the authority to supervise and control the injury-producing work.

TOPICS: *Labor Law § 240(1), Ladder*

BUZZETTA V. NYU HOSPITALS CENTER

241 A.D.3d 628
August 13, 2025

The plaintiff was performing demolition work using a chipping gun when the unsecured ladder he was working on twisted and fell, causing him injury. The Second Department found that the plaintiff made a prima facie showing because the ladder was unsecured. The court rejected the defendants' claim that the plaintiff was the sole proximate cause or that there were multiple accident versions, finding no contradictory accounts.

PRACTICE NOTE: A plaintiff can establish liability under Labor Law § 240(1) by demonstrating that the unsecured ladder failed to provide proper protection, as when it collapses, moves, falls, or otherwise fails to support the plaintiff.

TOPICS: *Labor Law § 240(1), Labor Law § 241(6), Proximate cause*

SANTOS V. LEEWARD LIVING, LLC

241 A.D.3d 717
August 13, 2025

The plaintiff sustained injuries when he fell through a hole in an attic floor while working on scraping and disposing of excess insulation in a house under construction. The property was located on land intended to serve as a single-family residence for the property owner's shareholders. The Second Department reversed the trial court's granting of the plaintiff's motion for summary judgment on his Labor Law § 241(6) claim predicated on a violation of 12 NYCRR 23-1.25 and 23-1.16 and held that these provisions were inapplicable because the plaintiff, according to his own deposition testimony, was not provided with any

safety devices. The Second Department affirmed the trial court's granting of the plaintiff's motion for summary judgment on his Labor Law § 240(1) claim and his Labor Law § 241(6) claim predicated on a violation of 12 NYCRR 23-1.7(b)(1)(i) and held that: (1) the plaintiff was exposed to an elevation-related risk by virtue of the uncovered, unguarded opening in the attic floor, that the defendants did not provide a safety device to protect the plaintiff from that hazard, and that the failure to provide proper protection proximately caused the plaintiff's injuries; and (2) the defendants failed to provide a substantial cover or safety railing for the hole in the attic floor and this violation was a proximate cause of the accident.

PRACTICE NOTE: Ownership of the premises where the accident occurred, standing alone, is not enough to impose liability under Labor Law § 241(6) where the property owner did not contract for the work resulting in the plaintiff's injuries. There must be some nexus between the owner and the worker, whether by a lease agreement or grant of an easement, or other property interest. To establish liability under Labor Law § 241(6), a plaintiff must demonstrate that their injuries were proximately caused by the violation of a regulation that sets forth a specific standard of conduct.

TOPICS: *Labor Law § 240(1), Safety device, Elevation-related risk, Labor Law § 200, Supervision and control, General supervisory authority*

SILVA V. CITY OF NEW YORK

241 A.D.3d 734
August 13, 2025

The plaintiff was a laborer who was injured while loading a metal plate into a dump truck. After the plate was placed in the truck using an excavator chain, the plaintiff climbed up the side of the truck to unhook the chain. When he put his hand on the side of the truck to pull himself up, the plate moved and crushed his hand, resulting in the amputation of his right ring finger. The plaintiff conceded that the metal plate was level with his hand when it caused the injury and no equipment malfunctioned. The Second Department held that the defendant City of New York was entitled to dismissal of the plaintiff's Labor Law § 240(1) claim, as it established that the plaintiff was provided with adequate securing devices and that his injury was not the result of an elevation-related risk. The City of New York was also entitled to dismissal of the plaintiff's Labor Law § 200 claim, as it did not supervise or control the method of the plaintiff's work.

PRACTICE NOTE: Dismissal of Labor Law § 240(1) is appropriate where adequate safety devices are provided and the injury was not a result of an elevation-related risk.

TOPICS: *Labor Law §§ 240(1) and 241(6), NYCRR § 23-1.7(d), Industrial Code, Elevation-related risk, Brill time, Fall on stairs*

GOMEZ V. TILDEN ESTATES, LLC

241 A.D.3d 791
August 20, 2025

The plaintiff claimed he was injured on a construction site when he slipped on dust on steps as he was carrying an air conditioning compressor unit up a staircase to the roof of the premises with a coworker. As a result, he fell backwards and the equipment he had been carrying landed on him. The plaintiff moved for summary judgment on the Labor Law §§ 240(1) and 241(6) causes of action and the defendants cross-moved. The § 241(6) cause of action was predicated on violations of Industrial Code § 23-1.7(d) and (e). The court held that the plaintiff was not entitled to summary judgment on the Labor Law § 240(1) claim because the plaintiff failed to establish that his alleged injuries were the direct consequence of an elevation-related or gravity-related risk encompassed by the statute, pointing to the plaintiff's deposition testimony that he fell as a result of slipping on dust on the steps. Thus, in the court's view, the plaintiff failed to eliminate triable issues of fact as to whether the alleged injuries were caused by a "separate hazard [dust] unrelated to any elevation risk." The court found that the Supreme Court should have denied the plaintiff's motion for summary judgment on Labor Law § 240(1) without regard to the sufficiency of the defendant's opposition papers. The court similarly found that the defendants were not entitled to summary judgment on the Labor Law § 240(1) claim because they did not establish that the plaintiff was provided sufficient safety equipment to prevent his injury. Further, the court found that the defendants failed to eliminate triable issues of fact as to whether the plaintiff was engaged in elevation-related work that required additional safety devices to be safely performed and whether the plaintiff's alleged injuries were caused by the absence of such safety devices. The court found that the plaintiff failed to establish violations of Industrial Code §§ 23-1.7(d) and (e) because the plaintiff failed to establish that these codes were applicable to the type of substance that the plaintiff claimed he slipped or tripped on. The court found that the defendants were not entitled to summary judgment on Labor Law § 241(6) under the alleged violation of Industrial Code § 23-1.7(d) because the "list of slipping hazards enumerated under 12 NYCRR 23-1.7(d) is not exhaustive and that provision applies to 'any other foreign substance which may cause slippery footing' when in contact with the surface where someone walks."

PRACTICE NOTE: A party may obtain consideration of an otherwise untimely summary judgment motion if it responds to a timely motion on the same issues. If a claim (e.g., § 200 or common law negligence) is not the subject of a timely motion, a late motion on that claim will generally be rejected. Not all stairway-related injuries involve the type of elevation-related risk required for § 240(1), and generic "slippery condition" allegations do not typically satisfy § 241(6) without a specific Industrial Code violation.

TOPICS: *Labor Law § 240(1), Credibility, Unwitnessed accident*

LAHOZ VARGAS V. BOP NE, LLC

241 A.D.3d 812
August 20, 2025

The plaintiff commenced this action to recover damages for personal injuries he allegedly sustained while working at a construction site when an aluminum beam fell from a scaffold frame above him and struck him on the right knee. The complaint alleged, among other things, a violation of Labor Law § 240(1). Where a plaintiff is the sole witness of the accident and his or her credibility is placed in issue, summary judgment in favor of the plaintiff on the issue of liability on a cause of action alleging a

violation of Labor Law § 240 (1) is not appropriate. In opposition to the plaintiff's motion for summary judgment, the defendants raised triable issues of fact through affidavits calling into question the plaintiff's credibility as to how the incident occurred. Accordingly, the Second Department held that the trial court properly denied the plaintiff's motion for summary judgment on the cause of action alleging a violation of Labor Law § 240(1).

PRACTICE NOTE: As unwitnessed accidents proliferate at job sites, defendants should be prepared to call into question a plaintiff's own credibility and veracity in opposition to motions on unwitnessed cases.

TOPICS: *Labor Law § 240(1), Protective devices, Sole proximate cause*

RIVERA V. 26 W. 56, LLC

241 A.D.3d 844
August 20, 2025

The plaintiff was employed to remove demolition debris and dispose of it. While performing this work, she was injured when an HVAC duct that was being removed from a ceiling fell on her. The Second Department affirmed the trial court's denial of the defendants' cross-motion for summary judgment seeking dismissal of the plaintiff's Labor Law § 240(1) claim and held that: (1) the defendants' submissions, including their expert's conclusory affidavit, failed to eliminate all triable issues of fact as to whether the HVAC duct being removed from the ceiling required securing for the purposes of the undertaking and thus fell due to the "absence or inadequacy of an enumerated safety device"; and (2) the defendants failed to demonstrate that the plaintiff was the sole proximate cause of her injuries.

PRACTICE NOTE: A plaintiff may be the sole proximate cause of his/her own injuries when he/she: (1) had adequate safety devices available; (2) knew both that the safety devices were available and that he/she was expected to use them; (3) chose for no good reason not to do so; and (4) would not have been injured had he/she not made that choice.

TOPICS: *Labor Law § 200, Dangerous condition, Notice*

IMPAGLIAZZO V. JUDLAU CONTR. INC

241 A.D.3d 892
August 27, 2025

The plaintiff commenced an action to recover damages for personal injuries he allegedly sustained while working on an MTA construction project in Manhattan. The plaintiff fell while walking across a rebar mat with protruding Nelson studs while being led to stairway H by the defendant's superintendent. According to the superintendent, the rebar mat had not been laid by the defendant and was located in an area outside the scope of their work, but traversing the rebar mat was the only way to access stairway H. The plaintiff asserted a cause of action alleging a violation of Labor Law § 200 and common law negligence. The appellate court found that the defendant's motion for summary judgment failed to eliminate all triable issues of fact as to whether the rebar mat dotted with protruding Nelson studs constituted a dangerous condition, whether the defendants had actual or constructive notice of the condition, and whether traversing a rebar mat of this type was an inherent risk in the plaintiff's work.

PRACTICE NOTE: Even where a contractor did not directly perform the work that creates an allegedly dangerous condition, they may still be held liable for injuries caused by such condition. This reinforces the importance for contractors to know any potentially dangerous conditions on a job site and clearly direct employees to avoid same.

TOPICS: *Negligence, Duty of care, Labor Law § 200*

ZUNIGA V. SMITH

241 A.D.3d 1502
September 17, 2025

The plaintiff, while working on a pool removal project, sustained injuries when he was struck by a vehicle while in a public roadway, not on the defendants' property. The Second Department reversed the trial court's dismissal of the defendants' motion for summary judgment and awarded summary judgment for the defendants holding that the defendants did not owe the plaintiff a duty of care on the grounds that: (1) the accident occurred in a public roadway and not on the defendants' property; (2) the accident was not caused by any defect on the defendants' property; and (3) the defendants did not cause a defective condition to occur by making special use of the roadway. The Second Department further held that the defendants were not present during the project, exercised no supervisory control over the plaintiff's work and, at most, did nothing more than oversee the progress of the project, which was insufficient to impose liability under Labor Law § 200.

PRACTICE NOTE: To establish negligence, a plaintiff must establish the existence of a duty owed by a defendant to the plaintiff, a breach of that duty, and that such breach was a proximate cause of injury to the plaintiff. Mere general supervisory authority at a worksite for the purpose of overseeing the progress of the work and inspecting the work product is insufficient to impose liability under Labor Law § 200.

TOPICS: *Labor Law § 240(1), Recalcitrant worker, Adequate safety device*

BLACHOWICZ V. CITY OF NEW YORK

241 A.D.3d 1513
September 24, 2025

The plaintiff was working on the roof of a premises. Access to the roof was through a ladder with a hatch door that had safety latches, but no handrail. While descending, the plaintiff held the top of the latch door, which closed, causing him to lose balance and fall. The plaintiff sought summary judgment on his Labor Law § 240(1) claim. While the plaintiff made a prima facie showing of entitlement to summary judgment by establishing that access provided by the hatch door was not adequate and there was a lack of safety devices, in opposition the defendants raised a triable issue of fact by demonstrating that the plaintiff was provided with safety devices to prevent elevation-related injuries.

PRACTICE NOTE: A plaintiff is not entitled to summary judgment under Labor Law § 240(1) if the defendants are able to show that safety devices were provided but not used.

TOPICS: *Protected activities, Routine maintenance, Inspection, Storm in progress*

BARRON V. CITY OF NEW YORK

242 A.D.3d 689
October 1, 2025

The plaintiff commenced an action under Labor Law §§ 200, 240(1) and 241(6) when he fell from a retaining wall while conducting an inspection in the course of his employment. In dismissing the plaintiff's complaint, the Second Department held that since the plaintiff was not engaged in activities protected under the Labor Law, but rather routine maintenance, Labor Law §§ 240(1) and 241(6) were not applicable. With respect to common law negligence and Labor Law § 200, the defendants established that since a storm was in progress at the time of the accident, they were not responsible for accidents relating to the storm until adequate time passed after the storm's cessation.

PRACTICE NOTE: To establish a claim under Labor Law § 240(1), a plaintiff must demonstrate that he was involved in the "erection, demolition, repairing, altering, painting, cleaning or pointing" of a building or structure.

TOPICS: *Statutory defendants, Special employee doctrine, Authority, Common law negligence*

DEMARCO V. C.A.C. INDUSTRIES, INC.

242 A.D.3d 829
October 8, 2025

The plaintiff was injured when trench excavation walls collapsed while he worked to repair a water leak. The defendant contractor, hired by the plaintiff's employer, DEP, had supplied a backhoe and its operating engineer to the worksite. The defendant moved for summary judgment arguing that it was not a statutory defendant and that the operating engineer was a special employee of DEP. The Second Department held the defendant lacked authority to supervise or control the worksite and therefore could not be liable under Labor Law §§ 200 or 241(6). However, the defendant failed to prove that the operating engineer was a special employee of DEP, as the defendant continued to pay his wages and owned the equipment. Triable issues also existed as to whether the operating engineer's excavation activity created or exacerbated the dangerous condition that led to the collapse, precluding summary judgment on the common law negligence.

PRACTICE NOTE: A party will not qualify as a statutory defendant for purposes of Labor Law if it did not have the authority to exercise control over the work that brought about a plaintiff's injury. Common law negligence liability may still attach if the non-statutory defendant created or worsened a hazardous condition, even where supervisory control is absent. Special employee arguments require strong proof of surrender and assumed control between employers.

TOPICS: *Labor Law § 241(6), Industrial Code § 23-1.7(a)(1), Falling object*

GOMEZ-JIMENEZ V. 50 W. DEV., LLC

242 A.D.3d 836
October 8, 2025

During a construction project that included stripping plywood from the ceiling of a building lobby, a subcontractor tasked his employee with sweeping debris off the floor. While completing this task, the employee was injured when he was struck by a piece of plywood that had been pulled off the ceiling by another worker standing on a scaffold above. The plywood fell approximately 13 to 14 feet and struck the plaintiff in the chest. The trial court dismissed the plaintiff's claims under Labor Law §§ 200 and 240(1) and initially granted the plaintiff's motion as to a violation of Industrial Code § 23-1.7(a)(1) under Labor Law § 241(6). The Appellate Court found that the trial court was correct in rehearing the motion for summary judgment and denying the plaintiff's motion as to Labor Law § 241(6) and that the defendants were also not entitled to summary judgment on this cause of action. For a plaintiff to establish liability under Labor Law § 241(6) predicated upon a violation of Industrial Code § 23-1.7(a)(1), the plaintiff must establish that "the area in which the plaintiff was injured was one where workers are normally exposed to falling objects." The Second Department found that the evidence demonstrated that there were triable issues of fact as to whether the accident occurred in an area "normally exposed to falling materials or objects."

PRACTICE NOTE: In order to establish a violation of Industrial Code § 23-1.7(a)(1), a plaintiff must establish that "the area in which the plaintiff was injured was one where workers are normally exposed to falling objects."

TOPICS: *Labor Law §§ 200, 240(1) and 241(6), Punitive damages, Jury award, Jury instructions, Liability determination*

PETROSIAN V. B & A WAREHOUSING, INC.

242 A.D.3d 1026
October 15, 2026

The plaintiff was injured when a mobile lift collapsed while he was performing repair work on a parking garage structure at a property allegedly owned and managed by the defendants. The plaintiff and his spouse commenced an action, asserting claims under Labor Law §§ 200, 240(1), and 241(6), against the premises owner and manager, as well as the individual who owned the related business entities. Following discovery, the court granted the plaintiffs summary judgment on liability against the premises owner and manager, but denied summary judgment as to the business owner. The plaintiffs thereafter amended the complaint to assert a claim for punitive damages against all defendants, and the case proceeded to trial solely on damages. The jury awarded punitive damages based on the conduct of the business owner. The Second Department reversed the punitive damages award, holding that the jury had been improperly instructed that the business owner's liability had already been established. Because the jury was never asked to determine whether the business owner was liable under the Labor Law or any other theory, and no liability finding had ever been made against him, punitive damages could not be imposed based on his alleged conduct.

PRACTICE NOTE: New York does not recognize an independent cause of action for punitive damages. Thus, they may be awarded only where liability has first been established on an underlying substantive claim. Absent a finding of liability against a defendant on a recognized cause of action, a claim for punitive damages cannot be sustained, regardless of the defendant's alleged misconduct.

TOPICS: *Labor Law § 240(1), Labor Law § 241(6), Industrial Code § 23-1.7(e)(2), Adequate safety device, Guardrails, Sole proximate cause, Comparative fault*

OLIVERIA V. ROCKAWAY VIL. HOUS. DEV. FUND CORP.

242 A.D.3d 1212
October 29, 2025

The plaintiff claimed violations of Labor Law §§ 241(6) and 200 for the injuries he allegedly sustained when he tripped over a shovel on a construction site. The Second Department reversed the lower court's grant of summary judgment to the defendants, the owner and general contractor, and held that the defendants failed to eliminate triable issues of fact as to: (1) whether they violated 12 NYCRR 23-1.7(e)(2) by permitting an accumulation of debris, dirt, and scattered tools; (3) whether the shovel was an integral part of the plaintiff's work to constitute debris, scattered materials, or obstructions under this provision of the Industrial Code; and (4) whether they had constructive notice of the alleged hazardous condition. The court concluded that the accident arose from a dangerous premises condition rather than the means and methods of the work.

PRACTICE NOTE: A violation of Industrial Code § 23-1.7(e)(2) depends on whether the object causing the trip is 'debris, dirt, or a scattered tool' that should have been removed from a work area, as opposed to a material or tool that is an integral part of the work being performed. In the context of a Labor Law § 200 claim, trip hazards arising from site conditions may be treated as premises defects rather than means-and-methods issues.

TOPICS: *Labor Law § 200, Labor Law § 241(6), Failure to procure insurance*

GRALA V. STRUCTURAL PRESERV. SYS., LLC

242 A.D.3d 1181
October 29, 2025

The plaintiff claimed that he was injured on a construction site when he slipped and fell on fluid leaking from a forklift owned by the defendant contractor on premises owned or controlled by the defendant New York City Housing Authority. The plaintiff claimed that at the time of his accident he was employed by the third-party defendant subcontractor, which had been contracted to perform work at the premises. The contractor defendant commenced a third-party action against the plaintiff's employer for contractual and common law indemnification, and failure to procure insurance. The plaintiff's employer moved for summary judgment on the common law indemnification claim on the grounds that the claim was barred by NY Workers' Compensation Law. The court held that the third-party defendant failed to establish that the plaintiff did not sustain a grave injury under Workers' Compensation Law § 11, and therefore the plaintiff's employer was not entitled to summary judgment. However, the court held that the third-party defendant was entitled to summary judgment dismissing the failure to procure claim because it established that it procured the requisite insurance and that the insurer's declination of coverage was not a basis for finding that the subcontractor breached its obligation to procure insurance.

PRACTICE NOTE: A defendant is entitled to summary judgment dismissing a failure to procure cause of action in the event that the moving defendant establishes that the requisite insurance had been procured. A declination of coverage by the insurance carrier has no bearing on such a motion.

TOPICS: *Labor Law § 240(1), Ladder, Adequate safety device, Proximate cause*

RESTREPO V. BUSHWICK REALTY HOLDINGS, LLC

242 A.D.3d 1238
October 29, 2025

The plaintiff was injured when he fell from an A-frame ladder and alleged that the accident was caused by the defendants' failure to provide proper fall protection in violation of Labor Law § 240(1). The plaintiff had been provided with a personal fall arrest system consisting of a harness, lanyard, and yoyo device designed to attach to a ceiling-mounted D-ring. The defendants argued that the plaintiff failed to follow repeated instructions to tie off while working on the ladder, which would have prevented the fall. The plaintiff contended that the lad-

der was not properly secured and became unstable when struck by falling plywood, and further argued that his failure to use the harness was not a defense to § 240(1) liability. The Second Department reversed the grant of summary judgment to the defendants and affirmed the denial of the plaintiff's motion, holding that neither party established prima facie entitlement to summary judgment. The court explained that whether a safety device provides proper protection is generally a question of fact, except where the device demonstrably collapses, moves, or otherwise fails. With respect to ladders, liability may be imposed where the evidence shows that the ladder was inadequately secured and that such failure was a substantial factor in causing the injury. Here, the defendants failed to demonstrate that adequate safety devices were provided and that no § 240(1) violation occurred, while the plaintiff failed to establish that the absence of proper protection was the proximate cause of his fall.

PRACTICE NOTE: In ladder cases, under Labor Law § 240(1), summary judgment will be denied where factual issues exist as to whether the ladder was adequately secured or whether additional fall protection was required. Moreover, the plaintiff must still establish that the absence or inadequacy of a safety device was a proximate cause of the accident.

TOPICS: *Labor Law § 240(1), Labor Law § 241(6), Homeowners exemption, Commercial use*

REYES V. RAHMAN

243 A.D.3D 826
November 19, 2025

The plaintiff was injured when a ladder shifted beneath him, causing him to fall, while performing work at the premises owned by the defendant. The defendant sought summary judgment based on the homeowners exemption to Labor Law §§ 240(1) and 241(6), which shields owners of one- and two-family homes who contract for, but do not direct or control, the work. The Second Department found that the defendant failed to eliminate triable issues of fact regarding his entitlement to the homeowners exemption, including whether the work was performed in furtherance of a commercial use, such as resale or rental, and whether the defendant intended to use the premises as a three-family dwelling. The plaintiff's cross-motion for summary judgment was likewise denied, as factual issues remained concerning the applicability of the homeowners exemption.

PRACTICE NOTE: The homeowners exemption under Labor Law §§ 240(1) and 241(6) does not apply where a one- or two-family dwelling is used solely for commercial purposes, including renovations performed for resale or rental. The exemption is likewise unavailable where the premises is used, or intended to be used, as a three-family dwelling.

TOPICS: *Labor Law § 241(6), Industrial Code § 12 NY 23-1.7(d), Integral to the work, Labor Law § 200, Notice, Dangerous condition*

DOS ANJOS V. TAPPAN ZEE CONSTRUCTORS, LLC

243 A.D.3d 886
November 26, 2025

The plaintiff was handling a power saw when he slipped and fell on rainwater accumulated on a plastic vapor barrier covering the floor. The fall caused the saw to activate and cut his left forearm. The Second Department held that the plaintiff was entitled to judgment on his Labor Law § 241(6) claim, as the plaintiff slipped on accumulated rainwater, which was not integral to the work being performed. Issues of fact existed as to Labor Law § 200, as the defendants failed to demonstrate that they lacked actual or constructive notice of the alleged condition or that it constituted an ordinary or obvious employment hazard.

PRACTICE NOTE: A plaintiff is entitled to judgment on Labor Law § 241(6) when he is able to demonstrate that his injuries were proximately caused by an Industrial Code violation and that same was not integral to the work.

TOPICS: *Jury verdict, Weight of the evidence review*

CUJI V. 225 FOURTH, LLC

243 A.D.3d 885
November 26, 2025

The Second Department set aside a jury verdict in favor of the defendant on liability, finding that the verdict in favor of the defendants could not have been reached on any fair interpretation of the evidence. The plaintiff alleged Labor Law violations after being injured during demolition work. A jury found the plaintiff 100% at fault and the defendants 0% at fault, despite also finding that the defendants failed to conduct proper inspections, failed to provide safe footing, and that these failures were substantial factors in the accident. The Supreme Court acknowledged that the verdict was inconsistent and instructed the jury to return to their deliberations and to follow the directions on the verdict sheet. The jury returned with essentially the same verdict, except that the question as to whether the plaintiff's workplace was unsafe was now answered in the affirmative. Although the plaintiff's counsel declined further jury instructions, the Second Department held that the verdict could not be reached on a fair interpretation of the evidence and that there is no preservation requirement for weight of the evidence review. Accordingly, the judgment was reversed, the complaint reinstated, and a new trial ordered.

PRACTICE NOTE: An internally inconsistent jury verdict may result in a new trial. There is no preservation requirement for weight of the evidence review.

TOPICS: *Labor Law § 240(1), Labor Law § 241(6)*

MITCHELL V. CITY OF NEW YORK

244 A.D.3d 716
December 3, 2025

A dock builder was tasked with removing old floating dock sections – referred to as finger piers – for a project that was owned and operated by the defendants. He alleged he was injured when he lost his balance after placing his knee on an unsecured finger

pier while reaching for a second finger pier. The plaintiff alleged violations of Labor Law §§ 200, 240(1), and 241(6). The Second Department held that the defendants met their burden of demonstrating, prima facie, that they did not create the allegedly dangerous condition and that it was open and obvious and not inherently dangerous by submitting transcripts of the plaintiff's deposition testimony and an affidavit of a project manager. The affidavit of the defendants' project manager also provided evidence that the plaintiff was instructed not to work directly on top of the piers, but to wait for a floating platform to come back. The Second Department found that the trial court properly denied the plaintiff's motion for summary judgment on the Labor Law § 240(1) claim.

PRACTICE NOTE: Evidence, including witness affidavits, are not just necessary to affirmatively move for summary judgment, but in the realm of Labor Law § 240(1), they can be necessary to defeat a plaintiff's motion for summary judgment.

TOPICS: *Labor Law § 240(1), Labor Law § 241(6), Industrial Code § 23-1.7(b)(1), Adequate safety device, Guardrails, Footwear, Sole proximate cause, Comparative fault*

O'DONNELL V. ROCKLYN ECCLESIATICAL CORP.

244 A.D.3d 741
December 3, 2025

The plaintiff was directed to retrieve lumber located next to a 10-foot-deep trench on a construction site. While doing so, the plaintiff fell into the trench as the ground caved in. The evidence established that the trench was not protected by any safety devices, such as guardrails. The Second Department held that the defendants violated Labor Law § 240(1) by failing to provide adequate fall protection. The court rejected the defendants' argument that the plaintiff's footwear – sneakers rather than work boots – was the sole proximate cause of the accident and held that any potential comparative fault is not a defense to § 240(1) claims. The court also sustained the Labor Law § 241(6) claim, holding that the defendants violated Industrial Code § 23-1.7(b)(1), which requires holes or hazardous openings at construction sites to be guarded by a substantial cover or a safety railing.

PRACTICE NOTE: Failure of the defendants to provide safety protection devices next to a trench or an opening at a construction site constitutes a violation of Labor Law §§ 240(1) and 241(6). Allegations of comparative fault, such as the plaintiff's improper footwear, are not a defense under these statutes.

TOPICS: *Falling object, Unsecured ladder*

AGUILAR V. 58 GERRY ST., LLC

244 A.D.3d 799
December 10, 2025

The plaintiff was on a ladder when a falling metal object struck it, causing the ladder to shift and the plaintiff to fall. The Second Department affirmed the granting of the plaintiff's motion for summary judgment on his Labor Law § 240(1) claims, holding that his deposition established that the ladder was unsecured and moved due to the impact. The defendant failed to raise any triable issue that a statutory violation did not occur or that the plaintiff was the sole proximate cause.

PRACTICE NOTE: This case further demonstrates that in an accident involving a worker falling off of a ladder, liability will be imposed when the evidence shows that the subject ladder was inadequately secured and that the failure to secure the ladder was a substantial factor in causing the plaintiff's injuries.

TOPICS: *Labor Law § 240(1), Covered work*

CERRO V. 97 PORT RICHMOND AVE., LLC

244 A.D.3d 807
December 10, 2025

The plaintiff, employed by a landscaping company, was injured in a fall from a ladder while cutting tree branches. The Second Department affirmed dismissal of the Labor Law § 240(1) claim on the basis that the tree cutting was outside the ambit of Labor Law § 240(1), because a tree was not a "building or structure" within the meaning of the statute. The court also found that the tree was being removed to prevent future damage to a garage, not to perform structural alteration and preventative maintenance does not constitute "altering."

PRACTICE NOTE: Labor Law § 240(1) only applies to activities considered as erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure.

TOPICS: *Labor Law § 200, Labor Law § 241(6), CPLR § 3211(a), Motion to dismiss requirements*

SANCHEZ V. 12E63, LLC

244 A.D.3d 893
December 10, 2025

The plaintiff sustained injuries while performing construction work on a premises owned by the defendant. The defendant moved, pre-answer, to dismiss the plaintiff's complaint pursuant to CPLR § 3211(a) on the grounds that documentary evidence established that they did not supervise the plaintiff's work and were exempt from the provisions of Labor Law § 241(6) as the owner of a single-family dwelling. The Second Department reversed the trial court's granting of the defendant's motion and held that the documentary evidence proffered by the defendant did not utterly refute or conclusively establish a defense to the plaintiff's claims, which is a requirement under CPLR § 3211(a).

PRACTICE NOTE: To succeed on a motion to dismiss the plaintiff's complaint under CPLR § 3211(a), the documentary evidence relied upon in support of such a motion must utterly refute or conclusively establish a defense to the plaintiff's claims. To be considered documentary, evidence must be unambiguous and of undisputed authenticity. Judicial records, as well as documents reflecting out-of-court transactions such as mortgages, deeds, contracts, and any other papers, the contents of which are essentially undeniable, would qualify as documentary evidence in the proper case.

TOPICS: *Labor Law §§ 240(1) and 241(6), Industrial Code § 23-2.1(a)(1), Falling object, Secured and hoisted*

GUACHO V. DLV EMPIRE, LLC

244 A.D.3d 959
December 17, 2025

The plaintiff claimed injury while working on an elevator installation when a four-

foot by eight-foot box containing an elevator door fell over and pinned the plaintiff's leg, causing a fracture. The plaintiff commenced a lawsuit against the general contractor. The general contractor defendant moved for summary judgment dismissing the plaintiff's complaint and the plaintiff cross-moved on the Labor Law § 240(1) cause of action as well as the Labor Law § 241(6) cause of action predicated on a violation of Industrial Code § 23-2.1(a)(1). The Second Department held that the plaintiff failed to establish that the general contractor was the general contractor for purposes of the Labor Law, noting that under Labor Law §§ 240(1) and 241(6) a general contractor is "responsible for coordinating and supervising the entire construction project and is invested with a concomitant power to enforce safety standards and to hire responsible contractors." The court found that the plaintiff failed to distinguish the defendant as a general contractor versus a prime contractor with regard to the elevator installation sufficient to impose liability under the Labor Law. Further, the court found that the defendant was entitled to summary judgment dismissing the Labor Law § 240(1) cause of action on the grounds that the plaintiff's accident did not fall within the scope of the statute. The defendant was able to establish through the plaintiff's deposition testimony, in which he and his partner stated that they had not touched the elevator door box at the time that it fell, that the load was not being hoisted or secured, that the load did not require securing for the purposes of the undertaking, and that the box did not fall because of the absence or inadequacy of safety devices. The court, however, found that the defendant failed to establish their entitlement to summary judgment on the Labor Law § 241(6) cause of action predicated on a violation of Industrial Code § 23-2.1(a)(1) requiring that the "building materials be stored in a safe and orderly manner."

PRACTICE NOTE: In a falling objects case, a plaintiff must establish that at the time the object fell it either was being hoisted or secured, or required securing for the purposes of the undertaking. However, under certain circumstances, a plaintiff may establish liability in a falling objects case under Labor Law § 241(6) pursuant to Industrial Code § 23-2.1(a)(1), which requires that all building materials be stored in a safe and orderly manner.

TOPICS: *Labor Law § 240(1), Scaffold, Nondelegable duty, Statutory agent, Comparative fault*

PACHECO V. 32-42 55TH ST. REALTY, LLC

244 A.D.3d 991
December 17, 2025

The plaintiff was allegedly injured when he fell from loose and unsecured planks placed atop scaffolding. He commenced an action against the owner, general contractor, and the brick subcontractor that hired his employer, asserting inter alia violations of Labor Law § 240(1). The Second Department reversed the denial of the plaintiff's summary judgment and held that the plaintiff's fall was caused by the defective condition of the scaffolding. Any inconsistency in the plaintiff's testimony regarding the availability of safety devices did not raise a triable issue of fact, as a worker's failure

to use available safety devices would not be a defense to a Labor Law § 240(1) claim. The court further held that the defendant brick subcontractor was a statutory agent of the owner under Labor Law § 240(1), since it chose and directly contracted with the plaintiff's employer for the masonry work and had authority to stop the work based on safety concerns.

PRACTICE NOTE: Labor Law § 240(1) imposes a nondelegable duty on owners, general contractors, and their statutory agents to provide appropriate safety devices. A contractor may be held liable as an owner's agent where it possesses the authority to supervise and control the work giving rise to the injury. Contributory or comparative negligence is not a defense to liability under Labor Law § 240(1).

TOPICS: *Indemnification, Arising out of work, Scope of agreement*

SYNYSTA V. 450 PARTNERS, LLC

244 A.D.3d 1016
December 17, 2025

The plaintiff was injured while working on a construction site when he suffered an electric shock and fell off a scaffold. The electrical subcontractor moved for summary judgment seeking dismissal of the general contractor's claims for contractual and common law indemnification. The lower court granted the motion. The Second Department affirmed, holding that since the electrical subcontractor's contract required indemnification only for claims arising out of the subcontractor's acts or omissions for work it was contractually obligated to perform, dismissal of the contractual indemnity and common law claims were appropriate.

PRACTICE NOTE: Where indemnification is only obligated for claims arising out of a party's acts or omissions and that party was not responsible for the mechanisms behind the injury, dismissal of the contractual indemnity and common law claims is appropriate.

TOPICS: *Labor Law § 240(1), Labor Law § 241(6), Labor Law § 200, Indemnification*

KELLY V. RBSL REALTY, LLC

244 A.D.3d 1086
December 24, 2025

The plaintiff was standing in a hole guiding an 800- to 1000-pound cement light pole base being lowered by a crane when the crane allegedly jerked or moved suddenly, striking and injuring the plaintiff. The plaintiff asserted causes of action alleging a violation of Labor Law §§ 240(1), 241(6), and 200. The Second Department held that the trial court properly denied those branches of the separate motions of the defendants for summary judgment dismissing the cause of action alleging a violation of Labor Law § 240(1), § 241(6) and § 200 insofar as asserted against each of them. The court found that the plaintiff was exposed to an elevation-related hazard under Labor Law § 240(1) when the heavy cement base moved while being hoisted. Further, the defendants failed to show the Industrial Code violations alleged under § 241(6) were inapplicable. For Labor Law § 200 and common law negligence, the contractor who provided the light base and crane failed to eliminate triable issues regarding supervision, while the landlord-defendant established they did not exercise supervision or control over the work. The landlord-defendant's motion for summary judgment dismissing the cross-claim for contractual indemnification was denied. A party that moves for summary judgment dismissing a cause of action for contractual indemnification must make a prima facie showing that it was not contractually obligated to indemnify the party asserting the indemnification claim. The landlord-defendant failed to submit relevant contracts to support its motion. Similarly, the landlord defendant's motion for summary judgment dismissing the cross-claims for common law indemnification and contribution was also denied because it failed to establish that the landlord-defendant was not negligent and that it did not owe a duty of reasonable care to the plaintiff or a duty independent of its contractual obligations.

PRACTICE NOTE: It is important to attach all evidence relevant to each cause of action to support a motion for summary judgment. Failure to submit all evidence in support of a motion for summary judgment can be fatal and allow an otherwise dismissible claim to survive.

TOPICS: *Labor Law § 240(1), Labor Law § 241(6)*

MORALES V. 88TH AVE. OWNER, LLC

244 A.D.3d 1098
December 24, 2025

The plaintiff was injured at a construction site in Queens when he was struck in the eye by a spark from ironwork being performed on the floor above him. At the time of the accident, the plaintiff was employed as a foreman for a subcontractor retained to perform excavation and concrete work on the construction project. The plaintiff failed to establish that the sparks resulting from the ironwork were objects that required securing for the purpose of the undertaking or that his injuries arose from an elevation-related risk contemplated by Labor Law § 240(1), as opposed to the usual and ordinary dangers of a construction site. Further, the plaintiff failed to establish a violation of 12 NYCRR 23-1.8(a), as he could not demonstrate that he was personally engaged in welding, burning, or cutting operations, or in chipping, cutting, or grinding any material from which particles may fly, or was engaged in "any other operation which may endanger the eyes." The Second Department exercised their authority pursuant to CPLR 3212(b) to search the record and award summary judgment to the defendants.

PRACTICE NOTE: Not every accident requires the extraordinary protections of the Labor Law. It is important to fully establish a plaintiff's job duties at the time of his accident, as such facts can be determinative on whether certain Industrial Code sections can act as a basis for a Labor Law § 241(6) claim.

TOPICS: *Labor Law §§ 200, 240(1) and 241(6), Supervisory control, Indemnification*

NUSBAUM V. 1455 WASHINGTON AVE., LLC
244 A.D.3d 1559
July 24, 2025

The plaintiff, an employee of a sign installation subcontractor, was injured after falling from a ladder while installing signage at a convenience store. The defendant-contractor who subcontracted to the plaintiff's employer moved for summary judgment dismissing the complaint and cross-claims, arguing that it did not supervise or control the plaintiff's work. The Third Department affirmed the denial of summary judgment, finding triable issues of fact based on contractual provisions requiring the subcontractor to follow the defendant-contractor's specifications and safety standards, allowing the defendant-contractor access to personnel and documentation, and authorizing disciplinary action for safety violations. These provisions raised questions as to the defendant-contractor's supervisory control and potential status as a statutory agent.

PRACTICE NOTE: Even where a defendant denies onsite supervision, contractual authority over safety practices, work specifications, or personnel may be sufficient to create issues of fact as to Labor Law agency.

TOPICS: *Labor Law § 200, Common law negligence, Premises condition, Open and obvious hazard*

SULLIVAN V. FLYNN
244 A.D.3d 1354
December 4, 2025

The plaintiff, a cabinetry supplier, was injured when he tripped over a wooden construction brace placed diagonally across the floor of a kitchen during residential construction. Although the plaintiff observed the brace prior to tripping, the Third Department reversed the grant of summary judgment, holding that the open and obvious nature of the condition negated only the duty to warn and did not eliminate the defendants' duty to maintain a reasonably safe workplace under Labor Law § 200 and common law negligence. The plaintiff's awareness of the brace was relevant only to comparative negligence.

PRACTICE NOTE: An open and obvious condition does not, standing alone, defeat a Labor Law § 200 or common law negligence claim premised on failure to maintain a safe worksite.

TOPICS: *Labor Law § 240(1), Safety device, Ladder, Sole proximate cause*

NUSBAUM V. 1455 WASHINGTON AVE., LLC
234 A.D.3d 1078
December 18, 2025

The plaintiff, an employee of a sign installation subcontractor, was injured when he fell from a ladder while installing a convenience store sign. The plaintiff was working approximately eight- to 10-feet above the ground when the ladder suddenly wobbled and fell away from the building, causing him to fall face-first onto the sidewalk. The Third Department reversed the Supreme Court and granted the plaintiff partial summary judgment on liability under Labor Law § 240(1), holding that the unexplained movement of the ladder constituted a failure of the safety device. Allegations that the plaintiff was straddling the ladder or overreaching were insufficient to establish that the plaintiff was the sole proximate cause of the accident and, at most, raised issues of comparative negligence.

PRACTICE NOTE: Where a ladder unexpectedly wobbles or falls while being used for elevated work, a plaintiff is entitled to a presumption that the ladder was inadequate, and arguments regarding improper use typically raise only comparative negligence, not sole proximate cause.

TOPICS: *Labor Law §§ 200, 240(1) and 241(6), Covered activities*

CURRAN V. JJML, INC.

240 A.D.3d 1328
July 25, 2025

The plaintiff claimed he was injured when he slipped and fell on an exterior deck attached to commercial office space occupied by, and exclusively used by, his employer. On the date of the accident, the plaintiff observed a leak within the interior of the office space, and suspected that a tree limb had fallen onto the roof, causing the leak. He stepped onto the exterior deck to investigate, slipped and fell on what he described as a thin veneer of green moss or algae that had accumulated on the deck. The plaintiff's claims under Labor Law §§ 200, 240(1) and 241(6) were dismissed because the plaintiff performed administrative work rather than construction or manufacturing work, so he was not part of the protected class of persons covered under the Labor Law. As a result, the case was a common law negligence case involving a claimed defective condition.

PRACTICE NOTE: In order for the Labor Law to apply, a plaintiff must be engaged in a protected activity including construction, repairing, cleaning, painting or altering buildings or structures.

TOPICS: *Labor Law § 240(1), Falling object, Labor Law § 241(6)*

SZLAPAK V. THE L.C. WHITFORD CO., INC.

242 A.D.3d 1547
October 3, 2025

The plaintiff sustained injuries at a jobsite when a 40-foot suspension ladder fell on him. The plaintiff's co-workers had been using the ladder, and were in the process of taking it down when one slipped on ice, causing the ladder to fall and strike the plaintiff who was standing nearby. The plaintiff moved for summary judgment under Labor Law § 240(1), which was denied by the lower court. The Fourth Department affirmed, finding that at the time of the accident the ladder did not require securing for the purpose of the undertaking and that securing it would have been contrary to the objectives of the work plan. However, the plaintiff's motion should have been granted on the Labor Law § 241(6) claim as predicated under NY Industrial Code §§ 23-1.7(d) and 23-1.21(b)(4)(ii) because the ladder had been set up on a slippery surface.

PRACTICE NOTE: In order to establish liability under Labor Law § 240(1), a plaintiff must show more than he was struck by a falling object. The plaintiff must also show that the object was being hoisted or was required to be secured for the purpose of the undertaking.

TOPICS: *Labor Law § 200, Supervision and control, Indemnification*

IGNATOWSKI V. LEDGESTONE VIL., LLC

242 A.D.3d 1620
October 10, 2025

The plaintiff filed a claim alleging violations of New York Labor Law §§ 200, 240(1) and 241(6), as well as for common law negligence, after he sustained injuries while using a table saw to cut vinyl flooring planks. The lawsuit was filed against the property owner, who subsequently filed a third party action against the plaintiff's employer/general contractor for common law indemnification and contribution on the basis that the employer was the negligent party and controlled and supervised plaintiff's work. The owner filed summary judgment on the third-party claims, and the motion court granted conditional summary judgment with respect to the common law indemnification claim. The owner appealed, and the Fourth Department affirmed the motion court's holdings, finding that the general contractor hired the plaintiff, gave him work orders at the jobsite on the date of the accident, and hired and employed every person working at the site, including the plaintiff's supervisor.

PRACTICE NOTE: For a defendant to be liable under Labor Law § 200, that defendant must directly control or supervise the plaintiff, or be responsible for maintaining the premises in good condition. Supervision and control is fact specific, and can be established by showing that a party gave the plaintiff work instructions and maintained responsibility for supervising the plaintiff's work.

TOPICS: *Labor Law § 240(1), Fall from a height, Safety device*

LAMICA V. SISKAR

244 A.D.3d 1772
December 23, 2025

The plaintiff was injured when he fell from a roof he had been hired to repair. Both the plaintiff and the defendant filed motions for summary judgment on the Labor Law § 240(1) claim, neither of which was granted. In affirming denial of both motions, the Fourth Department held that neither party established entitlement to judgment as a matter of law due to questions of fact whether tie-off brackets that had been placed on the roof provided adequate protection and, if so, whether the plaintiff's failure to use the tie-off brackets was the sole proximate cause of the accident.

PRACTICE NOTE: To defend claims under Labor Law § 240(1), defendants should show that the plaintiff was provided with the proper safety device, but failed to use it.

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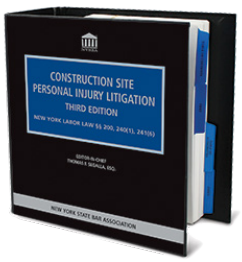

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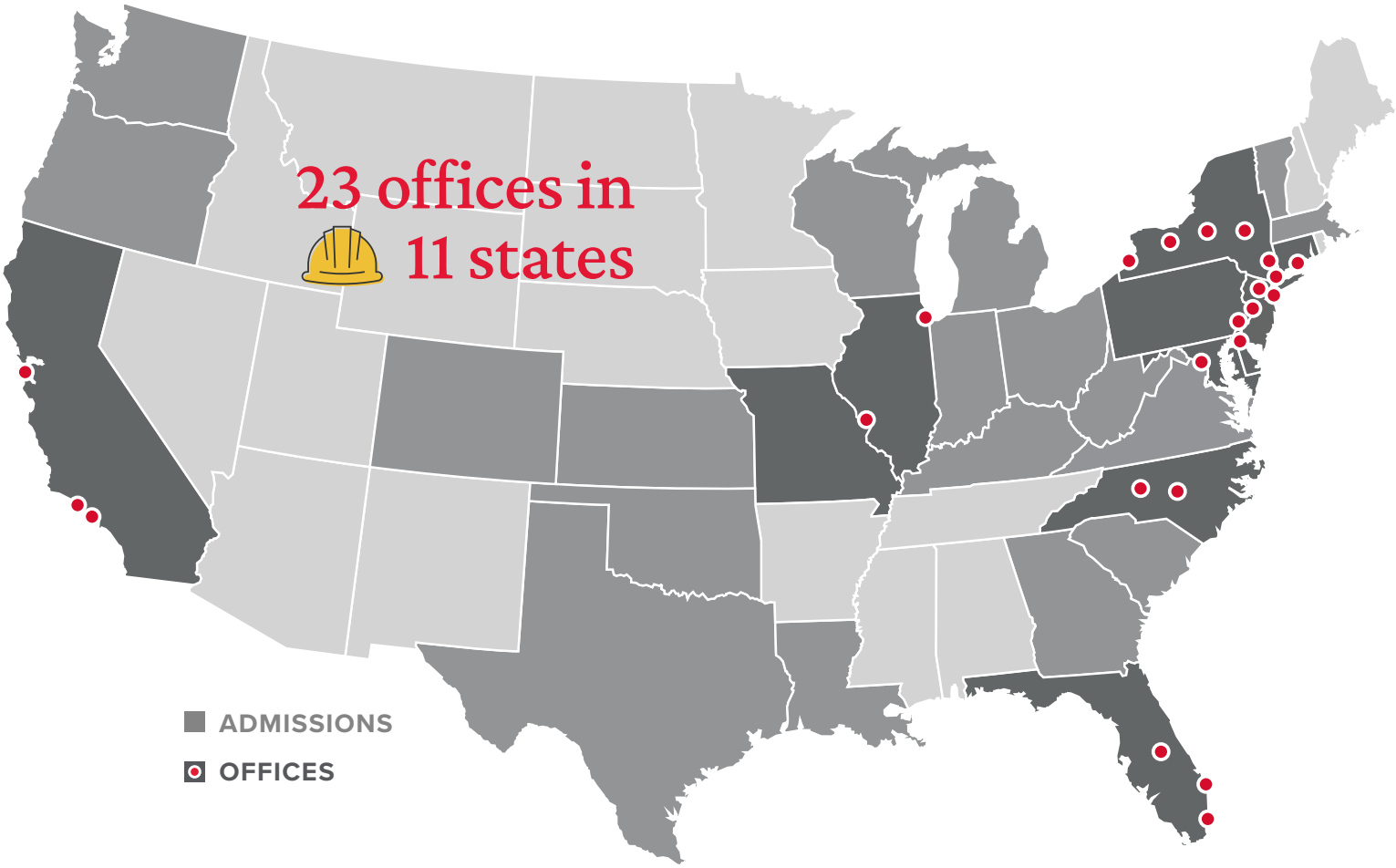

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