

Labor Law Update

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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

Goldberg Segalla's Fall 2025 *Labor Law Update* arrives at the end of a relatively quiet year for the construction world, but with a frenzy on the horizon. New York has seen a noticeable increase in new projects, with the construction industry labor force surpassing pre-pandemic levels and new projects on the horizon amidst lowering interest rates and an increase in available capital.

With new development comes more workers, and when there are more workers, Labor Law claims will inevitably follow. Demonstrating the firm's breadth of knowledge and experience, this year's update and accompanying webinar will focus not only on trends in case law, but will incorporate guidance for investigative best practices, successful defense tactics, and risk transfer opportunities to ameliorate the impact of otherwise high-exposure claims.

This expanded approach is driven by the firm's next generation of Labor Law leaders, who are proud to put their individual touch on this time-honored tradition. We would be remiss if we did not tip our hats and give deep thanks to our good friends and colleagues who took the *Labor Law Update* to new heights and who gave us each the opportunity to help shape the firm's biannual product. With nearly 60 years of experience prosecuting and defending New York Labor Law claims and representing clients across the broad spectrum of the construction industry, Goldberg Segalla's Labor Law team is as poised as ever to continue providing first-rate services to our construction clients and digging in on the front lines of Labor Law litigation.

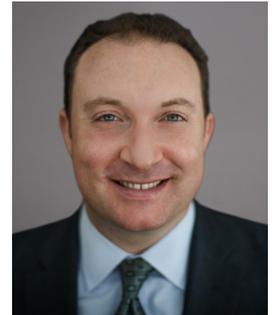
We hope the Fall 2025 *Labor Law Update* will serve as a practical and valuable resource as you navigate this ever-evolving sector of the law, and we hope to see you all on November 18 for our webinar. Please note that Goldberg Segalla offers a number of construction-related publications, case alerts and informational blogs, and also maintains rapid response teams ready to deploy at a moment's notice. For more information on the firm's offerings, please refer to the back page of this update or feel free to contact any of us directly. As always, we look forward to hearing from you should you have any questions concerning the cases or topics discussed in this update, or if you have any feedback on how to improve the *Labor Law Update*.



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TOPICS: *Labor Law § 240(1), Force of gravity, Secured load*

HEMPSTEAD V. HAMMER & STEEL, INC.

234 A.D.3d 407
January 2, 2025

The plaintiff was injured when a cement mixer weighing more than 600 pounds fell and crushed him. The First Department affirmed the lower court's decision denying summary judgment and declining to dismiss the plaintiff's Labor Law § 240(1) claim. The court reasoned that, while the elevation from which the mixer fell may have been a matter of feet, the mixer was still capable of generating an amount of force significant enough to crush the plaintiff. Additionally, the mixer needed to be secured for the purposes of the undertaking, which was to secure it for transport. While there was some testimony that the plaintiff's shirt may have caught on the mixer and brought it down with him as he came off the trailer, the record was unclear to find that to be the definitive version of the events, leaving issues of fact as to the manner in which the plaintiff's accident occurred.

PRACTICE NOTE: The distance an object falls does not determine the applicability of Labor Law § 240(1) when the object is capable of generating sufficient force to injure a worker and securing it was part of the work undertaken.

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

PEREZ V. 1334 YORK, LLC

234 A.D.3d 455
January 7, 2025

The plaintiff was injured when he fell from a mobile scaffold while taping drywall, his assigned task, at a construction site on the fifth floor of a building. The First Department reversed the lower court's decision and granted the plaintiff's summary judgment motion on his Labor Law § 240(1) cause of action based on his undisputed testimony that he was provided a scaffold lacking guardrails on its long sides. The court stated that liability under Labor Law § 240(1) does not attach when the safety devices the plaintiff alleges were absent

were readily available, albeit not in the immediate vicinity of the accident. While the defendants indicated that workers were generally aware that railings were available throughout the site, they failed to show that their precise locations were made known to workers. The affidavits of the defendants' three foremen and co-worker were conclusory, and the record did not specify or even approximate the location of the guardrails. At oral argument, counsel was unable to specify where these safety devices could be found. Although the record contained photos of the subject scaffold, there were no photographs of the missing guardrails that might serve as a guide to their possible location. The defendants' proof demonstrated only the general availability of safety equipment at the worksite, which does not relieve the defendant of liability. Where a defendant cannot show – and does not even know – the location of safety devices in a space the length of a city block, it cannot establish that the devices were readily available.

PRACTICE NOTE: The appellate courts have not further defined the meaning of "readily available" beyond qualifying that a safety device need not be in the immediate vicinity. Nonetheless, a worker should at least know where to find the safety devices. Conversely, a defendant may show that safety devices were readily available by submitting evidence that the worker knew exactly where they could be found.

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

INTERIANO V. SILVERSTEIN GALAXY PROP. OWNER, LLC

234 A.D.3d 488
January 9, 2025

The plaintiff claimed that she fell while performing exterior demolition work, working on a motorized scaffold on the exterior fourth floor level of a building when the wind, coupled with the force of her co-worker's drill boring into the façade, caused the scaffold to sway away from the building. As a result, the plaintiff lost her balance and fell backward into the scaffold railings and then to the surface of the scaffold. The First Department affirmed the decision of the lower court, finding that

the plaintiff was properly granted summary judgment on her Labor Law § 240(1) claim. The court found that the demolition work being performed by the plaintiff on an elevated scaffold, four stories from the ground, clearly fell within the statute's protection. The defendants' failure to fasten the scaffold to the building directly caused the plaintiff to be injured by the very safety device intended to protect her from the gravity-related risks posed by working on the building's fourth floor exterior.

PRACTICE NOTE: Labor Law § 240(1) applies even where the plaintiff falls to the scaffold floor, but not off the scaffold entirely, so long as the injury resulted from an elevation-related hazard.

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

PYANKAROO V. RENALI REALTY GROUP 1, LLC

234 A.D.3d 533
January 14, 2025

The plaintiff fell from a ladder while removing or reattaching a canvas storefront sign that was bolted into the building above the store's entrance. The plaintiff's activity had the earmarks of routine maintenance, although the plaintiff contended that his task with the canvas sign had been undertaken to prepare the storefront for the intended work of replacing damaged fluorescent lighting components, including ballasts and conduit-housing wiring, so that a new LED lighting system could be installed. The plaintiff testified that his electrical work was to be performed in conjunction with the business' planned project of replacing the storefront's roll-down security gate, which was to be performed by contractors. The First Department affirmed the denial of the plaintiff's motion for summary judgment on his Labor Law § 240(1) claim finding that, even assuming the plaintiff met his *prima facie* burden, there were factual issues as to whether this work had begun and was underway at the time of his fall, and thus, whether the plaintiff was engaged in a covered activity.

PRACTICE NOTE: Factual issues as to whether covered work had begun or was underway will preclude summary judgment on a Labor Law § 240(1) claim.

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

BARRETO V. BOARD OF MGRS. OF 545 W. 110TH ST. CONDOMINIUM

234 A.D.3d 515
January 14, 2025

The plaintiff sustained injuries while washing windows on an 11-story building. The First Department affirmed the lower court's decision denying summary judgment to all parties. The plaintiff established *prima facie* entitlement to summary judgment under Labor Law § 240(1) by showing that his accident arose from a gravity-related risk against which the defendants failed to adequately protect him. However, the opinions of the defendants' experts, as well as the testimony of the plaintiff's co-worker, raised an issue of fact as to whether the plaintiff's failure to use a rope guard, and to properly position a rope grab above his head, were the sole proximate cause of his accident. Conversely, the plaintiff and his co-worker's testimony that they assessed beforehand whether a rope guard was necessary and determined that it was not, and the plaintiff's testimony that he properly positioned the rope grab above his head prior to the accident, would support the conclusion that the plaintiff was, at most, only comparatively negligent, which is not a defense to a Labor Law § 240(1) claim. The defendants' failure to eliminate these same issues of fact in connection with their own motion required its denial without consideration of the plaintiff's motion papers in opposition. The First Department also reversed the lower court's decision which improperly dismissed the contractor hired by the condo defendant from the action, finding that the contractor was the statutory agent of the condo as they were the only contractor hired by the condo to perform the window-washing project. The contractor could not escape liability under the Labor Law because it delegated the work to the plaintiff's employer, and whether the contractor actually supervised plaintiff's work was irrelevant.

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). A contractor found to be the statutory agent of the owner cannot escape liability under the Labor Law



even if the contractor defendant delegated the work to the plaintiff's employer and did not supervise the plaintiff's work.

TOPICS: *Labor Law § 240(1), Unsecured ladder, De minimis height differential, Superseding causes*

SILVA V. 770 BROADWAY OWNER, LLC

234 A.D.3d 581
January 21, 2025

The plaintiff claimed that he sustained injuries while he was marking off areas of the floor with duct tape in preparation for the floor to be painted and he was struck on the back of the head by a ladder that fell from its position leaning against the wall. The First Department found the defendants failed to establish *prima facie* entitlement to summary judgment dismissing the plaintiff's Labor Law § 240(1) claim, and that the plaintiff established *prima facie* entitlement to summary judgment per Labor Law § 240(1)

because the evidence established that the ladder was not adequately secured for the purpose of the undertaking. Although the plaintiff conceded he did not see the ladder before the accident, his deposition testimony sufficiently identified the ladder as the cause of his injuries. The elevation differential involved was not *de minimis* as the ladder was 6- to 10-feet tall. The court found that it was foreseeable that a ladder resting against a wall could topple over and strike a nearby worker. A worker knocking over the ladder could not be considered an intervening superseding cause.

PRACTICE NOTE: A plaintiff may be entitled to summary judgment as to a Labor Law § 240(1) claim where evidence established that the object which fell and struck him or her was not adequately secured for the purpose of the undertaking. Here, even when the ladder was on the same level as the plaintiff, the fact that the ladder itself was 6- to 10-feet tall was considered when determining if the height differential was *de minimis*.

TOPICS: *Labor Law § 200, Contractual indemnification*

GARCIA V. SOHO AOA OWNER, LLC

234 A.D.3d 572
January 21, 2025

The plaintiff, a site safety manager at a construction project, was struck and injured by a metal sign that fell from a side wall of an overhead sidewalk shed on the premises. The First Department affirmed the lower court's denial of the defendants' motions for summary judgment to dismiss the plaintiff's common law negligence and Labor Law § 200 claims. The court stated that under Labor Law § 200, where an object on the premises is capable of deteriorating, or the hazard it presents is concealed from view, the property owner and the general contractor must demonstrate that reasonable inspections of the object were conducted in order to establish that they lacked notice of the dangerous condition. The First Department modified the lower court's order granting the defendant owner contractual indemnification against the plaintiff's employer, as the employer agreed to indemnify the defendant owner for losses arising out of performance of the employer's work to the extent that the loss was caused in whole or in part by the employer's conduct, acts or omissions, or breach of contract.

PRACTICE NOTE: Where a premises condition is at issue under Labor Law § 200, the defendant must demonstrate that reasonable inspections were conducted in order to establish that they lacked notice of a dangerous condition. This same analysis would be used on a common law negligence claim to determine whether the defendant lacked constructive notice of a dangerous premises condition.

TOPICS: *Labor Law § 240(1), Covered person, Covered work, Labor Law § 200, Statutory agent*

RODRIGUEZ V. RIVERSIDE CTR. SITE 5 OWNER LLC

234 A.D.3d 623
January 28, 2025

The plaintiff was working as a delivery truck driver and had just completed a delivery

of tiles for other employees to install when he fell into a 2-foot by 3-foot hole near a temporary loading dock ramp. The First Department reversed the lower court's decision and granted the plaintiff's motion for summary judgment per Labor Law § 240(1). The court stated that the task a plaintiff is performing at the exact moment of their accident is not dispositive of whether they were engaged in a protected activity for purposes of liability under the Labor Law. Rather, the inquiry includes whether the plaintiff's employer was contracted to perform the kind of work enumerated in the statutes and whether the plaintiff was performing work "necessary and incidental to" a protected activity. Because the plaintiff's work in delivering and unloading tiles to be used in the activity covered by Labor Law § 240(1) was necessary and incidental to the protected activity, he was within the class of workers protected by those statutes, notwithstanding that he was not assigned to participate in the installation of the tiles. The First Department also affirmed the award of summary judgment under Labor Law § 200 in favor of the electrical subcontractor as they were not a statutory agent of the owner or the general contractor. Their work was limited to providing electrical installation and temporary lighting and did not encompass either tile work or maintaining the temporary ramp or surrounding areas.

PRACTICE NOTE: A plaintiff may be entitled to protection under Labor Law § 240(1) even if his work was not a specific protected activity if the work is necessary and incidental to a protected activity under the Labor Law. To be treated as a statutory agent, a subcontractor must have been delegated supervision and control either over the specific work area involved or the work which gave rise to the injury.

TOPICS: *Labor Law § 240(1), De minimis height differential, Proximate cause*

MEJIA V. 770 BROADWAY OWNER, LLC

234 A.D.3d 615
January 28, 2025

The plaintiff was injured when he was struck by a 16-foot-long scaffold pipe that had been left unsecured on its end. The First Department reversed the lower court's decision and granted the plaintiff summary judgment

on his Labor Law § 240(1) claim, finding that the weight of the pipe and its descent were not *de minimis*, nor were there issues of proximate cause or credibility that would preclude summary judgment.

PRACTICE NOTE: In evaluating whether the distance of an object's fall is *de minimis*, the court looks at the weight of the object as well as the distance the object fell. Labor Law § 240(1) can apply even where a heavy object only falls a short distance.

TOPICS: *Homeowner's exemption, Labor Law § 240(1), Labor Law § 241(6), Labor Law § 200, Agency*

JAGDEO V. BORDEN HOUSE CONDO

235 A.D.3d 448
February 11, 2025

The plaintiff was injured when a co-worker, who was on a ladder installing metal Z clips, dropped the clips on the plaintiff's head while they were working on a renovation of a single-family apartment in a condominium building. The plaintiff was not wearing a hard hat. The First Department affirmed the dismissal of the plaintiff's Labor Law § 240(1) and § 241(6) claims against the defendant owners pursuant to the homeowner's exemption, as owners of one- and two-family dwellings who contract for but do not direct or control the work are exempt from both statutes. The defendants established that they owned the apartment and demonstrated their entitlement to the homeowners' exemption by showing that they did not direct or control the plaintiff's work. The plaintiff's hearsay evidence in opposition – that the defendant gave his supervisors instructions – was insufficient to raise a triable issue of fact. The plaintiff's Labor Law § 200 and common law negligence claims were also dismissed since there were no issues of fact as to whether the defendant owners directed or controlled the work. The First Department affirmed the dismissal of the plaintiff's Labor Law § 240(1) and § 241(6) claims against the condo defendant because the defendant established that the plaintiff's accident occurred within the apartment and that the plaintiff was not working on common elements of the building. Further, the condo defendants did not have authority to supervise or control the job and thus were not an agent of the owner.

PRACTICE NOTE: The homeowner's exemption to liability under the Labor Law will apply to owners of one- and two-family dwellings who contract for but do not direct or control the work.

TOPICS: *Labor Law § 240(1), Demolition, Statutory agent*

MANNINO V. WALDORF EXTERIORS, LLC

235 A.D.3d 470
February 13, 2025

The plaintiff was injured while working at a construction project, chipping cement encasements from two-story, steel vertical columns located in the lobby of the building. At the time of the accident, the plaintiff was ascending a scissor lift when he was struck by a 200- to-300-pound piece of cement that fell from the middle tier of a column. The First Department found that the plaintiff established *prima facie* entitlement to summary judgment under Labor Law § 240(1) because he demonstrated that he was injured by falling cement from an area on a vertical column and, at the time of the accident, he was not otherwise engaged in actual cement removal. Moreover, shoring or bracing of cement casing on the columns could have been accomplished by wire mesh or other means without making the work impossible to complete. The defendants failed to show how adequate safety measures would interfere with or preclude the plaintiff from completing his assigned demolition task. Questions of fact precluded summary judgment to the defendant subcontractors as to whether they were statutory agents of the general contractor in light of testimony that the defendant could stop work to enforce safety practices and that the defendant was the "eyes and ears" of the general contractor during the renovation.

PRACTICE NOTE: Labor Law § 240(1) is violated where a plaintiff is injured by a falling object which was not properly secured. To hold a subcontractor liable under Labor Law § 240(1) as a statutory agent of the owner or general contractor, a plaintiff must demonstrate that the subcontractor had authority to supervise and control the work being performed.

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

SAULA V. HARLEM URBAN DEV. CORP.

235 A.D.3d 478
February 13, 2025

The First Department affirmed the lower court's decision granting the plaintiff's motion for summary judgment on his Labor Law § 240(1) claim based on uncontested testimony that he slipped on the first rung of a wet ladder while descending, and the defendants did not require him to use fall protection gear when using the ladder. Evidence further established that the wet ladder, the only means of access between the first and second floors, lacked slip protection and a tie-off point. The First Department also affirmed dismissal of the defendants' affirmative defense asserting that the plaintiff was the sole proximate cause of his accident, finding that if a statutory violation of Labor Law § 240(1) is a proximate cause of the injury, the plaintiff cannot be solely to blame for it.

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: *Issue of fact, Labor Law § 240(1), Premature motion*

KONSTANTINOVIC V. FINCH APT. CORP.

235 A.D.3d 468
February 13, 2025

The First Department upheld the Supreme Court's denial of the boiler installation and repair defendant's motion for summary judgment on the plaintiff's asserted Labor Law claims. The plaintiff, an employee of the owner, sustained injuries when he fell from a ladder while working in the boiler room of the owner's building. The plaintiff alleged that the owner hired the boiler installation and repair defendant to work on the building's boiler before the accident, and that it was responsible for maintaining the boiler and boiler room in a reasonably

safe and suitable condition and in good repair. The Supreme Court denied the boiler defendant's motion as premature. The First Department found that the denial was proper because the plaintiff showed that facts essential to oppose the motion – including invoices, work orders, proposals, and other evidence of the boiler defendant's work before the accident – were in the boiler defendant's exclusive control, but were not produced. Additionally, the boiler defendant failed to establish its entitlement to judgment as a matter of law because the affidavit of its principal failed to address the plaintiff's central allegation that he fell.

PRACTICE NOTE: A party opposing summary judgment is entitled to obtain further discovery (i.e. depositions and project records) when it appears that facts supporting the opposing party's position may exist but cannot then be stated.

TOPICS: *Labor Law § 240(1), Protected activity*

TRAUB V. BASKETBALL CITY N.Y. LLC

235 A.D.3d 513
February 18, 2025

The plaintiff was one of a team of stagehands belonging to a union hired to erect a temporary stage for an awards show at Pier 36 in Manhattan. Although he was assigned to the audio department for the project, the union stagehands were required to perform all aspects of stage construction and the plaintiff undertook a multitude of interdepartmental assignments the day prior to the show, including some construction-related tasks. The First Department held the lower court properly granted the plaintiff summary judgment on his Labor Law § 240(1) claim. Section 240(1) provides special protection to those engaged in "erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure." The courts have held that a full assessment of the work being performed is required and the activity being engaged in at the exact moment of injury is not solely determinative. Thus, the plaintiff's work, even though ancillary to the construction of the temporary stage, was ruled to qualify as protected activity within the ambit of Labor Law § 240(1).



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. However, work that is ancillary to a covered activity may qualify as a protected activity.

TOPICS: *Statutory agent*

ROSSI V. DOKA USA, LTD.

235 A.D.3d 481
February 18, 2025

The plaintiff was an employee of the concrete subcontractor and was injured while using a ratchet to move a reusable concrete formwork system used to construct concrete walls. The concrete formwork system was provided by the supplier defendant, which also trained the subcontractor employees on how to use the system and the ratchets. The First Department affirmed the lower court’s denial of the supplier defendant’s motion for summary judgment because the supplier defendant failed to establish that it was not a statutory agent under the Labor Law. Based on the contract with the concrete subcontractor, and testimony that a supplier employee remained on site after training the subcontractor employees on the formwork system, issues of fact existed as to whether the supplier defendant had the authority to supervise and control the plaintiff’s work with the formwork system.

PRACTICE NOTE: The core requirement to be considered when assessing if a defendant is a statutory agent under the Labor Law is whether the party has actual authority to direct, supervise, or control the work where the injury occurred, not just supervisory control over the worker.

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

SUAZO V. 501 MADISON-SUTTON LLC

235 A.D.3d 513
February 18, 2025

The plaintiff was standing on an A-frame ladder performing plastering work when the ladder suddenly toppled over. The First

Department upheld the lower court’s decision granting the plaintiff’s motion for partial summary judgment on his Labor Law §§ 240(1) and 241(6) claims as the record presented no issues of fact as to whether his conduct was the sole proximate cause of his injuries and the inconsistencies in the plaintiff’s testimony identified by the defendants were insufficient to undermine the plaintiff’s proof of a *prima facie* case.

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: *Labor Law § 241(6), Tripping hazards, Industrial Code § 23-1.7(e)(1), Labor Law § 200*

WILLIAMS V. MCALPINE CONTR. CO.

235 A.D.3d 521
February 18, 2025

The plaintiff, an employee of a project subcontractor, was injured when he fell while walking on raised curbing in the middle of a pathway leading to his employer’s shop at the jobsite. The First Department dismissed the plaintiff’s Labor Law § 241(6) cause of action predicated on Industrial Code § 23-1.7(e)(1), which pertains to tripping hazards, because the plaintiff admitted that he did not trip on the raised curbing or any debris. The First Department also held issues of fact precluded the granting of summary judgment to either the plaintiff or the defendants on the common law negligence and Labor Law § 200 causes of action. These claims arose from an alleged dangerous condition on the site, not from the means and methods of the plaintiff’s work. Where an existing defect or dangerous condition causes the injury, liability will attach if the owner or general contractor created the condition or had actual or constructive notice of the condition. The defendants’ witness acknowledged that workers were not supposed to walk on the pathway with the raised curbing, but the record contained conflicting evidence as to whether the defendants knew or should have known that workers continued to use the pathway, despite the presence of a plywood barrier. There was also an issue of fact whether the plaintiff’s fall was caused

by a dangerous condition of the curbing, or if he lost his footing as he was stepping off the curbing. Additionally, because there were issues of fact as to the defendants' negligence, they were not entitled to summary judgment on their contractual indemnification claim against the third-party defendant subcontractor.

PRACTICE NOTE: To maintain a Labor Law § 241(6) claim, the plaintiff must establish that the owner or general contractor violated a sufficiently specific Industrial Code and that such violation was the proximate cause of the plaintiff's injuries.

TOPICS: *Labor Law §§ 240(1), 241(6) and 200, Homeowner's exemption, Supervision and control*

CASTRO V. BRITO

235 A.D.3d 527
February 20, 2025

The plaintiff was injured when the wooden ladder he was using collapsed as he descended from the garage roof of a two-unit private home. The First Department upheld the lower court's decision granting summary judgment to the plaintiff on the Labor Law § 240(1) claim against the spouse defendant, denied the spouse defendant's cross-motion for summary judgment dismissing that claim and the plaintiff's Labor Law § 200 and common law negligence claims. Although the spouse of the homeowner defendant, the spouse defendant was not a legal owner of the property where the plaintiff worked and was not entitled to the homeowner's exemption under Labor Law § 240(1) because the term "owner" in Labor Law §§ 240(1) and 241(6) does not encompass merely a spousal relationship with the titleholder. The plaintiff established that the spouse defendant was a statutory agent of the defendant owner under Labor Law § 240(1) because he acted as the owner's agent by hiring the plaintiff with the owner's authorization and providing the plaintiff with materials and tools needed for the roof repair work. The plaintiff further established a *prima facie* entitlement to summary judgment on his Labor Law § 240(1) claim by showing the ladder he was provided with was an old, unstable wooden ladder that was too short to reach the roof, which afforded him a pre-

sumption that it was not sufficient to afford proper protection. The First Department held that since the plaintiff established that a Labor Law § 240(1) violation proximately caused his injuries, the plaintiff was not the sole proximate cause of the accident. Additionally, because the evidence established that the defendants exercised supervisory control over the means and methods of the plaintiff's work, including providing him with the ladder he used, the defendants' motion for summary judgment on the Labor Law § 200 and common law negligence claims was properly denied.

PRACTICE NOTE: To fall within the homeowner's exemption, the homeowner must show they did not direct or control the work being performed. Further, general supervisory authority is insufficient to hold a homeowner or contractor liable under Labor Law § 200 or common law negligence; liability may only be imposed if the homeowner or contractor had authority to supervise and control the work being performed.

TOPICS: *Labor Law § 240(1), Fall from a ladder, Workers' Compensation Law § 11, Grave injury*

LOPEZ V. 18-20 PARK 84 CORP.

235 A.D.3d 591
February 27, 2025

The First Department upheld the Supreme Court's decision that granted the plaintiff's motion for partial summary judgment on Labor Law § 240(1), but reversed a portion of the decision and granted the third-party defendant employer's motion for summary judgment dismissal of the claims asserted against it for common law indemnification and contribution. The plaintiff was standing on an A-frame ladder while performing painting work within an apartment when the ladder moved from under him "for no apparent reason." The First Department indicated that contrary to the building defendants' argument, a plaintiff is not required to demonstrate that a ladder is defective in order to establish *prima facie* entitlement to summary judgment under Labor Law § 240(1). Further, the plaintiff established that the safety device he was provided with, the ladder, proved inadequate to prevent his accident. The First Department also ruled the third-party defendant's mo-

tion for summary judgment seeking dismissal of the common law indemnification and contribution claims should have been granted. The plaintiff's treatment records did not establish that his claimed total disability was due to his traumatic brain injury, as opposed to his other claimed injuries. In addition, the plaintiff's employer established *prima facie* that the plaintiff did not suffer a grave injury within the meaning of Workers' Compensation Law § 11 through its expert neurologist's affirmed report opining that there was no valid or reliable evidence of cognitive or psychological symptoms resulting from the accident, and that the plaintiff could return to work on a full-time basis.

PRACTICE NOTE: Workers' Compensation Law § 11 unambiguously shields employers from liability to third parties for contribution and indemnity except in limited circumstances, one of which is where the employee has sustained a grave injury, which includes "an acquired injury to the brain caused by an external physical force resulting in permanent total disability." A permanent total disability requires a showing that the injured employee is no longer employable in any capacity. In the absence of such proof, contribution and indemnification against the employer claims become extinguished by statute.

TOPICS: *Labor Law § 240(1), Labor Law § 241(6), Falling object, De minimis height differential, Labor Law § 200*

CRUZ V. PMG CONSTR. GROUP LLC

236 A.D.3d 402
March 4, 2025

A metal and glass worker was injured when a 225 to 250 lb., 4 foot by 10 foot window tipped over and struck the back of his legs. Prior to the incident, the window was leaning against a stack of approximately four other similarly sized windows, all of which were also leaning against the wall. The First Department held the lower court properly denied the defendants' summary judgment motion on the plaintiff's Labor Law § 240(1) claim because the parties submitted conflicting expert opinions, raising triable issues of fact. The defendants' expert engineer opined the window could not generate sufficient force as it toppled over and fell a short distance to the floor and did

not require additional securing devices in light of the *de minimis* elevation risk. In opposition, the plaintiff's expert opined that the weight, length, and height of the window, when toppled, created a significant, harmful force, even over the course of a relatively short descent, which warranted securing the window. The First Department held that the plaintiff's Labor Law § 241(6) claim, premised on a violation of Industrial Code § 23-2.1(a)(1), should have been dismissed, as the plaintiff failed to establish that both elements of the regulation were violated, specifically that the materials in question obstructed a passageway, walkway, stairway, or other thoroughfare. The First Department also ruled the lower court should have dismissed the plaintiff's Labor Law § 200 claim because there was no evidence that the defendants supervised and controlled the means and methods of the plaintiff's injury-producing work.

PRACTICE NOTE: To maintain a Labor Law § 241(6) claim, a plaintiff must establish that the owner or general contractor violated all elements of a sufficiently specific Industrial Code regulation and that such violation was the proximate cause of the plaintiff's injuries.

TOPICS: *Labor Law § 240(1), Inadequate safety device*

RIVERA V. 454 W. 57TH ST. HOLDING LLC

236 A.D.3d 477
March 11, 2025

The First Department affirmed the lower court's granting of summary judgment to the plaintiff on Labor Law § 240(1). The plaintiff and his co-workers were engaged in replacing a drainpipe at a building owned by the defendants when a section of the drainpipe detached and struck the plaintiff in the face. The sections of the pipe were attached to each other with a coupling and screws, and the pipe was attached to the wall of the building with metal hooks, which were hammered into the wall. The First Department ruled that the plaintiff established the screws and metal hooks were inadequate safety devices. It also held the trial court properly granted the plaintiff's motion for partial summary judgment on the Labor Law § 240(1) claim because the plaintiff established that the pipe required securing for the purposes of the undertaking.

Additionally, the pipe was not considered a permanent part of the building, given that it was installed by the plaintiff and his co-workers only moments before it fell on him.

PRACTICE NOTE: In order to establish liability under Labor Law § 240(1) in a case involving a falling object, the plaintiff must submit evidence showing that at the time of the accident the object was being secured or hoisted, or required securing for the purposes of the undertaking. Additionally, the plaintiff must show that the object fell because of the absence or inadequacy of a safety device of the kind enumerated in the statute. The safety device must also be the type "constructed, placed and operated to provide proper protection" from the falling object. See also *Fabrizi v. 1095 Ave. of the Ams., LLC*, 22 N.Y.3d 658 (2014).

TOPICS: *Routine maintenance, Enumerated activity*

HARNISCH V. CITY OF NEW YORK

236 A.D.3d 516
March 18, 2025

The First Department upheld the denial of the plaintiff's motion for summary judgment on his Labor Law §§ 240(1), 241(6) and 200 and common law negligence causes of action against the defendants and modified the lower court's order as to the defendant owners summary judgment dismissal of the plaintiff's Labor Law § 200 and common law negligence claims. The plaintiff's work, replacing a billboard advertisement without changing the structure of the billboard, was considered cosmetic maintenance or decorative modification rather than alteration for purposes of Labor Law § 240(1) because he did not make a significant physical change to the configuration or composition of the billboard itself. Although the plaintiff testified he was also inspecting the billboard for possible future upkeep and repair work, that inspection was not done as part of any ongoing construction project but was merely investigatory. Because no construction, excavation, or demolition was ongoing at the time of plaintiff's accident, his Labor Law § 241(6) claim was also not viable. Finally, because the defendant owners did not supply the ladder the plaintiff used or exercise supervisory control over the work, no liability

attached under Labor Law § 200 or common law negligence.

PRACTICE NOTE: Delineating between routine maintenance and repairs is frequently a close, fact-driven issue. To show that a plaintiff was not involved in routine maintenance rather than construction or alteration work, discovery should focus on the purpose for which the plaintiff was performing the task, and whether that work resulted in any significant changes.

TOPICS: *Labor Law § 240(1), Labor Law § 200, Falling object, Common law indemnification*

LUCAS V. CITY OF NEW YORK

236 A.D.3d 523
March 18, 2025

The plaintiff was working as a journeyman electrician on a renovation project when a stack of plexiglass panels tipped over and struck his feet, injuring him. Each panel was approximately 4 feet by 9 feet and weighed from 200 to 300 lbs., and they were resting lengthwise on the ground against a wall, reaching the approximate height of the plaintiff's waist. The First Department held the Supreme Court correctly granted the plaintiff's cross-motion for summary judgment on liability on the Labor Law § 240(1) cause of action. The defendants did not rebut the opinion of the plaintiff's expert who established that even though the load was positioned on the same level as the plaintiff and only fell a short distance, the weight of the panels was capable of generating extraordinary force and that securing devices of the kind enumerated in Labor Law § 240(1) were needed to stabilize the load and make the worksite safe. The defendant owner and general contractor's motion for summary judgment as to the Labor Law § 200 and common law negligence claims was properly denied because evidence showed the general contractor instructed the subcontractor installing the glass panels where to stage the panels at the worksite and that the general contractor's staging instructions differed from the regular practice of the delivery subcontractor, which raised triable issues of fact as to whether the general contractor supervised the means and methods of the injury-producing work or had a part in creating a hazardous staging condition. The

First Department also held the lower court properly denied the defendant owner and general contractor's motion for partial summary judgment on their causes of action for contribution and common law indemnification against the subcontractor because the general contractor, as the indemnitee, could not show that it was free from negligence, or that it did not cause the accident or supervise and control the injury-producing work.

PRACTICE NOTE: Even when it is undisputed that the injury-causing objects fell only a relatively short distance, liability under Labor Law § 240(1) can still attach. The court will review the height and weight of the object, and whether the object generated sufficient force to cause injury.

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

ARGUETA V. 39 W 23RD ST. LLC

236 A.D.3d 564
March 25, 2025

The plaintiff's motion for summary judgment on Labor Law § 240(1) was granted at the trial level and that decision was upheld by the Appellate Division. The plaintiff was injured when a metal post, which was 9- to 11-feet long, weighed approximately 150 pounds, and was leaning against a truck, fell on him as he kneeled to adjust other posts. The First Department indicated that given the weight and length of the post and the distance it fell, which was not a *de minimis* elevation differential, the plaintiff's testimony established he was exposed to an elevation-related risk. The First Department also held the plaintiff established that the failure to secure the post with an adequate safety device was a proximate cause of his injuries and that the plaintiff was not required to submit any expert testimony concerning what specific safety device was required.

PRACTICE NOTE: In determining whether Labor Law § 240(1) was violated when the falling object was on the same level as a plaintiff, the courts apply the same analysis used by the Court of Appeals in *Wilinski v. 334 E.92nd Hous. Dev. Fund. Corp.*, 18 N.Y.3d 1 (2011). Even if an object only falls a short distance, the court will analyze whether the size and weight of the object created sufficient force to cause injury, and should have been secured.

TOPICS: *Fall from a height, Sole proximate cause, Recalcitrant worker defense*

VELEZ V. LSG 105 W. 28TH LLC

236 A.D.3d 617
March 27, 2025

The plaintiff was injured as he stood on a concrete form to perform an assigned task and fell 5 feet to the ground. He testified that his supervisor instructed him to climb the concrete form rather than use a ladder. The First Department found the plaintiff was entitled to summary judgment under Labor Law § 240(1). The court further found the defendants failed to show that the plaintiff was the sole proximate cause of the accident because, while ladders were generally available onsite, the defendants failed to show that the plaintiff knew where the ladders were located or that he was expected to use them and failed to do so for no good reason.

PRACTICE TIPS: When looking to establish a sole proximate cause defense, be sure to inquire whether the plaintiff knew where appropriate safety devices were located onsite and easily accessible, whether the plaintiff had ever been told he was required to use the safety device, and any reason the plaintiff chose not to use the appropriate safety device.

TOPICS: *Labor Law § 240(1), Elevated surfaces, Fall from a height, Comparative negligence, Sufficient evidence*

MEDEROS V. 147 AMSTERDAM, LLC

237 A.D.3d 410
April 1, 2025

The plaintiff established his entitlement to summary judgment under Labor Law § 240(1) with circumstantial evidence where the accident was unwitnessed and the plaintiff's injuries prevented him from recalling the accident. The record established that after hearing a sound, witnesses at the construction site found the plaintiff lying on the ground next to a collapsed/overturned scaffold. The First Department found that the absence of proper protection was at least a proximate cause of the accident. In opposition, the defendants argued that the scaffold had railings and

working wheel locks and brakes that the plaintiff did not engage before his accident. The court found this argument unavailing and opined that the defendants failed to provide the plaintiff with an adequate safety device to perform his work. In addition, some witnesses suspected that the plaintiff may have had a medical event before his fall or may have been intoxicated. The court found that even if the plaintiff had consumed alcohol, that a worker's alcohol use amounted to comparative negligence at most, which is not a defense to Labor Law § 240(1).

PRACTICE TIPS: Courts are applying Labor Law § 240(1) broadly, even in unwitnessed accidents. Defense counsel should take steps to show that any safety device being used by a plaintiff was adequate and appropriate for the work being performed. In a case such as this, where there are witnesses after the fact, each witness should be interviewed and/or deposed to find a potential question of fact to oppose a motion for summary judgment.

TOPICS: *Covered work, Covered person*

CUNNINGHAM V. CITY OF NEW YORK

237 A.D.3d 422
April 3, 2025

At the time of the accident, the plaintiff was working as an environmental inspector employed by the New York City Transit Authority. The plaintiff argued that he was engaged in work covered by Labor Law § 240(1) because there had been ongoing construction in the area, and as an employee of NYCTA, he was under the supervision and control of the NYCTA's contractors. The First Department affirmed the denial of the plaintiff's motion for summary judgment, finding the plaintiff's arguments unpersuasive.

PRACTICE NOTE: As an initial analysis of a plaintiff's claims under the New York Labor Law, it is important to verify that the plaintiff was engaged in the type of work that is covered by the law.

TOPICS: *Hoist, Materials to be secured, Labor Law § 240(1), Means and methods, Labor Law § 200*

HARTRUM V. MONTEFIORE HOSP. HOUS. SECTION II INC.

237 A.D.3d 429
April 3, 2025

The plaintiff, a laborer, was injured when a piece of sheet metal being hand-hoisted without tag lines from a penthouse bulkhead roof to the main roof 20 feet below started to swing wildly, striking him. The First Department found that the facts warranted summary judgment in favor of the plaintiff on the Labor Law § 240(1) claim. However, the plaintiff's Labor Law § 200 claim should have been dismissed because the accident arose out of the means and methods of the work being performed and there was no evidence that anyone exercised supervisory control other than the plaintiff's employer.

PRACTICE NOTES: During discovery, it is important to determine whether appropriate safety devices were available for a plaintiff's work and whether those devices were readily accessible and the plaintiff was aware that he should use them. To establish a *prima facie* case under Labor Law § 200 where the accident involves the means and methods of the work, the plaintiff must show that the defendant had supervisory control over the work.

TOPICS: *Falling object, Gravity-related risk*

VIVAR V. CITIGROUP TECH., INC.

237 A.D.3d 491
April 8, 2025

The plaintiff was standing on a ladder removing ductwork attached to the ceiling when a piece of duct that had been cut by a co-worker fell and struck him, causing the plaintiff to fall backwards off the ladder. The defense witness testified that generally after pieces of duct were cut, they were secured and did not fall freely. The First Department found the plaintiff was entitled to summary judgment under Labor Law § 240(1) because the accident involved the application of the force of gravity to an

object, and the plaintiff's accident was thus a foreseeable consequence of the risk of performing the task without any safety device of the kind enumerated in the statute.

PRACTICE NOTE: During discovery, careful attention should be paid to the types of safety devices that may have been available at the worksite to protect workers from falling objects.

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

ALONSO V. CABGRAM DEV. LLC

237 A.D.3d 460
April 8, 2025

The plaintiff alleged he was injured when he was struck by a wooden plank dropped by co-workers while working on the second level of a 16-foot-tall wheel scaffold. The scaffold then fell over and landed on top of the plaintiff. The First Department held that the plaintiff was entitled to summary judgment as an accident caused by a scaffold collapse is *prima facie* evidence of a Labor Law § 240(1) violation. The court noted that the plaintiff did not need to demonstrate that the scaffold was defective to establish his *prima facie* case.

PRACTICE NOTES: When evaluating claims under Labor Law § 240(1), the courts look at more than whether the safety equipment a plaintiff was using was defective. The courts also look at whether the effects of gravity caused the accident.

TOPICS: *Materials to be secured, Inadequate safety device, Labor Law § 240(1)*

CUSUMANO V. SUPER P57 LLC

237 A.D.3d 533
April 15, 2025

The plaintiff was injured while in the process of repositioning a chain fall and he was struck by a double-I-beam weighing more than 1,000 pounds that was not secured to the dolly on which it was resting. The plaintiff identified clamps which were a readily available safety device that would have secured the I-beam to the dol-

ly. The First Department noted that even if the plaintiff were attempting to move the double-I-beam by himself, that would constitute comparative negligence at most, which is not a defense to Labor Law § 240(1). The court affirmed the plaintiff was entitled to summary judgment under Labor Law § 240(1).

PRACTICE NOTES: During discovery, careful attention should be paid to the types of safety devices that may have been available at the worksite to protect workers from falling objects, and whether the plaintiff was aware the safety devices were available and knew where to locate them.

TOPICS: *Recalcitrant worker defense, Sole proximate cause*

SIQUENCIA V. CITY OF NEW YORK

237 A.D.3d 554
April 17, 2025

The plaintiff testified that his foreman or another co-worker instructed him to bring a plank up a scaffold staircase, which was an inadequate safety device for the work being performed. The First Department found that the defendants failed to establish that the plaintiff was a recalcitrant worker or the sole proximate cause of the accident by failing to use an available hoist or pulley to transport the plank to a higher location because – even though other devices were available onsite and the plaintiff was aware of them – there was no evidence that the plaintiff had been instructed to use them.

PRACTICE NOTE: It is important to establish all elements of an affirmative defense of recalcitrant worker or 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: *Fall from a ladder, Credibility*

MOORE V. SKANSKA USA BLDG., INC.

237 A.D.3d 566

April 17, 2025

The plaintiff was injured when the ladder he was using slipped out from under him. In opposition to the plaintiff's summary judgment motion, the defendants submitted affidavits from the plaintiff's manager denying the plaintiff's version of events, specifically that the plaintiff had been directed to fix the damper on an air conditioning unit on a rush basis. Additionally, the defendants asserted the plaintiff's accident, as described, was physically impossible. The First Department affirmed the denial of the plaintiff's summary judgment motion under Labor Law § 240(1) as there were questions of fact based on conflicting accounts of the accident and issues of credibility to be determined by a jury.

PRACTICE NOTE: A finding of liability under Labor Law § 240(1) is not automatic, even where a plaintiff's version of events establishes a *prima facie* case. It is important to obtain witness statements or testimony regarding the incident as there may be alternative versions of the events to raise a triable issue of fact. In addition, where the plaintiff's account of an accident appears physically implausible, retaining an expert to opine on the mechanics of the accident could be useful to defeat a summary judgment motion.

TOPICS: *Elevation-related risk, Gravity-related risk, Adequate safety device*

LAGRIFFO V. 95TH & THIRD, LLC

237 A.D.3d 628

April 24, 2025

The plaintiff sustained injuries while installing a heavy marble slab on a bathroom wall. In order to install the slab, the plaintiff and his co-worker would lift the slab onto two 15-inch inverted buckets set up on opposite sides of the slab, then stand on the buckets and attach two suction cups to lift it to the height of the bathroom ceiling. The injury occurred when the plaintiff was standing in an awkward position and was trying to maintain his balance because the buckets were wobbling. The plaintiff claimed that his foreman had requested a Baker scaffold, but none was provided. The First Department held that the defendants' motion for summary judgment under Labor Law § 240(1) should have been denied as there were questions of fact as to whether the injury could have been prevented if the defendants had provided an adequate safety device. The fact that the plaintiff did not actually fall was of no consequence, as the court had previously held that the statute applies where the worker was injured in the process of preventing himself from falling.

PRACTICE NOTE: Labor Law § 240(1) sometimes applies even where the plaintiff does

not fall from a height. A violation can be found where the plaintiff was in the process of preventing himself from falling and the injury-causing action could have been avoided if an adequate safety device had been provided.

TOPICS: *Supervision and control, Transient condition, Ladder vs. passageway*

D'ANGELO V. LEGACY YARDS TENANT LLC

237 A.D.3d 607

April 24, 2025

The plaintiff was injured when he slipped on a grimy substance while descending a steel ship's ladder and struck his head on a Kindorf rack. The First Department affirmed summary judgment in the plaintiff's favor under Labor Law § 240(1), rejecting the defendants' claims that the plaintiff's version of the event was contradicted by differing accident reports. The First Department held the claim under Labor Law § 241(6) should have been dismissed because the Industrial Code provisions relied upon by the plaintiff were not applicable to his accident: the ladder in question was not a walkway or elevated working surface, there was no evidence that the plaintiff tripped over materials, debris or equipment, and there were no structural defects identified in the ladder. The court further found the plaintiff's Labor Law § 200 claims should have been dismissed because there was

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no evidence the plaintiff received instructions from anyone other than his employer.

PRACTICE NOTE: A transient condition on a safety device that is otherwise free from structural defects can trigger liability under Labor Law § 240(1).

TOPICS: *Labor Law § 240(1), Fall from a height, Slip and fall*

SANTANA V. PORT AUTH. OF N.Y. & N.J.
237 A.D.3d 628
April 24, 2025

The plaintiff was injured while descending stairs on a scissor lift that became wet from rain blowing into a construction site through openings in the building intended for windows. The First Department held the plaintiff was exposed to an elevation-related risk from which the defendants failed to provide proper protection, and that the plaintiff was not required to show that the scissor lift was defective in order to establish his *prima facie* case.

PRACTICE NOTE: A plaintiff may be entitled to summary judgment under Labor Law § 240(1) where the safety device provided is not itself defective, but where conditions upon the device become unsafe due to the failure to protect against other hazardous conditions, including adverse weather.

TOPICS: *Improperly secured load, Defective equipment, Height differential*

HERNANDEZ V. PORT AUTH. OF N.Y. & N.J.
238 A.D.3d 408
May 1, 2025

The plaintiff, a sheet metal worker, was injured when a dolly he was moving to access a work area tipped over onto him as a result of cracked and defective wheels. The First Department affirmed an award of summary judgment to the plaintiff on his Labor Law § 240(1) claim, finding that while the elevation difference was relatively short, the heavy weight of the material loaded onto the dolly brought the accident within the protections of the statute. The First Department also held that any error on the plaintiff's part in moving the dolly

could not be the sole proximate cause of the accident because the safety device in question was inherently defective due to the condition of the wheels.

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

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

ANGUISACA-MORALES V. ST. PAUL & ST. ANDREW UNITED METHODIST CHURCH
238 A.D.3d 439
May 6, 2025

The plaintiff was injured when he fell from an unsecured ladder leaning against the side of a sidewalk shed bridge while attempting to access a point of egress to the sidewalk below. The First Department reversed the trial court's granting of the plaintiff's motion for summary judgment on a Labor Law § 240(1) claim, finding the plaintiff's testimony, together with the video footage of his accident, created a question of fact as to whether the plaintiff intentionally fell and was, thus, the sole proximate cause of the accident.

PRACTICE NOTE: Video evidence capturing an alleged fall from a height can be utilized to create issues of fact relating to a plaintiff's proximate cause in causing or contributing to the cause of the alleged accident.

TOPICS: *Labor Law § 241(6), Protected activity, Window washing*

SANDOVAL V. 4 WORLD TRADE CTR. LLC
238 A.D.3d 468
May 6, 2025

The plaintiff sustained injuries when he slipped on a wet metal grille while performing exterior window washing. The First Department affirmed the denial of the plaintiff's motion for summary judgment on his Labor Law § 241(6) claim and the dismissal of his Labor Law § 200 and § 241(6) claims because there was no evidence that the routine exterior window washing qualified

as a protected activity. The First Department also held that the plaintiff's Labor Law § 200 claims were properly dismissed because defendants lacked actual or constructive notice of the wet condition, and the plaintiff admitted he never complained about the condition prior to his accident.

PRACTICE NOTE: Not all construction-related activities are protected under the Labor Law, and it is critical to perform an early and accurate investigation into a plaintiff's activities allegedly causing injury.

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

BEGNOJA V. HUDSON RIV. PARK TRUST
238 A.D.3d 481
May 8, 2025

The plaintiff sustained injuries after falling from a ladder while insulating ductwork in a ceiling. The First Department affirmed the award of summary judgment for the plaintiff on his Labor Law § 240(1) claim due to the absence of adequate safety devices to prevent the ladder from slipping and to protect the plaintiff from falling. The First Department further held that the plaintiff was not required to establish the ladder was defective to sustain his claim because the absence of a proper safety device to protect against falling proximately caused his injuries. In addition, whether he had to lean while standing on the ladder was immaterial because any alleged misuse by him constituted, at most, comparative negligence.

PRACTICE NOTE: The absence of adequate safety devices to prevent a ladder from slipping or to protect a plaintiff against falling from a height is a violation of Labor Law § 240(1) "under any version of the accident."

TOPICS: *Created condition, Actual notice, Sharp projections, Integral to the work doctrine*

ZYSKOWSKI V. CHELSEA-WARREN CORP.
238 A.D.3d 498
May 8, 2025

The plaintiff, a carpenter, was injured when he stepped on a nail while walking along a passageway. The First Department re-

versed the trial court's order and awarded summary judgment to the defendants on the plaintiff's Labor Law § 200 claim, finding that the defendants demonstrated they did not cause or create the dangerous condition allegedly giving rise to the accident. The First Department also dismissed the plaintiff's Labor Law § 241(6) claim predicated on the first sentence of 12 NYCRR § 23-1.7(e)(1), because the directive was specific to tripping hazards and the plaintiff did not trip on a nail. However, the First Department allowed the plaintiff's claim under the other provisions of the Industrial Code because the nail was a sharp projection within the meaning of those regulations, and the accident occurred in a passageway or work area. The defendants' reliance upon the integral to the work doctrine was rejected because appropriate preventative measures to guard against sharp protrusions would not have made it impossible for the plaintiff to execute his tasks.

PRACTICE NOTE: To successfully defend a Labor Law § 200 claim, defendants must demonstrate they did not create or have actual or constructive notice of the alleged condition prior to the accident. While the integral to the work doctrine is a viable defense to Labor Law liability, this theory may require proof to establish that the preventative measures that were allegedly absent would have otherwise prevented the plaintiff from being able to perform his work.

TOPICS: *Labor Law § 240(1), Unsecured loads, Force of gravity, Proximate cause, Foreseeable risk*

BRITO V. CITY OF NEW YORK

238 A.D.3d 508
May 13, 2025

The plaintiff was injured when wind blew three unsecured panels of galvanized steel fencing on top of him while he was engaged in rooftop asbestos removal. The First Department reversed the trial court and awarded summary judgment to the plaintiff on his Labor Law § 240(1) claim, finding that at the time the panels fell, they were not appropriately tied down to a bulkhead or parapet wall, or secured by heavy sandbags and/or metal plates. The First Department found that because of the reasonable possibility that the panels might topple onto the work-

space, appropriate measures to secure the panels were required. The First Department further held that the plaintiff's evidence demonstrated that the gravitational force generated by the wind-toppled steel fence panels was significant and a proximate cause of his injuries.

PRACTICE NOTE: Even when disconnected from the work being undertaken by a plaintiff, improperly secured loads create a risk of Labor Law liability when it is reasonably foreseeable that the material could impact the work area.

TOPICS: *Labor Law § 240(1), Expert affidavits, Medical reports*

BROUGHTON V. 553 MARCY AVE. OWNERS LLC

238 A.D.3d 536
May 15, 2025

The plaintiff, a laborer for a wrecking company, was injured when he fell approximately 20 feet through a hole in the roof while helping to carry building materials. Although the plaintiff's co-worker's testimony was sufficient to establish a *prima facie* violation of Labor Law § 240(1), the First Department affirmed the denial of summary judgment to the plaintiff as the defendants raised questions of fact concerning whether the accident occurred in the manner the plaintiff alleged. Through the expert affidavits of a mechanical engineer and neurosurgeon, the defendants were able to raise a question of fact as to whether the absence of objective medical findings expected to result from a 20-foot fall rendered the plaintiff's version of the events implausible.

PRACTICE NOTE: Even where Labor Law liability may be expected, it is critical to fully investigate a plaintiff's medical condition and reports of injuries, and work with qualified experts to determine whether the alleged injuries sustained are of the type that may reasonably result from the alleged accident.

TOPICS: *Labor Law § 200, Latent defects, Labor Law § 241(6), Defective steps*

SOLARTE V. THE BEARLEY SCHOOL

238 A.D.3d 541
May 15, 2025

The plaintiff was injured while descending a staircase and a step underneath him collapsed, causing him to fall. The First Department reversed the trial court and granted summary judgment to the owner and construction manager on the plaintiff's Labor Law § 200 claims, finding that the plaintiff's own testimony established there was no visible or apparent damage to the step that could potentially establish constructive notice of the dangerous condition. The First Department also held that because only the plaintiff's employer had access to the area before the incident, the defendants had no ability to perform regular inspections and, therefore, the plaintiff was unable to establish liability. The First Department also affirmed the denial of the defendants' summary judgment motion on the Labor Law § 240(1) claims because the stairwell was the only means of access to the work area and therefore it constituted a safety device within the meaning of the statute.

PRACTICE NOTE: In order to establish liability under Labor Law § 200 in a matter involving a defective premises condition, a plaintiff must also establish that the defendants had actual or constructive notice of the claimed defective condition. Where the claimed defect is latent and not readily observable during normal inspections, a defense can be built on the fact that the defendant had no notice of the defective condition.

TOPICS: *Routine maintenance, Construction, excavation and demolition*

RIVAS V. PANAMA LEASING, LLC

238 A.D.3d 549
May 15, 2025

The plaintiff was injured in the course of repairing a canopy's pendant lights when he fell from an elevated working platform that did not allow him to reach safely overhead to execute his tasks. The First Department reversed the trial court and awarded the plaintiff summary judgment on his Labor



Law § 240(1) claim, finding that the plaintiff's work, when viewed in totality, entailed work beyond mere routine maintenance and was therefore within the scope of Labor Law protections.

PRACTICE NOTE: Repairs, removal and replacement of light fixtures may be considered work beyond routine maintenance, entitling workers to protection under Labor Law § 240(1).

TOPICS: *Labor Law § 240(1), Inadequate protection, Proximate cause, Recalcitrant worker defense*

VINES V. JUDLAU CONTR., INC.

238 A.D.3d 557
May 15, 2025

The plaintiff was injured when he was struck by an unsecured brick that fell from a scaffold. The First Department affirmed the

trial court's award of summary judgment to the plaintiff on his Labor Law § 240(1) claim, finding that although there was netting around the scaffold, it was inadequate to protect the plaintiff from the falling brick. The First Department also rejected the defendants' recalcitrant worker defense, holding that an instruction to avoid an unsafe practice is not a sufficient substitute for providing a worker with a safety device to allow him to complete his work safely, and that the plaintiff's actions, at most, amounted to comparative negligence, which is not a viable defense to Labor Law § 240(1) liability.

PRACTICE NOTE: The recalcitrant worker defense requires direct proof that the plaintiff ignored a specific instruction and will not insulate a defendant from liability if, notwithstanding the plaintiff's conduct, the absence of a sufficient protective device proximately caused the injury.

TOPICS: *Labor Law § 240(1), Ladder, Expert affidavits*

MCCORMICK V. DIPERSIA

238 A.D.3d 562
May 20, 2025

The plaintiff was injured when he jumped into an approximately 3-foot-deep excavated trench to perform his work, causing him to sustain injuries. The First Department reversed the trial court and awarded the plaintiff summary judgment on his Labor Law § 240(1) claim, finding that the plaintiff's descent into the trench constituted an elevation-related hazard within the scope of Labor Law § 240(1), and a ladder or ramp would have been required for proper protection. The First Department also held that the defendants could not argue that the plaintiff was the sole proximate cause of his accident because the evidence established he was not provided with a ladder and the defendants' accident report conceded that one should have been provided. Finally, the defendants' expert affidavit was insufficient to raise a question of fact as the statements therein were not based upon an examination of the jobsite, were unsupported by the evidence, and were provided six years after the incident.

PRACTICE NOTE: Failing to provide a ladder or ramp to enable a worker to safely climb down into a trench may violate Labor Law § 240(1). When utilizing expert submissions, it is critical to ensure that the expert's opinion is grounded in established fact and, where possible, first-hand examination of a jobsite.

TOPICS: *Integral to the work doctrine, Fall from a scaffold, Sole proximate cause*

WILSON V. AC 32 HOTEL PARTNERS LLC

238 A.D.3d 581
May 20, 2025

The plaintiff was injured when he fell from an elevated scaffold through a partially hidden gap where there were no anchor points to tie off a harness or safety railings on the building side of the scaffold. The First Department affirmed summary judgment for the plaintiff on his Labor Law § 240(1) claim and rejected the defendants' argument that the gap was an integral part of the work. The court held that even if the gap were inherent to the task, there was no evidence explaining the absence of required safety measures such as railings or anchors, or why the hazard was partially concealed. The court also rejected the argument that the plaintiff was the sole proximate cause of the accident because adequate fall protection was not provided, and in any event, any such conduct would constitute, at most, comparative negligence, which is not a defense under Labor Law § 240(1).

PRACTICE TIP: Even when a hazardous condition may be integral to the work being performed, owners and contractors remain obligated under Labor Law § 240(1) to provide adequate fall protection.

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

SARANTE V. COURTLANDT DEV., LLC

238 A.D.3d 619
May 22, 2025

While lifting an I-beam, the plaintiff was injured when an elevated chain block pulley system he was using suddenly detached, causing one of its poles to strike his neck. The First Department affirmed summary

judgment for the plaintiff on his Labor Law § 240(1) claim, finding that the pulley system constituted a safety device that failed to protect the plaintiff from a falling hazard, namely the poles. The defendants' contention that the plaintiff's excessive hoisting was the sole proximate cause of the incident was rejected as mere comparative negligence.

PRACTICE TIP: An injury caused by the collapse or detachment of an elevated hoisting system falls squarely within Labor Law § 240(1), and an alleged overuse of the system by the injured party will not support a sole proximate cause defense to liability if the system is being operated at the direction of the injured party's employer.

TOPICS: *Safety devices, Means of access*

SKYDANIUK V. ESRT EMPIRE STATE BLDG., LLC

238 A.D.3d 622
May 22, 2025

The plaintiff was injured when his boot became stuck to a piece of duct tape, causing him to trip and fall down a stationary escalator that was the only means of access between two levels of a construction project. The First Department reversed the trial court and awarded summary judgment to the plaintiff on his Labor Law § 240(1) claim, finding the stationary escalator functioned as a safety device within the meaning of the statute, as it was an elevated surface required for the plaintiff's work, and was the sole access route to his work area.

PRACTICE TIP: An escalator that serves as the only means of access at a construction site qualifies as a safety device within the scope of Labor Law § 240(1).

TOPICS: *Labor Law § 241(6), Inherent to the work, Contractual indemnification*

BOWDEN V. SUMMIT GLORY PROP. LLC

238 A.D.3d 629
May 27, 2025

A union carpenter was injured when he tripped on an unsecured sheet of Masonite covering finished flooring in a hallway of a leased commercial space. The First Department affirmed the trial court's award of sum-

mary judgment to the plaintiff on his Labor Law § 241(6) claim based on Industrial Code § 23-1.7(e)(1), finding that deposition testimony, photographs and video footage of the unsecured Masonite established a *prima facie* violation of the regulation. The defendants' contention that the Masonite was an inherent part of the work was rejected, as there was no evidence that the hazardous condition of Masonite was inherent to the plaintiff's work. The First Department further rejected an attempt by a defendant to assert a contractual indemnity claim in the absence of a direct agreement, finding that indemnity provisions should not be enforced unless a promise to do so can be clearly implied from the language and purpose of the entire agreement and the surrounding facts and circumstances.

PRACTICE TIP: A hazardous condition is not inherent to the work merely because it arises from materials used onsite. If defective or unsafe, it can constitute a violation of Labor Law § 241(6). When effectuating risk transfers, contract language must be clear and precise with regard to the scope of indemnity obligations imposed upon downstream contractors.

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

NYANTEH V. 590 MADISON AVE LLC

238 A.D.3d 643
May 27, 2025

The plaintiff was injured when the wheels of an A-frame cart he was moving became caught on debris, causing metal sheets loaded on the cart to topple. The First Department affirmed summary judgment for the plaintiff on his Labor Law § 240(1) claim, rejecting the defendants' argument that the plaintiff was the sole proximate cause of his injuries because he was moving the cart by himself, which he was not supposed to do. The court held that the plaintiff's actions would be merely evidence of comparative fault and not a defense to a Labor Law § 240(1) claim.

PRACTICE TIP: A worker's unilateral decision to perform a task in a manner not authorized or directed may be insufficient to establish the sole proximate cause defense under Labor Law § 240(1), particularly

where the equipment or device provided by the employer is inadequate to ensure worker protection.

TOPICS: *Elevation-related risk, Constructive notice*

BRAGANCA-FERREIRA V. SREP 10TH AVE. VENTURE LLC

238 A.D.3d 656
May 29, 2025

While carrying a beam over his shoulder, the plaintiff was injured when a 3-foot-high pile of unsecured beams that he was walking across shifted, causing him to fall. The First Department affirmed the trial court's award of summary judgment to the plaintiff on his Labor Law § 240(1) claim, finding the plaintiff followed the routine procedure established by his employer for moving building materials within the site, and that the injury suffered was proximately caused by the type of elevation-related hazard contemplated by the statute. The First Department also affirmed the denial of the defendant's summary judgment motion on the plaintiff's Labor Law § 200 claims, finding that issues of fact existed as to whether the unsecured beams constituted a dangerous condition that should have been remedied, noting that workers routinely walked across the unsecured beams to move building material despite a superintendent's documented belief that it was unsafe to do so.

PRACTICE TIP: A 3-foot-high pile of materials on the ground can constitute an elevation-related risk under Labor Law § 240(1). The sole proximate cause defense is unavailable when a worker acts in accordance with the regular procedure or instructions of the employer.

TOPICS: *Labor Law § 240(1), Falling object, Fall from a height, Sole proximate cause*

BYRNES V. RP1185 LLC

238 A.D.3d 660
May 29, 2025

The plaintiff was injured when he was forced to jump 15 feet to the ground to avoid being struck by a 15,000-pound precast concrete panel that fell from above. The First Department reversed the trial court and granted the plaintiff summary judgment on his Labor Law

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§ 240(1) claim finding that the plaintiff established his *prima facie* case by showing the panel was inadequately secured, and rejected the defendants' argument that Labor Law § 240(1) applies only when an object is in the process of being hoisted. The court upheld the denial of both parties' motions on Labor Law § 200 and common law negligence, finding factual issues as to whether the fall resulted from a manufacturing defect or improper installation.

PRACTICE TIP: Labor Law § 240(1) applies to falling-object hazards even when the object is not being hoisted at the time of the incident.

TOPICS: *Fall from a ladder, Proximate cause, Recalcitrant worker defense*

DURAN V. ERY RETAIL PODIUM LLC

238 A.D.3d 665
May 29, 2025

The plaintiff was injured when an unsecured A-frame ladder suddenly wobbled while he was descending it, causing the plaintiff to miss a step and fall. The First Department affirmed summary judgment for the plaintiff on his Labor Law § 240(1) claim, finding no conflicting evidence as to the cause of the fall being a wobbly ladder. The court also rejected the defendants' recalcitrant worker argument because the plaintiff's accident resulted from a Labor Law violation, and the plaintiff's failure to maintain contact with the ladder amounts to comparative negligence, which is not a defense under Labor Law § 240(1).

PRACTICE TIP: Comparative negligence, including a plaintiff's own misstep or momentary lapse, is not a defense to a Labor Law § 240(1) claim where the injury results from a defective or inadequate safety device.

TOPICS: *Labor Law § 241(6), Electrical hazard, Required inspections*

LOPEZ V. NG 645 MADISON AVE LLC

239 A.D.3d 417
June 3, 2025

The plaintiff was injured while cutting away and removing marked objects from a ceiling, when his Sawzall came into contact with an electric bus creating a sudden electric explosion, knocking the plaintiff off a lad-

der. The bus was one of the objects marked for removal at the direction of the general contractor, who believed the power had been shut off in the area. The First Department affirmed the award of summary judgment to the plaintiff under Labor Law § 241(6), finding that the defendants failed to properly inspect the electrical systems in the work zone in violation of Industrial Code §§ 23-1.13(b)(1), (3), and (4). The court held that the owner failed to ensure compliance with these provisions and that such failure was a proximate cause of the explosion. The owner's reliance on its internal policy requiring written notice from contractors before cutting power was deemed insufficient to defeat liability.

PRACTICE TIP: An owner may be held liable under Labor Law § 241(6) for electrical hazards where Industrial Code safety requirements are violated, regardless of internal notice procedures.

TOPICS: *Fall from a scaffold, Hearsay, Evidentiary form*

BERRONES V. 130 E. 18 OWNERS CORP.

239 A.D.3d 500
June 12, 2025

A brick layer was injured when he fell through a gap between a pipe scaffold and the building façade that was hidden by plastic. The First Department affirmed the trial court's award of summary judgment to the plaintiff on his Labor Law § 240(1) claim, rejecting secondhand accounts and uncertified medical records as inadmissible hearsay insufficient to defeat summary judgment, particularly in the absence of evidence to establish that the information was properly translated for the plaintiff, and where the disputed cause of the accident was not germane to the plaintiff's diagnosis or treatment. The court dismissed the plaintiff's Labor Law § 200 and common law negligence claims, finding that the plaintiff's injuries resulted from the manner and means in which the work of his employer was performed, specifically a defect in the scaffold erected by the plaintiff's employer.

PRACTICE TIP: Secondhand hearsay evidence is insufficient to defeat a summary judgment motion under Labor Law § 240(1), and a proper evidentiary foundation must be laid for the admissibility of information in medical records.

TOPICS: *Labor Law § 240(1), Ladder, Inadequate safety device*

DANIELLO V. J.T. MAGEN & CO. INC.

239 A.D.3d 516
June 17, 2025

The plaintiff was injured while performing overhead ceiling wiring work, when a ceiling tile unexpectedly dropped and the ladder upon which he was standing wiggled, causing him to fall. The First Department affirmed an award of summary judgment to the plaintiff on his Labor Law § 240(1) claim, finding that the ladder was not an adequate safety device under the circumstances as it failed to provide proper protection for the elevated work being performed. The court rejected the defendants' arguments that the fall was due to the plaintiff's own misstep or unexplained loss of balance, holding that such explanations do not raise a triable issue where the safety device itself was inadequate.

PRACTICE TIP: Under Labor Law § 240(1), a worker is entitled to summary judgment when a safety device proves inadequate for the task.

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

HASAN V. MACERICH CO.

239 A.D.3d 568
June 26, 2025

The plaintiff was injured after falling from a 6-foot ladder. The First Department affirmed the granting of the plaintiff's motion for summary judgment under Labor Law § 240(1), finding that he had established the inadequacy of the ladder as a safety device since he was required to stand on the top rung in order to reach his work, and rejected the defendants' argument that the plaintiff was the sole proximate cause of his fall because he learned the procedure for moving the ladder from his supervisor.

PRACTICE NOTE: The failure to provide an appropriate device that allows a worker to safely reach his workspace may result in liability under Labor Law § 240(1) even though the device is structurally sound and free from inherent defects.

TOPICS: *Labor Law § 241(6), Industrial Code § 23-1.7(d), Slipping hazard, Foreign substance*

BRAVO V. 609 W. 56TH ST. PROP., LLC

234 A.D.3d 735
January 15, 2025

While walking to get a broom to clean up demolition debris, the plaintiff was injured when he slipped and fell on oil underneath sand on the floor. The Second Department affirmed the trial court's order granting the plaintiff summary judgment on his Labor Law § 241(6) claim, finding that his injuries were proximately caused as a result of oil, a foreign substance, underneath sand on the floor, constituting a violation of 12 NYCRR 23-1.7(d).

PRACTICE NOTE: In a Labor Law § 241(6) claim, a plaintiff must plead and prove his injuries were proximately caused by a sufficiently specific Industrial Code provision that is factually applicable to his case. The language of the statute should be carefully reviewed to determine whether the plaintiff can establish a violation to the directive contained in the statute.

TOPICS: *Labor Law § 240(1), Fall from a height, Slipping hazard*

MEDINA V. 1277 HOLDINGS, LLC

234 A.D.3d 839
January 22, 2025

The plaintiff was injured when he was struck by a pallet jack that his co-worker lost control over as they were pushing the pallet jack up a plywood ramp that was wet, slippery and covered in ice. The Second Department upheld the lower court's denial of the plaintiff's motion for summary judgment on Labor Law § 240(1) because his expert failed to establish that the ramp and pallet jack were inadequate safety devices. The Second Department also affirmed the lower court's grant of summary judgment to the plaintiff predicated upon a violation of 12 NYCRR 23-1.7(d) because the plaintiff established the ramp was wet and slippery at the time of the accident in violation of the requirement that certain substances that can cause slippery footing, such as ice, snow and water, be removed.

PRACTICE NOTE: Falling from a height alone is not sufficient to invoke Labor Law § 240(1). A plaintiff must establish that the absence of adequate safety devices was the proximate cause of the accident.

TOPICS: *General Obligations Law § 15-108, Labor Law § 240(1), Labor Law § 241(6)*

**VELAZQUEZ V. MOSDOS MEHARAM
BRISK OF TASHNAD**

234 A.D.3d 893
January 22, 2025

The plaintiff was awarded summary judgment on his claims for violations of Labor Law § 240(1) and Labor Law § 241(6), after which the plaintiff and the defendants entered into a stipulated settlement in open court. In affirming the trial court's denial of the defendant/third-party plaintiff's motion for summary judgment dismissing the third-party defendant's counter-claim for contribution based upon the application of General Obligations Law § 15-108, the Second Department held that the statute does not apply to settlements agreed upon after the liability of the parties has already been adjudicated, and further found that the parties waived the application of General Obligations Law § 15-108 by virtue of their stipulation of settlement, which expressly noted that the third-party litigation would proceed notwithstanding the settlement.

PRACTICE NOTE: A claim for contribution remains viable and is not barred by General Obligations Law § 15-108 when a stipulated settlement makes it clear that the parties did not intend for it to be waived, and the settlement was entered into after the issue of liability was adjudicated. The terms of a stipulated settlement should be carefully drafted.

TOPICS: *Supervision and control, Labor Law § 241(6), Notice of dangerous condition*

MARTINEZ V. NADER ENTERS., LLC

235 A.D.3d 630
February 5, 2025

The plaintiff was injured while cutting a cement block with a grinder when the machine, which lacked a blade guard, kicked back and cut his leg. The Second Depart-

ment reversed the lower court's order and dismissed the plaintiff's Labor Law § 200 and general negligence claims, finding that the owner did not have the authority to supervise or control the manner and methods of the plaintiff's work. The Second Department also reversed the grant of summary judgment to the plaintiff under Labor Law § 241(6) inasmuch as it was predicated on an alleged violation of 12 NYCRR 23-1.5(3) because the plaintiff failed to eliminate all questions of fact as to whether the owner had notice of any defect or unsafe condition with the subject grinder.

PRACTICE NOTE: An owner who does not supervise and control the means and methods of the plaintiff's work will likely not be exposed to liability under Labor Law § 200.

TOPICS: *Summary judgment, CPLR § 3212(f)*

**MAGISTRO V. NEW YORK CITY
HOUSING AUTHORITY**

235 A.D.3d 733
February 13, 2025

While manually loading pieces of broken concrete from an excavated hole into an elevator bucket, the plaintiff was injured when his co-worker slammed a piece of concrete into the bucket and directly on top of the plaintiff's hand. The Second Department reversed the trial court's award of summary judgment to the defendant on the plaintiff's Labor Law §§ 240(1) and 200 claims, finding it to be premature in view of the fact that written discovery remained to be completed and depositions were yet to be held. The Second Department affirmed the dismissal of the plaintiff's Labor Law § 241(6) claims as the Industrial Code provisions relied upon by the plaintiff were not sufficiently specific or were not applicable to the facts of the case.

PRACTICE NOTE: A defendant should be mindful when filing a motion for summary judgment as a premature motion runs the risk of tipping off the plaintiff to the defendant's theory of defense. A party opposing summary judgment is entitled to conduct discovery when it appears that facts necessary to oppose such a motion may exist but cannot then be stated.



TOPICS: *Labor Law § 240(1), Labor Law § 241(6), Supervision and control, Agency*

MARTINEZ V. SHORE OAKS, LLC

235 A.D.3d 959
February 26, 2025

The plaintiff was injured when he fell 18 feet from the roof to the ground while installing windows. The Second Department reversed the trial court's denial of the construction manager's motion for summary judgment, finding that it had adequately established through testimony and its contract that it did not have any supervisory authority or control over the plaintiff's work, thereby preventing a finding that it was an agent of the owner or general contractor.

PRACTICE NOTE: Though a construction manager may be hired to oversee and/or run a construction project and acts as a legal agent of the owner, it may not be liable under the Labor Law if the construction manager lacks the authority to control the means and methods of the plaintiff's work.

TOPICS: *Out-of-state accidents, Motion to dismiss, Common law negligence*

RAMIREZ-GOMEZ V. EMPIRE TODAY, LLC

236 A.D.3d 691
March 5, 2025

The plaintiff was performing construction work at a property in New Jersey when he was injured by a falling radiator. The plaintiff commenced an action against the defendants sounding in common law negligence and alleging violations of New York Labor Law. The Second Department reversed the trial court's dismissal of the plaintiff's complaint, holding that while New York Labor Law does not apply to accidents occurring outside New York – even when all parties are New York domiciliaries – the inapplicability of the Labor Law in and of itself is not a proper ground to dismiss a common law negligence cause of action.

PRACTICE NOTE: While the protection afforded to New York employees by the Labor Law has no application to an accident that occurs outside of the state, even where all parties are New York domiciliaries, the inapplicability of the Labor Law, standing alone, is not grounds to dismiss a cause of action for common law negligence.

TOPICS: *Labor Law § 241(6), Passageways, Elevation- or gravity-related risk, Supervision and control, Actual notice*

RAMOS V. KENT & WYTHE OWNERS, LLC

236 A.D.3d 693
March 5, 2025

The plaintiff was allegedly injured when an A-frame cart he was using to move sheet-rock across an unfinished floor toppled over and trapped his legs and waist. The Second Department affirmed the lower court's dismissal of the plaintiff's Labor Law § 240(1) claim as his injuries did not arise from an elevation- or gravity-related risk. The Second Department also affirmed the trial court's grant of summary judgment to the defendant on Labor Law § 241(6), finding that the accident did not occur in a passageway as contemplated by Industrial Code § 23-1.7(e)(1), and the 1-inch grooves in the unfinished floor were not a hazard regulated by Industrial Code § 23-1.7(e)(2). However, the Second Department permitted the plaintiff's Labor Law § 200 claims to proceed, finding that the defendant failed to establish it did not have the authority to exercise supervision and control over the work, that it did not have actual and/or constructive notice of the alleged dangerous conditions, that

the accident did not arise out of a dangerous condition at the premises, or that the grooves were trivial as a matter of law.

PRACTICE NOTE: In order to establish a violation of Labor Law § 240(1), a plaintiff must do more than show an object fell on him. He must also establish that the accident arose from an elevation- or gravity-related risk for the claim to fall within the extraordinary protections of the Labor Law.

TOPICS: *Labor Law § 240(1), Proximate cause, Recalcitrant worker defense*

LOPES V. COUNTY OF SUFFOLK

236 A.D.3d 883
March 19, 2025

The plaintiff was injured when he fell off a scaffold that lacked safety railings. In affirming the order granting the plaintiff's summary judgment motion on the Labor Law § 240(1) claim, the Second Department held that the plaintiff met his *prima facie* burden in demonstrating a violation of Labor Law § 240(1) that was a proximate cause of his injuries. The defendants' argument that the plaintiff was a recalcitrant worker because he knew he was expected to use a safety harness, a man lift, or a different scaffold and deliberately chose not to do so, was insufficient to raise a triable issue of fact. Specifically, the evidence submitted by the defendants in support of their position that the plaintiff was a recalcitrant worker was too vague regarding what instructions the plaintiff had received.

PRACTICE NOTE: The courts are generally hesitant to find that a plaintiff was a recalcitrant worker in a claim involving Labor Law § 240(1). In order to establish this affirmative defense, it is important that during discovery – especially depositions – attention is paid to specific instructions the plaintiff was provided to perform his work, whether the plaintiff was advised to use an alternative means to perform his work and chose not to do so, and whether the plaintiff was aware that alternative safety devices were readily available. A vague affirmation that the plaintiff was given instructions on alternative means to perform his work is generally insufficient support a recalcitrant worker defense.

TOPICS: *Labor Law, Employee, Protected persons, Construction work, Out-of-possession landlord*

MARMOLEJO-CUELLAR V. SPAR KNITWEAR CORP.

236 A.D.3d 889
March 19, 2025

The plaintiff, a clerical worker, allegedly tripped and fell on loose wood that was temporarily placed on the office floor. The Second Department affirmed dismissal of the plaintiff's Labor Law claims, finding that the plaintiff was not in a class of persons protected by those statutes because she was not hired to perform repairs or construction work. Summary judgment was also granted to the out-of-possession owner on the grounds that it was not liable for the plaintiff's injuries in the absence of a statute imposing liability, had no contractual obligation to repair the premises where the plaintiff was injured, and did not participate in a course of conduct that gave rise to a duty.

PRACTICE NOTE: If it is not obvious that a plaintiff was engaged in construction work at an ongoing project, the first inquiry should be whether the plaintiff was engaged in the type of activity covered by the Labor Law, which includes an individual involved in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure. If the plaintiff is not engaged in any of these activities, a motion to dismiss the Labor Law claims should be considered. If those claims are dismissed, the inquiry then generally becomes whether the defendants were negligent under the common law.

TOPICS: *Contractual indemnification, Evidence, Additional insured, Supporting documentation*

RAHMONOV V. PURVES DEV., LLC

236 A.D.3d 941
March 19, 2025

The plaintiff filed suit against the project owner and general contractor after sustaining injuries while installing windows at a construction site. The general contractor entered into a contract with a window manufacturing company, which then contracted

with the plaintiff's employer for installation of the windows. The general contractor filed a third-party action against the plaintiff's employer seeking contribution, common law indemnification, contractual indemnification and alleging breach of contract. The employer then moved for summary judgment, which was granted. The defendant general contractor appealed the portion of the order dismissing the contractual indemnification claim, arguing that the subcontract between the manufacturing company and the plaintiff's employer incorporated by reference the prime contract between the general contractor and manufacturing company, including the indemnification provision. The Second Department ultimately reversed the dismissal of the contractual indemnification and breach of contract claim, finding that the employer did not meet its *prima facie* burden because it failed to submit the contract between the general contractor and the manufacturing contractor, which had been referenced in its own contract, and which contained an indemnification provision and insurance procurement provision in favor of the general contractor.

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. This includes annexing all documents which are referred to in the contract which may contain alternative versions of an indemnification agreement. 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), Falling object, Triable issue of fact, Workers' compensation, Special employee, Direction, Control*

NARVAEZ V. PETRILLO CONTR., INC.

237 A.D.3d 725
April 2, 2025

The plaintiff claimed he was injured when an excavator fitted with a clamp attachment that was being used to hoist cement barriers from a flatbed truck to the ground had one of the barriers detach from the clamp, causing the barrier to fall and strike his wrist. The Second Department affirmed

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denial of the plaintiff's motion for summary judgment on Labor Law § 240(1), finding that there was a triable issue of fact due to inconsistencies in the plaintiff's deposition concerning whether he saw the barrier detach from the clamp and whether he knew what caused the barrier to strike his wrist. However, the Second Department reversed the decision on the defendant's motion on Labor Law § 200, finding that the defendant did not submit sufficient evidence to establish that it controlled and directed the manner, details and ultimate result of the plaintiff's work to show that the plaintiff was a special employee of the company.

PRACTICE NOTE: The determination of whether a special employment relationship exists is generally an issue of fact requiring consideration of various factors, with the most significant factor being who controls and directs the manner and the ultimate result of the employee's work. During depositions, questions should be asked to verify who gave the plaintiff instructions and directed the work on the date of accident.

TOPICS: *Evidence, Spoliation, Homeowner's exemption*

LUPO V. CARUSO

237 A.D.3d 923
April 16, 2025

The plaintiff alleged that he was injured when, during the course of certain renovation work at the defendant's single-family home, he fell from a ladder that he borrowed from the defendant. The trial court granted the defendant homeowner motion for summary judgment finding that they had met their *prima facie* burden showing they did not create the alleged danger or defect in the ladder, nor did they have actual or constructive notice of any defects in the ladder. The plaintiff opposed the motion, arguing that the defendant homeowner spoliated the evidence by failing to preserve the ladder. The court ultimately found that the plaintiff failed to show that the defendant failed to preserve the ladder, or that it was destroyed with a culpable state of mind.

PRACTICE NOTE: Following an accident, it is important to preserve any physical evidence involved. To the extent a party is under an obligation to preserve such evidence, a plaintiff may seek spoliation sanctions. Should it be determined that the equipment or other physical item involved in an accident was discarded or is no longer in possession of the client, it is important to be proactive and determine if the client attempted to preserve the physical evidence and/or if they are aware of why the physical evidence is no longer in their possession. Having this information early can assist in preempting any potential spoliation motion made against your client.

TOPICS: *Labor Law §§ 240 and 241(6), Fall from a ladder, Burden of proof*

VILLALTA V. TONKA REALTY ON 5TH LLC

237 A.D.3d 1001
April 16, 2025

The plaintiff claimed injuries after he fell from a rubber-footed metal ladder that had been situated on plywood flooring being used to go from the first floor to the second floor of the worksite. During discovery, differing accounts of the accident were raised. The plaintiff claimed that while descending the ladder the bottom of the ladder "slipped back," which caused him to fall. The onsite superintendent testified that while the plaintiff was descending, his foot missed a rung and went through the ladder, which caused him to fall. On appeal, the Second Department affirmed denial of the plaintiff's summary judgment motion, finding that there was credible evidence revealing different versions of the accident, and under one of those versions – the plaintiff's misstep – the defendant would not be found liable under Labor Law § 240(1).

PRACTICE NOTE: This case demonstrates the importance of identifying all eyewitnesses to any accident and getting testimony from each. Where a credible defense witness can offer a non-negligent account of an accident, the testimony will aid in raising a triable issue of fact and the potential to avoid summary judgment.

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

ZOKIR V. TELLER OWNER, LLC

237 A.D.3d 1008
April 16, 2025

The plaintiff claimed that he sustained injuries after falling from a 10-foot ladder. The accident was unwitnessed. Following discovery, the plaintiff moved for summary judgment under Labor Law § 240(1). In affirming the trial court's denial of the plaintiff's motion, the Second Department found the plaintiff's deposition testimony included inconsistencies regarding certain repairs or modifications that he made to the ladder prior to the accident, thereby placing his own credibility in issue and presenting a triable issue of fact regarding how the accident occurred.

PRACTICE NOTE: Where a plaintiff's alleged accident is unwitnessed, careful attention must be paid during discovery regarding not only the details of how the accident occurred, but also with respect to plaintiff's credibility. A thorough investigation should be conducted, including a background check of the plaintiff, as well as interviews of any individuals at the jobsite who may have knowledge about the circumstances surrounding the accident, even if they were not an eyewitness to the incident.

TOPICS: *Labor Law § 240(1), Homeowner's exemption, Supervision and control*

BUCHANAN V. DEORIO

237 A.D.3d 1030
April 23, 2025

The defendant homeowners entered a contract for the removal and reinstallation of gutters on their home. After completing the job, the defendant homeowners contacted the gutter company to hire someone to clean and seal the gutters that had been installed the previous year. The plaintiff hired to perform the job was provided with a ladder by the gutter company. The plaintiff alleged he was injured while performing this work when he fell approximately 20 feet from one of the ladders onto the ground. The defendant homeowners moved for summary

judgment seeking dismissal of the Labor Law §§ 200, 240(1) and 241(6) claims under the homeowner's exemption, which was granted by the trial court. The plaintiff appealed. The Second Department affirmed, finding that the defendant homeowners established they did not exercise supervision or control over the plaintiff's work.

PRACTICE NOTE: Homeowners seeking to avail themselves of the protection afforded by the homeowner's exemption to liability under the Labor Law must show they did not direct or control the method and manner of the work performed at their property. The phrase "direct and control" is strictly construed, and the plaintiff must show that the homeowner supervised the method and manner of the work. See also *Hicks v. Aibani*, 157 A.D.3d 870 (2d Dep't. 2018).

TOPICS: Labor Law § 241(6), Industrial Code, Safety equipment, Eye protection

CASTELLON V. E. 85TH ST., INC.

237 A.D.3d 1033
April 23, 2025

The plaintiff alleged he was injured on a worksite while moving an air compressor and sandblasting equipment when the discharge hose disconnected from the sandblaster, causing air and sand to strike him in the face. The plaintiff's complaint alleged a violation of Labor Law § 241(6) predicated upon violations of 12 NYCRR § 23-1.5(c)(3) (all safety devices, safeguards and equipment in use shall be kept sound and operable, and shall be immediately repaired or restored or immediately removed from the jobsite if damaged) and 12 NYCRR § 23-1.8(a) (approved eye protection equipment suitable for the hazard involved shall be provided for and shall be used by all persons ... while engaged in any ... operation which may endanger the eyes). The plaintiff's deposition testimony established that only a broken full body mask was available for use at the worksite at the time of the accident, with no other protective eyewear available. The Second Department reversed the trial court's order denying the plaintiff's motion for summary judgment on liability under Labor Law § 241(6) holding that the testimony established, *prima facie*, that the defendant general contractor violated 12 NYCRR § 23-1.5(c)(3) and 12 NYCRR § 23-1.8(a) when



the plaintiff was forced to use a broken sandblaster without protective eyewear.

PRACTICE NOTE: Contractors are required to ensure the equipment being used onsite is in sound, operable condition. Additionally, it is imperative that all workers onsite are provided with approved eye protection when performing work that could cause injury to the eyes/face. A plaintiff's deposition testimony can establish a *prima facie* violation of Labor Law § 241(6) where a contractor fails to comply with the Industrial Code.

TOPICS: Labor Law § 240(1), Homeowner's exemption, Covered person

LOPEZ V. CLASSIC DAY CARE CORP.

237 A.D.3d 1086
April 23, 2025

The plaintiff alleged he was injured while working on a construction project located at a three-unit building. The defendants argued that the property was subject to the homeowner's exemption for liability under Labor Law because the building consisted of two residential units and one commer-

cial unit used as a daycare. The Second Department found the plaintiff's submission of the deed showing that the building had three units was sufficient to show that the homeowner's exemption was not applicable. Additionally, in opposition to the plaintiff's summary judgment motion, the defendants argued the plaintiff was not a covered person under the Labor Law because he was not engaged in the type of activity covered by the project, and that the work was a decorative modification rather than an alteration. The Second Department found there was a question of fact as to whether the work the plaintiff was performing at the time of the accident was a covered activity, and affirmed the denial of the plaintiff's summary judgment motion.

PRACTICE NOTE: This case shows the importance for defendants to be able to clearly document and establish the type of work a plaintiff was engaged in. To the extent a defendant can clearly show that a plaintiff was not engaged in work protected by Labor Law § 240(1), it may serve to preclude a plaintiff from successfully moving for summary judgment.

SECOND DEPARTMENT

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

SISALIMA V. THORNE CONSTR., INC.

237 A.D.3d 1126

April 23, 2025

The plaintiff alleged he was injured when he fell from a roof after the tarp he was tasked with confirming was properly placed flew up in a gust of wind and threw him from the roof. The Second Department affirmed denial of the plaintiff's motion for summary judgment on his Labor Law § 240(1) claim, as well as the denial of the defendants' cross-motion to dismiss the cause of action on the sole proximate cause defense. The Second Department held that the plaintiff failed to eliminate triable issues of fact as to whether adequate safety devices were provided to him at the worksite and, if not, whether the absence of adequate safety devices was a proximate cause of the accident. The court also affirmed denial of the defendants' motion for summary judgment based on the sole proximate cause defense, holding that the defendants did not eliminate triable issues of fact as to whether adequate safety devices were readily available or that the plaintiff disregarded a specific instruction.

PRACTICE NOTE: To support a sole proximate cause defense, it is critical to provide evidence of an instruction being given to the plaintiff advising against the specific action taken. In addition, it is important to question all witnesses about the availability of safety devices at the construction site, and whether the plaintiff was aware those devices were available for his use and that he should have been using one of those devices.

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

DELCID-FUNEZ V. SEASON AT E. MEADOW HOMEOWNERS ASSN.

237 A.D.3d 1160

April 30, 2025

The plaintiff alleged he was injured in the course of his employment with a roofing contractor when he slipped and fell off a roof while shoveling snow off it after responding to a call about a roof leak. The Second Department found that neither party had estab-

lished entitlement to summary judgment as there were triable issues of fact as to whether the plaintiff was engaged in an enumerated activity within the meaning of Labor Law § 240(1) and whether the plaintiff's actions were the sole proximate cause of his injuries.

PRACTICE NOTE: In order for the protections of Labor Law § 240(1) to apply, a plaintiff must first show that he or she is engaged in an activity enumerated in the statute, which includes the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure. Where the plaintiff was not engaged in an obvious construction activity, it is important to establish the nature of the plaintiff's activity in order to support the potential defense to the claim.

TOPICS: *Labor Law § 200, Labor Law § 240(1), Fall on stairs, Gravity-related risk, Means and methods*

CAGUA V. BUSHWICK HOLDINGS, LLC

238 A.D.3d 698

May 7, 2025

The plaintiff alleged that he was injured when a 150- to 160-pound prefabricated metal handrail he was holding in place while a co-worker welded it onto a permanent staircase post fell, causing him to be pulled down the staircase by its weight. On appeal, the Second Department reversed the denial of the defendant's motion on Labor Law § 200, holding that the claims involved the means and methods of the work rather than a premises condition, and that the moving defendants had established they did not have supervisory authority over the means and methods of the plaintiff's work. The Second Department further affirmed the denial of the portion of the motion seeking to dismiss the Labor Law § 240(1) cause of action on the basis that the plaintiff being pulled down by the falling railing is the type of gravity-related injury Labor Law § 240(1) seeks to prevent and the fact that the staircase on which plaintiff fell was constructed as a permanent structure does not remove it from the reach of Labor Law § 240(1). The Second Department also affirmed the denial of the defendants' motion to dismiss the Labor Law § 241(6) claim because they had failed to demonstrate the specific Industrial Code section that was inapplicable, not violated or not a proximate cause of the plaintiff's injuries.

PRACTICE NOTE: On a Labor Law § 200 cause of action, it is important to differentiate whether the accident was the result of a dangerous premises condition or arose out of the means and methods of the plaintiff's work. If the latter, focus should be made on showing that the defendant did not have authority to supervise or control the plaintiff's work methods.

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

CANALES V. RYE NECK UNION FREE SCH. DIST.

238 A.D.3d 836

May 14, 2025

The plaintiff allegedly sustained personal injuries when he slipped and fell from the top step of a truck cab while he was retrieving tools from the truck. The Second Department affirmed the dismissal of the Labor Law § 240(1) cause of action on the basis that the 5-foot descent from the truck's top step to the ground was not an elevation-related risk for the purposes of Labor Law § 240(1). The Second Department also affirmed the dismissal of the Labor Law § 241(6) cause of action, as predicated on Industrial Code § 23-1.7(d) (slipping hazards) because the truck steps were not a "floor, passageway, scaffold, platform or other elevated working surface" as well as § 23-1.7(e)(2) (tripping and other hazards) because the plaintiff alleged he slipped, not tripped.

PRACTICE NOTE: Not every fall from a height warrants liability under Labor Law § 240(1). An evaluation should be made as to whether the accident involves an elevation-related risk contemplated by the statute, including whether the plaintiff's injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential. See *Nicometi v. Vineyards of Fredonia, LLC*, 25 N.Y.3d 90 (2015).

TOPICS: *Labor Law § 200, Means and methods, Negligence*

PISCULLI V. TEW

238 A.D.3d 919
May 14, 2025

The plaintiff alleged that he was injured during the course of his employment when he was struck on the head by the bucket of an excavator operated by his co-worker. He further alleged the defendants were vicariously liable for the negligence of the excavator operator and for failing to provide him with a hard hat. The Second Department affirmed the defendants were entitled to summary judgment on the Labor Law § 200 cause of action because the subject accident was caused by the means and methods of the work and they did not possess the authority to supervise and control the means and methods of the plaintiff's work at the time of the accident. The court, however, affirmed the denial of the portion of the motion to dismiss the common law negligence cause of action, finding that the defendants failed to eliminate triable issues of fact as to whether they could be found vicariously liable for the negligent acts of the excavator operator.

PRACTICE NOTE: Where an accident is caused by the means and methods of the work, a defendant can establish entitlement to summary judgment on a Labor Law § 200 cause of action by demonstrating it did not have authority to supervise or control the plaintiff's work methods. However, that does not absolve the defendants from being found negligent under the common law if another theory of liability, such as vicarious liability for an employee's negligence, is raised.

TOPICS: *Labor Law § 240(1), Labor Law § 241(6), Construction manager liability, Elevation differential, Credibility*

WEEKES V. TISHMAN TECH. CORP.

238 A.D.3d 948
May 14, 2025

The plaintiff alleged he was injured while assisting in dismantling a Baker scaffold belonging to another tradesperson and a piece of the scaffold fell onto his head.

The plaintiff testified that it was common for trades to assist others with disassembling a scaffold, and that he needed the other trade to remove their scaffold because it was preventing him from removing a scaffold belonging to his employer. In its review of the lower court's decision, the Second Department affirmed denial of the defendant's motion for summary judgment, noting that a construction manager is generally not liable under the Labor Law unless it functions as an agent of the owner or general contractor and has the ability to control the activity which brought about the injury. The court found that the defendant construction manager was an agent of the owner because the construction management services contract charged them with enforcing the subcontractor's compliance and safety, gave the ability to choose the means and the methods of the work, and they could correct workers who were performing work in an unsafe manner. The Second Department held that the plaintiff's own inconsistent testimony raised triable issues of fact regarding the height of the piece of scaffold prior to its descent, as it may have only been six inches. The plaintiff also gave inconsistent testimony about how the scaffold piece struck him, whether it fell downward after a tradesperson released his grip on the scaffold frame, or whether it swung around and struck him in the head. Under the second scenario, the plaintiff's injuries would not be covered under Labor Law § 240(1).

PRACTICE NOTE: A construction manager can face liability under circumstances where it has the ability to control the activity that brought about the injury. It is recommended to conduct a thorough review of the construction management contract to determine the scope of work and responsibilities of the construction manager to determine if it is charged with enforcing compliance and safety and has control over the activities of the subcontractors. In a Labor Law § 240(1) case involving a falling object, one factor in determining whether there was a gravity-related risk contemplated by the statute is the distance which the object allegedly fell before striking the plaintiff. The courts also consider other factors such as the weight of the object, whether there were adequate safety devices, and whether the accident flowed directly from the force of gravity.

TOPICS: *Labor Law §241(6), Homeowner's exemption*

CADENA V. KUPFERSTEIN

238 A.D.3d 973
May 21, 2025

The plaintiff alleged he injured his finger on a table saw while working on a one-family residence. The Second Department upheld the dismissal of the Labor Law § 241(6) cause of action on the basis that there is a statutory exemption of liability for the owners of one- or two-family dwellings unless the owner directs or controls the work. The phrase "direct or control" is construed strictly and refers to the situation where the owner supervises the method and manner of the work. Note, the owner of the dwelling was also the sole principal of the general contractor, but the court found that he did not supervise the work and, at most, provided aesthetic decisions and general supervision of the project. The Second Department reversed and denied the portion of the motion as to the general contractor, as it found there was a question of fact regarding whether a safety guard for the table saw was available and provided to the plaintiff, which could provide the basis for a violation of the alleged Industrial Code sections.

PRACTICE NOTE: A plaintiff must show that a homeowner directed and controlled the work in order to get around the homeowner's exemption to liability under the Labor Law. The courts strictly construe those terms.

TOPICS: *Labor Law § 200, Negligence, Actual notice, Constructive notice*

BAXTER V. JADA CONSTR. & DEV., INC.

238 A.D.3d 969
May 21, 2025

The plaintiff sustained injuries due to an alleged slip and fall accident while he was delivering a prefabricated fireplace to a condominium unit under construction. The plaintiff claimed he slipped due to a slope between two driveways that created a height differential of 6 to 7 inches. The trial court dismissed the action against both defendants on the ground that the slope was an open and obvious condition and not inherently dangerous. The Second Department re-



versed, finding that there was a question of fact regarding whether the height differential between the driveways was a dangerous condition, and whether the owner had created or had notice of the existence of that condition.

PRACTICE NOTE: A Labor Law § 200 case involving a claimed defective premises condition uses a common law negligence analysis to determine liability. Thus, a plaintiff must show the defendant either created the defective condition or had actual or constructive notice of it.

TOPICS: *Labor Law § 200, Labor Law § 240(1), Labor Law § 241(6), Safety devices, Sole proximate cause*

MONTES-VIDAL V. NEW YORK STATE THRUWAY AUTHORITY

238 A.D.3d 1131
May 28, 2025

The plaintiff, an ironworker assigned to work on a bridge, was injured when he attempted to reach a portable scaffolding platform underneath the road span of the bridge. He was wearing a safety vest, a harness, and a retractable yoyo that attached the harness to the bridge. His injury allegedly occurred when he was climbing a support column, lost his grip and fell, landing on concrete debris that slid beneath him. The Second Department affirmed the Court of Claims' decision granting the defendant's motion for summary judgment on the Labor Law § 240(1) claim, finding that the defendant demonstrated the

claimant had been provided with the necessary safety equipment to perform his task, including a harness and retractable yoyo as well as a ladder. The plaintiff failed to raise a triable issue on whether the equipment was inadequate. On the Labor Law § 241(6) claim, the court found that the plaintiff's accident did not occur in a passageway, and that the plaintiff ignored instructions to use the available ladders when accessing the portable scaffolding platform.

PRACTICE NOTE: In defending a Labor Law § 240(1) claim where it is alleged that the defendant failed to provide adequate safety equipment, it is important to establish what safety equipment was available onsite, as well as whether the plaintiff was aware of the equipment's availability and had been instructed to use that equipment. Additionally, a safety expert could aid in establishing that the plaintiff was provided with the proper equipment to perform his task which would support the argument that Labor Law § 240(1) was not violated.

TOPICS: *Labor Law § 241(6), Industrial Code § 23-1.7(d), Industrial Code § 23-1.7(e)(1), Integral to the work doctrine*

BITTROLFF V. CITY OF NEW YORK

237 A.D.3d 1024
June 4, 2025

The plaintiff claimed he sustained injuries as he walked through a room, slipped upon and became tangled in a portion of a plastic tarp that covered a pool table and extended

past the table onto the floor, causing him to fall. The plaintiff asserted claims against the defendants under Labor Law § 241(6), claiming the defendants violated Industrial Code §§ 23-1.7(d), 23-1.7(e)(1) and 23-1.7(e)(2). The Second Department affirmed part of the lower court's order denying the defendants' motion to dismiss the § 23-1.7(d) claim, finding the defendants failed to eliminate all triable issues of fact as to whether the tarp was integral to the work being performed. However, the court reversed the portion of the order denying the defendants' summary judgment motion on the § 23-1.7(e)(1) claim, reasoning that the defendants established the site where the plaintiff fell was not a "passageway" as required by that regulation.

PRACTICE NOTE: In cases involving Labor Law § 241(6), a plaintiff must also show that the defendants violated a provision of the New York Industrial Code that includes a specific directive. Where the plaintiff claims he or she tripped or slipped at the jobsite, the plaintiff will generally claim the defendants violated Industrial Code § 23-1.7(d) related to slipping hazards, § 23-1.7(e)(1) related to tripping and other hazards in passageways, and § 23-1.7(e)(2) for tripping and other hazards in working areas. It is important to establish what the plaintiff claims caused him to trip and/or slip, and where on the jobsite the accident occurred. A defense can be built on the fact that the accident did not occur in one of the areas specified in the statutes.

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

VINDELL V. SITE 2 DSA OWNER, LLC

239 A.D.3d 688
June 4, 2025

The plaintiff was working in the subcellar level of an open excavation area that was muddy due to water coming in from a nearby underground water source. He was injured while using a sledgehammer to remove a piece of wood supporting plywood on the wall of the excavation site when his feet got stuck in the mud, causing him to lose his balance and fall. The Second Department upheld the lower court's decision granting the defendant summary judgment on the plaintiff's Labor Law § 241(6) claim based on 12 NYCRR § 23-1.7(d). The court

found that the plaintiff did not slip or trip, and was not using a floor, walkway, or other surface that was covered by that Industrial Code provision. However, the Second Department reversed the lower court's granting of the defendant's summary judgment on the plaintiff's Labor Law § 200 claim because there was conflicting evidence regarding the source of the water that created the muddy condition.

PRACTICE NOTE: A fall at a construction site may not constitute a slip or trip under the scope of Labor Law § 241(6). To establish summary judgment to dismiss a Labor Law § 200 claim, a defendant must submit evidence showing that they did not create the claimed defective condition, nor did they have notice of the condition.

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

MERLO V. 49 GROVE REALTY LLC

239 A.D.3d 727
June 11, 2025

The plaintiff was working as a laborer and was injured when metal sheets stored upright against a wall fell and pinned him against the floor. The Second Department affirmed the trial court's decision granting the defendant's motion for summary judgment on Labor Law § 240(1) finding that the plaintiff's injuries were not caused by a gravity-related or elevation-related risk. The court also affirmed the dismissal of Labor Law § 241(6) claims predicated on Industrial Code § 23-1.7(e) because the alleged accident did not occur in a passageway, stairway, walkway, or other thoroughfare.

PRACTICE NOTE: When moving to dismiss a Labor Law § 241(6) claim, it is important to look at which Industrial Code provision the plaintiff is predicated on the claim on and submit evidence that it does not apply in your matter. Labor Law § 240(1) only applies to a narrow class of hazards so it is not enough for a plaintiff to merely show that an object fell and caused injury. The plaintiff must prove that the falling object was being hoisted or secured, or that the falling object required securing for the purposes of their work.

TOPICS: *Labor Law § 240(1), Labor Law § 241(6), Ladder, Sole proximate cause*

CABRERA V. PROVIDENT ALPINE PARTNERS, LP

239 A.D.3d 814
June 18, 2025

The plaintiff, a construction worker, was injured while performing renovation work when he fell from an aluminum A-frame ladder while demolishing a portion of a wall attached to the ceiling. The Second Department affirmed the trial court's denial of the plaintiff's motion for summary judgment on his Labor Law § 240(1) claim as the defendant was able to raise a triable issue of fact as to whether the plaintiff was the sole proximate cause of his injuries due to being engaged in activity which he was not authorized or instructed to perform. The Second Department also ruled that the trial court should have denied the defendant's cross-motion for summary judgment on the Labor Law § 241(6) claim as the owner's duty under § 241(6) is non-delegable. Additionally, the court found that the defendant's claim that the plaintiff improperly specified 12 NYCRR §§ 23.121(b)(3)(iv) and 23-1.21(b)(4)(ii) – both pertaining to ladders – was also without merit, as the defendant failed to submit evidence of the condition of the ladder in rebuttal.

PRACTICE NOTE: A recalcitrant worker defense can be established by showing that the plaintiff was given instructions on using an appropriate safety device to perform his work, knew where the device was located, and chose not to use that safety device.

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

ACATILA V. REALLY NEAT REALTY, INC.

239 A.D.3d 926
June 25, 2025

The plaintiff was injured while performing construction work when a ladder he was standing on collapsed, causing him to fall. The Second Department affirmed the trial court's granting of his motion for summary judgment on the Labor Law § 240(1) claim. The plaintiff established a *prima facie* case by submitting evidence that the ladder he was standing on moved for no apparent reason.

PRACTICE NOTE: The collapse of a ladder for no apparent reason is enough to establish a violation of Labor Law § 240(1). To avoid summary judgment, a defendant must submit evidence which establishes that the ladder was in good condition and not defective or inadequately secured to raise a triable issue of fact.

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

GARCIA V. FED LI, LLC

239 A.D.3d 942
June 25, 2025

The plaintiff was injured when he fell from an extension ladder while working on a commercial property. He then filed suit against the building owner and tenant, alleging violations of Labor Law § 240(1). The tenant then brought a third-party action against the plaintiff's employer for contractual indemnification. The Second Department held that the plaintiff established a *prima facie* case and should have been granted summary judgment because he established that the unsecured ladder moved and fell and that he was not provided with any safety devices. Additionally, the Second Department held that the plaintiff's employer did not expressly agree to indemnify the third-party plaintiff pursuant to a written contract. The third-party plaintiff alleged that there was an indemnification clause in the terms and conditions of a purchase order, but the purchase order failed to incorporate by reference the purported indemnification clause and the terms and conditions were not provided to the third-party defendant until after the accident.

PRACTICE NOTE: According to the doctrine of incorporation by reference, the material to be incorporated must be so well known by both parties that a mere reference to it is sufficient. It cannot apply to an otherwise unidentified terms and conditions page which is not provided or included. Additionally, an indemnification clause cannot apply retroactively unless the agreement was made prior to the accident or is expressly worded to specify that the parties intend it to include past obligations.

THIRD DEPARTMENT

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

BURGOS V. DARDEN RESTS., INC.

234 A.D.3d 1037
January 2, 2025

The plaintiff sustained injuries as he was demolishing a walk-in freezer on the roof of a restaurant and the freezer roof collapsed, causing him to fall to the floor. In opposition to the plaintiff's motion for summary judgment on the Labor Law 240(1) claim, the defendants argued the plaintiff was the sole proximate cause of his injuries because he chose to cut through the roof of the unit rather than demolishing the unit from the ground floor. The Third Department affirmed the denial of the plaintiff's motion, finding the defendants established that the plaintiff had been provided with multiple ladders and appropriate safety devices sufficient to accomplish the demolition from ground level, that he was instructed to execute the job from ground level, and that he was instructed to call a supervisor with any questions. The court found this evidence sufficient to raise a question of fact as to whether the plaintiff actively ignored the supervisor's instructions and whether his conduct was the sole proximate cause of his injuries.

PRACTICE NOTE: The sole proximate cause defense is available to claims under Labor Law § 240(1) where it can be demonstrated that the plaintiff had access to available, adequate safety devices and ignored instructions to use those devices. Through discovery, it is important to establish what safety equipment was readily available on-site, that the plaintiff was aware the equipment was readily available, that the plaintiff had been provided with instructions to use the appropriate equipment, and that he or she chose to ignore those instructions.

TOPICS: *Labor Law § 240(1), Falling object, Safety devices, Labor Law § 241(6), Industrial Code, Labor Law § 200, Supervision and control*

JAMES V. MARINI HOMES, LLC

234 A.D.3d 1078
January 9, 2025

The plaintiff was injured while working in a 4-foot-deep excavation for the foundation

of a new townhome when his co-worker intentionally threw a wooden board in the plaintiff's direction from the ground level. The Third Department held that the general contractor was entitled to dismissal of the plaintiff's claim under Labor Law § 240(1) because the plaintiff was not injured by an object that fell while being hoisted or secured, or due to the absence or inadequacy of a safety device. The plaintiff's Labor Law § 241(6) claim was also dismissed because performance of excavation was not an activity that was normally exposed to falling material or objects such that overhead protection pursuant to 12 NYCRR § 23-1.7(a)(1) was required.

PRACTICE NOTE: An object falling from a height alone is not sufficient to invoke Labor Law § 240 (1). A plaintiff must establish they were exposed to the type of elevation-related risk in which safety devices of the kind enumerated in Labor Law § 240(1) are deemed warranted. In this matter, the defendant was entitled to summary judgment because the plaintiff failed to show that the wooden board was being hoisted or secured, or that the board fell because of the absence or inadequacy of a safety device. In similar cases, attention should be paid to whether the alleged falling object required securing, and what device would have been appropriate to secure the object to prevent its fall.

TOPICS: *Labor Law, Federal Aviation Act, Federal preemption*

SCALLETTA V. MICHELS POWER, INC.

236 A.D.3d 1
January 16, 2025

Plaintiff was a helicopter lineman working for a subcontractor of the defendant general contractor on a power line repair project. The plaintiff was required to work from a platform attached to a helicopter that hovered next to the structure being worked on. The plaintiff was injured when one of the helicopter rotors hit the structure causing the helicopter to crash. The plaintiff alleged common law negligence and violations of Labor Law §§ 240(1), 241(6), and 200. The defendant filed a pre-answer motion to dismiss arguing that the Supreme Court lacked subject matter jurisdiction over the plaintiff's claims because they were preempted by the Federal

Aviation Act of 1958. The lower court denied the motion. The Third Department affirmed and held that while the Federal Aviation Act preempts the field of air safety, it contains a saving provision preserving state law remedies. The court reasoned that the plaintiff's claims were premised upon the defendant's failure as the general contractor overseeing the work to provide him with adequate safety equipment while he was working outside of the helicopter and, as such, related to workplace safety standards under New York's Labor Law rather than the operation of the aircraft, and did not interfere with federal air safety regulations.

PRACTICE NOTE: A plaintiff's claims against a general contractor are not preempted by federal aviation law where the claims relate to workplace safety standards under New York's Labor Law rather than the operation of aircraft, and do not interfere with federal air safety regulations.

TOPICS: *Approved safety devices, Burden of proof, Supervision and control*

BRESLIN V. ACCESS AUTO SALES & SERV., LLC

239 A.D.3D 1119
June 12, 2025

The plaintiff, a cable technician, was installing fiberoptic cables at the defendants' offices when he fell from a 28-foot ladder and was injured. He had no recollection of the accident or what caused his fall. The Third Department affirmed the denial of all motions on the plaintiff's Labor Law §§ 240(1) and 241(6) claims because there were questions of fact as to whether the safety devices provided were insufficient. The plaintiff's Labor Law § 200 claims were properly dismissed as to all defendants because the plaintiff failed to refute the defendants' showing that they had no involvement in the installation of cable wire and lacked any supervisory control or authority over the plaintiff's work.

PRACTICE NOTE: Thorough investigation of all potential witnesses to an accident must be undertaken, even when liability seems apparent, as conflicting versions of events giving rise to an injury may be sufficient to preclude an award of summary judgment.

TOPICS: *Evidence*

**SARAIVA V. NEW YORK STATE
THRUWAY AUTHORITY**

234 A.D.3d 1325
January 31, 2025

The plaintiff sustained injuries as a result of an electric shock while sandblasting paint on an overpass located on the New York State Thruway. The Court of Claims denied the defendant Thruway Authority's summary judgment motion on the Labor Law § 241(6) claim, and the action proceeded to trial. After trial, the Court of Claims ruled that the defendant was not liable, and the claimant appealed, arguing that the trial court erred in striking a portion of a witnesses' testimony that he had received a shock from the same condition on two prior occasions. The Appellate Division found that since the testimony was considered, the decision to strike the testimony did not affect a substantial right of the claimant. The Court of Claims also declined to admit testimony from the plaintiff's expert regarding the "the magnitude of the ... shock" received by the claimant inasmuch as such testimony exceeded the scope of the expert disclosure. The Appellate Division held that any error in precluding the challenged testimony did not prejudice a substantial right of the claimant and was therefore harmless because the Court of Claims considered and ultimately rejected aspects of the expert's testimony.

PRACTICE NOTE: Trial courts such as the Court of Claims are afforded wide discretion in making evidentiary rulings and, absent an abuse of discretion, those rulings will not be disturbed on appeal. To be admissible at trial, evidence must be relevant and its probative value must outweigh the risk of undue prejudice.

TOPICS: *Labor Law § 240(1), Prime contractor*

**PREVOST V. ASSOCIATED
MATERIALS, LLC**

239 A.D.3d 1235
June 6, 2025

The plaintiff fell from a homeowner's roof while performing renovation work for the roofing subcontractor. He commenced a Labor Law and common law negligence action against the contractor who had en-



tered into a contract with the homeowner to construct an addition to the home and to perform roofing work. The contractor then hired a renovation company to perform the new construction, and the plaintiff's employer to perform the roofing work. The Appellate Division affirmed dismissal of the complaint against the renovation contractor, finding that it was a prime contractor rather than a general contractor because it had no control over the plaintiff's work and had no authority to coordinate and control the activities of the plaintiff's employer.

PRACTICE NOTE: Knowing the distinction between a general contractor and prime contractor under the Labor Law is crucial for determining your liability under §§ 240(1) and 241(6). Having actual authority and responsibility for coordinating, supervising, enforcing, and hiring is dispositive in that regard. The mere status or designation of general contractor does not establish liability.

TOPICS: *Statutory agent, Subcontractor liability*

**WHEELER V. BRANDSAFWAY
INDUSTRIES, LLC**

239 A.D.3d 1408
June 27, 2025

The plaintiff was working on a project to construct boats for tours of Niagara Falls when he fell from a scaffold ladder while carrying a 25- to 30-pound box of wire. At the time of the accident, the plaintiff was climbing the scaffold ladder as no stair towers, ramps or runways had been constructed. The plaintiff brought suit against the owner of the proper-

ty where the boats were being constructed as well as the entities that held a license to use the property for construction. The plaintiff's employer was the general contractor for the project and was impleaded as a third-party defendant by the licensee. The subcontractor hired to erect the scaffolds onsite so workers could access the top of the boats being constructed was also impleaded into the action. The Appellate Division reversed the denial of summary judgment to the defendant scaffolding company because it was not a statutory agent of the owner or general contractor. Subcontractors, such as the scaffolding subcontractor, qualify as statutory agents only with regard to injuries "sustained in those areas and activities within the scope of the work designated to [them]." The plaintiff and co-defendants admitted that the scaffolding subcontractor had no authority to supervise or control the plaintiff or his work, but argued that the contractual terms requiring the contractor to comply with applicable safety laws, rules and regulations showed that the contractor had control over the worksite. The Appellate Division held this language was not enough to trigger statutory agent status because nothing in the subcontract delegated the authority to supervise or control any part of the worksite to the scaffolding contractor.

PRACTICE NOTE: In order for a contractor to be held liable for violating the Labor Law, it must have authority to control and supervise the injury-producing work and worksite. Broad terms contained in the contract that require compliance with safety laws, rules or regulations are insufficient to establish that a contractor had authority to supervise or control the work at the site.

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CONSTRUCTION

Defending Claims Under New York Labor Law

Tuesday, November 18, 2025
12 PM ET/9 AM PT

Jamie K. McAleavey, Jeffrey S. Matty,
and Jessica M. Erickson

Defending claims under New York Labor Law presents unique challenges that require a deep understanding of statutory nuances and evolving case law. Join Goldberg Segalla partners Jamie McAleavey, Jeff Matty, and Jessica Erickson as they discuss how to gain actionable insights into defending against claims brought under Labor Law Sections 200, 240(1), and 241(6), with a special emphasis on recent judicial developments and practical strategies for effective litigation.

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- › Attorneys
- › Claims professionals
- › Risk managers who handle New York Labor Law matters

YOU WILL LEARN:

- › How to better understand the landscape of New York Labor Law and its implications for defense
- › How to analyze recent case law and its impact on litigation strategy
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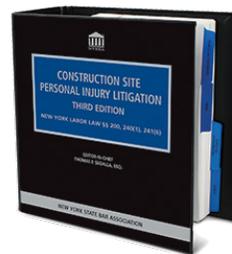
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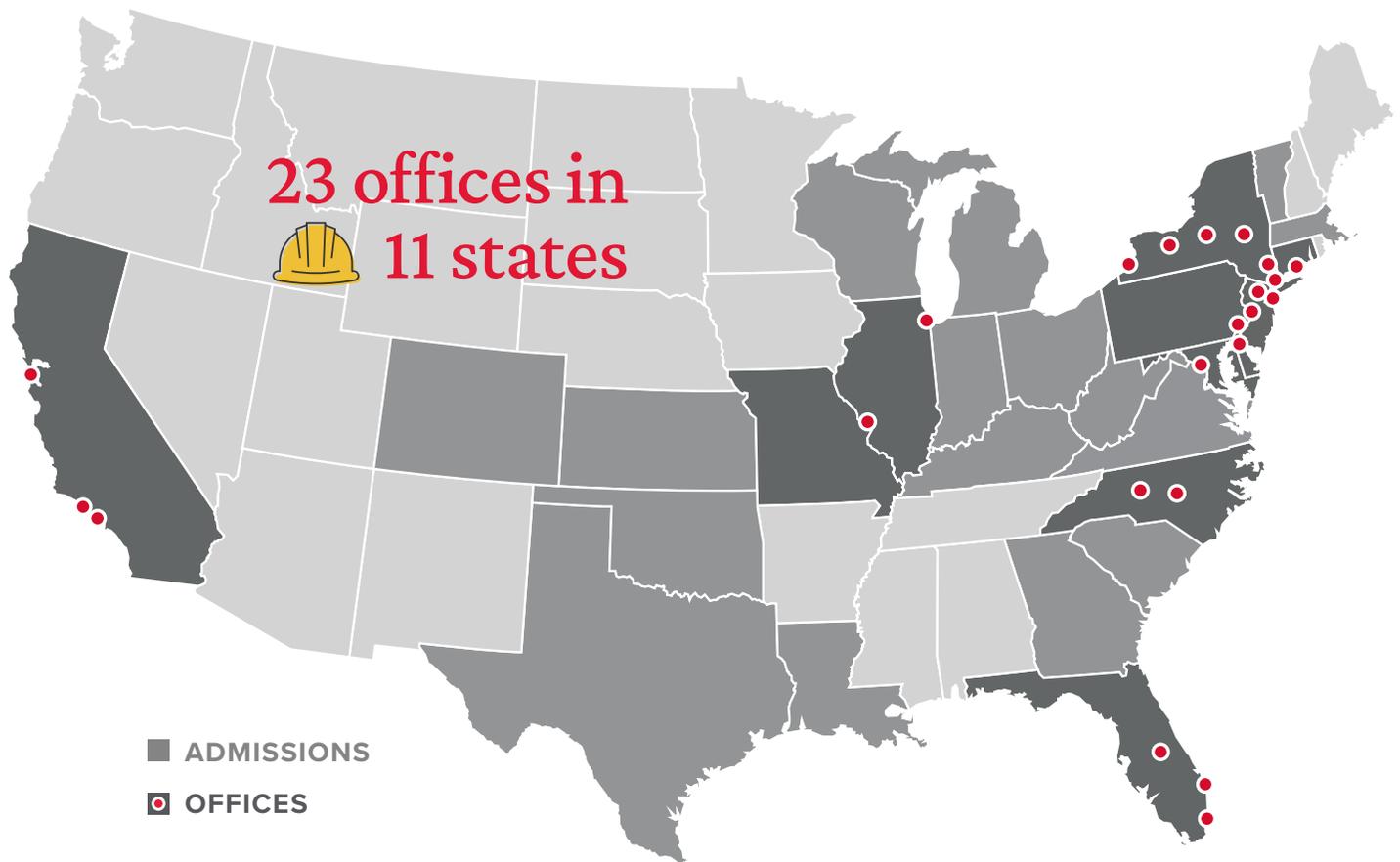
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