New York State Labor Law

Overview

Businesses that have locations or operations in the state of New York need to be aware of the increased liability exposure that New York Labor Law (NYLL), Sections 200, 240(1) and 241(6), places on them when subcontracting work out to others. This document provides information on NYLL as well as guidance on risk mitigation techniques that can help reduce loss exposures related to workplace safety.

Background and history

The purpose of NYLL is to place the responsibility for safety practices onto the owner, property manager, general contractor (GC), agent or individual who has the best financial ability and sufficient control of the worksite to protect workers engaged in hazardous and dangerous employment. Versions of the statute have been around since the 1800s.

Historically, these sections have pertained to construction-based activities and were designed to protect workers who were employed and involved in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure.

Over time, the courts in New York have been broadening the application of NYLL outside of the construction industry by focusing the scope of coverage based on the injury-causing activities that are covered by the statutes. For example, carpet installation is generally not considered a construction activity. If the worker uses a power saw to cut floor molding, under certain circumstances, a court could rule that the worker is engaged in construction activity.

Owners of single- and two-family dwellings (except owners who act as their own GC) as well as professional engineers, architects and landscape architects are excluded from NYLL if they do not direct or control the work other than to plan or design. Additionally, anyone who does not fall within the definition of GC/owners (such as subcontractors) will not be subject to statutory liability under NYLL.

NYLL suits are often some of the toughest to fight in court, with jury verdicts regularly resolving for $600,000-$1,000,000. Several larger verdicts over the past few years have topped $10,000,000. CNA's experience has shown that when effective risk transfer is in place, the liability typically gets placed with the most appropriate party. When risk transfer mechanisms are not in place or are improperly implemented, the liability apportionment may be placed with those who had little or no control over the injury-causing hazard.

What sections of the labor law are most important to the owner, property manager, GC or agent?

Labor Law Section 200

- Under this section, the owner, property manager, GC or agent has a duty to provide a safe place to work based on common law negligence principals. Liability is imposed only when the responsible party supervises or controls the work that results in an injury to a worker, so overall supervision of the workplace is not sufficient.
- Another basis for liability is an injury caused by a hazardous condition of the premises. This section is not limited to traditional construction job sites or activities involving erection, excavation, demolition, repairing, alteration, painting, cleaning or pointing of a building or structure. This section can also be applied to manufacturing operations and other operations outside of construction.
- If the owner, property manager, GC or agent does not supervise or control the event that caused the injury, then no liability can be attached to them under this statute.
- Comparative negligence on the part of the injured party can be taken into consideration.

Labor Law Section 240(1)

- Known as the "scaffolding law," this section imposes a non-delegable duty on the owner and GC to prevent injuries that are the result of risks associated with the effects of gravity. Section 240(1) only applies to erection, demolition, repairing, alteration, painting, cleaning or pointing of a building or structure.
- This section generally applies to accidents where a worker falls from an elevated height or is injured by an object falling from an elevated height. In more recent cases, the courts have used the term "gravity-related" risks. A worker engaged in construction activities at a height that does not require fall protection per OSHA (under six feet for construction and four feet for the general industry) can still bring about a 240(1) claim in the event of a fall. Section 240(1) is not triggered by any specific height, but by risks that are "gravity-related."
- To successfully prosecute the case the plaintiff must prove a type of defect in the safety device or failure to provide an adequate safety device for the task at hand.
- Liability under this section is absolute. Comparative negligence on the part of the injured worker is not a defense.
- Any responsible parties are obligated to pay the injured worker the full value of their claim, even if the injured party was 99 percent responsible for their own injuries. If the plaintiff was fully responsible for their own injuries, protection under this section would fail.

Labor Law Section 241(6)

- This section requires a violation of the New York Industrial Code, a safety standard that predated OSHA. The plaintiff must set forth specific concrete standards contained in the Industrial Code. Violations of general provisions are insufficient.
- Violations of an OSHA regulation do not give rise to a claim under this section of the NYLL.
- Supervision and control do not need to be shown for application of this section of the NYLL as it can be vicariously applied by the courts based on the facts of a case.
- Comparative negligence does apply.

Note: The interpretation of the NYLL and related case law continues to evolve, so it is important to work with legal counsel familiar with the statutes. The above is a summary of the noted labor law sections and is not a complete detailed listing of all material contained in those sections.

What can a business owner, property manager, GC or agent do to help mitigate the loss potential from NYLL exposures?

1. Establish internal procedures for evaluating NYLL exposures when doing business in the state of New York.
2. Evaluate and hire experienced subcontractors that have good safety records, strong hiring practices, effective risk management programs and financial stability.
3. Use well-written subcontractor agreements with specific hold harmless and indemnification language drafted by your attorney. Overly broad indemnification language can be ruled not specific enough and considered invalid.

   New York's General Obligations Law voids as a matter of public policy, overbroad indemnification agreements, especially those that require the subcontractor to indemnify the owner/GC for their own negligence.
4. In your written subcontractor's agreement or contract, use specific language to make sure you're listed as an Additional Insured (AI) on a primary and non-contributory basis. Make sure there is a completed operations policy. Obtain copies of the subcontractor's AI endorsement and review for adequate insurance limits and unfavorable language.
5. Go beyond simply acquiring Certificates of Insurance from subcontractors who will be working in the state of New York and make a point to fully review the policy and endorsement language. The coverage should be verified to ensure it is an active policy that contains adequate limits and does not contain any unique or unusual exclusionary language (gravity-related injuries, construction-related injuries, injuries to own employees, etc.) that could impact NYLL claims. If a Certificate of Insurance must be used, require the New York Construction Certificate of Liability Insurance Addendum (Acord 855 NY), and require subcontractors to provide a 30-day notice of policy cancellation.
6. Restrict your subcontractors from further subcontracting your work out to others.

Sample Loss Scenarios*

Loss Scenario #1: NYLL 240(1)

A company domiciled in Florida owns a commercial building in Queens, New York. The company hires a roofing contractor, and a contract for the work is executed, including the necessary indemnity and insurance procurement language.

While roof work is being performed, an employee of the roofing company falls, sustaining injuries. The injured worker files a Workers' Compensation claim as well as a third-party liability claim against the building owner under NYLL Section 240(1).

The building owner reports the loss to their general liability insurance carrier, providing a copy of the contract. The insurance carrier sends a tender to the general liability carrier of the roofing company demanding the defense and indemnity pursuant to the contract.

The roofer's insurance carrier issues a disclaimer of coverage, citing exclusions on their policy for incidents arising out of construction work in the state of New York. The building owner will likely bear 100 percent of the damages with no ability to transfer the risk to others.

Loss Scenario #2: NYLL 200/241(6)

A company located in New York is constructing an addition to their building. They decide to act as their own GC, hiring all of the necessary trades directly. Contracts are executed with each contractor containing the necessary indemnification language.

*The above are hypothetical claim scenarios. Any unknown or new information may change the outcome of any scenario provided.

Multiple trades are working simultaneously, and the company has an employee on site daily to ensure the work is being completed. An employee of a subcontractor is walking through the hallway when he trips and falls on construction debris, sustaining a serious back injury.

The injured party files a Workers' Compensation claim and a liability claim against the company who hired them, under Sections 200 and 241(6) of NYLL, citing violations of the NY Industrial Code pertaining to requirements to keep passageways clear of debris.

The owner/GC will be found liable under Section 200 (active negligence for failing to coordinate the trades and maintain the passageways) and Section 241 (violation of an Industrial Code violation).

Risk transfer to any of the trades will be difficult, as the company cannot be indemnified for its own active negligence. Under these sections, the plaintiff can be found with comparative negligence for failing to observe the tripping hazard.

Contractor safety controls for Section 240(1)

Because courts may interpret contracts differently, strong risk transfer and contractual controls should be implemented in tandem with strong safety controls, which include but are not limited to:

- Proper selection of ladders for the tasks performed.
- Ladder and lift inspections, including weight limit review.
- Proper selection, use and inspection of personal fall arrest systems for the tasks being performed.
- Properly protecting, marking and securing floor holes.
- Properly erecting scaffolds and conducting qualified inspections of scaffold systems.
- Installing railings where appropriate for leading edges and on baker scaffolds.
- Providing safety toolbox talks and construction meetings on fall exposures.
- Enforcing the use of toe boards to prevent objects from falling to lower levels.
- Securing tools from falling to lower levels and utilizing fall protection for tools.
- Avoiding work under suspended loads of objects in the process of being hoisted.
- Developing and formalizing subcontractor vetting procedures (interviews, checking references, reviewing for any prior OSHA violations, requesting and reviewing safety programs, etc.).

Although NYLL claims can occur even when work is performed within the OSHA requirements for fall protection, those engaged in construction should still have the appropriate OSHA certifications for scope of work, and for the region where work is being performed.

For construction workers and supervisors on jobsites within New York City, compliance with Local Law 196 is required. For more information on Local Law 196, please visit the New York City DOB website.

Where do NYLL claims occur?

NYLL claims have the potential to occur anywhere within the state of New York (and are not confined to any specific industry), but claims might be more frequent and severe in New York City and its boroughs, as well as within certain northwestern counties.

Organizations that lease space within a building are not immune to NYLL claims. Contractual risk transfer should be implemented and insurance reviews should be performed for all hired subcontractors prior to the start of any renovation work within the suite.

From a landlord's perspective, procedures should be in place for tenants to advise of any planned renovations. A copy of the Certificate of Insurance should be collected and reviewed, and your organization should be listed as an Additional Insured.

NYLL can be uniquely complex and potentially very expensive. However, exposure to these types of losses can be mitigated by being knowledgeable and proactive in your risk transfer practices when you subcontract work to others in the state of New York. Using strong subcontractor qualification protocols, adequate and enforceable contract language, and an effective internal procedure to manage program compliance is critical to protecting your company from the perils of NYLL.

Additional resources

- Risk Transfer: A Strategy to Help Protect Your Business
- OSHA – Safe & Sound Resources
- OSHA – Small Business Portal

To learn more about managing risk and increasing efficiency, visit cna.com/riskcontrol.