

## Construction & Design

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### Big questions surrounding NY Scaffold Law

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Perhaps no other law in the New York construction industry prompts greater debate whether it should remain than Labor Law §240.

Known colloquially as the Scaffold Law, the statute imposes absolute liability upon owners and general contractors when workers sustain gravity related injuries, without regard to their contributing fault.

Derived from an 1885 law passed when skyscrapers first started to rise, it was an early measure to protect workers from unsafe conditions as vertical construction reached new heights.

The law applies to elevation related injuries arising during construction, demolition or repair work.

It is unique to New York. It balances precariously between the workers it protects and those who demand reforms for a more reasonable standard. Here is the scope of the safety prob-

lem: According to OSHA and the Bureau of Labor Statistics (BLS), out of approximately 3,929 worker fatalities in private industry in CY 2013, 796 or 20.3% were in construction — that is, one in five workers.

The leading cause of death was falls, accounting for 294 out of 796 total deaths (36.9%).

BLS statistics note that of 56 fatal work injuries in New York City in 2013, 17 were in the construction industry. Falls, slips, or trips accounted for 11 of the worker deaths. Contact with objects and equipment accounted for 3. Non-fatal injuries far exceed these numbers.

In New York they account for a majority of the lawsuits filed that are predicated on the Scaffold Law.

New York State's current law purportedly incentivizes safety by shifting the burden to be safe from the individual to the project owner and general contractor, parties who are allegedly best able to institute safety monitoring systems.

Through these systems and equipment, the law expects owners to prevent worker injuries sustained when falling from above and from being struck by falling objects. This duty is non-delegable and applies when statutory violations proximately cause the worker's injuries. Only owners of one- and two-story family dwellings are exempt.

*"They are seeking reform of what they view as an archaic law."*

Proponents champion the law as protecting workers in one of the nation's most dangerous industries. Particularly at-risk are non-union laborers who may lack access to safety training and equipment from their employers. It also protects immigrant workers whose language barriers hinder the ability to demand safe working conditions. Additionally, workers need not fear possible termination or retribution from employers for demanding protective equipment and systems.

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More importantly, supporters argue the law appropriately places the onus on the project owner and general contractor to protect their workers.

These advocates contend the liability imposed is not draconian but properly penalizes those who fail to meet required safety standards. Those who adhere to these standards are not subject to theoretically limitless liability. To erode the Scaffold Law and remove or modify absolute liability, they assert, will undermine the safety incentives of the legislation.

Opponents of New York's Scaffold Law are not opponents of worksite safety. They assert that no other state has a Scaffold Law like New York that imposes what is viewed as strict liability for worker injury, ignoring the worker's contributing fault to the injury. They are seeking reform of what they view as an archaic law, asking the legislature to repeal the law entirely or modernize it and bring it in line with other states.

Outside of New York, the potential damages to an owner typically decrease in proportion to the fault attributable to an injured worker. Conversely, in New York an owner's liability is viewed as limitless due to the strict liability standard. Courts construe the Scaffold Law liberally.

Owners have been held absolutely liable in instances where workers fell from fifteen inches and even when a job is performed by an independent contractor over whom the owner exerts no control or supervision. In addition, workers can

recover under the Scaffold Law beyond statutory worker's compensation benefits.

There are few legal defenses available to owners and in practice most cases are settled out of court to avoid the costs of a trial and the prospect of a jury award.

An owner can be relieved of liability if the worker was the sole proximate cause of the injury or is deemed a recalcitrant worker that intentionally refused to follow safety systems or use safety equipment provided.

To address this business risk, owners must acquire substantial amounts of insurance coverage, and those costs are substantially higher here because of the Scaffold Law.

High priced insurance policies, however, adversely impact small business owners and women and minority owned businesses that cannot afford the expensive premiums. Prohibitively priced insurance policies also jeopardize economic growth and reduce opportunities for potential projects.

The New York City School Construction Authority has claimed its insurance costs are three-to-four times higher than for a similar project in New Jersey. As a result, the Author-

ity claimed it would construct fewer schools because funds must be redirected from capital projects to pay for potential personal injury claims.

That translates to fewer construction jobs, as well as fewer classrooms.

Opponents also claim trial lawyers purposefully block the Scaffold Law reforms. Some of the largest legal settlements in New York stem from alleged Labor Law §§240 & 241 violations.

Currently, the Scaffold Law is subject to scrutiny following the fall of a staunch supporter, former Assembly Speaker Sheldon Silver.

Many in the construction and real estate industry are clamoring for change; others want the law to remain intact.

There is a growing consensus that high insurance costs hurt both sides by diverting funds away from projects and jobs. Perhaps one day this shared concern will become the catalyst for common ground. For now, the debate continues.

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