Workplace Related Injuries

A Discussion of the Relevant Provisions of New York State Labor Law

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An increasing amount of litigation today concerns workplace related injuries. These claims sound in negligence, violations of the Labor Law and, on occasion, concern issues of products liability. This memorandum is concerned with causes of action brought by plaintiff employees for injuries sustained during the course of their employment. The vast majority of these cases are concerned with theories of negligence and violations of the safe place to work provisions of the Labor Law. In addition to understanding these issues, it is important that the practitioner in this area also understand the issues of insurance coverage as it relates to workplace injuries.

Labor Law

The primary provisions of the Labor Law in workplace-related injuries are Sections 200, 240 and 241. The following is a brief synopsis of the relevant portions of the statute that affect workplace litigation.

SECTION 200 - "General Duty to protect the health and safety of employees; enforcement"

Subsection 1 provides that all places shall be so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety of employees or persons lawfully frequenting such places. All machinery, equipment and devices in such places shall be so placed, operated, guarded and lighted as to provide reasonable and adequate protection to such persons.

Section 200 is a codification of the common law duty of an employer to provide a safe place to work for all employed. An owner of property will be liable under Section

200 only if there is a dangerous condition and the owner exercised supervision and control or had actual or constructive notice of the condition.

By contract, the owner normally requires the general contractor to be responsible for safety on the job site. In order for a subcontractor to be liable for injuries sustained pursuant to this section, it must be shown that the subcontractor had the authority to supervise and control the activities of the injured party on the job site or the place where the accident occurred.

Section 200 applies to all work sites. It is not limited to construction or building sites. It is important to remember that the plaintiff's culpable conduct is a factor to be considered in Section 200 cases and is an affirmative defense to the claim of the injured employee.

Section 240(1) - "Scaffolding and other devices for use of employees"

All contractors and owners, except owners of one and two family dwellings who contract for but do not direct or control the work, in erection , demolition, repairing, altering, painting, cleaning or pointing of a building shall furnish or erect for such work the following: scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes and other devices which shall be so constructed, placed and operated, as to give proper protection to the employee.

Section 240(1) is known as the "scaffold law". The owner/general contractor has an absolute duty to furnish or erect safety equipment for the protection of the employee. This is a self-executing statute in that it lists the safety devices that must be provided to an employee at a construction site.

The culpable conduct of the employee is not a defense to a violation of this statute. There is no notice requirement that an employee must demonstrate in order to be entitled to recovery. There is a one/two family residence exception to the imposition of liability under this provision. If an owner of a one/two family residence contracts for, but does not supervise or control the activities of a worker, he will not be liable under Section 240(1).

This provision applies only to construction work at building sites.

SECTION 241 - Construction, Excavation and Demolition

The most important subsection of this paragraph is subsection number 6. It provides, in substance, that all areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, equipped, guarded, arranged, operated and conducted as to provide protection and safety to persons employed or persons who lawfully frequent such places. It empowers the Commissioner of the Department of Labor to make such rules and regulations that will carry into effect the provisions of this section. It applies to owners and contractors except owners of one/two family dwellings who contract for but who do not direct or control the work.

This section applies to construction sites but is not limited to building sites. It is not a self-executing statute, but requires regulations be promulgated by the Commission of the Department of Labor. These regulations are contained in Rule 23 of New York's Code of Rules and Regulations. A violation of one of these regulations is a predicate for finding liability under this provision. The owner and general contractor have a non-delegable duty under this statute. No notice is required for the plaintiff in order to prove liability under this section. This section imposes absolute liability upon the

owner/general contractor, but also takes into consideration the culpable conduct of the employee.

SUMMARY OF LABOR LAW PROVISIONS

Section 200 - This section is a general statement of the common law duty to provide a safe place to work. Unlike sections 240 and 241, it must be shown that the owner or general contractor supervised the work and had actual or constructive notice of the hazardous condition. Culpable conduct of the employee is a defense.

Section 240(1) - Absolute duty to furnish or erect scaffolding, hoists, stays, ladders, slings, etc., to give proper protection. Culpable conduct is not a defense. This is a self-executing statute.

Section 241(6) - Similar to Section 200 in that it reiterates the common-law duty to provide a safe place to work. Unlike sections 240 and 241(1-5), it is not a self-executing statue. It does not contain its own specific safety measures. Culpable conduct is a defense. It provides that the Commissioner of the Department of Labor may make rules to carry into effect provisions of the section. The owner and general contractor are subject to the same non-delegable duty pursuant to Section 240(1). The defendant should always argue that in any action predicated upon 241(6), an implementing regulation of the Commissioner of the Department of Labor must be alleged in order to effect to Section 241(6). Further, under Section 241(6), the vicarious liability of an owner or general contractor or other entity is dependent on establishing negligence on the part of a contractor or subcontractor.

KEY ISSUES IN SAFE PLACE TO WORK CASES

The following issues must be taken into consideration and examined in every case involving a claim that an owner, general contractor or subcontractor has filed to provide the injured employee with a safe place to work.

1. Recalcitrant workers.

Traditionally, owners and general contractors have been defeated in 240(1) cases where they maintain that safety devices were generally available on the work site to employees but that the employees choose not to use them. In order for a defendant to defeat the imposition of liability under Section 240(1), the defendant must demonstrate that a plaintiff affirmatively refused to use provided safety devises (see the Court of Appeals decision in ***Smith v. Hooker Chemical and Plastics Corp.**, 70 N.Y.2d 994 (1988))*.

It is very difficult to defeat a labor law claim with the "recalcitrant worker" defense as evidenced by the decision of the Court of Appeals in ***Stolt v. General Foods Corp., 81 N.Y.2d 918, 597 N.Y.S.2d 650 (1993)***. Plaintiff was injured when he fell from a ladder at defendant's construction site. The ladder was owned by a third-party defendant contractor and had broken the previous week. The plaintiff had been instructed not to use the ladder unless there was someone present to secure the ladder. The Court of Appeals granted partial summary judgment to the plaintiff and rejected the "recalcitrant worker" defense. It noted that such a defense requires a showing that the plaintiff refused to use safety devices provided by the owner or employer. In this case, the plaintiff did not refuse to use a safety device, but used a defective safety device.

As a defense to the imposition of Section 240 liability, an owner or general contractor must prove that not only were safety devices provided to employees, but that

management made it mandatory for its workers to wear or utilize such devices. It must be determined what specific steps the owner or general contractor took to insure worker safety.

2. Is plaintiff within the class of workers intended to benefit from the statute?

There must be a relationship between the construction project and the work the plaintiff was performing at the time of his injury in order to determine whether or not the various provisions of the Labor Law will protect him.

3. Is defendant responsible for absolute liability under Section 240?

If the party for whom imposition of liability is sought is not the owner or general contractor, then in the absence of any contractual right or actual ability to supervise or control the construction work, as well as the safety on the project, there will be no imposition of liability.

4. Does the work site come within protection of the statute?

It must be remembered that Section 240 applies only to construction work at building sites. Section 241(6) applies only to construction work, but it can be performed at sites other than building sites. Section 200 applies to all workplaces covered by the Labor Law.

5. Does any statutory liability apply?

In determining whether any statutory liability applies, you must also take into consideration whether or not there is an exception to the statutory liability. A subcontractor will be exempted from statutory liability if he can show that he did not have the ability to supervise or control the activity of the plaintiff employee and was not contractually obligated to do so. In addition, you must remember the one/two family exception under Section 240(1) and 241(6).

6. Was the safety violation was a proximate cause of the injury?

Case law in the Section 240 area makes it clear that not only must a plaintiff demonstrate that an accident occurred at a work site involving some differential in height, but that the failure to provide a safety device was a "proximate cause" of the accident.

7. Can there be common law indemnification?

Although liability under Section 240 is absolute, it may be shifted pursuant to either common law and/or contractual indemnification. While it was previously possible to shift liability to the plaintiff employer pursuant to common law indemnity principles, the Omnibus Workers Compensation Act of 1996 has specifically prohibited such a claim.

In reviewing indemnification agreements, it is important to remember General Obligations Law Section 5-322.1. This provision provides that an agreement in construction cases to indemnify and hold harmless the promisee against liability for personal injury to another caused by or resulting from negligence of the promisee is void. A promisee can have an agreement requiring

indemnification for damages caused by negligence of a party other than the promisee whether or not the promisee is partially negligent.

8. Determine the existence of agreements to procure additional insurance.

In an effort to avoid the indemnity-barring provisions set forth in GOL Section 5-322.1, many owners and contractors have adopted the use of agreements to purchase liability insurance. The Court of Appeals has distinguished between agreements to indemnify and agreements to obtain additional insurance. In ***Kinney v. G.W. Lisk Co.****, 76 N.Y.2d 215 (1990)*, the Court of Appeals held that an agreement to procure insurance is not an agreement to indemnify or hold harmless. Because the subcontractor breached its agreement to procure insurance covering the contractor, the subcontractor was liable for the resulting damages, including the contractor's liability.

A promise to procure insurance is different from a promise to purchase insurance. The latter is simply a promise to have a certain amount of insurance in place but does not require endorsing the policy to name the promisee as an additional insured. An insurance carrier owes a defense to a party who is named under its policy as an additional insured. A defense is not owed if the insured failed to procure insurance for another party.