



Avoid accidents by making sure proper safety practices are being followed

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It happens in a split second, and there's no way to turn back the clock. Accidents happen, and will continue to happen. "While there is no way to eliminate the possibility of accidents on a construction site, there is much to be done to reduce the frequency and severity of on-the-job accidents," said Scott Gennarelli, an attorney with Salenger, Sack, Schwartz & Kimmel LLP (Manhattan and Woodbury, N.Y.). As a personal injury attorney who represents workers who have been injured at construction sites, Gennarelli has seen a full spectrum of injuries, from minor to tragic.

Gennarelli finds that the biggest problem is the lack of availability of safety equipment. "It's not so much that the safety products are not on site, but too often they are not used because the workers are not aware of their presence, and they have not been made available to the workers." He suggests that a greater oversight at the worksite, either by an outside safety monitor(s) or workers whose only job is to ensure safe practices, is the best way to prevent accidents. "In the vast majority of cases, it's not that the owner or general contractor is trying to get around the regulations. They know their obligations and try to respect them. However, they don't have the proper resources on site to insure that regulations and proper safety practices are being followed. It comes back to oversight. OSHA inspections are not enough, nor is having a single designated safety person on a larger jobsite as it is virtually impossible for one person to handle the task."

Under New York law, the owner and the general contractor are liable and responsible for providing a safe place to work. This includes an obligation to keep sites free of debris, tools or supplies that might trip a worker and to provide workers with appropriate safety equipment including ladders, scaffolds, railings, harnesses, netting, gloves, lifelines, tielines and braces or any other device necessary to make the job site a safe place to work. Although a GC and developer may try to protect themselves from liability by writing into contracts that subcontractors are responsible for their workers' safety, it's important to understand that despite these contracts, from a legal perspective, the GC and the developer or owner are still responsible to the injured worker if they fail to provide the proper protections.

Gennarelli sees certain types of accidents that occur frequently. Ladder falls are very prevalent, as ladders are often perceived to be quicker and easier to use than a scaffold, but often are too short or the wrong type. "You see it everyday - a straight ladder leaning against a building with a lone worker at the top performing work. A ladder must be secured at the top or held at the bottom, every time that it's used. With a scaffold, workers don't have to get up and down, so there's less of a chance for injury. Plus, a scaffold is required to have fall prevention (railings) in place." He is currently working on the case of a worker who fell close to 40 feet from a scaffold and is now paraplegic. "A properly trained safety person acting on behalf of the owner or general contractor has the authority and expertise to make sure all necessary safety precautions are being followed; to halt work until proper

precautions are taken; or to provide an alternate means to complete the job safely. In New York, the owner and GC are both liable for any injury caused by the forces of gravity regardless of what kind of safety measures are available, unless the worker refuses to use a device he is specifically instructed to use. That's why supervision is so important. Property owners can protect themselves contractually with the GC, a subcontractor or with an insurance policy, but for any jury award in excess of that insurance policy, the owner is ultimately on the hook."

"It's almost like a Catch 22 for owners. If they're hands off and hire a GC or construction manager to do everything, they're still exposed to liability in gravity or elevation issues, or if there's a violation of NYS Industrial Code. If they're actively involved in the project and actively direct or supervise the job, then they're exposing themselves under a more general theory of liability if the work is done wrong. What needs to be done, whether you're hands on or off, is to have a competent safety person or team on site."

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