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## **Labor Law: Proposed changes to Labor Law 240: Defeated without a vote in the legislature**

October 28, 2013 - Spotlights

Earlier this year the proposed changes to New York Labor Law 240, commonly known as The Scaffold Law, were defeated without a vote in the legislature. Assembly speaker Sheldon Silver refused to allow a vote on the proposed legislation, S.111 (Gallivan)/A.3104 (Morelle). His refusal to allow a vote effectively killed the legislation which sought to make changes to Labor Law 240, for at least another year.

The purpose of the legislation, as written in the state senate version of the bill, and referred to the judiciary committee of the Senate was "(t)o establish a comparative negligence standard for claims under Labor Law sections 240 and 241 with respect to a recalcitrant worker." In other words, the strict liability standard imposed upon owners and contractors, in the event of

a "gravity related" injury would no longer automatically apply. The law would have added a new section, 1414, to the Civil Practice Laws and Rules (CPLR) establishing a comparative negligence standard, which takes into account the actions of the injured worker, to the extent that the workers conduct involved "a criminal act, use of drugs or alcohol, failure of the employee to use safety devices furnished at the job site, failure to comply with employer instructions regarding the use of safety devices at the job site, or failure of the employee to comply with safe work practices in accord with safety training programs provided by the employer."

New York's Scaffold Law, the last in the nation of its kind, was passed in 1885 and remains largely unchanged. What makes New York unique is that Labor Law 240 allows workers injured on a construction site to sue property owners and contractors directly for the injuries they suffer in a fall. This law puts all parties involved in a construction project, even private homeowners, at risk of being liable for an injury which they had no part in causing. This automatic recovery, against potentially innocent parties, is in addition to any compensation they may receive from the Workers Compensation insurance their employer has. It remains one of the major areas of contention in the insurance industry.

Not surprisingly, the Plaintiff's Bar, with support from the various labor unions, are in favor of the Scaffold Law remaining unchanged. They claim that Labor Law 240 promotes a safer workplace for workers. The construction and insurance industries, with support from numerous government and municipal agencies, claim that the law increases the cost of doing business in New York, adds unnecessary time to complete projects once they are started and costs taxpayers millions of extra dollars on all public works projects.

The changes to the Scaffold Law would have added a new section to the CPLR, section 1414, which would have stated that contractors who provide safety training and equipment, including OSHA courses, have a right to demonstrate in court that the injured worker contributed to their own injury. The language in the proposed statute made it clear that "where safety equipment or devices have been made available, and a person employed or otherwise entitled to the protection of (Labor Law 240) has failed to follow safety instruction or safe work practices in accordance with training provided, or failed to utilize provided safety equipment or devices, or engaged in a criminal act or was impaired by the use of drugs or alcohol, and such failure, act or impairment is a proximate cause of an injury to such person, the conduct attributable to such person shall not bar recovery, but the amount of damages otherwise recoverable shall be determined in accordance with" the comparative negligence

standard enunciated in CPLR section 1411.

Simply put, the defeated changes, which never were voted on, would have assigned a degree of personal responsibility to the injured party, if he was responsible for, or contributed to the injuries he suffered. It's only a matter of time before a similar bill is proposed and changes to the Scaffold Law are once again introduced in New York. Hopefully, next time they are brought up for a vote, whichever side of the debate you fall on.

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