



Scaffold Law reform critical to attract more general liability insurance carriers in New York

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Labor Law 240 - better known as the Scaffold Law - was enacted in 1885 to help secure worksites and protect workers that fell from scaffolding or ladders on the job. The law puts the fault solely on the employer if an employee has a height-related accident, regardless of the circumstances. When it was created 129 years ago, accidents involving wooden scaffolding, stairs and ladders were commonplace - especially in New York City, where these structures were used to build some of our most recognizable skyscrapers and other high-rise properties.

More than a century later, scaffolding and construction technology and safety have advanced tremendously, with oversight mechanisms and other protections - including the Occupational Safety and Health Administration (OSHA) and the worker's compensation fund - in place to further safeguard employees. Workers can take comfort in knowing the construction industry, while still a dangerous occupation, is far safer today than it ever has been.

Despite these advances, though, Labor Law 240 remains largely unchanged in New York, which is the last state in the U.S. to have this rule in place. For decades this law has been the subject of a tug-of-war between advocates for reform who claim that making companies 100% liable is pushing costs through the roof and those who argue the threat of total liability and potential monetary damages are critical to maintaining safe job sites.

This issue is especially contentious because as construction safety continues to improve, incidents are increasingly likely to occur due to negligence or other impropriety on the part of the worker. Still, in such instances, the company or contractor is liable with no personal responsibility on the part of the employee.

Antiquated, one-sided laws drive up the cost of insurance coverage, which then adds millions or even hundreds of millions of dollars to the cost of projects, impacting everyone. The numbers are telling: for projects that span both New York and New Jersey, liability costs on the New York side are more than double in the Garden State.

A study by Cornell University's Rockefeller Institute of Government revealed Scaffold Law would add another \$200 million to the already costly Tappan Zee Bridge replacement project. It was also reported that the New York City School Construction Authority saw its premiums spike \$100 million over the last year, rising from \$140 million in 2013 to \$240 million in 2014.

Commercial projects aren't the only ones feeling the squeeze. The Cornell study found that on average, costs relating to the scaffold law can add as much as \$10,000 to the price tag of building a new home.

The cost of these settlements is astronomical, because the companies or contractors must assume 100% of the burden. The highest scaffolding settlement recorded was almost \$100 million, with more than half of the 30 priciest personal injury settlements resulting from Scaffold Law-related

claims.

The numbers are shocking, so it shouldn't surprise anyone to hear that rates for general liability coverage in New York are the highest out of all 50 states. That's because issues like the Scaffold Law are compounded by limited access to the insurance market, which results in sky-high premiums.

There are currently fewer than four insurance carriers in the entire state that will underwrite general liability policies for New York City and State construction companies and contractors. And many insurance brokerages simply don't have relationships with a full range of providers, leaving companies without access and unable to secure the right coverage. In fact at The Rampart Group, that lack of access is perhaps the primary reason many of our real estate clients come to us in the first place. Rampart can offer access to coverage that other firms simply cannot. But it doesn't need to be this way.

Reforming the Scaffold Law so claims can be evaluated by the same standards applied to the New York negligence law would directly reduce the cost of general liability coverage and attract more players to the field. This common sense approach would allow for more competition, providing greater access to the market and reducing the cost for construction companies shopping for coverage. This, in turn, would yield across-the-board savings for everyone - starting with the private company or public entity and passing those savings down to the tax payer that may ultimately end up footing the bill.

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