An Overview of the Proposed Reform to New York Labor Law Sections 240 and 241

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New York politicos are abuzz with the prospect that a hotly contested reform to Sections 240 and 241 of the State’s Labor Law could be imminent. Proponents of the change say that the current version of the so-called “Scaffold Law” unjustly places all of the blame for many construction site injuries on contractors and premises owners, even when the worker’s own negligent conduct caused or contributed to the accident. This, in turn, leads to inflated insurance premiums, making it too risky and too costly to continue to do business in the State.

On the other hand, opponents of reform say that the current law is necessary to ensure the safety of construction workers, and that the proposed changes to the Scaffold Law favor the financial interests of construction companies and their insurers over the physical safety of the worker.

These talking points are all over the news, but there has been surprisingly little discussion in the media about what the law actually requires now, and how the proposed reform would change those requirements.

Labor Law Section 240(1) requires contractors and premises owners to provide scaffolding, ladders, hoists, and other safety devices to ensure the proper protection of workers who are engaged “in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure”. This provision applies specifically to “elevation-related” injuries, where a worker either falls from a height or is struck by a falling object on a work site. If adequate safety devices are not provided, the contractor/owner is 100% responsible for the worker’s injuries, even if the worker was partially (or even primarily) at fault for the accident. In other words, the comparative negligence of the worker is irrelevant under the Scaffold Law.

The reform bill (A03209) does not propose an amendment to the Labor Law, but instead proposes the addition of Section 1414 to New York’s Civil Practice Laws and Rules (CPLR). The new section would fall under Article 14-A of the CPLR, entitled “Damage Actions: Effect of Contributory Negligence and Assumption of Risk”. It reads, in relevant part:

“In any action or proceeding to recover damages for personal injury . . . pursuant to Section [240] . . . of the Labor Law, where safety equipment or devices have been made available, and a person employed . . . has failed to follow safety instruction or safe work practices in accordance with training provided, or failed to utilize provided safety
Section 1411 of the CPLR sets forth the general rule of comparative negligence that applies in most personal injury cases: the plaintiff’s right to recovery is limited by his own percentage of fault.

What is the practical effect of this proposed reform? The most obvious one is that the conduct of the worker becomes relevant, and the worker’s right to recovery becomes limited by his own percentage of negligence.

For example, if a jury finds that a contractor violated Section 240(1) of the Labor Law by failing to provide a harness to protect a worker from a fall, under the current law, the contractor is 100% responsible for the worker’s injuries, end of story. Under the proposed reform, however, the jury could consider the worker’s own fault in causing the fall. This includes whether the worker was following safe work practices, whether he was utilizing the safety equipment provided and/or whether he was impaired by drugs or alcohol at the time. After considering these factors, the jury would allocate percentages of fault accordingly. If a jury found that the plaintiff had sustained $1,000,000 in damages, but that he was 40% at fault for his own fall, his recovery would be $600,000, instead of the full million under the current law.

It is a drastic change which illustrates why the stakes are so high between the competing interests on either side of this debate.

The wording of the reform bill, however, raises questions about how it is likely to be interpreted were it to become law. For instance, the bill states that the worker’s fault is relevant “where safety equipment or devices have been made available . . . .” Presumably, this means that if no safety equipment or devices are provided to the worker, the worker’s own negligence does not come into play pursuant to CPLR Section 1414, and the owner/contractor is 100% liable under the Labor Law.

However, at what point would a contractor/owner be deemed to have provided safety equipment under CPLR 1414? What if the contractor provides the wrong safety equipment? Is that still sufficient for the comparative fault of the worker to apply? Under the plain language of the reform bill, it is, but one can anticipate legal battles over that very issue in the future, as parties, attorneys and courts alike struggle to determine when this new law applies and when it does not.

It is certainly a subject to be watched closely in the months to come.

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