Law Offices of
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Report #12 - Construction Site Accidents and Injuries

A. Overview

Construction projects can be dangerous places to work. Tools and materials get tossed around. Large, heavy objects are moved from place to place. Great forces are unleashed; chemicals are used. Torches and flame and pressure may be applied. Injuries can occur at even the safest job sites.

Accidents at construction jobs are divided roughly into two categories – height-related injuries, and everything else. "Everything else" can be tripping over a hammer, or suffering electrical shock, or injuries caused by defective or unsafe machinery, or anything that's not height-related. "Height-related" usually means a fall, or an object dropped from above.

Construction site accident cases tend to be very complicated. There are usually many companies involved, and it's not always easy to assign blame for the cause of an injury. Responsibility may fall on a company that the injured worker does not even know about, such as the owner of the construction site, a sub-contractor, construction manager, materials supplier, or general contractor. Additionally, there are many different rules and regulations intended to guarantee a worker's safety, which negligent parties sometimes use clever defense attorneys to try to wriggle out of.

Complicating the picture is Worker's Compensation insurance, which every employer must have available to its workers. Whether you're a mason or carpenter, electrician or laborer, iron worker or painter, you can not sue your employer if you're injured. The injured worker can only receive Worker's Compensation, which is guaranteed, but tends to pay a small amount of money for lost wages and other benefits and is usually limited in the amount of time that it will pay the hurt claimant. The only way around New York's Worker's Compensation law is to sue a person or company that is <u>not</u> the injured person's employer – not a simple matter. This requires figuring out who did what, where, at the job site.

B. Some Law

One of the best known worker's protection laws is New York's Labor Law, section 240, which is intended to protect workers from height-related risks. That law states:

> 1. All contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, in the <u>erection of,</u>

> demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, 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 a person so employed.

So if an injured worker was engaged in "erection of, demolition, repairing, altering, painting, cleaning or pointing" and using "scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes and other devices" he or she has "super-protection" under New York State law. But there are several loopholes, so an experienced accident or personal injury construction law lawyer is necessary in these cases.

For example, defenses commonly raised by insurance companies to Labor Law claims are "sole proximate cause" and "recalcitrant worker."

"Sole proximate cause" occurs when the worker sets up equipment incorrectly and may be found to be entirely responsible for the accident. As you can imagine, this can be very tricky stuff.

For example, in one case (*Robinson v. East Medical Center*), New York's Court of Appeals addressed a defense to a Labor Law section 240 claim. The defendants claimed that the injured worker's actions were the sole proximate cause of his injury. The injured worker was hurt while using a six-foot ladder – which he knew was too short to accomplish the task he needed to perform. And even though he knew that there were eight-foot ladders available at the job site, he stood on top of the six-foot ladder and fell. The worker's case was thrown out because he was found to be the sole proximate cause of his own injury.

"Recalcitrant worker" is when a worker uses equipment incorrectly. This usually is found where a worker ignores safety instructions or fails to utilize available safety equipment, when he or she should have known better.

A Labor Law section 240 claim was dismissed where the injured worker was provided with proper safety equipment and told how to use it safely, but was injured because he disregarded his supervisor's instructions and misused the equipment. (*Mayancela v. Almat Realty Development, LLC*).

The effect of the defenses of "sole proximate cause" and "recalcitrant worker" is to chip away at the protections provided by law to New York workers.

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C. Conclusion

If you're hurt in an accident, consult a personal injury or accident attorney experienced in construction site and work-related injuries. Because of the complex issues and assortment of possible defendants, there must be a thorough investigation of the construction site, interviews of co-workers and witnesses, and, possibly, taking of photographs. This must be done fast, fast, fast – sometimes even while the injured worker is still in the hospital.