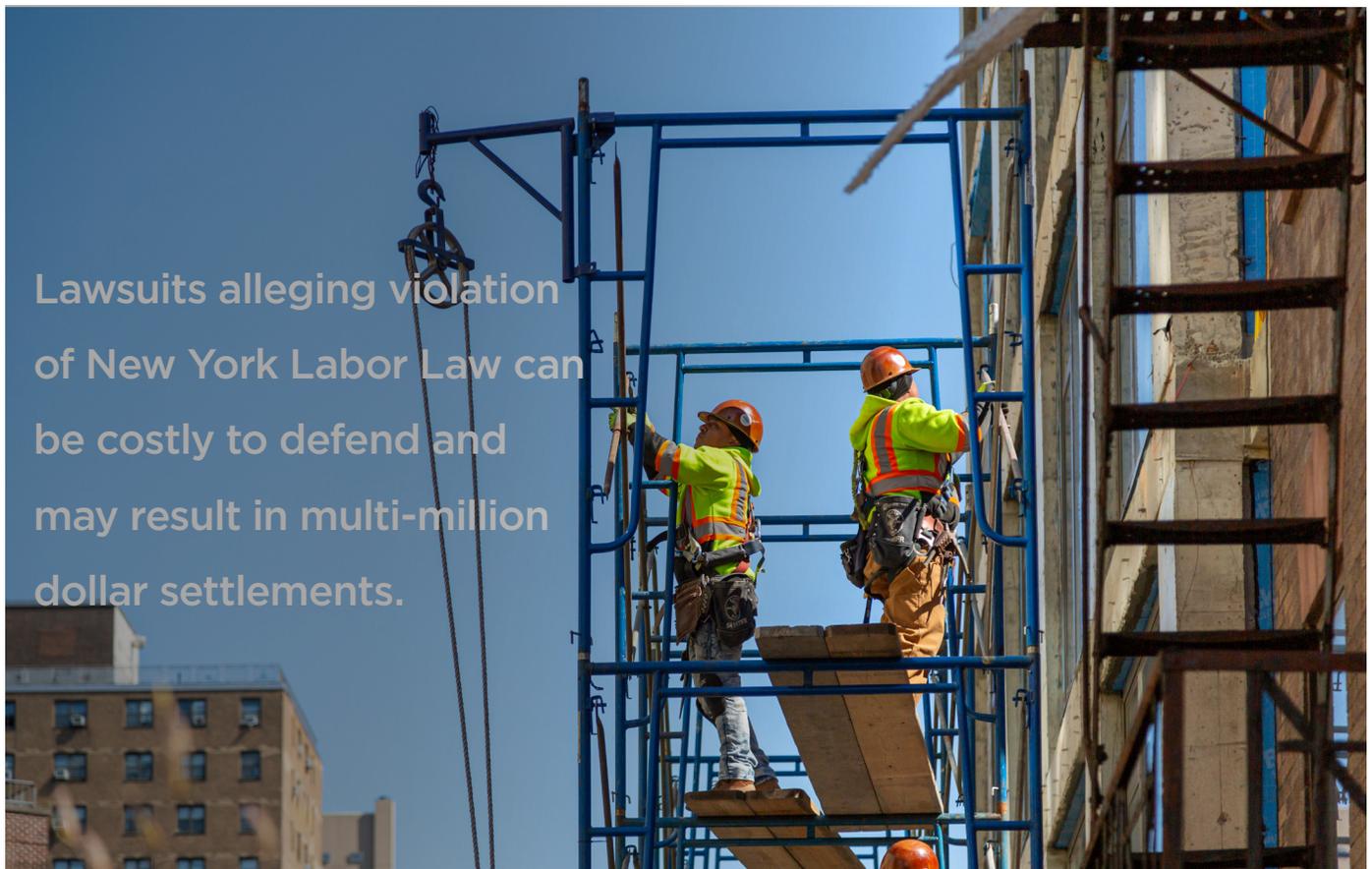


A law every New York property owner needs to know and understand.



Lawsuits alleging violation of New York Labor Law can be costly to defend and may result in multi-million dollar settlements.

If you own or manage commercial, industrial or residential property in New York state, you must pay close attention to the possible consequences of New York Labor Law (NYLL). To avoid NYLL lawsuits, owners or managers of apartment buildings, condominiums, co-ops, strip malls, stores, restaurants, warehouses, factories and commercial/ industrial space of any kind should be knowledgeable of the law and take necessary precautions.



What's the risk to your business?

Lawsuits alleging violation of NYLL, Sections 200, 240(1) (aka Scaffold Law), and 241(6) can be costly to defend and may result in multi-million dollar settlements—putting your assets at risk. Such litigations also become part of your loss history, which may adversely affect your insurance rates.

NYLL can make you responsible for injuries to construction workers or others engaged in many of the service activities that keep building systems running smoothly and well maintained. NYLL also applies to nearly every activity involving construction and repair on your premises—like painting, landscaping, cleaning, repair and renovations. Even maintenance work can be covered by the statute.

In addition, the law can make you financially responsible for injuries to individuals and the employees of general contractors and subcontractors that you or another contractor hired—with or without your knowledge. You can be liable for injured workers or other injured third parties even when you didn't supervise or control the jobsite, supply materials, select equipment or choose the employees doing the work. In some cases, property owners have been held responsible for injuries to contractors hired by a tenant without the property owner's knowledge.

What NYLL stipulates.

- Makes property owners liable for height- or gravity-related injuries
- Includes injuries on ladders or scaffolding, and persons struck by falling materials
- Applies to all contractors and property owners and their agents (with limited exceptions for owners of one and two-family dwellings who contract for but do not direct or control the work) in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure; requires them to furnish or erect, or cause to be furnished or erected for the performance of labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes and other devices so that they are constructed, placed and operated in a manner that gives proper protection to a person so employed
- Makes property owners liable for injuries that occur on construction sites because of failure to follow safety laws or regulations

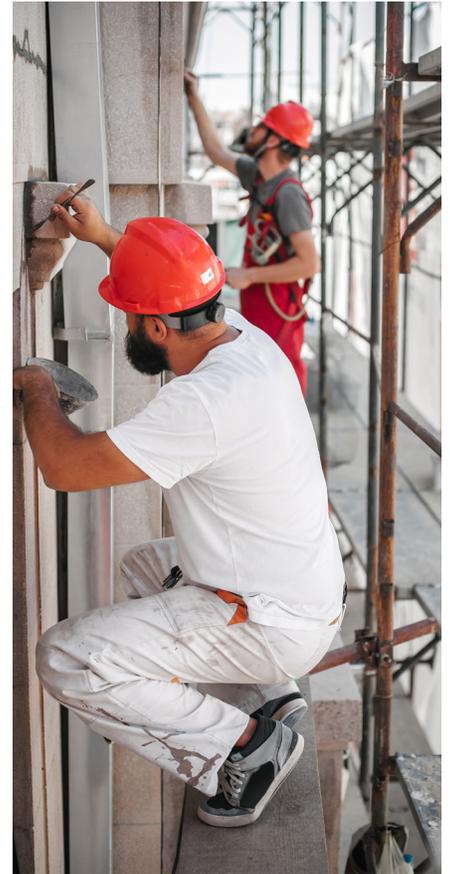


Examples of incidents causing NYLL lawsuits against property owners.

- With a property owner acting as a general contractor, a subcontractor's employee falls from a ladder while using a circular saw — sustaining severe injuries to his arm.
- A worker stands on two paint buckets to work over a doorway, falls and is seriously injured.
- A construction worker falls 30 feet to the ground when a handrail comes loose on a fire escape.
- A worker falls while using a property owner's unopened A-frame ladder that was propped up against a wall.
- A subcontractor's construction worker is injured by ductwork being lowered from the property owner's lift.
- An employee of a contractor falls from a ladder while installing aluminum gutters.
- A contractor's worker falls from a suspended scaffold.

Protect your assets by asking these questions when choosing a contractor.

- Can a general contractor be used if there is a need to subcontract work to others?
- Is the contractor competent, properly licensed and experienced?
- Does the contractor properly screen the subcontractors they hire?
- Are written agreements in place with all subcontractors that contain indemnification language in the property owner's favor and require that the owner be an additional insured under the subcontractor's insurance policies?
- Have references and complaints/incidents been checked?
- Is the equipment used by the contractor — especially ladders — new or well-maintained?
- Does the contractor have safety and employee training programs in place?
- Are there safety procedures in place for ladders, scaffolding and fall protection?
- What safeguards are in place to prevent accidents and injuries?
- Is there a history of OSHA violations?



Questions? Contact
Nationwide Loss Control
Services: 1-866-808-2101
or LCS@nationwide.com.



Risk transfer is your best defense.

Under New York Labor Law, injured employees of a contractor, subcontractor or other persons will likely sue if they are hurt on your premises. Strict liability applies in many labor law violations, and when there has been a violation of Labor Law Section 240 there is no “offset” for the injured worker’s own negligence— whether it be significant or minimal. (Strict liability is a legal concept of automatic responsibility— it is not necessary to prove negligence or fault. In some cases, the only item to be litigated is the amount of financial damages that will be awarded to the injured person.)

In risk transfer written agreements, one party assumes the liability for another. With good risk transfer language in place, the property owner is much more likely to be “defended,” “indemnified” financially, and “held harmless” should there be an insurance claim or lawsuit. Without good risk transfer procedures in place, you or your insurance carrier may be responsible for monetary awards.

Using written contracts to execute risk transfer.

Below are examples that illustrate how written contracts can be used to execute risk transfer, consistent with NYLL principles. This information is provided solely to help you gain an understanding of risk transfer methods. You should enter into a contract only after seeking the counsel of a qualified New York attorney, and these examples should not be viewed as a substitute for legal advice.



5 ESSENTIAL MINIMUM CONTRACT REQUIREMENTS

1. HOLD HARMLESS AND/OR INDEMNIFICATION AGREEMENTS

Under these types of agreements, the party performing the work (i.e., your contractor) must defend, indemnify and hold harmless you (i.e., the property owner), your property manager and your agents for whom the work is performed, for any liability, loss or other claim for damages for death, bodily injury or property damage arising out of performance of the work by the contractor or any agent, servant, employee, subcontractor or supplier of the contractor, except to the extent of any fault attributed to you and the property manager.

IMPORTANT: If you use work orders for routine work, the work order should include a hold harmless/indemnification provision to be signed by the repair person, service provider or contractor before work begins.

2. INSURANCE REQUIREMENTS AND ADDITIONAL INSURED COVERAGE—PROPERTY OWNER

Insurance procurement requirements call for additional insured status for ongoing operations and completed operations on your contractor's general liability and umbrella policies on a primary and non-contributory basis. Note: The contract should be clear that these requirements are to apply to any subcontractors hired by the contractor as well. See the list of specific requirements for contractor and subcontractor insurance limits on Page 6.

Your contractor should also carry workers' compensation coverage for the states related to the contract. If not, then the contractor's employees' wages may be added to your payroll as if they were your employees, and you may be responsible for their injuries. If your contractor is an individual or partnership, then confirm that he/she has elected to be covered by the workers' compensation policy.

3. GENERAL ACCEPTANCE PROVISION

Any work order, contract or similar document should contain or reference a hold harmless/indemnification provision and an insurance requirements/additional insured status provision as set forth above. Such documents should specify that commencement of any part of the work will be deemed as acceptance of such provisions and for all purposes legally equivalent to full execution of same. With regard to service work which may be done throughout the year, it should be expressly stated in writing that these requirements remain in effect until otherwise agreed in writing.



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4. WAIVER OF SUBROGATION AND WORKERS' COMPENSATION IMMUNITY

The contractor should agree to waive any and all rights of subrogation against the property owner and property manager. Waivers of subrogation for general liability and umbrella policies should require the contractor to waive their insurer's right to be reimbursed by you should a loss occur that was a result of your negligence. In addition, the contractor should agree that the indemnification obligation will not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the contractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

5. CERTIFICATE OF INSURANCE REQUIREMENT

A certificate of insurance should be provided to the property owner and property manager prior to the commencement of work as evidence the contractor is maintaining its own general liability and workers' compensation insurance with sufficient limits to cover a significant loss. The certificate should show the property owner and property manager as additional insureds for ongoing and completed operations on a primary and non-contributory basis. Contractors' insurance policies should be endorsed to guarantee you a right to notice of cancellation.

INSURANCE LIMIT REQUIREMENTS: CONTRACTORS AND SUBCONTRACTORS

General liability (GL) coverage

At a minimum, limits must be \$1 million each occurrence, \$2 million general aggregate, and \$2 million products-completed operations aggregate to avoid being considered an "inadequately insured contractor." In addition, the general aggregate must apply on a per-project or per-location basis.

Umbrella liability coverage

The umbrella coverage limit must be a minimum of \$1 million and provide additional insured coverage to you on a primary and non-contributory basis in order to provide additional protection in the event of a catastrophic loss.

Workers' compensation/Employers' liability coverage

At a minimum, the employers' liability limit of bodily injury (BI) by accident required must be \$500,000 per accident; the limit of BI by disease required must be \$500,000 per employee and \$500,000 per policy. These minimum limits must apply in any state in which work is being done under the contract.

Automobile liability coverage

At a minimum, a per-accident limit of \$1 million combined single limit must be required.

Personal and advertising injury (PAI) coverage

The PAI limit must be a minimum of \$1 million. An ISO GL policy automatically provides this limit when a \$1 million occurrence limit is selected. For non-ISO GL policies, a minimum \$1 million PAI limit must be provided.



Common pitfalls that increase your liability.

- A handshake agreement rather than a written contract
- A verbal agreement with a long-time associate—instead of a written contract
- Contracts that do not include insurance requirements
- An assumption that a contractor has insurance
- A contractor whose insurance coverage excludes contractual liability
- A contractor's certificate of insurance that has expired
- Allowing use of your tools and equipment by others not employed by you
- Failure to adequately screen contractors
- Work that proceeds before risk transfer agreements are in place
- A contract that does not include indemnification language
- A contract that does not include language requiring the additional insured coverage for the owner/property manager to be applicable on a primary/non-contributory basis



“But I’m a property owner – not a lawyer or insurance professional.”

Executing contracts and risk transfer agreements are common practices in your industry. Choose a competent and qualified attorney to review your contracts, risk transfer requirements and procedures. You also may want to consider using “standard” contracts, such as “AIA” or “Consensus Docs.”

Your insurance agent is an excellent resource and can provide additional assistance such as identifying insurance companies that limit or exclude contractual liability coverages – which could increase your liability. In matters involving New York Labor Law, it’s especially important to seek professional legal and insurance advice.

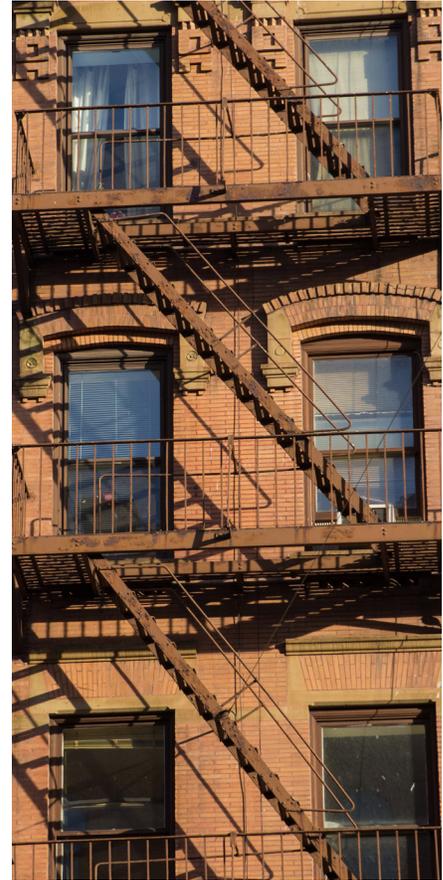
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A word about leases, tenants and the NYLL.

NYLL suits can arise from the actions of your tenants. As a property owner, you can be held liable for injuries to workers and others that your tenant has hired for construction, alteration, repair and maintenance.

To better protect your organization from the hazards associated with uninsured or inadequately insured commercial tenants:

- Obtain certificates of insurance from all commercial tenants
- Implement procedures to assure certificates are obtained—and updated as they expire
- Specify policy limits for general liability (GL) and workers' compensation (WC) on all certificates of insurance; these limits must be "equal to or higher than" the limits of your policies; the tenant must carry a minimum of \$1 million of GL coverage
- Insist that you are named as an "additional insured" through an endorsement that provides primary and non-contributory coverage for general liability, product liability and completed operations liability (Your agent knows which form to use.)
- Require tenants to sign written agreements with defense/indemnity/hold harmless language that requires them, to the fullest extent permitted by law, to accept liability caused either by their actions or their actions and your actions combined; never agree to accept liability for accidents caused by the actions of a commercial tenant
- Review and revise leases with the assistance of a competent attorney; if necessary, add new language to your current leases for all commercial tenants



Providing solutions
to help our members
manage risk.SM



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and safety needs, contact
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