Questions Arise Whether New York Labor Law Applies to Architects and Engineers

By Steven R. Goldstein, Esq.[1]

Design professionals often find themselves as defendants in lawsuits where a worker claims they suffered personal injuries while performing services at a job site. While it may leave some defendants scratching their heads and questioning why they are being pulled into the lawsuit, design professionals often have an out from such lawsuits in New York.

In such actions, claims against design professionals often include, among other allegations, violation of various sections of the New York Labor Law. Most commonly, plaintiffs in New York allege violation of Labor Law §§200, 240 and 241. While these claims may seem daunting at first blush, there are defenses available to design professionals that often can lead to dismissal of such claims. These defenses, in large part, are based on the role and the scope of work performed by the design professional at a project. It is thus important that a comprehensive analysis of the role and the scope of services the design professional contracted to perform and actually performed is undertaken as soon as possible to determine the applicability of such defenses.

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Labor Law §200

Labor Law §200 is a codification of the common law duty of an owner or general contractor to provide a safe place to work. Significantly, three classes of defendants can be liable under Labor Law §200: employers, general contractors and owners. Therefore, the first argument in support of dismissal of a Labor Law §200 claim against a design professional is that the design professional was not the employer of the plaintiff, a general contractor, or the owner of the project.

An implied precondition to the duty to provide a safe place to work under Labor Law §200 is that the entity charged with the responsibility has the authority to control the activity bringing about the injury. Therefore, if the alleged dangerous condition arises from a contractor's methods of construction and the design professional does not exercise supervisory control and has no actual or constructive notice of the unsafe condition that caused the accident, the design professional should have no liability under Labor Law §200.

Labor Law §§240 and 241

Sections 240 and 241 of New York's Labor Law impose a non-delegable duty on contractors, owners and their agents to provide for safe conditions at a construction site. Significantly, an agent within the meaning of §§240 and 241 is anyone who stands in for the owner or general contractor and performs his or her duties and obligations. However, an agent is not one who alone, or with others, acts for the owner or general contractor for a specific, limited purpose. A party may be deemed an agent of the owner or general contractor when they have supervisory control and authority over the work being performed where a party is injured. Notably, Labor Law §§240 and 241 expressly exempt design professionals from liability who do not direct or control the work or activities, other than planning and design.

While plaintiffs often allege that a design professional is responsible for site safety, under Labor Law §§240 and 241, the courts have held these sections do not impose responsibility on an architect or engineer to ensure site safety and, absent a contractual provision to the contrary, the architect or engineer has no responsibility with respect to site safety. The law is well settled that in order to impose liability under Labor Law §§240 and 241, the design professional must have the authority to control the activity bringing about the injury so as to enable it to avoid or correct the unsafe condition.

CONCLUSION

As set forth above, there are a number of defenses available to design professionals in response to claims of violation of Labor Law §§200, 240 and 241(6). Almost as unique as each project is to a design professional, so too are the facts that must be analyzed in each specific case in order to assess the viability of a Labor Law §§200, 240 or 241 claim against the design professional. Such an analysis should be promptly undertaken by the design professional and their legal counsel to assure that the appropriate course of action is pursued in response to such claims. The lesson to be learned here is that the role and scope of services performed by a design professional on a project, whether contractual or otherwise, will have a direct impact on the viability of Labor Law claims against the design professional.

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