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Uninsured Labor Law Claims

jamie · Tuesday, April 14th, 2020

Landlords and developers in New York are subject to strict liability for claims stemming from falls and injuries on their construction sites and, as a result, they are required to pay hefty insurance premiums to protect against these claims. Specifically, New York Labor Law 240, also known as the "Scaffolding Law," protects workers from falls and injuries from falling objects, and its companion statute, Labor Law 241, known as the "Safe Place to Work Law," outlines specific regulations regarding a construction site and aims to prevent traditional construction related injuries such as accidents related to slip and falls. These two laws impose liability on construction companies and property owners for injuries sustained by the workers during the job regardless of whether landlords or developers were negligent.

Since building owners are subject to liability claims if a worker is injured or killed on a job site, landlords and developers should have their insurance broker, in conjunction with an attorney, review any contractor's policy prior to signing any construction contract to ensure that there are no exclusions for labor law claims and there is an adequate amount of insurance coverage. Some contractors' insurance policies contain exclusions for labor law claims, which could result in building owners being liable, so it is important to review the policies and work with your insurance broker and attorney to make sure there are no exclusions. Additionally, if the contractor's insurance policy does not provide an adequate amount of coverage for the construction project, or contains a labor law claim exclusion, it could potentially void the building's insurance policy and leave a landlord or developer vulnerable to liability.

Of course, landlords and developers should work with contractors to prevent accidents from happening in the first place but, in addition, they should also seek to protect themselves through the construction contracts that they sign by including an indemnification clause and a waiver of subrogation in these agreements.

An indemnification clause is a provision in a contract where one party commits to compensate the other for any harm, liability, or loss which arise out of the contract. Since many owners' insurance policies do not cover any liabilities of the landlord or developer resulting from injuries sustained by construction workers on their property, having an indemnification clause in the contractor's policy is crucial and necessary to gain protection against these claims. Essentially, the contractor agrees to compensate the landlord or developer for any liability arising from injuries sustained by its workers while on the landlord's or developer's property.

A waiver of subrogation requires an insured party to waive the right of their insurance carrier to

seek redress or compensation for losses caused by a negligent third party. In this context, the contractor's insurance company would agree not to bring a claim against the building owner for any loss as a result of an accident.

In sum, landlords and developers need to be aware of the potential liabilities they face when entering into a construction contract and know all the available protections afforded to them. Due to the strict liability standard and the potential for large labor law related claims, an insurance professional and an attorney should review the owner's and contractor's insurance policies prior to signing any construction agreement.

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