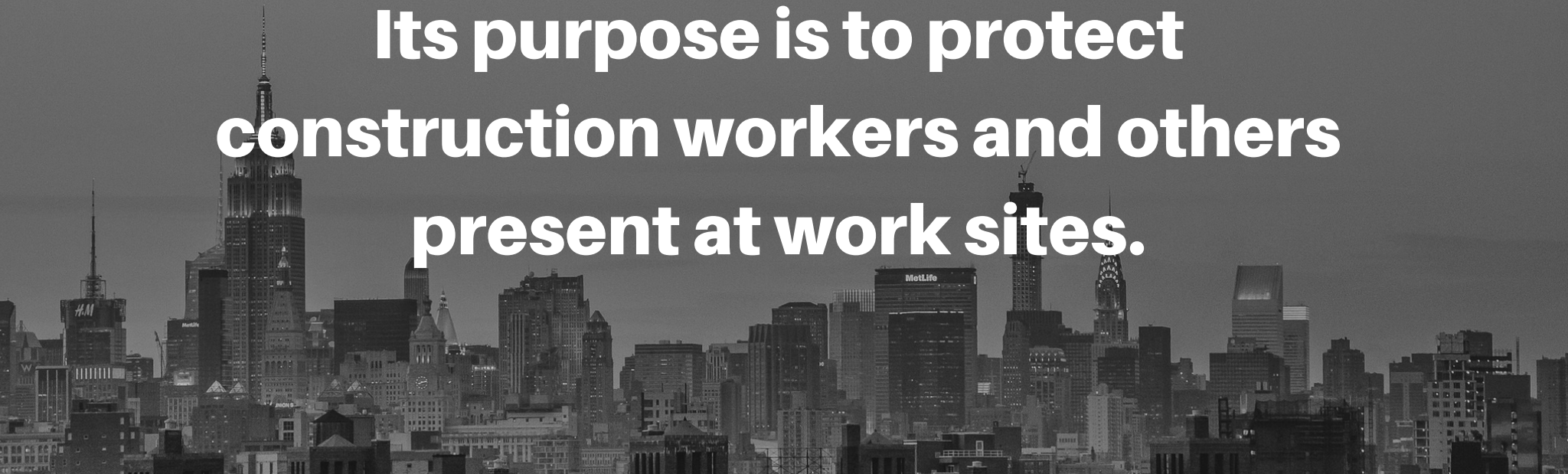


A Guide to New York's Scaffold Law

Big I New York



**New York State's so-called
"scaffold law" is
paragraph 1 of Section 240 and
paragraph 6 of Section 241
of the state's Labor Law.
Its purpose is to protect
construction workers and others
present at work sites.**





Both sections apply to:

- Property owners
- Contractors
- Agents of property owners and contractors
(that is, anyone authorized to act on their
behalf - not an insurance agent)

They do not apply to individuals who own and occupy one- and two-family dwellings if they do not direct or control the work.

For example, the law does not apply to a homeowner who hires a contractor to replace the home's roof if that person does not tell the contractor how to do the work.



Section 240(1) applies to property owners, contractors and their agents who are having these types of work done to a building or structure:

- Erection
- Demolition
- Repair
- Altering
- Painting
- Cleaning
- Pointing



**The law requires them
to provide certain
devices to the
workers performing
these operations,
including but not
limited to:**

Scaffolding

Stays

Slings

Blocks

Braces

Ropes

Hoists

Ladders

Hangers

Pulleys

Irons



The owners, contractors and agents must construct, place and operate these devices in ways that give proper protection to the workers.

If they fail to provide these devices, or the devices they provide fail in some way, and a worker is injured because of that, they are legally liable to the worker for damages.

Generally, the injury must result from the force of gravity - either the worker fell from a height (which scaffolding, ladders and similar devices could prevent) or an object struck the worker from above (which hoists, pulleys, slings and similar devices could prevent.)

**The damages for these injuries can
be in the hundreds of thousands
or millions of dollars.**





Section 241(6) applies where construction, excavation or demolition work is being done. The owner, contractor or agent must comply with New York State Labor Department regulations concerning the areas where this work is being done.

Specifically, the areas must be:

- Constructed
- Shored
- Equipped
- Guarded
- Arranged
- Operated
- Conducted

... In ways that provide reasonable & adequate protection & safety to workers in those areas and anyone else who is lawfully there. That could include construction workers and individuals employed in the building under construction.

If a worker is injured, and the direct cause of the injury was a violation of one of the regulations, the owner, contractor or agent (such as a construction manager) is liable to the worker for damages.



If an injured worker sues them under either of these sections, owners, contractors and agents are prohibited from arguing that:

- The worker knew the danger and took the job anyway (the New York State Legislature abolished that defense in 1910)
- The worker's poor judgment contributed to the accident (the New York State Court of Appeals abolished that defense in 1948 in a case in which a worker was ordered to use a ladder he thought was dangerous)



Owners, contractors and agents can win a lawsuit under Section 240(1) if they can prove:

- The work did not involve any of the listed activities (erection, demolition, repair, etc.).
- The work did not require the use of one of the listed devices (that is, none of the devices would have made a difference)
- The work could have been done in a different way that was safer
- The worker had an appropriate safety device available, knew where it was, and knew that he or she was expected to use it



They can win a lawsuit under Section 241(6) if they can prove any of the following:

- The work did not involve construction, excavation or demolition
- The regulation was not violated
- A regulation was violated but it did not apply to the work being done at the time of the accident
- The violation of the regulation was not the direct cause of the accident

**Owners, contractors & agents cannot
delegate these duties to others.**

**However, they can transfer the
financial cost to others.**

**This is usually done through liability
insurance policies.**



**There are two techniques for
transferring the cost of
damages through liability
insurance**

- **Indemnification (or "hold harmless") agreements**
- **Additional insured coverage**

The Workers' Compensation Law prevents an injured worker from suing his employer, but he is allowed to sue the owner or contractor who hired his employer.

**A hold harmless agreement
requires the worker's employer
to pay for any damages the
owner/contractor incurs that
result from the employer's work
on the project.**

If an injured worker sues the owner or contractor, they pass the lawsuit to the employer. The employer must then pay the legal costs plus any damages. Normally, the employer submits a claim to its liability insurer.



The owner or contractor may also ask the employer to name them as an "additional insured" on the employer's liability insurance policy.



This makes them a customer of the employer's liability insurer. If an injured worker sues them, they can send the claim directly to the insurance company.



The insurer then must pay for the additional insured's legal defense and any damages.

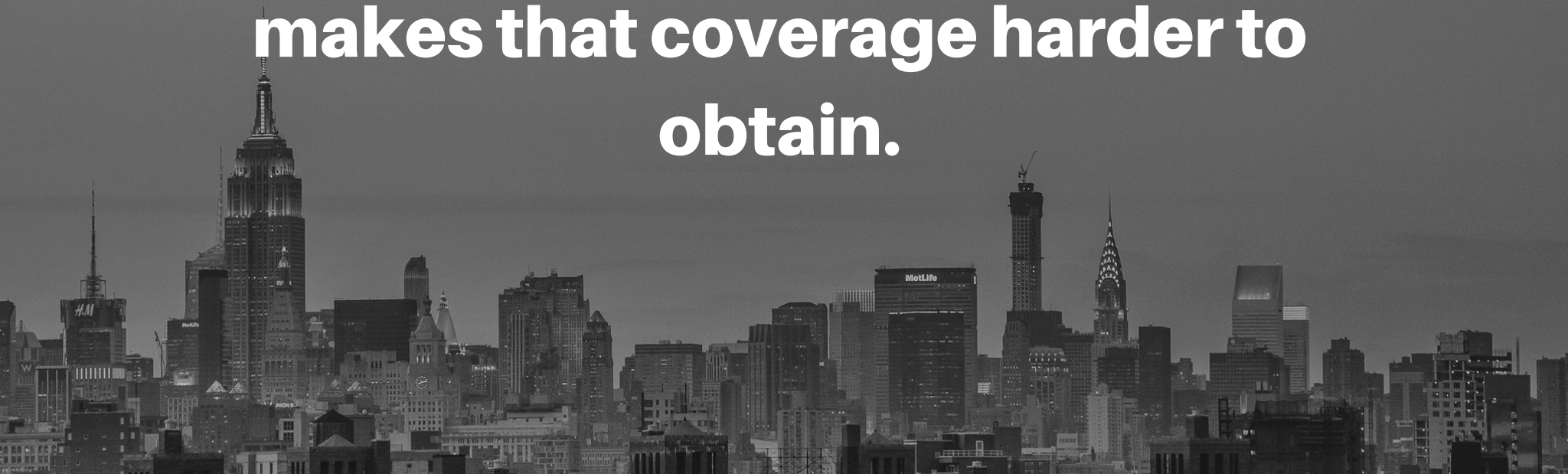


Even though the owner or contractor is an insured, it is the employer that pays the premium for this insurance to its insurer.

Hold harmless agreements and additional insured coverage are not the same thing. With a hold harmless agreement, the owner or contractor makes a claim against the employer; it is a claimant. With additional insured coverage, they make claims directly to the insurer; they are insureds.

Both protections may apply. An owner or contractor may be protected by both a hold harmless agreement in a contract and by additional insured coverage at the same time.

**Many believe that the large cost of
scaffold law claims increases
liability insurance premiums for
contractors in New York and
makes that coverage harder to
obtain.**



**These groups and individuals
have urged the State Legislature
to reform or repeal the law.
However, the Legislature has not
changed it since 1980.**



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