

Scaffolding Law an anachronism that is hurting New Yorkers

New York's Labor Laws 240/241, known as the "Scaffolding Law," was passed in 1885 and is an anachronism that needs to be corrected.

Imagine yourself in 1885. Grover Cleveland, a former mayor of Buffalo and governor of New York state, took office as president for the first of his two non-consecutive terms. The American flag had just 38 stars on its field of blue. The very first "skyscraper," the Home Insurance Building in Chicago is built at just 10 floors. The Washington Monument is the tallest man-made structure in the world at about 555 feet. Nothing built in the modern age was taller until 1889.

The masons, carpenters, iron workers, laborers and craftsmen working to build these marvels prepared for their day by candle or gaslight. They left their families before the sun came up. They carried many of their own tools—hand tools using only human strength and skill to operate. They walked to their work site or they rode a horse-drawn trolley or carriage. New York City's subway system did not exist for another 20 years.

Unskilled workers would arrive early to assure their opportunity to work. Late arrival would mean someone else could take your spot and your day's wages. Activity at a building site would begin at dawn and continue until dusk. Owners placed immense pressure on a builder to complete a project quickly, so revenue could be generated. However, in 1885 there was no OSHA (Occupational Safety & Health Administration). There was little if any regulatory oversight. If there were "safety" inspections, they were focused on the preservation of property, equipment, and raw materials, and the prevention of theft and fire. Shortcuts were often taken in the interest of expediency, and at the expense of human safety.

As buildings and structures were made taller, the risk to laborers of falling to their deaths became greater. Scaffolding, the temporary platforms erected around the structure being built, provide a place from which laborers do their work. In 1885, they were often cobbled together with rejected lumber, insuffi-



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ciently strong nails and fasteners and were not formally engineered. Scaffolds often were made as cheaply as possible to assure low costs and investor's profits. Scaffolding failures, worker deaths and severe injuries were frequent. Yet, building owners and contractors could escape most or all liability simply by raising the question of comparative negligence. If jurors believed an injured worker was partially responsible for any reason, liability could be escaped.

An injured worker in 1885 had very few options. They could keep working with the injury, stop working and become a burden to their family and society, or attempt to sue their employer for damages. Finding and affording an attorney willing to sue the employer was a daunting challenge. Employer retaliation was likely. And, employers had access to the best and most aggressive legal teams.

It was at this time and in this environment that New York's Scaffolding Law was enacted. It essentially said that if a project owner and builder had workers up on scaffolds, ladders and other supports, they would be responsible for injuries sustained because of a worker's fall. The law was originally intended to create an incentive for owners and builders to develop safer scaffolding options. Absolute liability was supposed to encourage investment in safer workplace innovations.

Fast forward to 2018. Scaffolding and building structures are engineered with the most stringent of specifications. The weight bearing, and tensile strength of materials are exactly known and clearly marked. The structures and worksites are inspected frequently by the owners, contractors, safety consultants, insurance loss control representatives, and by numerous local, state, and federal regulatory agencies. Do accidents still occur?

Certainly. But not at the frequency seen in 1885.

The creation of scaffolding laws should be thought of as the historical first step toward the development of a separate and distinct worker's compensation benefit system. Scaffolding laws created absolute liability for an injury resulting from an occupational event involving gravity. When they were developed decades later, worker's compensation systems substantially expanded that concept to create no-fault liability for all work-related injuries and illnesses in return for limits on benefits and awards. The

insurance carriers cite it as a reason to stop offering coverage. The ones who do write policies must raise their rates knowing they are the only options available and therefore have a risk of greater exposure.

The costs of keeping this law are staggering. Large awards add hundreds of millions of dollars onto the cost of construction yet do nothing to make our workers safer. We lose federal projects. State and local jobs are much more expensive and increase our tax burden, already one of the worst in the nation. Our infrastructure continues to deteriorate and endanger our citizens as



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need to determine fault, negligence and the extent of liability was eliminated. That was when New York's scaffolding law should have been eliminated as obsolete.

Instead, 133 years later, New York is the last state with this type of law. Supporters of the law will cite worker safety as the reason to keep it on the books. That simply is not factual. Nothing in its language mandates safety. Illinois was the last state to eliminate its scaffolding law and construction fatalities decreased 28 percent over the following six years. Other states experienced similar results. It is a liability law and its spirit and intent has been corrupted. Injury attorneys see it as an opportunity for large awards and fees without having to defend against questions of negligence. In-

restoration projects are delayed for lack of sufficient funding. Contractors train and hire fewer workers for jobs because of the additional costs the law creates, making workers less safe.

It is time for Labor Law 240/241 to be eliminated. Keeping this law does nothing for worker safety, yet it restricts our opportunities for economic growth, infrastructure improvement, and an expansion of employment opportunities in the high paying construction trades.

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