

HARLEYSVILLE RISK SERVICES

Your Partner in Preventing LossesSM

New York Labor Law



Why more
New York
property owners
are sued every
day and some
steps you can
take to protect
your assets


Harleysville
Good people to know[®]

New York Labor Law

What every New York property owner should know

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.

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 damage awards—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 ladders, scaffolding and persons struck by falling materials.
- Requires that: **All contractors and property owners** and their agents (with an exception, under certain circumstances, 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 shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give 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 left 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 gutters.
- A contractor's worker falls from a suspended scaffold.



Protecting your assets: Some questions to ask 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 contractor's equipment new (or well-maintained)—especially ladders?
- Does the contractor have safety and employee training programs in place?
- Are 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?

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 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 to help you gain an understanding of risk transfer principles, but should not be viewed as a substitute for the counsel of a qualified New York attorney.

YOUR 5 ESSENTIAL MINIMUM CONTRACT REQUIREMENTS

1 Hold harmless and/or indemnification agreements

EXAMPLE: *To the fullest extent permitted by law*, the party performing the work under this agreement, hereby known as the *contractor*, shall defend, indemnify and hold harmless the *property owner* and *property manager* and their 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 the *property owner* and *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 beginning work. (Sample hold harmless/indemnity stickers are available from: riskservices@harleysvillegroup.com.)*

2 General acceptance provision

EXAMPLE: Any work order, contract or similar document should contain or reference an indemnification/hold harmless provision and an insurance/additional insured status provision as set forth above. Such documents should specify that commencement of any part of the work shall 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.

YOUR 5 ESSENTIAL MINIMUM CONTRACT REQUIREMENTS (cont'd.)

3 Insurance requirements and additional insured coverage—property owner

EXAMPLE: The *contractor* shall obtain insurance covering the *property owner* and *property manager* as additional insureds for any liability arising out of the work with limits not less than \$1 million. (Note: Shareholders or unit owners of condominiums or co-ops should require contractors to include the property owner and property management firm as additional insureds.) This insurance shall be primary insurance and any other insurance covering the *property owner* and *property manager* shall be non-contributory. The coverage must be provided for both ongoing and completed operations. The coverage must be provided through coverage forms using standard ISO wording and must not include language that would limit or exclude the standard ISO coverage for injuries to the *contractor's* employees or the employees of any agent, servant or subcontractor, or exclude contractual indemnification and/or change the definition of an insured contract to exclude coverage for the very type of contract that would transfer the risk to the subcontractor. The measure of damage for failing to provide the necessary coverage is not limited to the cost of premium.

4 Waiver of subrogation and workers compensation immunity

EXAMPLE: The *contractor* agrees to waive any and all rights of subrogation against the *property owner* and *property manager*. In addition, the *contractor* agrees the indemnification obligation shall 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

EXAMPLE: A certificate of insurance must 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 must show the *property owner* and *property manager* as *additional insureds* for ongoing and completed operations on a primary and 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. And in matters involving New York Labor Law, it’s especially important to seek professional advice!

Other information of value to property owners

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:

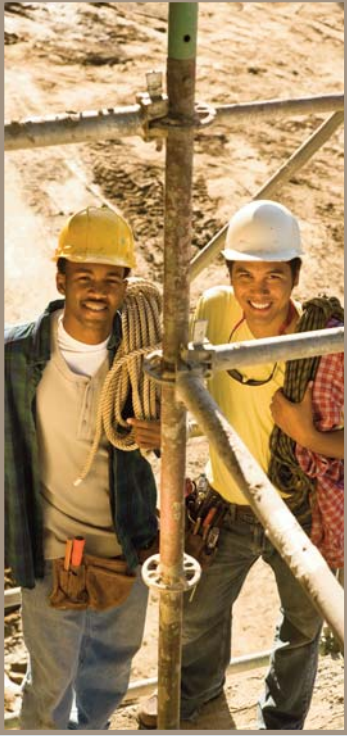
- Obtain certificates of insurance from *all* commercial tenants.
- Implement procedures to assure certificates are obtained—and updated as they expire.
- Specify policy limits for general liability (GL) and workers compensation (WC) on all certificates of insurance. These limits *must be* “equal to 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.



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

Additional resources available from Harleysville



To provide you with further protection against the risk of a lawsuit, the following materials are available from Harleysville Risk Services:

Additional materials

- Managing Contracts to Limit Sources of Contractual Liability—LCT-1060
- Certificates of Insurance Fact Sheet—Z-1465
- Real Estate Owners Best Practices—LCT-1052

For help with obtaining these materials, contact Harleysville Risk Services at 800.523.6344, ext. 8100, or by email at riskservices@harleysvillegroup.com.

Risk Services Department

Harleysville Insurance
355 Maple Avenue
Harleysville, PA 19438-2297
Tel: 800.523.6344, ext. 8100
Fax: 215.513.5345
riskservices@harleysvillegroup.com
www.harleysvillegroup.com



Scan to learn the many ways
Harleysville Risk Services can be
Your Partner in Preventing LossesSM.

Or, visit www.harleysvillegroup.com and
click on Policyholders > Risk services.

This information is designed to help users address their own risk management and insurance needs, and is not intended to be legal advice. Although we go to great lengths to make sure our information is accurate and useful, we do not warrant its accuracy or completeness, and we recommend you consult your insurance agent or other insurance professional, including a licensed attorney, to ensure that this information, and your interpretation of it, is appropriate to your particular situation. This information does not address all conditions, and may not be in compliance with federal, state or local laws.

© 2012 Harleysville Group Inc. All rights reserved.



Z-1551 05/12