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NEW YORK LABOR LAW &

Third-Party-Over Action Liability

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Companies doing business with independent contractors in New York State face additional challenges in mitigating legal liability.

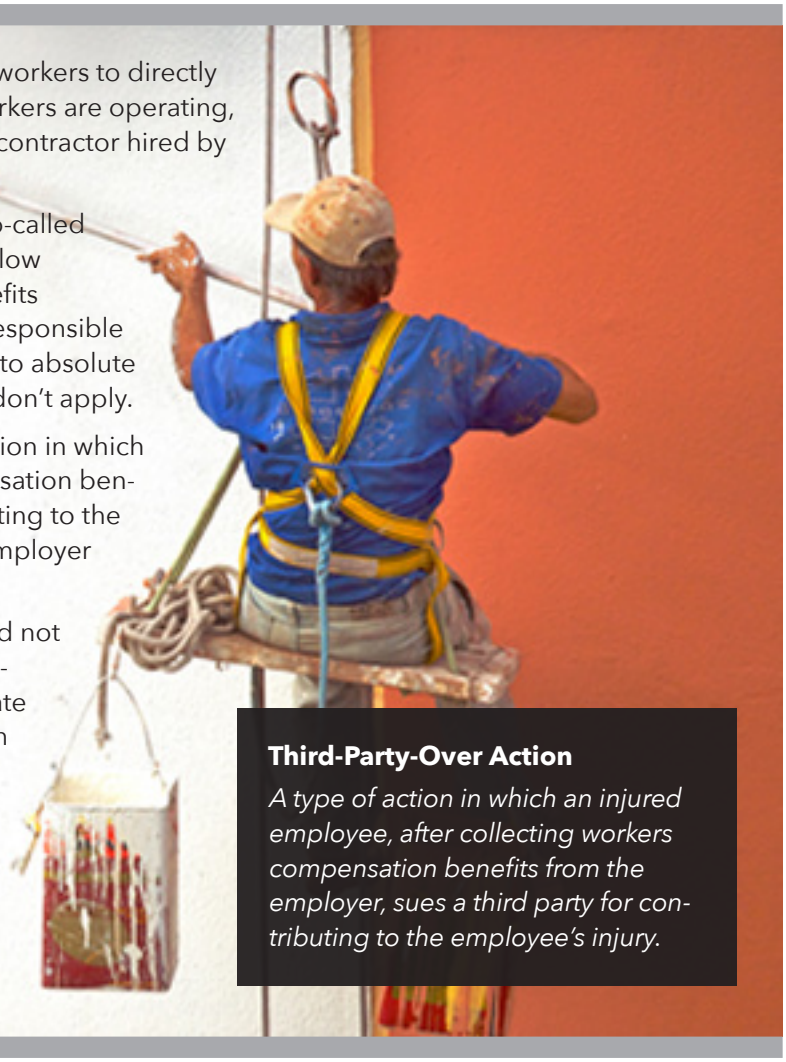
Provisions in New York labor law allow certain injured workers to directly sue the corporations on whose land & facilities the workers are operating, even if the workers are employed by an independent contractor hired by the corporation who owns the job site.[1]

Unlike most other states New York has two laws, the so-called "Scaffold Law," Labor Law 240 & Labor Law 241 that allow injured workers to collect workers compensation benefits from their employer as well as litigate against other "responsible parties." These other "responsible parties" are subject to absolute liability, meaning common law negligence standards don't apply.

This is known as a third-party-over action, a type of action in which an injured employee, after collecting workers compensation benefits from the employer, sues a third party for contributing to the employee's injury. The liability is passed back to the employer by prior agreement.

Contrary to the common law rule that a company could not be liable for the negligent acts of an independent contractor, New York Labor Law §240-241(a) places ultimate responsibility for safety practices at many work sites on the owner of the facility or property.

New York Labor Laws impose absolute liability on the owners of some job sites for breach of certain safety duties that lead to gravity-related injuries, irrespective of whether the owner actually controlled or supervised the work being done by the independent contractor's employees while on-site.[2]



Third-Party-Over Action

A type of action in which an injured employee, after collecting workers compensation benefits from the employer, sues a third party for contributing to the employee's injury.

A worker engaged in any erection, demolition, repair work, alteration, painting, cleaning or pointing a building or structure is covered by New York Labor Law §240-242(a). The law also covers a variety of job sites; including buildings, bridges, water towers, boats, airplanes, conveyor belts, land fills, etc.[3]

Though commonly referred to as 'construction' accidents, the lengthy list of activities and locations listed above clearly demonstrate that the potential legal liability for these type of accidents go far beyond a simple building construction site.

A common misconception by companies doing business in New York State is that these laws do not apply to them, because the companies erroneously believe that these laws only apply to construction firms and land developers. That is not true.

In 1999 a laborer was injured while changing a fluorescent light bulb inside of a commercial office building. The ladder he was standing on gave way, and he fell.[4] The injured worker sued both the independent contractor who had hired him to change the light bulb, as well as the building's owner. The owner of the office building erroneously believed he had absolved himself of tort liability by hiring an independent contractor to maintain the facility. Unfortunately for the owner, repairing a light bulb in the commercial office building while standing on a step-ladder constituted a construction-related injury under the New York labor laws, and the building owner was strictly liable for the worker's injuries, even though it was actually the independent contractor who maintained an unsafe work area.

These results should not be surprising. A prominent law review journal issued the following warning over thirty-five years ago when addressing the risk management issues businesses face in dealing with independent contractors. "The law is now unpredictable and inconsistent.[5]"

Many businesses believe they have protected themselves from liability by dealing exclusively with independent contractors and suppliers. What these businesses do not realize, however, is that the court system has been creating numerous exceptions to the independent contractor non-liability rule for the past four decades. As the same law review article states: "The current rule [non-liability for businesses dealing with independent contractors] embraces twenty or more exceptions, each so vague that its application often seems to depend not on any policy but upon purely random factors, such as the court's attitude towards the parties.[6]"

The law review journal was written over thirty-five years ago. Since that time, the legal uncertainty of independent contractor related liability has only grown more complicated and uncertain. Companies who work with independent contractors may face more legal liability than they previously thought possible.

To learn more about how Business Credentialing Services can help your organization better navigate New York labor law and the Third-Party-Over Action issues through its comprehensive insurance certificate management program, visit us online at www.bcsaudit.com or call us today at +1.862.242.5494.

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[1] McKinney's Labor Law § 241, construction, excavation and demolition work

[2] Allen v. Cloutier Construction Corp., 44 N.Y.2d 290, 376 N.E.26 1276

[3] Caddy v. Interborough R.T. Co., 195 N.Y. 415, 420 N.E. 747

[4] Piccione v. 1165 Park Ave., Inc., 258 A.D.2d 357, 685 N.Y.S.2d 242, N.Y.A.D., 1999

[5] Risk Administration in the Marketplace: A Reappraisal of the Independent Contractor Rule, James McHugh, 40U. Chi.L.Rev.661 [1973] http://www.law.syr.edu:2055/HOL/Page?handle=hein.journals/uclr40&id=1&size=2&collection=-journals&index=journals/uclr

[6] Id. at 663-664