

HOW NEW YORK LABOR LAW 240 COULD IMPACT YOUR RELIGIOUS ORGANIZATION

INTRODUCTION

Many, if not all, of us are ethical, moral and righteous people. We know that when we do something wrong and thereby harm another, we must pay. Paying is not often fun or easy, but, in a sense, it's the right thing to do. In fact, we purchase insurance to help us pay the person who was hurt. When there are disputes it is a lawsuit that gets things ironed out. They are by no means fun or easy experiences, but they give us a way to bring closure to the event.

Now, suppose we had a system in place that made us pay a person who was hurt but not through any fault of our own. Suppose that we had to pay an injured person hundreds, thousands, hundreds of thousands, or even millions of dollars just because we owned a building that was being built, renovated, maintained or demolished. Would it be fair and just if we were forced to make someone whole when we did not in any way cause or even contribute to his injury in the first place? Of course not! In fact, how many of us would tolerate such a situation?

Believe it or not, we actually have that very situation. In New York State, the owner of premises, under most circumstances, is absolutely liable for a hired contractor or subcontractor's employee who is injured while working in the construction, renovation, maintenance or demolition of your building. Furthermore, recent changes in the law prevent such owners, who may have been absolutely innocent of any wrongdoing, from recovering from the party who is usually at fault - the employer. That is, unless the owner of the property, such as a church, took certain fairly easy steps when the contractor was hired to work on the building. Let us show you what we mean and how easy it is for you to take the steps that are needed to protect yourself and your organization from such outrageous situations.

UNDERSTANDING TRADITIONAL LIABILITY FOR INJURIES

Under traditional or common-law rules, an injured party (the plaintiff) generally must show that injuries were in some way a result of the defendant's negligence. However, in construction site cases we are faced with a different situation. Through the peculiar laws that New York State has enacted, an injured party does not have to show that the defendant actually did anything wrong. Instead, in most instances, an injured party can sue (and win) simply by showing that the entity that he is suing owned the building that he was working on when he was injured. Thus, the fact that the owner of the building had nothing to do with the work that was being done does not matter.

Further, until recently, although the Workers' Compensation Law did not allow an injured person to sue his employer directly, an owner who was sued by such an injured worker could then bring what is known as a third party action against the employer to recover all or at least some of the amounts that the owner had been forced to pay to the injured worker.

THE WORKERS' COMPENSATION REFORM ACT BOMB!

In 1996 New York State reformed its workers' compensation law. Many people believe that the reforms were intended to make things better for business. Many people are wrong! This is because the reforms did not take away the ability of an injured worker to impose absolute liability upon an innocent owner. Instead, the reforms took away the ability to pass along, through the common law theories of recovery, the amounts that they have to pay to the injured workers. The only exception to this prohibition is in the cases where the injured worker sustained very, very serious injuries such as amputations or brain damage. Thus, while the owner, under most circumstances, no longer has the right to recover back from the employer on the common law claims, such recovery is still allowed if, but only if, the owner had the proper clauses inserted into the contract with the contractor prior to the time that the incident happened.

WHAT YOU CAN DO TO PROTECT YOUR RELIGIOUS ORGANIZATION

An owner should approach any agreement that calls for work to be done to or on a structure or building with the utmost care. The contract should:

- Be entered into with the assistance of counsel
- Contain provisions that call for the owner to be provided with insurance by the general contractor and all subcontractors and for each of those entities to defend and indemnify (hold harmless) the owner to the fullest extent permitted by law.

Further, a certificate of insurance should include:

- Proper phone number of the contractor's insurance agent
- Expiration date of policy covers the time frame of your project
- Adequate coverage amounts
- Umbrella coverage for additional perils listed under excess insurance caption
- Worker's compensation coverage for all workers
- Your church named as additional insured

By becoming educated on this issue and taking clearly identified steps to protect your religious organization from having to pay for the injuries of workers while at work on your property, you may prevent being shocked by a claim or lawsuit and will be better prepared to ensure that the programs of your religious organization for years to come.