

Construction & Surety Law Newsletter

A publication of the Torts, Insurance and Compensation Law Section
of the New York State Bar Association

Summary of Decisions and Statutes

LABOR LAW §§ 200, 240, 241

26-17. On a demolition project where steel beams were being lifted by a backhoe from the basement and dropped eight to ten feet to the floor for the purpose of removing debris so the beams could be salvaged, a worker was killed when he was struck by one of the beams. The court rejected the estate's Labor Law § 240(1) claim because this accident was not caused by an elevation-related hazard within the meaning of the statute and because the hoisting and clamping mechanisms on the backhoe had functioned properly for the intended purpose. *Corey v. Gorick Construction Company, Inc.*, 271 A.D.2d 911, 706 N.Y.S.2d 512 (3d Dep't 2000).

26-18. While wiring a computer room, a worker injured his knee, ankle, and back after misstepping a distance of 15 to 24 inches from the floor in which he was standing to the subfloor below, because a floor tile had been removed. The Third Department dismissed his claim under Labor Law § 240(1) on the grounds that the floor was not an elevated worksite and the accident was not the result of an elevation-related hazard as contemplated by the statute. The court rejected the analysis of a First Department decision in *Carpio v. Tishman Const. Corporation*, 240 A.D.2d 234, 658 N.Y.S.2d 919 (2000) (see Labor Law §§ 200, 240, 241, 23-21, *Construction & Surety Law Newsletter* (October 1997)), which reached a different conclusion on similar facts. *D'Egidio v. Frontier Insurance Company*, 270 A.D.2d 763, 704 N.Y.S.2d 750 (2000).

STATUTES

26-19. Chapter 116 of the Laws of 2000 authorizes the Commissioner of Environment Conservation to develop procedures with the approval of the State Comptroller, permitting the Commissioner to declare a "construction emergency" and to immediately contract for work to be performed for the purpose of protecting life, limb, property, public health or safety, or essential services, with limited competitive solicitation of contractors. A "construction emergency" is "damage to or an imminent danger of failure, or the malfunction of buildings, structures or property caused by a sudden and unexpected occurrence which involves a pressing necessity for immediate repair, reconstruction or maintenance in order to permit the safe continuation of necessary public use or function, or to protect the property of the State of New York, or the life, health or safety of any person." Notice of an emergency contract award must be published in the procurement opportunities newsletter as soon as practicable; emergency work is reasonably expected to be completed within 30 days; the scope of work is limited to that necessary to alleviate or remedy the construction emergency; additional work may be added to an existing contract to accommodate an emergency. Effective July 11, 2000.

WORKERS' COMPENSATION

26-20. A worker, hired by subcontractor either as an independent contractor or as an employee to install drywall, was injured when scaffolding collapsed. The injured worker brought suit against the subcontractor, general contractor, and owner of the worksite under Labor Law § 240(1). The Fourth Department held that the worker was not barred by the Workers' Compensation Law from pursuing his claim against the subcontractor even if the worker was an employee and not an independent contractor. The court reached this conclusion because the subcontractor did not provide workers' compensation coverage, thereby giving an injured employee the option under the Workers' Compensation Law to sue or to file a workers' compensation claim. This worker commenced his personal injury action against the

subcontractor before he applied to the Workers' Compensation Board, having received no benefits. *DiVincenzo v. Tripart Development, Inc.*, ___ A.D.2d ___, 709 N.Y.S.2d 271 (2000).

26-21. A "special employee," transferred for a limited time to the service of the defendant municipal owner, which controlled and directed the manner, details and ultimate result of his work, could not maintain an action against the owner under Labor Law §§ 200, 240(1), or 241(6) for personal injuries suffered when he was struck in the head by an iron beam while reconstructing a bridge. His exclusive remedy was workers' compensation, paid for by his contractor employer which assigned him to perform services at the direction of the owner. *Jaynes v. County of Chemung*, 271 A.D.2d 928, 707 N.Y.S.2d 516 (3d Dep't 2000).

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