

## New York's Highest Court Weighs in on N.Y. Labor Law

Article By:

William S. Wilson

---

N.Y. Labor Law § 241(6) requires owners and contractors to provide reasonable and adequate protection and safety to persons employed at or lawfully frequenting a construction site. If a worker is injured on a construction site and establishes a violation of a specific and applicable Industrial Code regulation, both the owner and contractor will be held vicariously liable for the worker's injury, without regard to their fault and even in the absence of control or supervision of the worksite. The Court of Appeals of New York recently addressed the broad scope of the Labor Law in the context of slipping hazards.

In *Bazdaric v. Almah Partners, LLC*, 41 N.Y.3d 310 (2024), the plaintiff, an injured painter, slipped and fell on a plastic covering placed over an escalator in an area he was assigned to paint. The plaintiff claimed that the plastic covering was a foreign substance for purposes of Industrial Code [12 NYCRR 23-1.7\(d\)](#) because it was not part of the escalator. Industrial Code [12 NYCRR 23-1.7\(d\)](#) states:

Slipping hazards. Employers shall not suffer or permit any employee to use a floor, passageway, walkway, scaffold, platform or other elevated working surface which is in a slippery condition. Ice, snow, water, grease and any other foreign substance which may cause slippery footing shall be removed, sanded or covered to provide safe footing.

The Court found that the plastic covering was a “foreign substance” under [12 NYCRR 23-1.7\(d\)](#) after examining its relation to the work area and its uniform properties. The plastic covering was a “foreign substance” because it “was not a component of the escalator and was not necessary to the escalator’s functionality.” The plastic covering also had properties common to “ice, snow, water and grease,” materials that are slippery when in contact with an area where someone walks, seeks passage, or stands, and when the substance is present, would make it difficult if not impossible to use the work area safely.

The Court considered and rejected the “integral to the work” defense, which applies only when the dangerous condition is inherent to the task at hand. This defense applies to work assignments which, by their nature, are dangerous but still permissible, where the particular commands of the Industrial Code may not apply if they would make it impossible to conduct the work. It does not apply when a party’s negligence creates an avoidable danger without obstructing the work or imperiling the worker. In this case, the use of some covering was integral to the paint work, but the use of the specific

plastic covering was not. The plastic covering created the slippery condition, which was avoidable without obstructing the work or endangering the worker because other types of coverings were available.

Notably, the concurring opinion identified a potential ambiguity in the Court's holding. The majority's opinion focused significant attention on whether the plastic covering was a foreign substance under [12 NYCRR 23-1.7\(d\)](#) and determined such a foreign substance includes "any substance not part of the escalator," rather than more narrowly considering it to be a substance that "shares the same qualities that make 'ice, snow, water and grease' hazardous when introduced into a qualifying work area."

Copyright © 2025 Robinson & Cole LLP. All rights reserved.

---

National Law Review, Volume XIV, Number 233

Source URL: <https://natlawreview.com/article/new-yorks-highest-court-weighs-ny-labor-law>