



In this issue, we are reprinting recent selected decision summaries related to labor law, including vicarious liability under Labor Law § 241(6), the ministerial exception, gravity related injury, and discrimination under the New York City Human Rights Law. Regular issues will resume next week.

COURT OF APPEALS

LABOR LAW, VICARIOUS LIABILITY UNDER LABOR LAW § 241(6)

Mann v Mezuyon, LLC, 2026 NY Slip Op 03257 (Ct App May 26, 2026)

Issue: Is section 23-4.2(k) of the Industrial Code (12 N.Y.C.R.R. § 23-4.2(k)) sufficiently specific to serve as a basis for vicarious liability under Labor Law § 241(6)?

Facts: While multiple drilling machines and excavators were operating at a construction site, plaintiff was injured when the back corner one of the excavators rotated into him. Plaintiff then sued defendant, the owner of the site, “asserting claims for common-law negligence and violations of Labor Law §§ 200, 240 (1), and 241 (6).” Although plaintiff did not initially base his section 241(6) claim on a violation of section 23-4.2(k) of the Industrial Code, which provides that “[p]ersons shall not be suffered or permitted to work in any area where they may be struck or endangered by any excavation equipment,” the trial court permitted him to amend his bill of particulars to include that violation.

Supreme Court then denied defendant’s motion for summary judgment on the section 241(6) claim based on a violation of section 23-4.2(k) of the Industrial Code. Defendant filed a third-party action against the excavation subcontractor in response, and Supreme Court granted the excavation subcontractor’s motion for summary judgment dismissing the third-party action against it. The Appellate Division, First Department affirmed.

Holding: Resolving a conflict amongst the Appellate Division departments in which the “First, Third, and Fourth Departments have concluded that [section 23-4.2(k) of the Industrial Code] is not sufficiently specific” to support a Labor Law § 241(6) claim, and the Second Department had concluded it was, the Court of Appeals held that section 23-4.2(k) is not “sufficiently specific to serve as a basis for vicarious liability under Labor Law § 241 (6).” The Court explained that the limited vicarious liability imposed under section 241(6) only applies to provisions of the Industrial Code that “mandate compliance with concrete specifications and not [those that] simply declare general safety standards or reiterate common-law principles.”

“[T]o be sufficiently specific to support a Labor Law § 241 (6) cause of action, a provision of the Industrial Code must both identify a specific safety concern *and* command a specific action required to address that concern.” The Court noted that its prior precedent has “held that ‘general regulatory criteria’ in the form of words like ‘adequate,’ ‘designated,’ ‘competent,’ ‘effective,’ ‘good,’ ‘proper,’ ‘safe,’ ‘sufficient,’ and ‘trained’ are not sufficient to give rise to a triable claim for damages under Labor Law § 241 (6).” Here, the Court held, section 23-4.2(k) of the Industrial Code “fails to state any action, whatsoever, required to address the safety concerns set forth in the provision. It merely contains a broad prohibition . . . Section 23-4.2 (k) does not include a minimum distance that must be maintained between a worker and any excavation equipment, and its protections are not limited to any specific class of worker. The section also does not identify any protective measures or reasonable precautions that a site owner must take in order to comply with the section. Nor does section 23-4.2 (k) provide clear guidance about how owners and contractors should provide reasonable and adequate protection and safety for workers. It merely states a general prohibition with broad applicability, lacking any specific directions. While the safety of workers is a critical concern, the language of section 23-4.2 (k) does not meet the legal standard for specificity required to hold site owners vicariously liable under the Labor Law.”

LABOR AND EMPLOYMENT, MINISTERIAL EXCEPTION

Sander v Westchester Reform Temple, 2025 NY Slip Op 06958 (Ct App Dec. 16, 2025)

Issue: Does an employee's off-hours speech constitute protected "recreational activities" under Labor Law § 201-d(2) (c) that would prohibit an employer from taking adverse action against the employee, and does the ministerial exception, which precludes application of employment discrimination laws to claims involving an employment relationship between a religious institution and its ministers, apply here?

Facts: Plaintiff was employed as a "Full Time Jewish Educator" at Westchester Reform Temple. The offer letter stated that her responsibilities would include teaching in 'Jewish Learning Lab classrooms for 15 hours a week,' as well as 'family and parent education, social justice programming, field trips and other off-site programs, communications, administrative support, and writing articles for Synagogue publications.' The letter also described aspects of the Temple's 'mission,' including 'supporting the development of a strong Jewish identity' and 'bringing Torah to life and inspiring Jewish dreams.'" Shortly after she began the position, "a Rabbi at the Temple met with her about a blog post she had recently co-written. The blog post said, among other things, that the authors felt compelled to 'speak out against Israel's [sic] most recent attack on Gaza' and 'rejected the notion that Zionism is a value of Judaism.' Plaintiff alleges that she and the Rabbi discussed the meaning of Zionism, and she assured him that she respected the Temple's position and would not share her views on the job. Plaintiff also alleges that the Rabbi subsequently expressed complete confidence in her teaching abilities. Nonetheless, Plaintiff was fired less than a week later."

Plaintiff then sued the Temple, alleging that her termination was for "legal recreational activity in violation of Labor Law § 201-d (2) (c). Defendants moved to dismiss, arguing that the complaint failed to state a cause of action because Plaintiff did not engage in a 'recreational activity' for purposes of section 201-d and her actions created a material conflict with the Temple's interests under section 201-d (3) (a), and further that Plaintiff's claim was barred by the ministerial exception and thus should be dismissed based on documentary evidence." Supreme Court dismissed the case, holding that it failed to state a claim because it alleged she was fired for the content of her blog post, not for the act of blogging. Supreme Court did not address the applicability of the ministerial exception. The Appellate Division, Second Department affirmed on the same grounds, and too declined to address the ministerial exception.

Holding: The Court of Appeals affirmed, albeit on different grounds. The Court noted that "Labor Law § 201-d . . . makes it unlawful for 'any employer or employment agency' to refuse to hire, discharge, or discriminate against an individual 'because of' certain protected activities: 'political activities outside of working hours,' 'legal use of consumable products,' 'legal recreational activities,' and 'membership in a union or any exercise of union rights.' As relevant here, the statute 'shall not be deemed to protect activity which creates a material conflict of interest related to the employer's trade secrets, proprietary information or other proprietary or business interest.'" The legal recreational activities protection, which includes recreational cannabis use, sweeps broadly, the Court explained, "protecting any lawful, leisure-time activity for which the employee receives no compensation and which is generally engaged in for recreational purposes, including but not limited to sports, games, hobbies, exercise, reading and the viewing of television, movies, and similar material." "The legislative history sheds little guidance on what qualifies as a recreational activity, and reveals no consideration of whether, or to what extent, the statute protects expression generated in the course of what is determined to be a protected recreational activity."

The Court held, however, that it didn't need to answer that question here. Rather, the Court decided, "the ministerial exception dispositively bars Plaintiff's claim. That exception precludes application of employment discrimination legislation to claims concerning the employment relationship between a religious institution and its ministers. Requiring a religious institution to accept or retain an unwanted minister, or punishing them for failing to do so both infringes the Free Exercise Clause, which protects a religious group's right to shape its own faith and mission through its appointments and violates the Establishment Clause, which prohibits government involvement in such ecclesiastical decisions." The Court held that Plaintiff's offer letter, which described her responsibilities as including "guiding the development of programs such as 'Shabbat, Havdalah, and other teen led events and initiatives'; planning, supporting, and attending 'Confirmation' experiences; and supporting the 'Rabbi's Table initiative'" and teaching Jewish values, established that she qualified as a religious minister. As such, the ministerial exception applied and the Temple was authorized to terminate Plaintiff's employment notwithstanding Labor Law § 201-d's general protections.

FIRST DEPARTMENT

LABOR LAW, GRAVITY RELATED INJURY

Szczesiak v Ery Tenant LLC, 2026 NY Slip Op 00600 (1st Dept Feb. 05, 2026)

Issue: Does Labor Law § 240(1) apply when a worker falls from a height following an electric shock?

Facts: "Plaintiff[,] an electrician, was injured at a construction site on September 11, 2019, when he fell from a 10-foot A-frame ladder as he was troubleshooting nonfunctioning ceiling lights." The plaintiff was shocked by live wires in a ceiling electrical box and fell from the ladder on which he was standing, after "the ladder immediately 'moved, wobbled, shifted, and fell'" following his electrical shock.

Plaintiff brought a Labor Law § 240(1) claim, and following discovery, moved for summary judgment, arguing that "that he was exposed to a height-related risk when he performed work on an unsecured and defective ladder 11 feet above ground and that the ladder, which

moved, wobbled, shifted and fell, was an inadequate safety device. Plaintiff further argued that defendants should have provided him with either a Baker scaffold or scissor lift with railings, which would have prevented him from falling and protected him in the course of his work.” Defendant opposed, arguing “that merely falling from a ladder does not establish a violation of Labor Law § 240(1). They alleged that the ladder was secure and did not require any tethering, and that it was only tipped over because when plaintiff was shocked he lost his balance, and as he fell he reached for the ladder and pulled it over. They further alleged that there are questions of fact as to whether the ladder provided proper protection that should be resolved by a jury.”

“Supreme Court denied plaintiff’s motion, finding that by submitting the affidavit of plaintiff’s foreman, stating that the wires were live after employees had been instructed to turn off the electricity, defendants created an issue of fact as to whether plaintiff was the sole proximate cause of the accident.”

Holding: The Appellate Division, First Department reversed, holding that “when a worker falls from a ladder after receiving an electric shock, to be entitled to the protections of Labor Law § 240(1), he must establish that the ladder was defective, or that ‘the ladder failed to provide proper protection’ . . . [T]he intent is not to carve out from the protection of section 240(1) of the Labor Law all elevation-related falls following electrical shocks.” Here, the Court held that plaintiff satisfied that standard by demonstrating that the ladder he was offered to perform the elevated work was defective. “Plaintiff’s deposition testimony and the photographs provided clearly demonstrate that the ladder, which was the only one available for the work plaintiff was required to perform, had two bent and curved crossbeams and worn rubber feet. The general contractor’s corporate safety manager confirmed that the ladder was defective when he stated at his deposition that if he had observed a ladder with the damage depicted in the photographs, he would have replaced the ladder and taken it out of service. Even if the ladder had been stable, this would have been no impediment to a claim under section 240. Plaintiff submitted evidence that the ladder was an inadequate safety device because it failed to provide adequate protection against the gravity-related risk inherent in the work he was performing. Plaintiff testified that when he removed his hand from the wires that shocked him, the ladder immediately ‘moved, wobbled and shifted,’ establishing that it failed to adequately support and protect him from the gravity-related risk.”

Contrary to Supreme Court’s holding, plaintiff’s failure to turn off the electricity prior to performing the work, at best, “constituted comparative negligence, which is not a defense to a Labor Law § 240(1) claim.” Thus, the court held, plaintiff demonstrated that he was entitled to partial summary judgment on liability.

LABOR AND EMPLOYMENT, DISCRIMINATION, NEW YORK CITY HUMAN RIGHTS LAW

Abromavage v Deutsche Bank Sec. Inc., 2026 NY Slip Op 00052 (1st Dept Jan. 08, 2026)

Issue: Can detailed federal court factual findings that no retaliatory or discriminatory motive existed bar under collateral estoppel discrimination claims asserted under the New York City Human Rights Law?

Facts: Plaintiff, a former Managing Director at Deutsche Bank Securities Inc., was terminated in August 2016 after he participated in a 2015 internal HR investigation involving another managing director accused of discriminatory conduct. Following his termination, he alleged that his cooperation in the investigation provoked retaliation from his supervisors, including artificially depressed revenue, client reassignments, negative performance reviews, denial of his 2015 bonus, and ultimately his termination.

Plaintiff first sued in federal court under Title VII, the New York State Human Rights Law, and the New York City Human Rights Law. Following extensive discovery in the federal action, the District Court dismissed Plaintiff’s Title VII and NYSHRL claims, holding that “plaintiff did not meet his evidentiary burden for a reasonable jury to find that defendants’ legitimate and nonretaliatory explanations for these adverse employment actions were pretextual or that a retaliatory motive was the but-for cause of the adverse employment actions about which plaintiff complains.” The District Court declined to exercise supplemental jurisdiction over Plaintiff’s NYCHRL claims, and dismissed those without prejudice. The Second Circuit affirmed on appeal, agreeing with the District Court’s detailed findings that Plaintiff failed to establish pretext or a retaliatory motive.

Following the dismissal of his federal case, Plaintiff filed this action in state court, reasserting his NYCHRL claims only. Defendants moved to dismiss, and “Supreme Court denied plaintiff’s cross-motion for limited discovery and dismissed this action on collateral estoppel grounds.”

Holding: The Appellate Division, First Department affirmed, explaining that “[a]s the Court of Appeals recently reaffirmed in *Russell v New York Univ.*, federal factual findings can bar relitigating even City HRL claims where the prior record established the absence of any evidence of retaliatory intent.” The Court held that the collateral estoppel bar applied here, because “the same parties litigated the identical factual question— namely whether defendants acted with retaliatory animus. Plaintiff had extensive discovery and a full and fair opportunity to contest the record before judgment and on appeal. The adverse employment decisions and retaliatory motive were thoroughly litigated under Title VII and the State HRL burden-shifting framework, and the issue was necessarily resolved when the District Court found a total absence of evidence of retaliatory motive and granted defendants summary judgment as a matter of law. The Second Circuit’s affirmance ratified those findings.”

Notably, the Court reasoned, “the requirement to interpret the City HRL under a more liberal lens does not relieve plaintiff of his burden to produce evidence of a retaliatory motive behind the adverse actions. Under the circumstances presented here, temporal proximity, standing alone, creates at most a prima facie inference of causation. It cannot overcome detailed factual findings that no retaliatory

motive existed . . . We emphasize that the City HRL’s liberal construction rule lowers the causation threshold, not the evidentiary one. Once the federal record established the absence of any retaliatory motive, no genuine factual issue remained even under the City HRL’s mixed-motive framework. To allow this case to go to a jury under the guise of liberal construction finds no support in the record.”

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