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New York Labor Law §241(6): When Is an Industrial Code Provision Specific Enough?

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Labor Law §241(6) imposes a nondelegable duty on owners and general contractors to provide reasonable and adequate protection and safety to workers engaged in construction work including excavation and demolition work. However, it is well settled that Labor Law §241(6) does not impose liability merely because an accident occurred on a construction site.

Instead, a plaintiff must establish that the defendant violated a provision of the Industrial Code that contains a specific, positive command or concrete specification.

The central issue in determining the applicability of Labor Law §214(6) is whether the Industrial Code provision relied upon by the plaintiff sets forth a concrete standard of conduct, or whether it merely reiterates a general common law duty to provide a safe workplace.

In *Mann v. Mezuyon, LLC*, the Court of Appeals recently addressed that distinction in the context of Industrial Code §23-4.2(k), which provides that "persons shall not be suffered or permitted to work in any area where they may be struck or endangered by any excavation equipment or by any material being dislodged by or falling from such equipment. *Mann v. Mezuyon, LLC*, 2026 N.Y. Slip Op. 03257 (N.Y. 2026).

In a closely divided decision, the Court held that the provision was not sufficiently specific to serve as a predicate for liability under Labor Law §241(6).

'Mann v. Mezuyon' provides a useful reminder that not every Industrial Code violation alleged by a plaintiff is enough. The regulation must contain a specific, positive command.

The Court of Appeals Standard

The starting point remains *Ross v. Curtis-Palmer Hydro-Elec. Co.*, where the Court of Appeals explained that Labor Law §241(6) is a hybrid statute. *Ross v. Curtis-Palmer Hydro-Elec. Co.*, 81 N.Y.2d 494 (N.Y. 1993). The first sentence of the statute reiterates the general common-law duty to provide reasonable and adequate protection and safety.

The second sentence, however, imposes a nondelegable duty on owners and contractors to comply with the rules of the Commissioner of the Department of Labor. That nondelegable duty is limited. As the Court held in *Ross*, only Industrial

Code provisions that mandate compliance with concrete specifications may support liability under Labor Law §241(6). Provisions that merely set forth general safety standards do not create a basis for vicarious liability.

The reason for this distinction is significant. If broad safety standards alone were enough, Labor Law §241(6) would largely duplicate Labor Law §200 and the common-law duty to maintain a safe workplace.

Thus, the court has repeatedly required plaintiffs to identify a specific Industrial Code provision that tells owners and contractors what must be done.

In *Misicki v. Caradonna*, the court applied this standard to 12 NYCRR 23-9.2(a), which governs power operated equipment. *Misicki v. Caradonna*, 12 N.Y.3d 511 (N.Y. 2009). The court held that the first two sentences of the regulation were too general because they required equipment to be maintained in “good repair” and “proper operating condition,” with “sufficient inspections” at an “adequate frequency.”

Those phrases were not concrete enough. However, the Court held that a later sentence in the same regulation was sufficiently specific because it required that a structural defect or unsafe condition be corrected by necessary repairs or replacement upon discovery.

Misicki is important because it shows that courts must look not only to the Industrial Code section number, but to the particular sentence or clause relied upon.

Similarly, in *Toussaint v. Port Auth. of N.Y. & N.J.*, the Court held that a regulation requiring a power buggy to be operated only by a “trained and competent operator designated by the employer” was not sufficiently specific. *Toussaint v. Port Auth. of N.Y. & N.J.*, 38 N.Y.3d 89 (N.Y. 2022).

Although the provision addressed a real safety concern, it did not provide a concrete standard of conduct. The terms “trained,” “competent,” and “designated” were too general to impose vicarious liability under Labor Law §241(6).

‘Mann v. Mezuyon’

The claim in *Mann* arose from an accident at a Manhattan construction site owned by Mezuyon, LLC. Excavation work was being performed at the site by Mayrich Construction Corp. The work involved drilling into bedrock and blasting. Several drilling rigs and excavators were operating simultaneously.

The original plaintiff, William Mann, was a Mayrich driller operating one of the drilling rigs. His drilling machine malfunctioned, and a mechanic was called to inspect it. While the mechanic was inspecting the drilling machine, the rear of a nearby excavator swung within a few feet of the rig. Mann then moved the drilling rig approximately 20 to 30 feet away. While Mann was lowering the drill head at the mechanic’s request, the back corner of an excavator rotated into him, striking him and knocking him to the ground.

Mann sued Mezuyon, asserting claims for common-law negligence and violations of Labor Law §200, §240(1), and §241(6). The Labor Law §241(6) claim was ultimately predicated on an alleged violation of Industrial Code §23-4.2(k). Mezuyon was not controlling or directing Mann’s work at the time of the accident.

Accordingly, Mezuyon could be liable only if Labor Law §241(6) imposed a nondelegable duty based on a sufficiently specific Industrial Code provision. The Court of Appeals held that Industrial Code §23-4.2(k) was not sufficiently specific.

The court reasoned that, to support a Labor Law §241(6) claim, an Industrial Code provision must both identify a specific safety concern and command a specific action required to address that concern.

Section 23-4.2(k) satisfied the first part of that inquiry because it identified the danger of workers being struck or endangered by excavation equipment or material dislodged from such equipment. However, the provision did not satisfy the second part of the inquiry. It did not state what specific action an owner or contractor had to take to address the danger.

The court noted that the provision did not require a minimum distance between workers and excavation equipment. It did not identify any specific protective measures, precautions, barriers, flaggers, signals, or other means of compliance. Nor did it provide clear guidance as to how an owner or contractor should keep workers away from the danger posed by excavation equipment.

Rather, the provision broadly prohibited people form working in areas where they may be struck or endangered. To the majority, that language was too general to support vicarious liability under Labor Law §241(6).

In reaching its conclusion, the Court compared §23-4.2(k) to the regulation at issue in *Toussaint v. Port Auth. of N.Y. & N.J.* There, the regulation required a power buggy to be operated by a trained and competent operator. The court held that provision insufficiently specific because it lacked a concrete standard of conduct.

The *Mann* majority found §23-4.2(k) even broader because it did not state any action required to address the safety concern. Accordingly, the Court affirmed dismissal of the Labor Law §241(6) claim predicated on §23-4.2(k).

The Appellate Division Split

Before *Mann*, the Appellate Division Departments were split three to one over whether Industrial Code §23-4.2(k) was sufficiently specific to support a Labor Law §241(6) claim.

The First Department held that it was not. In *Sparendam v. Lehr Constr. Corp.*, the court held that §23-4.2(k) was insufficiently specific to support a Labor Law §241(6) claim. *Sparendam v. Lehr Constr. Corp.*, 24 A.D.3d 388, 389 (1st Dept. 2005).

The First Department followed that approach in *Mann*, affirming dismissal of the claim before the case reached the Court of Appeals.

The Third Department reached the same conclusion. In *Mohamed v. City of Watervliet*, the court held that §23-4.2(k) was not sufficiently specific to support a Labor Law §241(6) claim. *Mohamed v. City of Watervliet*, 106 A.D.3d 1244, 1247 (3d Dept. 2013) The Fourth Department also agreed. In *Vicki v. City of Niagra Falls*, the court noted that it had repeatedly held that §23-4.2(k) was not sufficiently specific and declined to adopt the contrary position taken by the Second Department. *Vicki v. City of Niagara Falls*, 215 A.D.3d 1285, 1289 (4th Dept. 2023).

The Second Department took the opposite view. In *Zaino v. Rogers*, the court held that §23-4.2(k) was sufficiently specific to support a Labor Law §241(6) cause of action. *Zaino v. Rogers*, 153 A.D.3d 763, 765 (2d Dept. 2017) The Court of Appeals resolved the split in *Mann* and sided with the First, Third, and Fourth Departments.

The Dissent in '*Mann*'

Chief Judge Wilson dissented, joined by Judges Rivera and Halligan. The dissent would have held that §23-4.2(k) was sufficiently specific. In the dissent's view, the regulation did more than restate the common law. It required owners and contractors to keep people out of any part of an excavation site where they might be injured by excavation equipment or material dislodged by such equipment.

The dissent rejected the majority's conclusion that the provision was too broad. It reasoned that a broad command is not necessarily a specific one. The dissent compared the regulation to signs stating "do not enter," "stay off the tracks," or "no trespassing," noting that those commands may apply broadly, but remain specific. However, the majority held that the regulation lacked the concrete direction necessary to impose vicarious liability on a non-supervising owner or contractor under Labor Law §241(6).

Examples of Non-Specific Provisions

Mann is significant because it reinforces that plaintiffs cannot rely on broad Industrial Code language simply because it is safety related. The most obvious examples are provisions that use general descriptive terms.

The Court of Appeals has repeatedly identified words such as "adequate," "competent," "effective," "good," "proper," "safe," "sufficient," and "trained" as general regulatory language that, standing alone, is not enough.

In *Ross v. Curtis-Palmer Hydro-Elec. Co.*, the Court rejected reliance on regulatory language requiring "proper" protection because that type of language incorporated the ordinary tort duty of care rather than creating a concrete standard of conduct. *Ross*, 81 N.Y.2d.

In *Misicki v. Caradonna*, the court held that requirements that equipment be kept in "good repair" and "proper operating condition," and that inspections be made at a "sufficient" or "adequate" frequency were not specific enough. *Misicki*, 12 N.Y.3d.

In *Toussaint v. Port Auth. of N.Y. & N.J.*, the requirement that a power buggy operator be trained and competent and designated by the employer was likewise insufficient. *Toussaint*, 38 N.Y.3d. The regulation did not state what training was required. It did not state what competency meant. It did not state what specific conduct was necessary for compliance.

Mann v. Mezuyon now adds another example. A regulation may identify a specific danger, such as being struck by excavation equipment, yet still be too general if it does not state the action required to prevent that danger.

The distinction is important for defendants. A plaintiff may cite an Industrial Code provision that appears, at first glance, to address the accident. However, the relevant inquiry is not merely whether the regulation relates to the injury producing hazard. The question is whether the regulation contains a concreate command.

By contrast, courts have found provisions sufficiently specific where the regulation requires a distinct action or measurable standard. For example, in *Rizzuto v. L.A. Wenger Constr. Co.*, the Court held that 12 NYCRR 23-1.7(d) was sufficiently specific because it prohibited workers from using slippery floors or walkways and required foreign substances that may cause slippery footing to be removed, sanded, or covered. *Rizzuto v. L.A. Wenger Constr. Co.*, 91 N.Y.2d 343 (N.Y. 1998).

Likewise, in *St. Louis v. Town of N. Elba*, the court held that a regulation requiring a load handled by a power shovel or backhoe to be suspended by wire rope with a safety factor of four, and connected by a closed shackle or safety hook capable of holding four times the intended load, was sufficiently specific. *St. Louis v. Town of N. Elba*, 16 N.Y.3d 411 (N.Y. 2011).

The difference is that those provisions told the contractor what to do. They did not merely tell the contractor to act safely.

Conclusion

Mann v. Mezuyon confirms that an Industrial Code provision must do more than identify a workplace hazard to serve as a predicate for Labor Law §241(6) liability. The provision must also command a specific action required to address that hazard. While the Second Department had previously held that §23-4.2(k) was sufficiently specific, the Court of Appeals has now resolved the split and held otherwise.

For defendants, the decision is significant. It reinforces that a Labor Law §241(6) claim should be tested at the threshold by examining the language of the Industrial Code provision itself. If the provision merely uses general safety language, or fails to tell the owner or contractor what concrete action was required, it should not support vicarious liability under Labor Law §241(6).

Accordingly, *Mann v. Mezuyon* provides a useful reminder that not every Industrial Code violation alleged by a plaintiff is enough. The regulation must contain a specific, positive command. A broad instruction to keep workers safe is not sufficient.

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