

## 5.4 NEW YORK LABOR LAW

Current New York Law can impose liability on property owners for accidents to contractors' employees who, for example, fall off ladders while painting. This liability can be imposed even if the contractor was hired by a resident and even if the property owner and its managing agent were unaware of the arrangement between the resident and the contractor. Consequently, whenever any contractor does any work in your building – whether hired by the property owner, managing agent, a resident or commercial lessee – the following requirements should be in a written agreement between the contractor and the party hiring the contractor:

- The contractor must maintain a General Liability insurance policy with a limit of liability of at least \$1 million per occurrence with a \$2 million aggregate. The nature and scope of a contractor's work may dictate a Commercial Umbrella (\$5 million or higher), particularly those that perform building façade or outdoor work.
- If the contractor is doing work on behalf of the building and will be using any autos they own, then a Business Auto policy with a minimum limit of \$1 million Combined Single Limit covering owned automobile coverage, non-owned automobile and hired automobile coverage must be maintained.
- If the contractor has been hired by the building, then Workers Compensation with statutory limits of liability must be maintained.
- The contractor's General Liability policy must name the property owner, management firm and resident or commercial lessee (if applicable) as additional insureds, so that in the event of any loss arising out of the contractor's work at the building, the contractor's insurance carrier will cover that loss to the extent of its coverage limits.
- It must contain a Hold Harmless/Indemnity provision in order to ensure that the contractor, and not the property owner or its managing agent, is held responsible for any loss arising out of the contractor's work at the building. Note that if an AIA contract is used, the hold harmless/indemnity provision is typically a part of this contract.

Prior to the commencement of any work, there must be a fully executed written agreement containing the above provisions, as well as a Certificate of Insurance naming the parties mentioned above as additional insureds. You are strongly encouraged to review both the contract and Certificate of Insurance with your corporate counsel to ensure that the necessary documentation is in place.

Some insurance companies may have an exclusion for construction being done on or in the building. It is important that you inform us of any upcoming work, so that way we may make sure that not only do the insurance policies provide you with proper coverage, but that you have all of the necessary paperwork from the contractors to protect 11825 Owners Corp. interest.

Under no circumstances should the managing agent, superintendent or any other building employee provide any tools, ladders and other equipment or safety devices to contractors, to tenants, or to tenant's contractors. Providing this equipment, by itself, may make you liable for any accident that results from its use.

The managing agent, superintendent and all other building employees should be instructed that they are not to discuss or give any statements to anyone concerning an accident unless the individual soliciting the information provides proper identification indicating that he or she is an authorized representative of the insured's insurance carrier.

**Mackoul Risk Solutions are not attorneys and cannot give legal advice. As indicated above, all agreements and contracts should be reviewed by legal counsel.**

## 5.5 TRANSFERRING RISK TO CONTRACTORS

### Sample Hold Harmless / Indemnification Language

To the fullest extent permitted by law, Contractor agrees to indemnify, defend and hold harmless Owner and/or Managing Agent from any and all claims, suits, damages, liabilities, professional fees including attorneys' fees, costs, court costs, expenses and disbursements related to death, personal injuries or property damage (including loss of use thereof) arising out of or in connection with the performance of the work of the Contractor, its agents, servants, subcontractors or employees, at premises owned by Owner. This agreement to indemnify specifically contemplates (1) full indemnity in the event of liability imposed against the Owner and/or Managing Agent without negligence and solely by reason of statute, operation of law, or otherwise, and (2) partial indemnity in the event of any actual negligence on the part of Owner and/or Managing Agent causing or contributing to the underlying claim, in which event, indemnification will be limited to any liability imposed over and above that percentage attributable to actual fault, whether by statute, by operation of law, or otherwise.

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### Action Over Claims

Some contractor's insurance policies contain an endorsement named "Action Over Exclusion", "Injury to Employee Exclusion", "Third Party Over", "Injury to Employees of Subcontractor Exclusion" or something similar. These endorsements may exclude coverage for claims brought against 11825 Owners Corp. by employees of a contractor or subcontractor alleging injury due to "negligent supervision" or "negligence in maintaining workplace safety." Action Over Coverage protects the property owner from having to pay a claim in the event that there is a worksite accident during the job. An injured employee is entitled by State law to make a claim against the employer's Workers Compensation policy in exchange for not suing the employer. Inevitably, the injured employee sues the property owner. Without the correct controls in place, these claims can be (and have been) made the responsibility of the property owner. It does not matter if there wasn't any negligence on their part. By having a Hold Harmless Agreement and being an Additional Insured on the contractor's insurance policy, claims brought by the employee against 11825 Owners Corp. should be the contractor's responsibility to defend. Without Action Over Coverage 11825 Owners Corp. would not have an additional layer of protection and there is a significant chance that their insurance company would have to pay the claim, affecting the long term insurance premiums.