

**SITE SAFETY –
WHAT TO DO WHEN A CONTRACTOR IS NOT WORKING SAFELY?**

1. WHAT IS SITE SAFETY?

Site Safety is the protection of workers on construction sites, occupants and buildings adjoining construction sites as well as any pedestrians that could be affected by construction. The purpose is to promote and ensure that construction operations are conducted in a safe manner.

2. WHO IS RESPONSIBLE FOR SITE SAFETY?

New York City Building Code Title 27, Subchapter 19 §27-1009 requires the contractor engaged in building work to institute and maintain safety measures and provide all equipment or temporary construction necessary to safeguard all persons and property affected by such contractor's operations. A construction site safety coordinator must be designated and present on a construction site in accordance with NYC Building Department rules and regulations.

3. IS THE ENTIRE PROJECT SUBJECT TO SITE SAFETY?

Yes. Section 27-1012 provides that any construction equipment or device, except hand tools, that would affect the public safety when operated shall be inspected by the person superintending the work or by his or her designated representative before using the equipment or device on a specific job. Such inspection shall be carefully made, and every defect or unsafe condition shall be corrected before use is permitted. Any unsafe equipment or device shall be made safe immediately or removed from the site.

Except for the installation of underpinning and the construction of temporary retaining structures and for other operations specifically required by the provisions of 27-724 to be inspected by an engineer or an architect, the contractor is responsible for site safety.

4. WHAT TYPES OF ACTIVITIES SHOULD BE REVIEWED FOR SITE SAFETY?

Utilities, fire protection, construction equipment (machinery), housekeeping (ice, snow, grease, debris, etc.), removal and storage of material, obstruction of sidewalks, protection of sidewalks (sidewalk sheds, fences, temporary walkways, foot bridges, safety netting and scaffolds), warning signs and lights, watchmen and flagmen, adjoining properties, excavations, erection operation, demolition operation.

5. MAY THE DESIGN PROFESSIONAL BE HELD LIABLE FOR THE CONTRACTOR'S FAILURE TO PERFORM SITE SAFETY?

Generally, the answer is no provided the parties (owners, design professionals/and contractor) have contractually agreed that the contractor shall be *solely* responsible for control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work... the contractor shall evaluate the jobsite safely thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety... (AIA General Conditions, section 3.1) and set forth the requirements of the NYC Building Code (AIA General Conditions, Section 10.1).

However, a design professional can waive this provision by voluntarily getting involved with site safety. For example, the design professional observes that watchmen are not being utilized during crane operation work and directs the contractor to correct the condition. In the event an injury occurs as a result of the failure to have a watchman, the design professional could be liable.

6. IS SILENCE GOLDEN?

No. The design professional is responsible like any other person near or at the site to report any unsafe work conditions. If a design professional observes a condition at the site, but fails to report it, then the design professional could be subject to fine or sanction.

7. WHAT CAN THE DESIGN PROFESSIONAL DO TO RELIEVE HIS/HER LIABILITY?

If an unsafe condition is observed at the site, the design professional should immediately notify the owner and contractor reminding them of contractor's responsibility pursuant to the contract and request the owner take immediate steps to enforce the contract and direct contractor to correct the condition.

