

# NEW YORK CONSTRUCTION ACCIDENT GUIDE

*Getting The Benefits  
You Need and Deserve*

BRIAN J. ELBAUM



Have you been seriously injured in a construction accident? You may be feeling a lot of things; pain, worry, and perhaps grateful to be alive. These construction accidents can be life-threatening and harrowing for victims. Our New York construction accident attorney Brian Elbaum is here to help you through this tough situation.

Call our office today for a free consultation to discuss your legal options and see how Brian Elbaum can get you the compensation that you deserve.

## COMMON INJURIES AND ACCIDENTS

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The Department of Buildings in NYC released a map of live major construction in the city and shows dots covering the map. As of November of 2018, there are about 7,500 active permits. Meaning the number of construction workers in Manhattan is very high. Due to this, there are a significant amount of injuries that result from construction accidents. According to the City of New York, there were 593 construction accident-related injuries in January of 2018 alone.

The types of accidents that can cause injuries include:

- » Falling from heights
- » Equipment malfunction
- » Structure collapse
- » Objects dropping unexpectedly
- » Improper safety training
- » Ignored safety precautions
- » Careless behavior

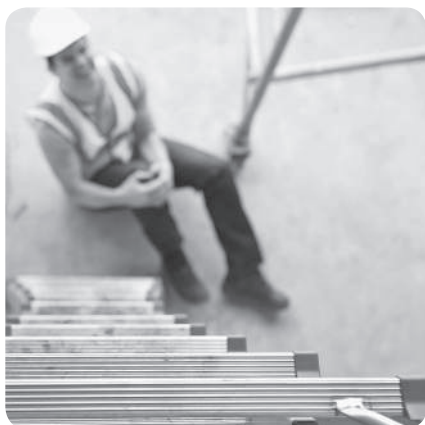
Investigative reporter Jim Hoffer of 7 On Your Side discovered in the summer of 2018, just how easy it is to cheat on the examinations that qualify you for an OSHA certification. There are specialized safety training courses that are

required to be OSHA certified, but Hoffer found out that that can easily be bypassed. He had someone certify him on his behalf when he has never taken any specialized safety training. No one is monitoring these websites where you can take the test for certification. This is a huge issue in New York City. Construction sites are everywhere and side-stepping these vital requirements for workers is both a threat to them, and to passersby on the street. This can also result in the deaths of workers who otherwise might never have been put in a dangerous situation if everyone on a construction site was properly trained.

The types of injuries that construction workers often suffer include:

- » Cuts and bruises
- » Concussions and traumatic head injuries
- » Injuries from being crushed
- » Falling injuries
- » Electrical or chemical injuries
- » Death

The injuries from a construction accident claim are not limited to that list. If you have been seriously injured in any way due to an accident on your site, you may be entitled to compensation and you should contact an attorney right away.



## MAKING SURE YOU GET COMPENSATED

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After you have been seriously injured in a New York construction accident, you may be wondering how you are going to pay all of your quickly piling up medical bills. In an accident like this, your main form of relief is most likely going to come from workers' compensation, but in some cases, you can

bring a claim against a negligent party. There are certain steps that you need to follow in order to get compensation.

## *Recording Your Injury*

You are going to have to inform your employer or a coworker about your injuries. This can be an intimidating thing to do and you may even fear for your job, but it is a necessity. At your workplace, the name of your workers' compensation insurer should be posted where you can find it. If it's not, your employer can get in legal trouble. You have a right to workers' compensation and your employer is not allowed to discourage you from seeking it. You don't want to put yourself in a tough spot if you did not inform your employer about your accident. It's hard to prove your injury was work related if work doesn't know about it. You cannot be fired for filing a claim. You also cannot be fired for bringing a lawsuit.

## *Determining Liability*

Your employer has a duty to keep you safe on the job and if you can prove negligence, you may be about to sue in those situations. Generally, in a construction accident, you cannot sue your employer, but in certain instances, you may be able to bring a claim. Getting an attorney involved early on will be the key to determining if there was negligence, who is liable, and if there was a third-party subcontractor involved who may be responsible for your damages. If it is a case where no one is liable, don't be discouraged. You may still be able to file for a workers' compensation claim and have your damages covered in that regard. However, as mentioned previously, OSHA certifications are easy to fake and there may be negligence involved if workers on your site are not properly certified. This is also where having a New York construction accident attorney involved early on is extremely valuable. They will be able to uncover these things and build a strong case for you.

# HIRING A NEW YORK CONSTRUCTION ACCIDENT ATTORNEY

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If you want your lawsuit to be a successful one, the best tool you can have is an experienced construction accident attorney. You are probably in a lot of pain and whether or not you can return to work may be up in the air. The workers'

compensation insurers have the right to have their doctor examine you to see if you really need compensation, and having an attorney will make this process a lot less stressful.

Having to prove that you were hurt is a taxing demand and while you are injured, it may seem out of your range of abilities. Your attorney's job is to take care of all of this for you. They will go out and document the construction site and get witness accounts of the event. You can focus on your recovery while your attorney does all the heavy lifting.

You want an attorney right away so that they can preserve evidence. The construction is not going to be put on hold just because you got hurt, so having an official pair of eyes go out and document everything can mean all the difference in your lawsuit.



## FREQUENTLY ASKED QUESTIONS | NEW YORK CONSTRUCTION ACCIDENT GUIDE

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### *What Do I Do After a Construction Accident?*

In New York, there are very specific rules that apply to construction accidents. I had someone call me the other day who told me that her husband was on a scaffold, and the scaffold collapsed, and he suffered some very, very serious injuries. The question was, what could they do now? There are certain sections of the labor law where the owner of the building may be held responsible for the injuries sustained, even if the owner of the building did not control the work that was being done at the time of the accident.

There are also may be industrial code violations. If it's proven that there is an industrial code violation, again, the owner of the building or the general contractor could be held responsible. Keep in mind it's very important to

understand that you can't sue your employer. Your recourse relevant to your medical expenses and your lost wages would be to go through your employer for workers' compensation coverage, and then you would need an attorney to handle, what we call, the third-party action, which would be the case against the owner, potentially, and any other contractors that may have been involved in the happening of the accident other than your employer.

## *How Do I Pick the Right Attorney?*

You want an attorney that has experience in personal injury litigation and construction accident cases because that's the type of attorney that will be able to guide you through the process and know how to litigate the case if it's a case that requires litigation. When I say litigation, I'm talking about a case that must be pursued in the court system.

## *What Mistakes Should I Avoid After An Accident?*

I had a client call me the other day who told me that a month ago, he had tripped over a two by four at a construction site while he was working, and he landed on his shoulder and suffered a shoulder injury. I asked him, "Did you notify your employer?" and he said, "No." I asked him why. He said, "Because I was afraid of losing my job." That's mistake number one. They can't fire you because you make a workers' compensation claim. You must notify your employer in order to protect your workers' compensation rights, and you need to do it as soon as possible.

I asked him, "Did you go see a doctor?" He said, "No." I said, "Why?" He said, "I work 10-hour days. I didn't have the time, and I've just been dealing with the pain." I said, "What have you been doing for the pain?" He said, "I've been taking Tylenol every day." Mistake number two is not seeking medical attention right away.

The third thing that often happens –not with this particular client – is clients seek counsel, but they seek counsel who are not personal injury attorneys or not construction accident attorneys, who don't know the ins and outs of litigation relevant to personal injury and construction accident type case. That can

be problematic. They may take on your case, but they may not necessarily know the ins and outs that a personal injury litigation attorney would know.

## *Should I Tell My Employer?*

I got a call the other day from a client in a panic. He was injured at work and his employer called, and wanted to know about what happened, and about him making a claim. He was afraid to get back to the employer because he was afraid that if he called the employer, he would lose his job. You need to notify your employer of the happening of the accident as soon as possible. That's to protect your workers' compensation benefits. Your employer is required to carry workers' compensation insurance, and that will pay for your medical expenses, and that will pay for your lost wages, but there are certain requirements that have to be met. One of the early requirements is that you notify your employer of the accident as soon as possible.



## *What Benefits Are Available to Me?*

It's important to know that your medical bills should be paid by your employer through workers' compensation, as well as your lost wages. It's important that you notify your employer of the accident as soon as possible so that you can get those benefits.

You also might have a case against what we call a third-party. It could be the owner of the property, if there are industrial code violations. It could be the owner of the property if there's a violation of a 240 of the labor law. You also may have a claim against the other contractors that were involved. What you have to understand is that you don't have a claim, other than workers' compensation, against your employer, meaning that you cannot sue your employer. There are exceptions to that, but as a general rule, you cannot sue your employer, but you do potentially have claims against the owner of the property and other contractors that may have been involved. It would be wise to seek the advice of counsel.

## *Can I Get Workers' Compensation?*

In New York, every employer is required to carry what's called workers' compensation coverage, and that's to cover your lost wages and your medical expenses. It's very important that you notify your employer right away that you were injured. It's also important that you seek medical attention right away because these are crucial things that have to be done in order to secure your rights to those workers' compensation benefits.

## *How Much is My Case Worth?*

It's not an easy answer. In fact, it can be very complicated. On the one hand, you need to look at liability. Who is at fault for the accident? We need to know that we can go after a party and they have the deep pockets to cover the injury. Second, we need to know the extent of the injury.

Often, clients will come to me at a time where they're beginning the process of treatment and beginning they're recovery process. It may take a long time before we know what the end result of the injury is. Is it something that's going to be permanent and lasting? That has value and that needs to be calculated into the equation and negotiations when dealing with the other side, in terms of coming up with a fair resolution. The end goal is to try to get the highest possible recovery for the client, and that, as I said, can take time to determine.

## *Can I Sue My Employer?*

The answer is generally, no. There are some limited exceptions, but as a general rule, you cannot sue your employer. Your employer is supposed to carry what's called workers' compensation coverage, and that's how you get your medical bills paid and lost wages recovered. There are some other benefits that go along with a workers' compensation claim, but as a general rule, you cannot sue your employer.

## *How Long Will the Case Take?*

Very often, when it comes to construction accident cases, litigation is required. That means that we'll need to file a lawsuit against those parties that are responsible. If we do have to file a lawsuit, that can take anywhere from two to



five years depending on the type of construction case and very often depending on the extent of the injuries. Please understand that the injuries alone can take quite some time to know the extent of. I say that because it takes a while to recover and after the recovery process, there's a good chance there will be some permanency, and that permanency is a very important factor in determining the value of the case.

## FREE CONSULTATION WITH AN EXPERIENCED ATTORNEY

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If you want a dedicated and experienced New York construction accident attorney, please call our office today to get a free consultation with Brian Elbaum. You will be in competent hands.



### ABOUT THE AUTHOR

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Brian J. Elbaum was only a few years out of law school when he decided to go out on his own in 1996.

Twenty years later, he still holds fast to the same two winning principles:

- » Making sure clients are comfortable throughout the litigation process.
- » Achieving great results by being aggressive and making the responsible party constantly uncomfortable.

### 1996

Brian graduated from Rutgers University in 1991 and earned his law degree from Brooklyn Law School in 1994. While he had a great job at a good firm after graduating, he quickly realized that he could serve clients better on his own, unburdened by the constraints of the law firm model and approach.

Brian felt so strongly in what he was doing that for his first year he was willing to work out of his apartment – a sixth floor walkup on East 37th Street & 3rd Avenue. Getting dressed every day in a full suit and tie to work from the desk in the corner of a modest one-bedroom, Brian took the cases no other attorney wanted. He quickly developed a reputation for making “lemons into lemonade,” helping those personal injury clients who other attorneys couldn’t.

## 2016

The Law Offices of Brian J. Elbaum have come a long way in 20 years. We’ve represented over 800 personal injury clients in Queens, Brooklyn, the Bronx, New York, Staten Island, Long Island, Upstate New York and New Jersey in cases involving construction accidents, auto accidents, slip & falls, medical/dental malpractice, bar and nightclub assaults, product liability, and much, much more.

We’ve stayed small by design, continuing to believe as we did 20 years ago that, more lawyers means more internal politics and reduced focus on the client. At our office, you know that every case will be handled personally by Brian. And we’ve stayed true to our philosophy, demonstrating in case after case that being tough with the adversary and compassionate with our clients is a winning combination.

Brian is licensed to practice law in New York and New Jersey as well as the federal courts. He is active in New York’s legal community as a Certified Member of the New York Trial Lawyers Association, Brooklyn Bar Association, and New York County Bar Association.

## *Our Office*

The story of our office mirrors the story of New York’s past twenty years. We were located in 150 Broadway on 9/11, and moved to 708 3rd Avenue until downtown was ready for business again. As soon as it was, we moved to 111 John Street – until Superstorm Sandy hit and relocated us to our current location.

Today, our office is inside the historic 11 Broadway building, just outside Bowling Green. Built 120 years ago in 1896, the Western Union branch office inside our building became a focus in the investigation into the Titanic disaster in 1912 as

Senator Alden Smith sought to determine whether a message from the doomed ship had been transmitted to New York's White Star Line office next door.

Mr. Elbaum has broad experience in the areas of law practiced by the Firm and manages a team dedicated to meeting client needs. Prior to establishing the Firm, Mr. Elbaum worked for several New York law firms representing clients in cases ranging from workers' compensation to commercial litigation. He also served as a judicial intern to a New York Supreme Court Justice, investigated exchange violations as an intern at the New York Stock Exchange, and worked at an entertainment firm representing musicians. His extensive legal and business background has instilled in Mr. Elbaum a solid understanding of how to get things done in a variety of environments.

Mr. Elbaum once held the position of Vice President at an insurance company, for which he provided advisory services. This position has enabled him to gain an insider's view of the insurance industry. He translates that insight into solid advice for his clients on insurance-related matters.

In establishing the Firm, Mr. Elbaum received guidance and inspiration from his father, the late David Elbaum, Esq. David Elbaum served as Of Counsel to the Firm in its early years and provided key insights into several cases.

