

## **Contractors Liability for Deviating from the Plans**

A contractor's liability either for an accident involving someone who is not an employee on a construction site or for property damage is not absolute but predicated upon negligence. The contractor must have a duty and the injury must proximately cause the breach of the duty. For example, there is no breach of duty and consequently no negligence where a contractor merely follows the plans or specifications given him by the owner, so long as they are not so obviously dangerous or defective that no reasonable contractor would follow them. Thus, where a contractor is not following his or her own plans, but those provided by the owner, "liability is imposed only where the plans are so obviously defective that no reasonable contractor would follow them."

The issue often comes up where a contractor performs work, there is an injury or property damage, then there is an allegation that the work performed by the contractor violated an applicable building code. In this situation, the court will decide if the violation of the code was an obvious defect. That is was it reasonable to foresee the injury and the breach of the code requirements?

This practical reality is that most changes are minor and no one knows the better. But assume a situation where a sub-contractor cannot meet the requirements of the plans. He calls the individual who prepared the plans, and they jointly decide if the deviation is appropriate. If there is a subsequent lawsuit, they can both be liable for failure to follow the plans.

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