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COMMISSIONER
NEW YORK CITY DEPARTMENT OF BUILDINGS**

**HEARING BEFORE THE NEW YORK CITY COUNCIL
COMMITTEE ON HOUSING & BUILDINGS
ON CONSTRUCTION SAFETY
May 11, 2015**

Good morning, Chair Williams and members of the Housing and Buildings Committee. I am Rick Chandler, Commissioner of the New York City Department of Buildings. I am joined by Tim Hogan, Deputy Commissioner for Enforcement and other members of my staff. We are pleased to be here this morning to offer testimony on the issue of construction safety.

Our mandate at the Buildings Department is as broad as it is deep. There are more than one million buildings and construction sites throughout the City that are governed by the City's Construction Codes, Zoning Resolution, the State's Multiple Dwelling Law and other regulations. We enforce compliance with these laws through our examination of building plans, permitting, licensing functions and inspections. While our broad mandate certainly includes advancing development in the interest of creating jobs, schools and affordable housing, everything we do is conducted through the lens of safety. Safety for construction professionals. And safety for all New Yorkers.

As you are undoubtedly aware we are in the midst of a construction boom in New York City and a rise in construction activity understandably correlates with an increase in construction accidents. But truth be told, while there is a correlation, construction accidents have outpaced construction activity and this is cause for great concern. In 2014 the Department issued 2,047

new building permits and 98,511 alteration permits. With the addition of more than 41,000 renewal permits the Department issued a total of more than 142,000 permits last year. In 2014 there were 231 construction accidents. Compared with 2013 there was a 10% increase in permits issued and a 24% increase in construction accidents. Following a record high of 19 construction-related fatalities in 2008, during the five-year period beginning in 2009 and ending in 2013 there were an average of 4.6 construction-related fatalities a year. In 2014 there were 8 fatalities. Thus far in 2015 there have been 6 fatalities. The Department determines a fatality to be construction-related if it occurs at a construction site and was directly related to construction activity.

Construction safety is much more than hardhats and harnesses. It must be the focus at every stage of a construction project. Construction safety is a long-term commitment that starts with the owner and integrates proper safeguarding procedures into the daily activities of every worker, every builder, every architect and every engineer.

The Department makes every effort to educate construction professionals on best practices for safety, and to identify bad actors who allow site conditions to create an unsafe environment. But the Department cannot be at every construction site every day. Ultimately it remains the responsibility of every person on a jobsite to ensure that work conforms to approved plans and is performed safely. Furthermore, while the Department regulates construction in an effort to protect the public by enforcing the safeguarding provisions of the Construction Codes, the Occupational Health and Safety Administration (OSHA) within the United States Department of Labor has jurisdiction over worker safety.

TYPES OF CONSTRUCTION ACCIDENTS

The Department categorizes construction accidents into several different types. Examples include accidents related to demolition work, scaffold and shoring installations, mechanical construction equipment, and excavation and soil work. The most common accidents are worker and material falls. Material falls occur when construction materials are improperly secured within or to the worksite. Of the 231 construction accidents that occurred in 2014 the most common are a worker falling, of which there were 89 accidents, an increase from 62 falls in 2013, and material falling or failure, of which there were 57 accidents, an increase from 49 in 2013.

Following an accident the Department arrives at the scene to perform an investigation to determine the cause and ensure that measures are put in place to prevent the accident from occurring again. In the case of a worker or material falling, contributing factors can be characterized as either worker or contractor error. Worker error includes not wearing or improper use of fall protection, distraction, carelessness and taking short cuts. Contractor error includes improper or no pre-task planning, inadequate supervision, lack of or inadequate temporary protection, providing inadequate or improper tools for the task, poor housekeeping, and implementing shortcuts or unsafe work practices. In the case of material failure, contributing factors include improper or lack of planning, overloading, and design flaws.

FALL HAZARD PREVENTION

When it comes to preventing falls and material failure the Department advocates a three-stepped approach.

Remove the Condition

The first effort in addressing a fall hazard is to remove the condition. For example, shaftways and holes in the floor should be sealed to prevent workers from falling through.

Re-Engineer the Condition

Assuming the condition cannot be removed it should be re-engineered. For example, installing a guardrail around a shaftway will prevent a fall.

Restrain

Assuming the condition cannot be removed or re-engineered, workers should be restrained. This includes wearing harnesses and lanyards that are properly tied-off to a safety line.

As you can see, for the overwhelming majority of construction accidents, prevention and protection does not require significant expense or complex protocols. It merely requires patience, commitment to the safeguarding procedures outlined in Chapter 33 of the Building Code and OSHA regulations, and at all times a respect and appreciation for the harm that can be caused to oneself and others if the work is not performed responsibly.

THE DEPARTMENT'S ROLE IN PROMOTING CONSTRUCTION SAFETY

There are three primary avenues by which the Department promotes construction safety – education, oversight and Code reform.

Education

The Department conducts extensive outreach to construction professionals to educate them on Code requirements and to promote worker and public safety. For example, with the adoption of

the 2014 Construction Codes the Department hosted numerous forums throughout the City to educate construction professionals on recent changes to our Codes.

Two weeks ago the Department hosted our annual Build Safe | Live Safe Conference, a sold-out event at the Downtown Marriott where we convened hundreds of construction professionals to educate them in a day-long series of safety seminars on new Code requirements and best practices.

Additionally as part of National Construction Safety Month, the Department will be broadening its “Experience is Not Enough” campaign. As part of this campaign I will be visiting several mid-level and high-rise construction sites throughout the City to speak with workers and remind them about the proper safeguarding of construction sites. During these visits I will be distributing our “Experience is Not Enough” campaign literature and stickers for hardhats. The literature includes flyers that provide information to workers on a variety of safety topics including worker and material falls. Our employees will also be distributing these materials at construction sites throughout the City.

Oversight

Another facet of our effort to hold construction professionals accountable for conditions at job sites is through inspections. In 2014 the Department responded to nearly 94,000 complaints and issued nearly 52,000 ECB violations totaling just under \$130 million in penalties.

A focus of the Department's strategic planning process has been on construction safety. From that process I am pleased to announce a new initiative beginning this spring where within the span of thirty days the Department will identify three hundred construction sites of nine stories or less throughout the five boroughs where we will provide intensive outreach and enforcement. At these sites multiple Department units will provide guidance to construction professionals on proper safeguards to prevent the most common safety accidents from occurring, thereby reducing the risk of harm to themselves and others. When conditions warrant, violations will be issued. At these visits we will also be providing construction workers with the means to contact the Department anonymously to share safety concerns.

The Fiscal Year 2016 Executive Budget includes new funding that will enable the Department to hire additional inspectors and supervisors. This funding, if approved by the City Council, will enable us to be more proactive in our enforcement and reduce the occurrence of construction accidents.

An additional way the Department addresses construction safety is through our issuance and maintenance of twenty-five different types of construction trade licenses and registrations. Prior to licensure, most applicants take an examination, go through a rigorous experience and background check and have continuing education requirements as part of any license renewal application. Work performed by unlicensed or unqualified construction professionals can result in unsafe conditions for New Yorkers. If an unlicensed worker or a licensed worker is found to have created unsafe conditions or committed some other misconduct, the Department takes swift

and appropriate action, from issuing violations and obtaining correction of unsafe conditions, to suspending and revoking licenses for the most serious misconduct.

An exciting new tool the Department is developing is using information and data analytics to identify risks associated with construction and the construction professionals we regulate. This will allow for proactive enforcement as the Department reviews those issues and areas that pose the greatest risks to the public.

Code Reform

With the help of the City Council, the Department has recently enacted a series of improvements to our Construction Codes that will result in safer work sites. I cannot emphasize enough the Code's role in creating a foundation for best safeguarding procedures based upon stakeholder engagement and design trends and practices in the industry. For example, the Code now requires that material or equipment not being used shall be secured to prevent dislodgement and shall be stored a minimum of ten feet from all unenclosed perimeters of the building. To ensure the safety of construction sites and the properties that abut them, certain excavations are now required to utilize a movement monitoring plan designed by a licensed professional to check for significant vibrations that may create unsafe conditions. Additionally sidewalk sheds must be inspected daily to ensure their proper functioning and safety and a log of such inspections must be maintained. And the Code now requires construction fencing be built to withstand a minimum of eighty mile-per hour winds.

While all construction accidents warrant strict scrutiny and vigilant enforcement, given the inherent dangers of construction work, particularly in a vertical and complex built environment such as New York City, we have to be realistic that the Department's role in promoting safe construction lies largely in designing risk mitigation regulations. The recent increase in the number of accidents, including fatalities, indicates that more must be done by both construction professionals and the Department to ensure that construction site managers and workers are employing proper safeguard procedures. Our job is to educate construction professionals on best practices so that they can do their jobs safely and to vigorously enforce violations of the law. In sum, to help create an environment where accidents are kept to a minimum.

Thank you for your attention and the opportunity to testify before you today. Deputy Commissioner Hogan and I welcome any questions you may have.



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Gale A. Brewer, Borough President

Testimony of Gale A. Brewer, Manhattan Borough President Oversight - Construction Safety May 11, 2015

Good morning. I am Gale A Brewer, Manhattan Borough President, and I thank Councilmember Jumaane Williams for scheduling this oversight hearing on construction accidents in our city. Unfortunately, many of the accidents have taken place in Manhattan. We are here with a grim responsibility – to demand safety in and around New York’s construction sites. I hope that this hearing gives insight into why these accidents – some fatal – are taking place, and what we should be doing to stop them.

The latest tragedy was the recent death of Christian Ginesi who fell 24 stories in an elevator shaft at a construction site at 301 W. 46th Street, outside the Riu Plaza Times Square Hotel.

As horrifying and unacceptable as this was, this was not the first time a worker had fallen on this site: in June 2013, work was halted here after a report of a worker suffering a three-story fall. And in May and September of 2014, inspectors found more unsafe conditions at this site: improperly supported scaffolding, and a missing safety training certification.

But it’s not just here at this site. Across Manhattan in recent months we’ve experienced what feels like an uptick in safety incidents. In early April, a piece of plexiglass fell from a construction site on East 34th Street, seriously injuring a pet dog but luckily not killing anyone. Less than three weeks later, a truck collapsed and killed the construction safety manager at a site on East 44th Street. According to Crain’s New York Business, the 44th Street incident was the eighth construction related death of 2015. That was only four months into the new year – and for comparison, there were only eight such deaths in all of 2014. So here we are on just May 11, 2015, and we have already passed 2014’s year-long total for construction-related deaths.

After a resident was killed at the former St. Vincent’s hospital site when plywood flew off temporary fencing in a burst of wind, and hit the woman walking on the street, the developer and contractor met with elected officials and the Chair of the community board. It was not a predictable accident, but it was a horrific outcome. That developer now has a wind calculator on site – most developers rely on the media’s meteorologist and the Central Park weather station – and has bolted down the fence, but with such tall buildings going up, and so much construction, we need to think differently about safety.

Reframing our approach could include improvements to onsite and offsite training for construction workers, more frequent inspections of construction sites that have prior complaints and/or are engaged in the advanced phase of their high-rise construction and working with

industry partners, labor, DOB and OSHA to see if more effective safety gear exists and should be required.

I will continue to do whatever I can to encourage more and better enforcement from the Department of Buildings, but we must look into the wider problem. I am deeply concerned that builders, developers and contractors are perpetuating a culture of disregard toward basic public safety – and workers and residents will pay the price.

One construction site death is one too many – we must reverse this disturbing trend and protect both the workers and the residents in and around construction sites.

Thank you.

**Testimony of Allen Wright, Director of Industry Advancement, I.U.O.E.
Local 14-14B**

Before

**New York City Council Committee on Housing and Buildings
On Construction Safety**

**Hon. Jumaane Williams
Chairperson**

Monday, May 11, 2015

Good morning Chairman Williams and members of the committee. Let me begin by thanking you for conducting this hearing on construction safety. Too often as we engage in the ongoing luxury/affordable housing debate we lose sight of a simple fact:

Whether you are building a mile-high \$100 million condo overlooking Central Park, or four-story rental building in Ridgewood, it is dangerous and deadly work.

According to a report in the April 13 edition of Crain's, there was a 50% increase in the number of construction-related accidents between 2013 and 2014; and in the first few months of this year we have already surpassed the eight construction related deaths recorded in all of 2014.

In the past two months alone two construction workers and a 37 year-old woman lost their lives either working or simply walking past a construction site.

The woman, Tina Nguyen was killed when she was struck by a windblown plywood panel from a nearby construction site in mid-March.

Late last month, on Friday, April 24, Trevor Loftus, a sub-contractor on a non-union worksite in midtown, was killed when a small crane malfunctioned during a "lift."

Loftus not only owned the crane, he owned the sub-contract company and he was the safety coordinator at the site. Incidentally, his company Kenry Contracting had previously been fined more than \$20,000 for "serious" OSHA violations.

Just last Tuesday, construction worker Christian Ginesi, 25, fell 24-stories down an elevator shaft while working on another non-union construction site on W. 47th Street. The general contractor on that site is New Jersey-based Rinaldi Group.

The Rinaldi Group also has been hit with more than \$16,000 in OSHA fines and penalties. And, according to published reports, those fines and penalties remain unpaid.

That these recent tragedies took place on non-union worksites is not a coincidence. According to OSHA's recent report on Construction Safety in New York City, 75% of all construction fatalities occurred at non-union worksites. And half involved immigrants and those who speak a language other than English.

I have included a copy of the OSHA's presentation NYC's 2014 Construction Safety with my written testimony.

For all of OSHA and NYCOSH's troubling findings, they only investigate and report on worker and worksite incidents. As we have seen in the case of Ms. Nguyen, in New York City's unique urban environment, anyone and everyone in or around any construction site are at risk.

This is especially true in and around high-rise construction crane operations. The most effective way to protecting the tens of millions of New Yorkers, tourists and commuters who walk the streets of our city every day is to pass Intro 299.

Legislation that became necessary when the Bloomberg administration, bypassed the City Charter, to change New York's long standing, strict regulations to adopt a "national standard" under OSHA.

Then-Buildings Commissioner Robert LiMandri argued the national standard would make for "safer" crane operations. The reality is, after the Department of Buildings took control of crane testing from the Department of Citywide Administrative Services, it was determined they did not want to test.

The OSHA standard provided an easy exit out of the testing business. Well, Mayor Bloomberg and Commissioner LiMandri were wrong.

For all the talk of safer crane operations in New York City the national standard was nothing more than an exam on crane “load capacities.”

An exam, it turns out that was so easy, “OSHA certified” crane operators were creating havoc. OSHA announced postponement of the new standard until 2017.

They explained their reasoning in a Feb. 7, 2014 Press Release: *“...After OSHA issued the standard, a number of parties raised concerns about the qualification/certification requirements. After conducting several public meetings, OSHA decided to extend the enforcement date so that the certification requirements do not take effect during potential rulemaking or cause disruption to the construction industry.”*

OSHA learned the hard way, that “certification is not qualification.”

Meanwhile as we sit here today, New York City crane license requirements are based on a standard that does not exist.

How safe is that?

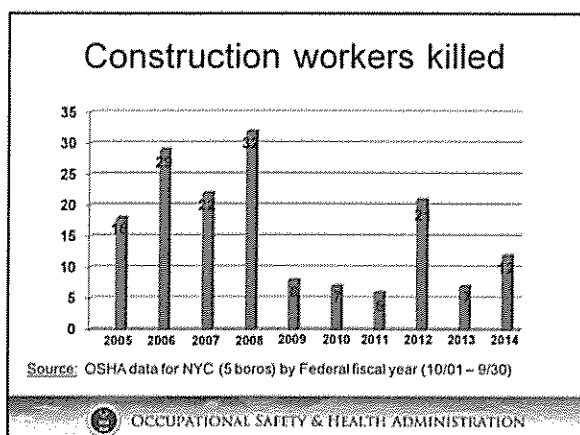
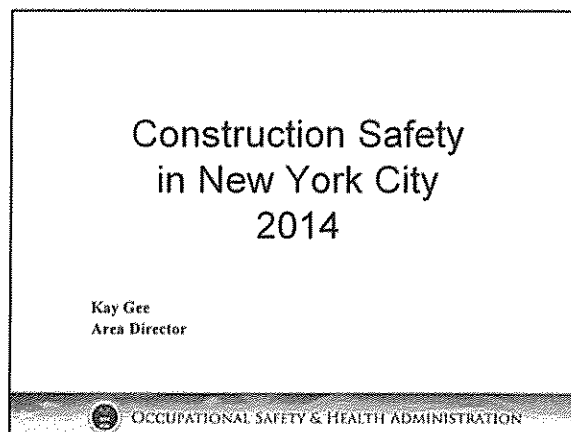
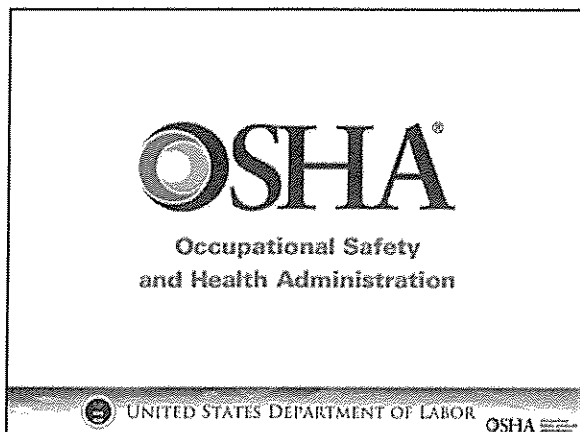
That is why it why we are urging this Council to pass Intro 299; and to restore DCAS oversight and testing for crane operations. Local 14 has recently opened a state-of-art training and testing center in Westchester.

In fact New York City has already conducted the “B” exam at the site.

Over the course of the past century New York City developed and defended the most stringent standards and controls of crane operations in the nation – only to walk away from them in 2012.

We must restore those standards. We must once again give New York City control over crane operations. It is the only way to protect our workers, our worksite and all New Yorkers.

Thank you. I'll be happy to answer any questions.



Why don't OSHA and DOB numbers match exactly?

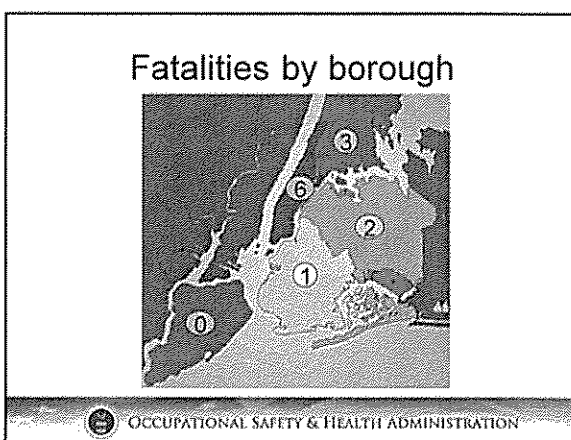
- OSHA & DOB share incident and trend data
- Worker safety (OSHA) vs. public safety (DOB)
- OSHA covers incidents outside DOB jurisdiction
 - Heavy / highway / infrastructure (bridges, roads, etc.)
 - Sites outside NYC's jurisdiction (eg., airports, transit)
 - Non-building issues (eg., health hazards)
- DOB reporting requirements apply to a segment of jobs, but do not have a threshold

OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION

Construction Fatalities by type

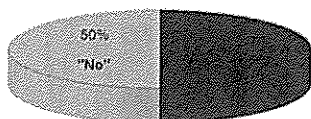
- 9 fatalities due to falls from heights
- 2 fatalities were due to crush hazard
- 1 fatality due to struck by hazard

OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION



Fatalities coded for "Imm-Lang"

Immmigration or Language factors



N=12



OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION

Contributing factors

The more factors that apply, the greater the correlation to a fatal accident

- o Worker is foreign-born
- o Worker is Hispanic
- o Worker speaks a language other than English
- o Worker speaks a language different than that spoken at the jobsite



OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION

Fatalities by union status



N=12



OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION

Other fatality trends

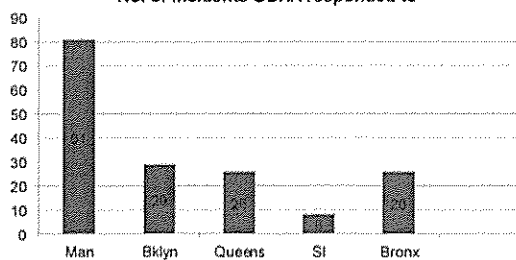
- 10 fatalities were in companies with 30 or fewer employees
- 1 fatality occurred in a company with between 31-100 employees
- 1 fatality occurred in a company with 101 or more employees



OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION

Construction Incidents by Boroughs

No. of Incidents OSHA responded to



OSHA

OSHA enforcement

- 806 Total Inspections – 5 boroughs
- Violations
 - 1195 Serious/Willful/Repeat Citations issued
 - 260 OTS Citations Issued
 - Approximately 4.7 million in penalties

OSHA data, FY14 (10/1/13-9/30/14), 5 boros NYC



OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION

OSHA enforcement

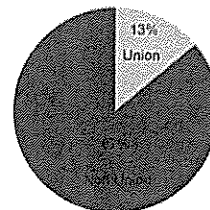
- 540 Construction Inspections – NYC Violations
 - 742 Serious/Willful/Repeat Citations issued
 - 115 OTS Citations Issued
 - Approximately 2.3 million in penalties

OSHA data, FY14 (10/1/13-9/30/14), 5 boros NYC



OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION

OSHA construction inspections



OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION

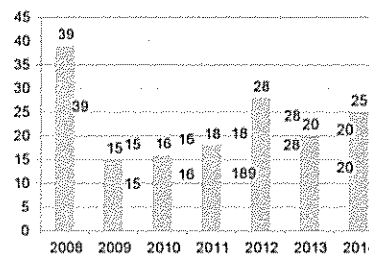
Non Construction Fatalities

- 13 Fatalities in non construction activities in NYC
 - 4 Manhattan, 4 Queens, 3 Brooklyn, 0 Bronx, 2 SI
 - 5 from falls (ladder, elevator shaft, 2 aerial lifts, window ledge)
 - 3 Crushed by
 - 3 forklift accidents
 - 1 Assault/murder (Workplace Violence)
 - 1 overcome by CO
 - 1 working in in food processing
- 5 Immigrant Language
9 non-union



OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION

Total Number of Fatalities
2008-2014
Construction/GI



OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION



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May 11, 2015

Housing and Buildings Committee Hearing on Construction Safety

Good Afternoon. Thank you Chair Williams and all Councilmembers present, for allowing me to speak today. I am here representing the New York City & Vicinity District Council of Carpenters, a representative body comprised of eight individualized locals, and over 23,000 members.

I am speaking today on an issue of great importance to the NYC District Council and to all New York City construction workers. Construction worker safety is often in the headlines with news of fatalities on jobsites across the city, yet little has been done to prevent the occurrence of future tragedies. The 2015 NYCOSH Report on Construction fatalities, "The Price of Life: 2015 Report on Construction Fatalities in NYC," details the pervasive nature of the problem. The report cites the statistic that 2/3 of OSHA construction inspections detect violations. These citations, which were for the period of 2010 to 2012, were for "serious safety violations." The report goes on to state that in 2012, 79 percent of all OSHA-investigated falls from elevation occurred on nonunion jobsites. The statistics become even more alarming when the report highlights the practices of the NYC Department of Housing Preservation and Development. 89 percent of contractors on HPD's enhanced review list that are presently working on affordable housing projects have OSHA violations. This is of particular concern, as HPD will be overseeing and implementing the Mayor's affordable housing plan.

The plan, which calls for 80,000 new units, will spur significant construction, making it imperative that workers building these units are properly trained. NYC desperately needs affordable housing, but that housing should not be built with an exploited workforce. City-sanctioned affordable housing should demand workers receive proper training, as well as receive wages that are family sustaining. Workers should never be subjected to a potentially hazardous workplace, particularly not when the work is being sanctioned and overseen by the city of New York. The NYCOSH Report references the City's past failures to protect workers on affordable housing sites. The report cites one instance where a contractor was forced to pay \$600,000 in back wages to workers. Too often, the workers who will be tasked with building the affordable housing are forgotten. Our elected officials must protect the construction workers on these projects. The plan offers the opportunity to create good jobs for the community. But we put take that path, and not pursue the path that has been the norm. Construction is an inherently dangerous occupation, but steps can be taken to ensure workers are in the safest possible environment. The Mayor's plan should not be realized by ignoring worker safety. The conditions of these jobsites should no longer be kept in the shadows. We must understand the problems associated with the construction of affordable housing, and we must work to correct it.

Workers who build affordable housing have the same hope we all do. They hope to safely return to their families each night.

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Deaths and Serious Accidents at Crisis Levels in NYC Construction

Deaths and serious accidents in the New York City construction industry have reached crisis levels. It is only May, and already this year, nine workers have died at construction sites around the city. The present system for enforcement isn't curbing the flagrant abuse of federal and local safety standards by unscrupulous contractors, whose ranks have proliferated in recent years. For example, basic training requirements are too often circumvented through the illegal sale of OSHA cards to workers who never actually receive the required training.

One problem is the sheer increase in construction volume; OSHA and the DOB are unwilling or unable to allocate the resources necessary to inspect all the job sites where contractors are engaging in dangerous practices.

More importantly, serious violators receive only insignificant fines that serve as little more than slaps on the wrist.

We Desperately Need a More Effective Construction Safety Enforcement System

It is time to institute a new enforcement system, one that will make the best use of all the available resources to direct regulators to exactly where they are most needed.

Therefore, we call on the City to establish a new independent task force whose mission will be to target contractors and jobsites with the highest risks of deaths and serious accidents.

This task force would use available public data, as well as subpoena power, to identify the following two groups for enhanced regulatory oversight:

- 1) Irresponsible contractors with egregious records of safety failures, wage theft and/or employment fraud (with a guiding principle being that firms who break other kinds of employment laws often also violate safety regulations); and
- 2) Jobsites where more than one of these lawbreaking contractors have been hired to work at the same time.

Contractors in the first category would be subject to more intense inspections by the DOB, and jobsites in the second category would be labeled "**danger zones**" and would be subject to even more frequent scrutiny by DOB inspectors, including undercover investigations.

Repeat violators would be subject to higher fines, prosecution and eventual debarment from the NYC construction industry.

The task force would publish the lists of contractors identified as irresponsible along with the information from their records that led to them being chosen for enhanced scrutiny – thereby exposing and shaming the contractors and, more importantly, creating a disincentive for developers and general contractors to hire serious violators.

One benefit of this plan is that it would not require legislative action but simply refocus the existing regulatory structure.

May 11, 2015



BUILDING & CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK

GARY LaBARBERA
PRESIDENT

AFFILIATED WITH THE
BUILDING CONSTRUCTION TRADES DEPARTMENT
OF WASHINGTON D.C.

BUILDING AND CONSTRUCTION TRADES COUNCIL
OF NEW YORK STATE

AMERICAN FEDERATION OF LABOR OF CONGRESS
OF INDUSTRIAL ORGANIZATION

**Building and Construction Trades Council
Housing and Buildings Committee Hearing on Construction Safety
May 11, 2015**

My name is Santos Rodriguez and I am speaking on behalf of Gary LaBarbera, President of the Building and Construction Trades Council of Greater New York which represents 100,000 unionized construction workers.

I want to start by thanking the Housing and Buildings Committee members and Chair, Councilmember Williams, for this oversight hearing on construction safety.

Construction is still one of the most dangerous jobs. We work at great heights, with complex materials and machines and we do it all in and above one of the busiest cities in the world. Mayor de Blasio's 2015 Management Report noted the danger in referencing the rise in construction-related injuries and construction-related accidents.

The Mayor's 2015 Management Report found that construction accidents have increased by 39% and 21% respectively from the same period studied in 2014. Even just last week, a worker lost his life at a non-union midtown construction site as he fell over 20 stories to his death.

NYCOSH's recent report, "Price of Life: 2015 Report on Construction Fatalities NYC," also found what many of us already know in this room, non-union jobs are significantly less safe and most injuries could be prevented if OSHA's regulations were met.

Development in New York City should not be done on the backs of workers and with workers' lives at stake. Too often irresponsible developers worry more about their bottom line than making sure the workers on their site have the proper safety materials and training. Too often irresponsible developers don't care if a worker is trained for a given job or able to perform a specialized task at a work site. Too often irresponsible developers don't properly handle accidents that occur on their worksites, and too often turn a blind eye.

At the Building Trades we pride ourselves on our safety and take the safety of our members very seriously. Our members, in all affiliate unions, go through rigorous, New York State Department of Labor recognized and approved training and apprenticeship programs that make all members aware of OSHA guidelines, proper safety procedures, how to properly operate machinery, and the specialized skills that each union requires. We do all this so that our members are safe and trust the fact that they will be able to return home to their families at the end of a hard day's work. We acknowledge those



responsible developers and contractors who employ our members and recognize the importance of a safe worksite. It is time to institute a new enforcement system, one that will make the best use of all available resources to direct regulators to exactly where they are most needed. Therefore, we call on the city to establish a new independent task force whose mission will be to target contractors and jobsites with the highest risks of deaths and serious accidents.

We want this safety, training, and knowledge to be available for all construction workers because when they are safer, we are all safer. The Building Trades thanks the City Council again for examining this important issue, for it truly is life or death.



Committee on Housing and Buildings
Hearing on Oversight Construction Safety
05/11/15
Testimony Provided by James Bifulco

Good morning, Chairman Williams and Councilmembers.

My name is James Bifulco, I am a principal consultant with TSC North America and a strong advocate for improved Construction safety for over 20 years. Most recently, I was the Co-Chairman of the NYC Building Code Update Committee for Demolition and Construction Safety, I am past President of the Safety Executives of New York, past president of NYC Chapter of the American Society of Safety Engineers, and meet regularly with industry stakeholders to discuss improving construction safety.

Accidents and fatalities are on a path to surpass record highs and proactive steps need to be taken.

Site Safety Programs are essential to construction safety in NYC. Without the oversight of Site Safety Programs and the presence of licensed, experienced, qualified and certified safety personnel, accidents will increase, and the public will be at greater risk. Site Safety Programs mandate a thorough and regimented series of reviews, requirements, and inspections that are designed to ensure code compliance and prevent accidents.

Although they are limited to only the largest projects, mandatory Site Safety programs on construction projects are very effective. If you examine fatalities in construction, not only over the recent past, but also over the timeframe that Site Safety Programs have been required in NYC, the overwhelming majority of fatalities and serious accidents occurred on projects without an implemented Site Safety Program.

We are experiencing a construction boom. The number of projects underway has more than doubled and, in some cases, tripled over the last 2 years.

At the same time, the market is experiencing a significant shortage of every type of skilled personnel in construction. This has had an even greater impact with licensed safety professionals. The shortage has had many adverse impacts and correcting this needs to be a priority.

Although the Department of Buildings has responded, there is still a tremendous shortage of available Licensed Site Safety Managers and Coordinators. The lack of available licensed, qualified personnel has had a significant impact on NYC, and has certainly contributed to the increased number of accidents. We believe DOB has to support and promote programs that develop and create desperately needed licensed safety professionals and increase its efforts to approve qualified personnel.

In its effort to produce qualified personnel, TSC developed a NYS Apprentice Program and an On-the-Job Training Program in Site Safety Management. Not only do these programs create licensed, qualified safety professionals, they create high-paying careers – and not temporary dead end jobs. The careers can help break the cycle of

¹
income inequality in New York City. While past administrations would not consider this approach, we have received a positive response from the current management at DOB. However, we still need a much greater level of support for these programs to be successful.

The Submission and approval of Formal Site Safety Programs is another essential part of Safety in NYC, but has also experienced the impacts of increased volume. Although the number of projects has increased, resources for review and approval remains the same. Approval lead-time has doubled or tripled, and amendments to plans take as long as initial approvals.

Training is essential to improving Construction Safety. The need for training is even more critical since there is an inexperienced workforce created from the current construction boom. Projects with Site Safety Programs have mandatory OSHA Training and New Worker Orientations. Unfortunately, there is an epidemic of fraudulent training. It is common knowledge that you can purchase certificates for OSHA, other safety certifications and training.

Taking steps to root out corruption and establishing mandatory training on smaller projects provided in both English and Spanish would have a tremendously positive impact on overall safety.

We believe that in order to curb the current trend of increased accidents and impacts of a booming construction market, swift and decisive action is needed by all stakeholders in the construction industry to expand Site Safety Programs, take efforts to develop and increase the available safety professionals, and to mandate valid and legitimate training by all workers.

Good Morning, Council Members. I am Bud Griffis, Professor of Construction Engineering and Management and Director of the Center for Construction Management Innovation at New York University's Polytechnic School of Engineering. In a previous lifetime, I was the District Engineer and Commander of the US Army Corps of Engineering District in New York. At NYU-Poly, we have several construction safety research projects underway.

There have been 4 construction workers killed in NYC in the last 4 weeks, bringing the total in the first 4 months of this year to 9! Nine construction fatalities in 4 months. In this same period, ONE US soldier has been killed in Afghanistan. What is happening is unacceptable. No one should die on a construction project.

Mayor Bloomberg in 2008 in the midst of the series of crane accidents said in a NYT interview words to the effect that if you are going to have construction, you are going to have fatalities. That is wrong! There should be virtually no accidents on construction projects.

I am a member of the safety committee of the National Academy of Construction. The (NAC) is a select organization made up of industry leaders. It consists of members from Industry, Owners, Academia and Government who have distinguished themselves throughout their careers. The NAC has taken it as a major objective to provide assistance to members of the construction industry to help achieve Zero Injury Safety Management Goals and through New York University's Polytechnic School of Engineering, help provide leadership to the NYC industry to embrace and achieve similar goals.

Zero Incident Safety Management works. Companies using zero incident safety management programs have a safety record nearly 10 times better than the construction industry as a whole. The recordable injury rate for the overall construction industry in 2011 was 3.9 accidents per 100,000 workers. Those companies using zero incident safety programs had a rate of 0.4.

There will be a tendency by safety regulating agencies to try to find ways to further regulate the industry and prevent further fatalities. This is a natural tendency because everybody wants to take some action to protect the workers. This won't work. It will only

increase the cost of construction; it will divert attention from what has to be done; and it will add more stress on already over-extended resources

Almost all, if not all, major construction companies in NYC have good safety programs. Some are excellent and already institute many of the principles of Zero Incident Safety Management.

What is lacking, in my opinion after over 55 years in this business, is standard of commitment, especially in the non-union sector of the industry. By lack of standard of commitment, I mean having the desired safety culture permeate throughout each organization to all involved parties. Safety leadership must flow through the senior management, to PM's, superintendents, foremen, workers, trade subcontractors and their superintendents, foremen and workers, and be visible to the public, the media including the press, as well as the DOB, DDC, and other agencies.

Leadership does not mean lip service and posters, it means doing everything necessary to make sure every worker gets home safely. It means that every supervisor is a safety officer and must constantly remind workers to stay safe.

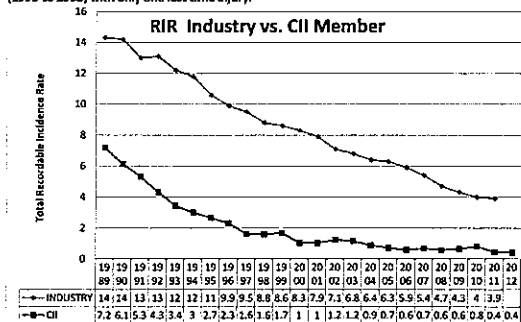
I am delighted that last Wednesday, the BTEA Board insisted that they take the lead in stopping these nonsensical accidents by adopting zero incident safety programs. While these contractors and construction managers are only a part of the construction industry of New York, all of the others including the non-union contractors will follow suit. Nobody in the industry wants a worker to get hurt.

As we move towards instituting the 9 points of a Zero Incident Safety Program in all organizations, these fatalities will stop.

Madam Speaker, this concludes my remarks. Thank you for this opportunity.

Supplemental Data to the Testimony

[1993 to 2003] with only one lost time injury.



The Plan.

To start improving the safety culture of members of the AEC industry in New York City, let's start by implementing the 9 strategies, as stated by CII, necessary to achieve Zero Injuries Safety Management.

The factors are:

Demonstrated management commitment.

Staffing for safety.

Planning: pre-project and pre-task.

Safety education: orientation and specialized training.

Worker involvement.

Evaluation and recognition with rewards.

Subcontract management.

Accident and incident investigation.

Drug and alcohol testing.

The implementation of these 9 strategies by all contractors and subcontractors in New York City is going to require some special incentives as well as buy-in by the members of the various labor unions operating in the City.

Testimony of Mónica Velásquez, daughter of Delfino Velásquez

Good morning everyone, my name is Monica Velasquez and I am a member of El Centro del Inmigrante, a worker center in Staten Island. My father Delfino Velásquez was killed last year in November due to unsafe workplace conditions when the ceiling of a car dealership he was demolishing, collapsed. According to records at the NYC Buildings Department, my father's employer, Formica Construction, did not have a valid permit to work at Dana Ford dealership.

OSHA, the Buildings Department and District Attorney Donovan's office have launched investigations into the collapse. Our campaign, Justice for Delfino, is demanding that District Attorney Donovan immediately file criminal charges against Formica Construction and that OSHA and the Buildings Department immediately issue the maximum penalties available to these criminal contractors.

This is not the first case of a death at Formica. One of the company's owners, Ken Formica, pleaded guilty to criminally negligent homicide in 2007 when Lorenzo Pavia, a 39-year-old man from Staten Island was killed after being asphyxiated in a trench. Even though Mr. Formica admitted he knew the trench was unsafe, he was only sentenced to an alternative program where he served just 16 weekends in jail. That is a joke.

After the death of my father, Formica Construction had its license renewal denied by the Department of Consumer Affairs, but a judge overturned the decision and Formica's license was renewed in 2009. Our campaign demands that the DOB and OSHA act quickly and that the District Attorney's office immediately file charges and apply a sentence corresponding to the crime – we do not want another 16-weekend sentence.

My family misses my father every day. The last five months have been a nightmare. I have a little brother with special needs and I'm worried about the stress that my mother lives with.

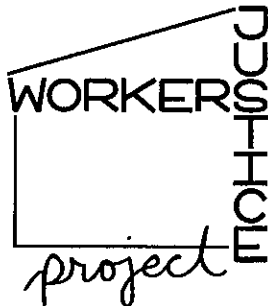
We mourn, but we are also fighting to get justice for my father. We also believe that the city has to take responsibility to protect workers and ensure that any City agency does not approve licenses to criminal contractors.

TESTIMONY

**Day Laborer Centers- Fair Wages and Workplace Safety
for all New Yorkers**

Presented to
New York City Council, Committee on Housing and Building
Hon. Jumaane D. Williams, Chair
Monday, May 11, 2015

Prepared by:
Ligia Gualpa
Worker's Justice Project (WJP)
Proyecto Justicia Laboral



Good afternoon, Chairperson Jumaane D. Williams, and the distinguished members of the New York City Council Committee on Housing and Buildings. On behalf of the Worker's Justice Project (WJP) I want to thank you for this opportunity to testify today on construction safety and importance of creating safe and fair working conditions for all New Yorkers. My name is Ligia Guallpa, I am Executive Director of WJP.

The *Worker's Justice Project* is a worker rights organization dedicated to win better working conditions for day laborers, immigrant construction workers and domestic workers. The WJP initiated its work as a response to the exploitative labor practices committed against Latino immigrant workers. These workers operate in the city's underground economy as day laborers, construction workers or domestic workers and do not receive the protection other workers might received from traditional labor unions.

Today I will focus primarily on our experience and work with day laborers and immigrant Latino construction workers who are building New York City without protection and representation. Every day, we as an organization have witness how working fathers, sons and grandparents get injured while laboring in construction and many times are forced to put their lives on the line to bring home a paycheck. For instance, Vidal Sanchez-Roman, who live and work in our community died after falling from six-story commercial building owned by Neptune Group LLC in Brighton Beach, Brooklyn. Vidal Sanchez-Roman is one of the many working fathers whose lives were stolen from us by unethical employers who put a price on their lives. Many more get injured because their employers refuse to provide them training, basic protection equipment and implement safety measures. I am here because it is time for our city to say "Not one more death and not one for injured." It's time to demand stronger safety standards in the workplace and to hold employers accountable for putting these lives on the line.

As part of our work organizing day laborers and immigrant construction laborers, and as response to the lack of OSHA inspectors, WJP implemented a new program names safety Liaison, which trains workers leaders of our organization on safety standards and through the day laborer center we enforce these standards by monitoring job sites, educating workers and responding to health and safety hazards. In 2014 alone, we had trained 300 day laborers in

OSHA-10 in Construction, engaged 50 employers providing health and safety equipment and demanded specific workplace standards. However, this is not enough.

There are currently 8,000-10,000 day laborers in New York City. Day laborers often experience rampant wage theft and face pervasive construction accidents, workforce hazards, lack of access to workforce development training and lack of infrastructure which are topics we can discuss more at length at another hearing.

We believe that our city legislators can take a series step to prevent more deaths and injuries. We must be criminalizing employers responsible for these deaths and stop issuing licenses to these employers who should not be building in our city.

In addition, today we are also asking members of the City Council to support the Day Laborer Workforce Initiative with an allocation of 365,000 in the FY16 budget. The Day Laborer Workforce Initiative supports the expansion and development of Day Laborer Centers across the five boroughs., specifically the Bay Parkway Community Job Center and Williamsburg Community Job Center, in Brooklyn (run and operated by Worker's Justice Project), NICE Worker's Center in Queens (run and operated by New Immigrant Community Empowerment), and Staten Island Community Job Center. With expanded support these workers' centers can not only continue to assist workers to be trained in Health and Safety, but can help guarantee these workforce has protection and representation. The Day Laborer Workforce initiative will support the expansion of these three Day Laborer Centers, which will provide dignified, physical space for day laborers, curtailing wage theft, also providing much needed workforce development and health and safety training and resources.

We hope to count on your support on holding these employers accountable for these deaths, but also for our Day Laborers Centers.



Testimony by Charlene Obernauer, NYCOSH Executive Director

City Council Hearing re: Construction Safety

May 11, 2015

All workers' lives have value, and all workers should be able to leave their loved ones knowing that they will return home safely at the end of the day. However, New York's construction workers, particularly immigrant and non-union workers, are more likely than workers in any other economic sector to die on the job.

New York had the nation's sixth lowest construction worker injury rate from 2000 to 2012, but construction still remains a very hazardous occupation. While the construction industry's overall fatality rate dropped from 11.5 deaths per 100,000 workers in 2004 to 8.6 in 2013; in New York, construction work accounts for less than four percent of employment, yet the sector represents nearly 20 percent of occupational fatalities in the state.

Today, we released a report, called *The Price of Life*, around construction safety in New York State. This report focuses on construction work at elevated heights because it is especially hazardous, and contractors are more likely to violate health and safety standards in this category. Additionally, as construction and insurance interests have stepped up their efforts to weaken New York's Scaffold Safety Law, this report shows the necessity of "special protections" for workers who perform some of the most dangerous jobs in the country: construction workers working at elevated heights. Sixty-five percent of construction workers work on a scaffold, where they are at risk of falling. Other construction workers face fall hazards such as open stairways and elevator shafts. In recent years, falls from working at elevated heights accounted for nearly half of construction fatalities in New York; and recently in 2015, there have been a number of such injuries and fatalities.

All workers—from construction workers to nurses, teachers to farmworkers, office managers to retail workers—deserve a safe and healthy workplace. I'd like to go through the summary of findings from the report, to highlight the risks that construction workers face on the job, and to urge the City Council to continue to investigate this issue further.

- 1) ***Construction work at an elevation is especially hazardous.*** Roofing and siding workers take extreme risks to do their everyday jobs. In 2011 and 2012, falls to a lower level comprised 49 percent of construction fatalities in New York.¹ Additionally, 71

percent of construction accidents with injuries reported to the New York City Buildings Department between 2008 and 2013 were height-related — workers who work at an elevation are at an increased risk. Eighty percent of roofing and siding contractor inspections between 2010 and 2012 resulted in violations, compared to two-thirds in all construction inspections. Contractors who violate health and safety regulations are often at fault when an employee is injured or killed.

- 2) ***Nonunion employers are the least safe.*** In 2012, 79 percent of fatal fall construction accidents investigated by OSHA in New York occurred at nonunion construction sites. Ninety percent of construction companies in OSHA's Severe Violator Enforcement Program (SVEP) in New York are nonunion. According to OSHA, the SVEP focuses "on recalcitrant employers that endanger workers by committing willful, repeat or failure-to-abate violations."
- 3) ***NYC Department of Housing Preservation and Development continues to do business with contractors that have extraordinary high violation rates.*** Eighty-nine percent of contractors that are currently working on affordable housing projects and are flagged for "enhanced review" by the New York City Department of Housing Preservation and Development, had OSHA violations.
- 4) ***Construction employers in New York routinely violate OSHA safety standards.*** Two-thirds of OSHA construction inspections in New York between 2010 and 2012 resulted in citations for "serious" safety violations. Most of the violations were of safety requirements for scaffolds, ladders, and fall protection equipment. OSHA defines a "serious" violation as one which could "cause an accident or illness that would most likely result in death or serious physical harm."
- 5) ***When a worker dies in a construction site fall, OSHA almost always finds there were safety violations.*** In 2012, serious violations were cited in 89 percent of the fatal height-related construction accidents OSHA investigated in New York. Violations of safety standards specifically intended to prevent height-related injuries were cited in 68 percent of these fatalities.
- 6) ***Immigrant and Latino workers are disproportionately at risk of dying in construction.*** Latinos made up 25 percent of NYS construction workers, but represented 38 percent of construction fatalities in 2012.ⁱⁱ Additionally, in 60 percent of OSHA fall from elevation fatalities, the worker was immigrant and/or Latino.ⁱⁱⁱ Risks are associated with nonunion employers, lack of training and language challenges.
- 7) ***OSHA does not have adequate resources to make construction safe.*** Nationally, OSHA inspects fewer than four percent of construction sites. In New York, there are only 71 inspectors to monitor all worksites in all industries, so most construction sites are not inspected. When OSHA does inspect and cites violations, the penalties they assess are so low, they are a mere slap on the wrist, even if a worker died. The average penalty in fatal height-related construction accidents in New York in 2012 was only \$7,620.

While we have recommendations at the Federal and State level, which include increasing funding for OSHA and the fines that go towards employers, and protecting the Scaffold Safety Law, we are also calling for repeat and willful violators of health and safety laws must be prosecuted under existing criminal statutes and should pay into a special fund to increase inspections.

Given the limited number of OSHA inspectors and low fines for violators, many employers do not take OSHA violations seriously. Local district attorneys, attorney general's offices, and federal prosecutors must be more proactive in identifying criminal cases against employers who regularly show disregard for the lives of their employees. One egregious example of criminal negligence by Formica Construction Company, which you will hear testimony on today, makes the case for increasing the number of workplace safety cases that are flagged for criminal investigation.

Additionally, fines paid by repeat and willful violators should go towards increasing the number of inspectors and inspections, so that some of the most egregious violators will help pay towards making New Yorkers safer.

Many of the recent fatalities that occurred in New York City were not only at non-union workplaces, but they were with contractors who had a history of OSHA violations. This is a problem that, I believe, can be addressed.

Thank you for the opportunity to testify.

ⁱ U.S. Bureau of Labor Statistics data.

ⁱⁱ U.S. Census American Community Survey "2006-2010 Employment Opportunities Tabulation"

ⁱⁱⁱ The Center for Popular Democracy, *Fatal Inequality. Workplace Safety Eludes Construction Workers of Color in New York State*, October 2013.



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Build Up NYC

Build Up NYC is an alliance of working men and women, committed to good jobs and responsible development. Working together, we are advocating for a stronger and more vibrant middle-class through safe and responsible development.

TOWARDS A VIBRANT MIDDLE CLASS

Build Up NYC is committed to a growing and sustainable middle class. We can only grow a stronger middle class if workers have jobs with good wages, affordable health insurance and retirement benefits. Access to training and apprenticeship programs creates opportunities for advancement and real careers.

The race to the bottom in the construction industry hurts workers and communities. When contractors compete by cutting wages and benefits, workers lose the ability to support their families and businesses in their communities and responsible contractors are at an economic disadvantage.

Build Up NYC is fighting for good jobs for workers and a level playing field for responsible employers.

A SAFE WORKPLACE IS A SAFER CITY

Construction is one of the most dangerous industries in New York City. Cutting corners and lack of proper safety practices can lead to more accidents, injuries and deaths in and around construction sites.

Build Up NYC is working to make sure every construction worker has access to comprehensive training in order to prevent accidents and injuries at the worksite and in our city. Build Up NYC is fighting for a safer New York.

RESPONSIBLE DEVELOPMENT, STRONGER COMMUNITIES

Developers who construct and maintain buildings in New York have a responsibility to the communities and workers who make their success possible.

Developers and employers have a responsibility not only to make sure the construction, operations, maintenance and security jobs are good jobs, but to support a 21st century infrastructure.

Build Up NYC is working to make sure employers and developers do their fair share to maintain and upgrade the infrastructure that we all count on.

It's time to stand up and fight back
Build Up NYC is fighting for the High Road on Economic Development



— Good Jobs —
Responsible Development

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Testimony of Tamara Brummer before the New York City Council Housing and Buildings Committee

May 11, 2015

Good morning, council members, and thank you for the opportunity to testify before you today and thank you for holding a hearing on construction safety.

My name is Tamara Brummer. I am here representing Build Up NYC – a campaign fighting for safe, good jobs for construction workers, hotel workers as well as cleaning, maintenance and security workers.

We join with other groups here today who are standing up for those workers who don't have the opportunity to work for responsible employers who provide the training and safety equipment necessary and where the workers have a voice on the job.

As you will hear from our testimonies today, construction work is one of the most dangerous jobs there is. Construction workers disproportionately make up the workplace fatalities in New York City. In 2012, according to OSHA statistics, 75% of all workplace fatalities were construction related. 72% were on construction sites where employers did not participate in state approved training or apprenticeship programs and 52% of the fatalities involved immigrant workers or non-english speaking workers.

We are proud of our successes in reaching agreements with developers at the Empire Outlets on Staten Island and Astoria Cove in Queens that will result in good jobs with employers that participate in state-approved training and apprentice programs but our work is not done.

We have been engaged in an effort at Brooklyn Bridge Park, where the Pierhouse joint venture project of Starwood Capital and Toll Brothers is being built by irresponsible contractors. The Department of buildings has shut the site down on numerous occasions due to safety violations on the job and now a judge has issued a temporary restraining order stopping further construction on the site because the developers are building higher than the plans filed with the DOB allow.

May 11, 2015

Construction accidents and fatalities not only take a human toll, but also impose costs to the economy. The advocacy group Public Citizen issued a report in November 2013 called “The Price of Inaction – The Cost of Unsafe Construction in New York City” which is included in the information we are submitting. They found the cost to the New York City economy of construction fatalities was \$186.3 million for 2011 and 2012, the 2 years they studied.

OSHA recently issued a report called “Addition inequality to injury: The costs of failing to protect workers on the job”. This report is also included in our materials and specifically addresses the problem of the costs of misclassification of workers in the construction industry.

Finally, we are including a report in the materials we are submitting by the Center For Popular Democracy issued in October 2013, called “Fatal Inequality – Workplace Safety Eludes Construction Workers of Color in New York State,” which focusses on the disproportionate share of construction accidents on Latino and immigrant workers.

New York City provides millions of dollars each year to real estate developers in the form of subsidies, tax breaks and other benefits, yet there is no requirement that the developer create safe jobs. We urge the council and the administration to ensure that any developer who receives public benefits be required to use contractors and subcontractors who participate in state approved training and apprenticeship programs.

Thank you



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Testimony of Carole Raftrey before the New York City Council Housing and Buildings Committee

May 11, 2015

Good morning, councilmembers. My name is Carole Raftrey and I'm here to testify as an activist with Build Up NYC, a coalition of construction, building and hotel maintenance and operations workers, fighting for good jobs and responsible development.

Some real estate developers and contractors are in a race to the bottom, cutting corners on safety practices to save time and money. In reality, building safely the first time can ensure a building goes up on schedule with less maintenance and repairs needed over time.

I have been a Stone Derrickman for 21 years and an instructor at our training center for five years. Stone derrickmen are the workers who install exterior facades of stone on buildings of all sizes across the city. Our work involves precise calculation of weights and safe operation of cranes and rigging. I am also proud to be an elected officer in my union and a resident of Brooklyn.

I grew up looking up to my father, a stone derrickman himself, who worked hard to give me and my siblings a good, middle class life. I studied communications at SUNY New Paltz, but had trouble finding a job when I came back my home. My father's union happened to be recruiting for a new apprenticeship class, and much to his dismay, I applied to join the union.

I started working with my dad and he instilled in me the importance of working well and working safe. He inspired me to become an instructor and now nearly 100 apprentices later, I've been appointed to be the director of our training school.

Two weeks ago, one of my apprentices shared with me an experience he had over the winter. He was working at the edge of a building when he slipped on the ice and fell off the building into his harness. He told me that as he stepped onto the icy ledge, he thought of me nagging him about safety, and he secured his harness to the building.

May 11, 2015

Saving that one life makes all the extra training we do in our apprenticeship program worth every minute. We teach our apprentices how to operate rigging machines, wire rope, and all the other equipment we use.

Thank you



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Testimony of Marco Alcocer before the New York City Council Housing and Buildings Committee

May 11, 2015

Good morning, council members, and thank you for the opportunity to talk about construction safety.

My name is Marco Alcocer and I am one of the laborers currently working on repairs to City Hall. You may have all noticed coming in that there is scaffolding outside. We're working to keep City Hall beautiful and, most importantly, a safe structure for all New Yorkers to visit.

I enjoy seeing our council members and our mayor come to work every day. And I am proud that my skills and the care I put into my work have are being used to preserve such a historic building.

Today I am testifying as an activist with Build Up NYC, an organization that brings construction workers together with building and hotel workers. We often get a chance to exchange stories and talk about the importance of training and apprenticeship programs made available to us in our different fields.

I've been a member of Laborers Local 79 for 17 years now, but I used to work nonunion before then. I can tell you many stories about old friends who lost hands and even eyes because of the lack of training on nonunion construction sites.

I was lucky to have brought with me some construction experience from Ecuador. Training was simply watching your friend do the work, and if you happened to have a small accident it was best to hide it or risk being sent home unpaid.

One time, we were doing demolition of a building's interior and one of my coworker's was knocking down a wall. When you do this, the wall is supposed to fall away from you. Instead, the wall fell on top of him. We rushed over to help him with what little First Aid skills we had. No one called an ambulance. He was back to work two days later as if nothing happened. We don't know if he needed further medical care or therapy because he didn't have access to medical care.

May 11, 2015

This accident I believe could have been prevented had these workers been provided with training and employers who are held accountable to safety standards and comply with the law. Accidents happen, but only training can ensure everything is being done to prevent a disaster. We have to find a way to keep unscrupulous and callous employers from continuing to get work. We must continue to raise the bar in our industry.

Thanks again for giving me the opportunity to speak today.



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Testimony of Dave Ramsey before the New York City Council Housing and Buildings Committee

May 11, 2015

Thank you, council members, for having us here today. My name is Dave Ramsey and I am a painter by trade and a Navy veteran.

I'm here on behalf of Build Up NYC, an alliance of more than 200,000 hard working men and women committed to good jobs and responsible development in New York City.

I am an activist with Build Up because I believe all workers should have safe jobs and good jobs. There is a construction site just a few short blocks from where I live where there have been too many accidents. Starwood Capital Group and Toll Brothers are building a luxury residential apartment building in Brooklyn Bridge Park called the Pierhouse.

I'm concerned because 10 stop work orders have been issued by the Department of Buildings for site safety violations in addition to fines since the shovel first went in the ground. Workers have been injured and no one seems to do a thing about it.

Just some weeks ago, the concrete contractor at the Pierhouse, Trevor Loftus of Kenry Contracting, died in an unrelated Midtown crane accident. He was crushed to death by a crane while checking a mechanical malfunction.

And an accident that took place at the Pierhouse on October 23, 2014 where the worker claims to be permanently injured, has resulted in pending litigation before New York County Supreme Court alleging negligence on behalf of the Brooklyn Bridge Park Corporation and Hudson Meridian, the general contractor.

I have testified before the Brooklyn Bridge Park Corporation for two years now about the lack of transparency and their failure to provide oversight at the construction of the Pierhouse.

May 11, 2015

We ask that this Council and the mayor's administration stand up for these workers and my community. The Brooklyn Bridge Park Corporation continues to deny this construction site much needed oversight.

We cannot wait for another stop work order to be issued or for another worker to be seriously injured before the City of New York intervenes. Thank you



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Testimony of Juan Hoy before the New York City Council Housing and Buildings Committee

May 11, 2015

Good Morning Committee Members. My name is Juan Hoy, I am an Elevator Constructor. Thanks to the training from my Apprenticeship program, I am here today to testify before you.

In June of 2010 I was working at One World Trade Center when I fell from the 54th floor. I was fortunate, as part of my apprenticeship training I learned how to properly use my safety harness and how to hook it up. Due to the fact that I work for a responsible employer, I had been issued this equipment free of charge. Many workers are not so fortunate.

As I dangled over the open hoistway, I was dazed and stunned from the fall. My awareness of the potential hazard and the training that I have received prevented that from being a fatal fall.

As my co-workers pulled me out of the hoistway to safety I was grateful that I would go home to my family that night. I would not be a newspaper article or a fatal statistic. I had been trained.

I brought my safety equipment here today so you could see it for yourselves. Those of us who work for responsible employers get this equipment for free.

Another thing that my apprenticeship training through the National Elevator Industry Education Program taught me was if I was stuck on a platform or car top "do not try to jump to the nearest floor." Wait and help will arrive. Had Christian Ginesi been trained, he would've known this too. And he still may have been with us today.

On October 24, 2013 an article ran in the New York Daily News highlighting a report that stated while only 41% of all construction workers in New York City identify themselves as Latino, 74% of construction fatality victims are Latino. The article then goes on to say that "contractors are not taking the simple steps to protect their workers".

May 11, 2015

My life was saved by my apprenticeship training and my equipment. Workers exposed to the same conditions and hazards, should all receive the same training. The training that I have received could have saved the life of Christian Ginesi last Tuesday. I would be happy to answer any questions you have. Thank you.



The Price of Inaction

The Cost of Unsafe Construction in New York City

Part of a Series of City and State Reports

Acknowledgments

This report was written by Keith Wrightson, Worker Safety and Health Advocate for Public Citizen's Congress Watch division, and edited by Congress Watch Research Director Taylor Lincoln. Research assistance was provided by Tianqiu Zhou and Siya Hegde, Worker Safety and Health Intern(s).

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Contents

Executive Summary	4
I. Introduction	5
II. Data and Methods	8
III. Dangerous Work	9
IV. Quantifying the Costs of Fatalities in New York City	11
V. Insufficient Resources	12
VI. The Collapse	12
VII. Apprenticeship Training	13
VIII. A Decent Proposal	14
IX. Conclusion	15
Appendix A Calculations of Occupational Fatal Injuries	16

Executive Summary

During 2011 and 2012, 1,513 construction workers lost their lives on the job in the United States, more than any other industry. Thirty-six of these fatalities occurred in New York City.

New York City could reduce the risk of construction industry fatalities by requiring the use of registered New York State apprentices on all publically assisted development and construction projects, including those financed through public benefit corporations. *Intro 1169-2013*, a bill introduced in the New York City Council, would seek to improve safety by closing gaps in requirements for employers to maintain apprenticeship programs. Safety training is the cornerstone apprenticeship programs. The benefits of these programs are shared by industry, workers and taxpayers.

Our review of the construction industry in New York City for the years 2011 and 2012 found:

- In 2011 and 2012, 36 New York City construction workers lost their lives on the job;
- Three percent of New York City's workforce is composed of construction workers, but construction worker deaths represent 24 percent of all workplace fatalities in the city;
- Seventy-two percent of the fatalities occurred on job sites where workers did not participate in state-approved training and apprenticeship programs;
- Fatal construction injuries in New York City in these years cost the New York City economy \$186.3 million;
- It would take the Occupational Safety and Health Administration approximately 107 years to inspect each workplace in New York State once; and
- New York City provides about \$2 billion a year in the form of loans, tax incentives, grants and other credits to public benefit corporations, which are subject to reduced safety and training requirements.

I. Introduction

Baby boomers are retiring and are taking with them a lifetime of skills and expertise.¹ This is of particular concern in the construction industry, in which generations of workers have learned the skills they need from elders who pass their knowledge down through apprenticeship. Nearly three-fourths of construction firms across the country report they are having trouble finding qualified craft workers.² Beyond the technical skills learned through apprenticeship, younger workers also learn how to conduct their jobs safely.

The Occupational Safety and Health Administration (OSHA) has reported that construction is one of the most dangerous occupations in the United States. For example, during 2011 and 2012, fatalities due to workplace accidents claimed the lives of 1,513 construction workers, making construction the most deadly occupation in the United States.³ New York City has not avoided these types of tragedies. During 2011 and 2012, 36 construction workers in New York City lost their lives on the job.

This paper highlights the economic burden of occupational fatalities in New York City's construction industry by estimating the direct, indirect, and quality of life costs resulting from fatal injuries. In 2011 and 2012, fatal construction injuries in New York City cost the New York City economy \$186.3 million, according to a Public Citizen analysis of a 2004 research paper that quantifies the costs of worker fatalities. (The figures in this paper are adjusted to 2013 dollars).

One way for New York City to address the economic burdens caused by fatal injuries is by taking steps to reduce construction accidents. A significant and inexpensive step the city could take is to use its power as a chief purchaser of construction services to insist on high-standards on all construction and development projects to which it provides financial assistance. Such standards should apply to developers and contractors who receive tax incentive financing from entities categorized as "public benefit corporations."

During the last 10 years, New York City has disbursed an average of \$7.9 billion per year from its capital asset budget, which funds the majority of construction projects that the city

¹ *For Employers-Registered Apprenticeships-Good For Business*, WASHINGTON STATE DEPARTMENT OF LABOR AND INDUSTRIES, <http://1.usa.gov/17zXaGY> (viewed on October 25, 2013).

² Press Release, Associated General Contractors of America, *Seventy-Four Percent of Construction Firms Report Having Trouble Finding Qualified Workers Amid Growing Labor Shortages* (Sept. 4, 2013) <http://bit.ly/1fzM44N>.

³ U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, ECONOMIC NEWS RELEASE, *CENSUS OF FATAL OCCUPATIONAL INJURIES SUMMARY, 2012* (2013), <http://1.usa.gov/7KHMh>.

finances through conventional means.⁴ But every year, New York City also provides an average of about \$2 billion a year to public benefit corporations in the form of loans, tax incentives, grants and other credits.⁵ These corporations provide about 6.8 percent of total private employment in New York City.⁶ Public benefit corporations are typically tasked with fostering economic development, often through construction projects.⁷ For example, the New York City Economic Development Corporation (NYCEDC) in 2012 distributed \$1.2 billion in city assistance (such as loans, grants and tax benefits) to help finance 607 projects. These projects, the NYCEDC reports, received \$21.8 billion in private investment.⁸

Although public benefit corporations receive loans, tax incentives, grants and other things of value from the city government, they are not required to abide by safety standards and other requirements that govern conventional city contractors. For instance, public benefit corporations are not required to abide by certain safety standards in the construction of buildings of fewer than 10 stories, nor are they required to hire contractors who participate in New York State registered apprenticeship programs.⁹

Additionally, the public disclosures that public benefit corporations are required to make do not reveal the names of the individuals who receive assistance. For example, New York City's Industrial and Commercial Abatement Program provides the addresses of recipients, but not the name of recipient or the amount received.¹⁰

New York City should adopt a policy of requiring construction contractors to establish state-accredited apprenticeship training programs to be eligible to compete for any public benefit corporation contract.

New York City has long been at the forefront of safety reforms. Specifically, in 2008, the city required construction workers to become certified under an OSHA training program in

⁴ NEW YORK CITY INDEPENDENT BUDGET OFFICE, UNDERSTANDING NEW YORK CITY'S BUDGET: A GUIDE TO THE CAPITAL BUDGET 1 (June 2013), <http://1.usa.gov/17ZWtV>.

⁵ FISCAL POLICY INSTITUTE, GOOD JOBS NEW YORK, NATIONAL EMPLOYMENT LAW PROJECT, AN OVERVIEW OF JOB QUALITY AND DISCRETIONARY ECONOMIC DEVELOPMENT SUBSIDIES IN NEW YORK CITY 1 (February 2011) <http://bit.ly/1arbzro>.

⁶ NEW CITY ECONOMIC DEVELOPMENT CORPORATION, ANNUAL INVESTMENT PROJECTS REPORT PURSUANT TO LOCAL LAW 62-FY 2012 VOLUME I 2 (Jan. 31, 2013), <http://bit.ly/17cdZ6T>.

⁷ FISCAL POLICY INSTITUTE, GOOD JOBS NEW YORK, NATIONAL EMPLOYMENT LAW PROJECT, AN OVERVIEW OF JOB QUALITY AND DISCRETIONARY ECONOMIC DEVELOPMENT SUBSIDIES IN NEW YORK CITY 1 (February 2011), <http://bit.ly/1arbzro>.

⁸ NEW CITY ECONOMIC DEVELOPMENT CORPORATION, ANNUAL INVESTMENT PROJECTS REPORT PURSUANT TO LOCAL LAW 62-FY 2012 VOLUME I 2 (Jan. 31, 2013), <http://bit.ly/17cdZ6T>.

⁹ *Id.* at 3.

¹⁰ BARNES K., AND KELLERMAN J., ALIGN, THE 7,000,000,000 WAGER: NEW YORK STATE'S COSTLY GAMBLE IN ECONOMIC DEVELOPMENT (May 2013), <http://bit.ly/16GOLIX>.

order to be eligible to work on “major buildings.”¹¹ Also during 2008, New York City began requiring all new rigging foremen to complete 32 hours of training to safely perform the duties of an on-site supervisor.¹² In 2009, the city enacted a several laws to ensure that asbestos abatement is conducted safely by reforming the ways that asbestos projects are filed, approved and inspected.¹³

In neighboring Nassau County, the Nassau County Industrial Development Agency (a public benefit corporation) requires prospective contractors to participate and use registered apprentices as a part of their conventional and subsidized development and construction work.¹⁴ Considering New York City has been willing to implement other bold construction safety reforms, it should lead in this area as the neighboring counties do.

This report proposes requiring public benefit corporations maintain the higher standards that presently apply to City development and construction projects. Development contractors performing services for public benefit corporations should be required to participate in New York State registered apprenticeship programs in while. Additionally, requirements should be placed on developers and contractors as a part of the public benefit corporation financial assistance awarding process. Violations of labor, safety and health or tax laws should be publicly disclosed.

¹¹ The term “Major Buildings” is defined in Chapter 33 of the NYC Building Code, specifically, section 3310.2. See <http://on.nyc.gov/Y7bkKI>.

¹² *Safety Training Classes-32-Hour Rigging Foreman Training*, DLB TRINITS INC. <http://bit.ly/1csUQpl> (viewed on Oct.31, 2013).

¹³ NEW YORK CITY OFFICE OF THE MAYOR MICHAEL BLOOMBERG, ASBESTOS TECHNICAL REVIEW: A GUIDE TO THE NEW YORK CITY ASBESTOS REGULATIONS FIRST EDITION (October 2009) <http://on.nyc.gov/1h3VxYf>.

¹⁴ NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY, *Prevailing Wage Policy, 05-429695.1* (2008) <http://bit.ly/HQ84in>.

II. Data and Methods

This paper's methodology draws on the work and data from the Bureau of Labor Statistics (BLS); the AFL-CIO's annual report *Death on the Job: The Toll of Neglect*; and a 2004 study by Waehrer et al. that quantifies the costs of occupational injuries.

The findings of Waehrer et al. are used in concert with recent data on the number of construction fatalities and consumer price index data to estimate the inflation-adjusted costs of construction fatalities in New York City for recent years. Appendix A explains how Waehrer et al. arrived at estimated costs, and how we adjusted such figures to account for recent data.

Although this report invokes the costs of fatalities to buttress the case that the New York City Council should take steps to reduce the incidence of workplace accidents, this should not be interpreted as an endorsement of the use of cost-benefit analysis as a prerequisite for moving forward with public safety measures. Policymakers who are beholden to cost-benefit analysis require government agencies to demonstrate that the quantifiable monetary benefits of any proposed action would outweigh the costs. Adherence to this philosophy inhibits problem-solving for numerous reasons. For instance, the formulas invoked for cost-benefit analyses invariably overstate the costs and understate the benefits. On the cost side, they often ignore the ability of industry to develop less-expensive solutions through innovation and economies of scale. On the benefits side, they typically do not permit agencies to place a value on protecting against likely harms that are not quantifiable. Ultimately, bowing to cost-benefit analysis prevents government agencies from implementing feasible solutions to major problems.

III. Dangerous Work

Construction is dangerous work. The Occupational Safety and Health Administration (OSHA) has reported that construction is one of the most dangerous occupations in the United States. In 2011, fatalities due to workplace accidents claimed the lives of 738 construction workers, representing 16 percent of total workplace fatalities.¹⁵ In 2012, fatalities due to workplace accidents claimed the lives of 775 construction workers, representing 18 percent of total workplace fatalities.¹⁶ Of the 20 construction fatalities in the city in 2012, 72 percent occurred on job sites where workers did not participate in state approved training and apprenticeship programs.¹⁷

Many different issues lead to fatal injuries in the construction industry. Accidental falls and contact with objects and equipment are two of the leading causes of fatal injuries, and oversight agencies have failed to do their part to reduce the frequency of such tragedies. "Despite efforts to reduce the risk of occupational injuries and illness in construction, the [construction] industry continues to account for a disproportionate share of work-related injuries and illnesses in the United States,"¹⁸ authors Geetha Waehrer et al. wrote in a 2007 paper that assessed the costs of construction-related fatalities.

On February 10, 2012, an unidentified worker died while working in Manhattan at a NYCEDC subsidized building that has received more than \$700,000 in financial assistance during the last 10 years.¹⁹ According to OSHA, an employee of Star Wars Technology Systems Inc. was killed while installing heat control cabling after falling off a ladder and hitting his head on the concrete floor.²⁰ Star Wars Technology Systems Inc. was fined a paltry \$8,400 for placing its employee in harm's way.²¹

The leading causes of worker deaths on construction sites are falls, electrocution, being struck by an object, and being caught in or between an object. In 2011 these "Fatal Four"

¹⁵ AFL-CIO, DEATH ON THE JOB: THE TOLL OF NEGLECT, 48 (2013), <http://bit.ly/1hxniWM>.

¹⁶ *Number and Rate of Fatal Occupational Injuries, by Industry Sector, 2012*, U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, 14 (2013), <http://1.usa.gov/16PeVnk>.

¹⁷ *NYC Construction Safety Fact Sheet*, BUILD UP NYC, <http://bit.ly/1bTfXvU>, (viewed on Nov. 4, 2013).

¹⁸ Waehrer G, Dong X, Miller T, Haile E and Men, Y. *Costs of Occupational Injuries in Construction in the United States*. 39 ACCIDENT ANALYSIS AND PREVENTION 1259-1266 (2007).

¹⁹ *Database of Deals*, GOOD JOBS NEW YORK, <http://bit.ly/1iKIQNh> (viewed on Nov. 5, 2013)

²⁰ Press Release, UNITED STATES DEPARTMENT OF LABOR OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, *Weekly Summary (Federal and State data tabulated week ending April 21, 2012)* <http://1.usa.gov/1b9EKKt>.

²¹ UNITED STATES DEPARTMENT OF LABOR OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, *Inspection: 191455.015-Star Wars Technology Systems, Inc.* <http://1.usa.gov/1b5tUa5> (viewed on Nov. 5, 2013).

were responsible for 57 percent of construction worker deaths nationwide.²² Eliminating the Fatal Four would save 410 workers' lives in America every year.²³

In New York City a similar scenario has unfolded. In 2011 there were 16 construction fatalities, of which:

- Eight workers died from slips, trips and falls, and
- Five workers were killed due to contact with an object or equipment, and
- Three workers died due to unclassified hazards.²⁴

Of the 72 fatal work injuries in New York City in 2011, 22 percent occurred in the construction industry.²⁵

In 2012, there were 20 workplace deaths among construction workers.²⁶ These fatal injuries were classified as:

- Eight deaths from slips, trips and falls;
- Eight deaths from crushing/collapse;
- Four from contact with an object or equipment.²⁷

Of the 75 fatal work injuries in New York City in 2012, 27 percent occurred in the construction industry.

In sum, in 2011 and 2012, 36 New York City construction workers lost their lives on the job. Construction workers compose three percent of New York City's workforce, but construction worker deaths represent 24 percent of all workplace fatalities in the city.

²² *Commonly Used Statistics, Construction's Fatal Four*, U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS 2011 (viewed on Oct. 22, 2013), <http://1.usa.gov/T1loR8>.

²³ *Id.*

²⁴ *Fatal Occupational Injuries by Selected Demographic Characteristics and Major Events or Exposures, New York City 2011*, U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, <http://1.usa.gov/17vGKl8>.

²⁵ *Fatal Work Injuries in New York City 2011-2012, Table 2*, U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, <http://www.bls.gov/ro2/cfoi9660.htm>.

²⁶ *Id.*

²⁷ *NYC Construction Deaths on the Rise*, PAINT SQUARE (July 8, 2013), <http://bit.ly/16pLYPV>.

IV. Quantifying the Costs of Fatalities in New York City

The Occupational Safety and Health Act of 1970 states “that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments.”²⁸ Days away from work due to fatal occupational injuries are costing employers, workers and New York City taxpayers. Likewise, when occupational fatalities occur, more is lost than a day’s work. The tragedies of workplace deaths devastate families and their surrounding communities.

This report relies on an analysis by Waehrer et al. (2004) coupled with more recent consumer price index data to estimate the costs of occupational fatalities in New York City. Waehrer et al. determined costs of occupational injuries and fatalities by adding up three broad categories of consequences from such incidents: direct costs, indirect costs and quality of life costs. Direct costs include payments for hospital, physician and allied services. Indirect costs refer to victim productivity losses, employer productivity losses and administrative cost associated with an occupational accident. Quality of life costs refer to the value attributed to the pain and suffering of victims and their families.²⁹

The 2004 Waehrer et al. study estimated that the cost of a fatal occupational injury was \$3.2 million (1993 dollars).³⁰ This translates to a cost of \$5.2 million per fatal occupational injury in 2013.

There were 36 fatal construction accidents in New York City in 2011 and 2012. Applying the inflation-adjusted \$5.2 million cost per fatality this translates to a total of \$186.3 million in costs for New York City.³¹

This estimate almost certainly understates actual costs because many of the factors Waehrer et al. included in their calculation have increased at a faster rate than inflation. This is particularly true for health care costs, which are one of the primary direct costs of occupational injuries.

²⁸ Occupational Safety and Health Act, S.2193, 91st Congress, § 2 (1970), <http://1.usa.gov/9gSBuk>.

²⁹ WAEHRER G, LEIGH JP, CASSADY D, AND MILLER T, *Costs Of Occupational Injury and Illness Across States*, 46 JOURNAL OF OCCUPATIONAL AND ENVIRONMENTAL MEDICINE 1084-1095 (2004).

³⁰ *Id.*

³¹ Due to rounding, some category averages may not equal the total sum.

V. Insufficient Resources

In 2012, there were only 113 OSHA inspectors assigned to inspect 592,148 of New York State's workplaces.³² With such insufficient resources, OSHA was only able to inspect 0.93 percent of New York State's workplaces in 2012. At this rate, it would take OSHA approximately 107 years to inspect each workplace in New York State once.³³

OSHA inspected 2,481 construction sites in New York State in 2012, accounting for slightly more than 45 percent of inspections in the state. Of these, 741 concerned New York City's construction industry, representing just under 30 percent of all inspections of construction sites in the state.³⁴ New York City represents forty-two percent of the population of New York State.

Even though OSHA has dedicated relatively significant resources to the construction industry, fatal injuries continue to occur an alarming rate. More needs to be done to deal with this problem.

VI. The Collapse

During 2012, New York City experienced a horrific event when a building under construction collapsed in the Fort Greene neighborhood of Brooklyn. The collapse killed a construction worker.³⁵ Although this incident did not occur on a publicly funded or subsidized construction project, this is a prime example of what can happen when contractors do not participate in a registered apprenticeship program.

OSHA's investigators concluded that:

- The fourth floor joists were not braced in accord with either the manufacturer's requirements or the structural engineer's instructions;
- The masonry contractor placed excessive construction materials on the 4th floor;
- The masonry contractor placed construction materials on the 4th floor deck without ascertaining the load capacity of the 4th floor;

³² AFL-CIO, *DEATH ON THE JOB: THE TOLL OF NEGLECT* (2013), <http://bit.ly/1hxniWM>.

³³ *Id.*

³⁴ *NYC Construction Deaths on the Rise*, PAINT SQUARE (July 8, 2013), <http://bit.ly/16pIYPV>.

³⁵ INVESTIGATION OF THE SEPTEMBER 10, 2012 PARTIAL COLLAPSE OF A BUILDING UNDER CONSTRUCTION AT 227 CARLTON AVENUE IN BROOKLYN, NY, OCCUPATIONAL HEALTH AND SAFETY ADMINISTRATION (December 2012) <http://1.usa.gov/1d4yXZu>.

- The floor joists were not installed as required by the drawings and other documents; and
- The contractor temporarily substituted steel deck for plywood but neither fastened it to the floor joists nor used 2 inch wide straps.³⁶

Shoddy work and a lack of ability to follow construction blueprints led to this building collapse. The contractors responsible for this project, Professional Grade Construction Group Inc. and S&B Masonry Corp., do not participate in a New York State registered apprenticeship program. If the companies were in the programs, their workers would have been able to identify the hazards associated excessive materials being stored on unsecured platforms. Additionally, the workers would have been able to properly construct the building as per the blueprint drawings.

VII. Apprenticeship Training

Registered apprenticeship is a formal training relationship between an employer and an employee.³⁷ Construction industry apprenticeships are for a specific period averaging four years. During this time, the apprentice learns a trade that combines hands-on work experience, classroom instruction and safety and health training.³⁸ This leads to professional, independent and skilled workers.

Construction contractors share in the rewards of apprenticeship too. By having a skilled and safe workforce, a reduction in employee turnover and strong employer-employee relations contractors can perform without losing valuable production time.³⁹

There are also direct economic benefits for contractors who have a registered apprenticeship program, for example:

- Contractors qualify to pay apprentice wages (usually 40 percent to 50 percent of journey worker wages);
- They do not pay overtime to apprentices for the related instruction part of the training, and
- They qualify for tax credits if hiring people who meet certain criteria and their business is located in specific areas.

³⁶ *Id.*

³⁷ *Become an Apprentice*, STATE OF NEW YORK DEPARTMENT OF LABOR, [HTTP://BIT.LY/1D4W1HP](http://bit.ly/1D4W1HP) (viewed on Nov. 8, 2013).

³⁸ *Appendix A, Carpenter, D.O.T. Code 860.831.022* (July 7, 2006), STATE OF NEW YORK DEPARTMENT OF LABOR, [HTTP://BIT.LY/HLvp4U](http://bit.ly/HLvp4U) (viewed on Nov. 8, 2013).

³⁹ *Businesses and Sponsors*, STATE OF NEW YORK DEPARTMENT OF LABOR, [HTTP://BIT.LY/1DSBQPO](http://bit.ly/1DSBQPO) (viewed on Nov. 8, 2013).

In New York State, there is no cost to contractors to register an apprenticeship program or for technical assistance that is associated with operating an apprenticeship program.⁴⁰ The employer usually bears the cost of classroom instruction.

VIII. A Decent Proposal

At present, New York City taxpayers are not privy to detailed (complete, full, comprehensive) information (disclosure) on the types and amounts of subsidies provided by public benefit corporations. Nor is the public able to discern whether subsidies are given to unscrupulous contractors that have violated labor and tax laws or placed their workers' lives in jeopardy.

New York City's elected officials should take a major, yet inexpensive, step toward addressing construction industry safety shortcomings by requiring:

- All contractors on projects financed by public benefit corporations to have apprenticeship agreements appropriate for the type and scope of work to be performed on the project;
- Each contractor's apprenticeship to be registered and approved by the New York State Commissioner of Labor in accordance with Article 23 of the New York State Labor Law; and,
- All workers participating in such projects to become certified under OSHA's training program and all site-supervisors receive certification under OSHA 30 Hour training program.

Additionally, New York City should improve the level of disclosure involving public benefit corporations. New York City should:

- Require any developer or contractor who will provide services on a subsidized project to disclose and provide a description of any wage, discrimination, unemployment, workers compensation, tax laws, environmental, health and safety violations that have been committed in the past ten years;

⁴⁰ *Register an Apprenticeship Program, What does it Cost?* STATE OF NEW YORK DEPARTMENT OF LABOR, [HTTP://BIT.LY/HFSQMA](http://bit.ly/HFSQMA) (viewed on Nov. 8, 2013).

- Require any developer or contractor who will provide services on a subsidized project to list of any pending bankruptcy proceedings that have commenced in the last ten years; and
- Require any developer or contractor who will provide services on a subsidized project to disclose any names with which they previously conducted business, including any and all alter egos.

IX. Conclusion

New York City should establish requirements for all employers who receive city funding. These requirements should include mandatory participation in a state-certified apprenticeship program, which would encompass a requirement to provide employees with safety and health training.

Implementing a local law to establish apprenticeship training and transparency requirements for publicly subsidized construction and development projects will not address all of the safety problems that threaten construction workers. But such a step has the potential to yield significant gains for minimal costs. Additionally, workers who are hired for publicly subsidized construction jobs could be confident that they are working for a company with demonstrated safety credentials and which is willing to train the next generation of skilled workers.

New York City should adopt legislation that speaks to safety, health and apprenticeship training requirements. It's the right thing to do and will help lower New York City's fatality rates in the construction industry and will create a more transparent process bidding process.

Appendix A

Calculations of Occupational Fatal Injuries

Waehrer *et al.* determined the costs of workplace fatalities and injuries by adding up costs under three categories: direct costs, indirect costs, and quality of life costs.

Direct costs include payments for hospital visits, allied services, rehabilitation, nursing home care, medical equipment, burial costs, and insurance administrative costs for medical claims, payments for mental health treatment, police, fire, emergency transport, coroner services, and property damage.⁴¹

Indirect costs refer to: victim productivity losses, which include wage losses and household production losses; employer productivity losses, which is time spent by supervisors and coworkers investigating accidents, juggling schedules, and recruiting and training replacements for injured workers; and administrative costs, which include the cost of administering Workers' Compensation programs.

Quality of life costs refer to the value attributed to the pain and suffering of victims and their families.⁴²

In this paper, we adjusted the costs per incident as reported by Waehrer *et al.* for inflation (in 2013 dollars), and multiplied the inflation-adjusted costs by New York City's frequency of incidents from 2011 to 2012.

In 1993, Waehrer *et al.* reported that 106 workers lost their lives across New York's private industry occupations and concluded that these fatalities imposed a cost of \$977 million.

$\$977 \text{ million} \div 306 \text{ worker fatalities} = \$3,192,810.45 (\$3.2 \text{ million})$ in 1993. This is the cost per fatality. Adjusted for inflation, this would equal $\$5,173,656.57 (\$5.2 \text{ million})$ per fatality in 2013 dollars.

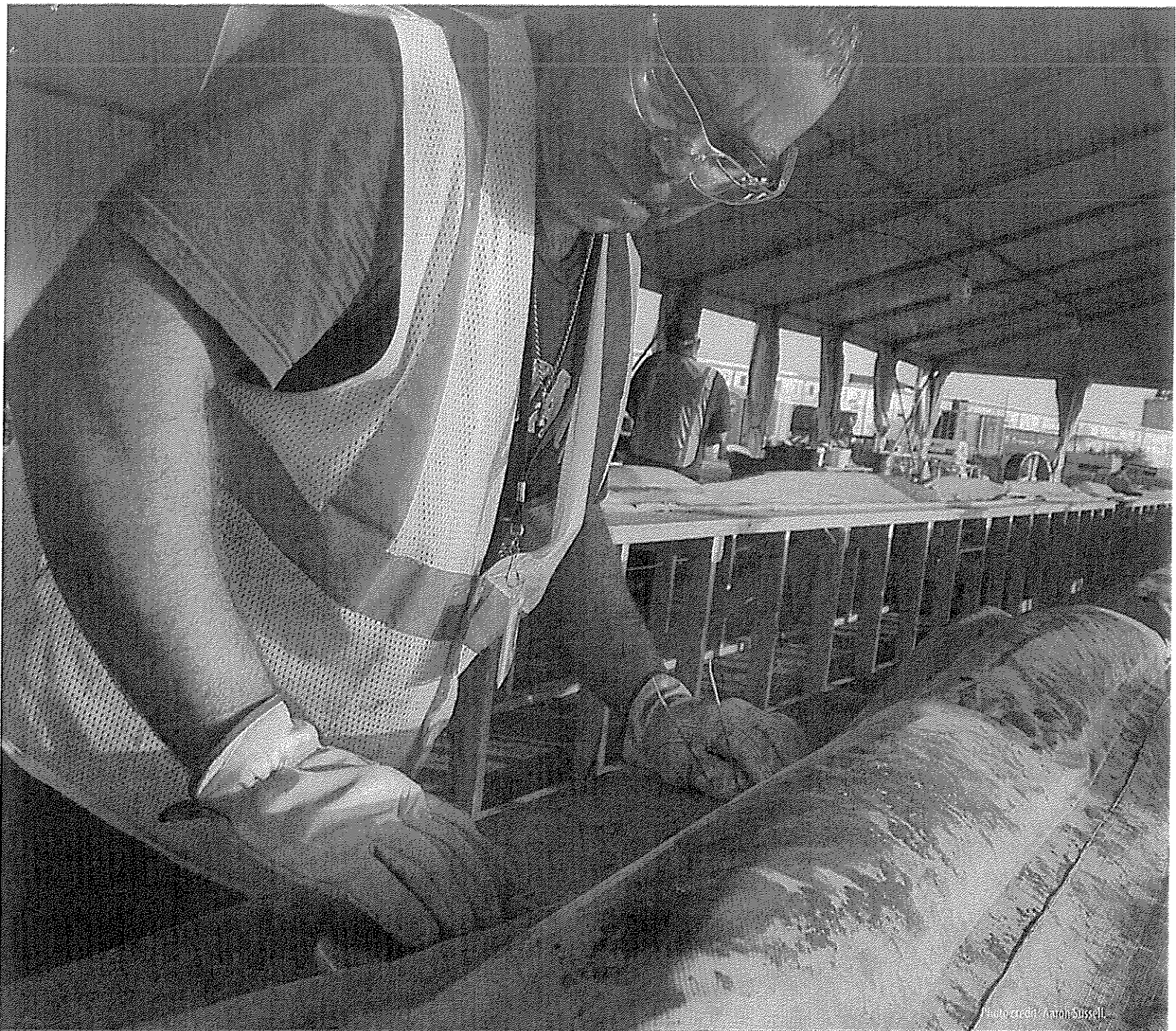
This report calculates the costs of New York City's construction related fatalities in 2011 and 2012. In 2011, there were 16 fatalities among construction workers, resulting in a calculated cost of $\$82,778,505.12 (\$82.8 \text{ million})$. In 2012, there were 20 fatalities among

⁴¹ WAHRER G, LEIGH JP, CASSADY D, AND MILLER T, *Costs of Occupational Injury and Illness Across States*, 46 JOURNAL OF OCCUPATIONAL AND ENVIRONMENTAL MEDICINE 1084-1095 (2004).

⁴² *Id.*

construction workers, resulting in a calculated cost of \$103,473,131.40 (\$103.5 million). The combined costs were \$ 186,251,636.52 (\$186.3 million).⁴³

⁴³ Due to rounding, some category averages may not equal the total sum.

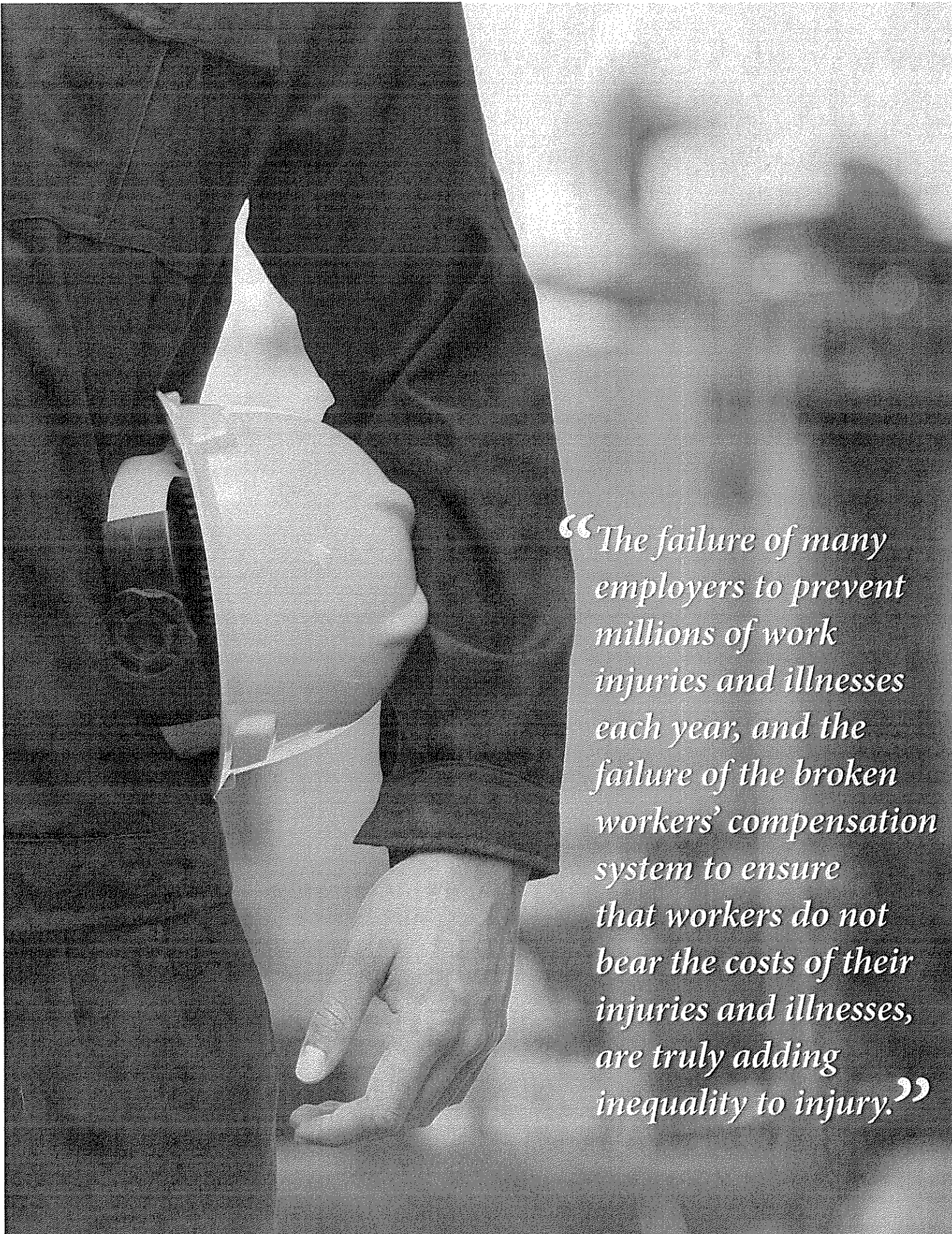


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Table of Contents

- 2** Executive Summary
- 3** Work injuries and illnesses impose heavy costs on workers, families and the economy
- 6** Injured workers and taxpayers subsidize high hazard employers
- 8** The changing structure of work in the U.S. increases risk of injury and contributes to income inequality
- 10** Occupational injuries and illnesses strain social insurance programs and result in taxpayer subsidies of unsafe employers
- 11** The most effective solution: greater efforts to prevent work injuries and illnesses
- 13** Endnotes

Executive Summary

Work injuries and illnesses exact a tremendous toll on society. Despite the decades-old legal requirement that employers provide workplaces free of serious hazards, every year, more than three million workers are seriously injured, and thousands more are killed on the job. The financial and social impacts of these injuries and illnesses are huge, with workers and their families and taxpayer-supported programs paying most of the costs.

For many injured workers and their families, a workplace injury creates a trap which leaves them less able to save for the future or to make the investments in skills and education that provide the opportunity for advancement. These injuries and illnesses contribute to the pressing issue of income inequality: they force working families out of the middle class and into poverty, and keep the families of lower-wage workers from entering the middle class. Work injuries hamper the ability of many working families to realize the American Dream.

The costs of workplace injuries are borne primarily by injured workers, their families, and taxpayer-supported components of the social safety net. Changes in state-based workers' compensation insurance programs have made it increasingly difficult for injured workers to receive the full benefits (including adequate wage-replacement payments and coverage for medical expenses) to which they are entitled. Employers now provide only a small percentage (about 20%) of the overall financial cost of workplace injuries and illnesses through workers' compensation. This cost-shift has forced injured workers, their families and taxpayers to subsidize the vast majority of the lost income and medical care costs generated by these conditions.

Important changes in the structure of the employment relationships in U.S. workplaces are also exacerbating the incidence and consequences of work injuries. The pervasive misclassification of wage employees as independent contractors and the widespread use of temporary workers have increased the risk of injury

and the number of workers facing financial hardships imposed by workplace injuries. The change in employment relationships also reduces the incentives for companies to assume responsibility for providing safe working conditions, which may result in increased overall risk of workplace injury.

The most effective solution to the problem posed by this paper is to prevent workplace injuries and illnesses from occurring. This would spare workers and their families from needless hardship and suffering, as well as the loss of income and benefits associated with these conditions. At the same time, it is vitally important that state-based workers' compensation programs take steps to eliminate roadblocks that prevent workers with compensable injuries or illnesses from receiving the full compensation to which they are entitled.

The failure of many employers to prevent millions of work injuries and illnesses each year, and the failure of the broken workers' compensation system to ensure that workers do not bear the costs of their injuries and illnesses, are truly adding inequality to injury.

Work injuries and illnesses impose heavy costs on workers, families and the economy

Forty-four years after Congress passed the Occupational Safety and Health Act of 1970, requiring employers to provide workplaces “free from recognized hazards that are causing or likely to cause death or serious physical harm” to their workers,¹ the toll of workplace injuries, illnesses and fatalities in the United States remains unacceptably high. The Bureau of Labor Statistics (BLS) reports that approximately 4,500 workers are killed on the job each year. BLS estimates that employers record nearly three million serious occupational injuries and illnesses annually on legally mandated logs.² Recordable workplace injuries and illnesses range in severity from wounds, amputations, back injuries and other serious condition requiring care beyond first aid (injuries receiving only first aid are not recordable) to fatal injuries. About half of recorded injuries require at least a day away from work, a job transfer or a work restriction for recovery.³

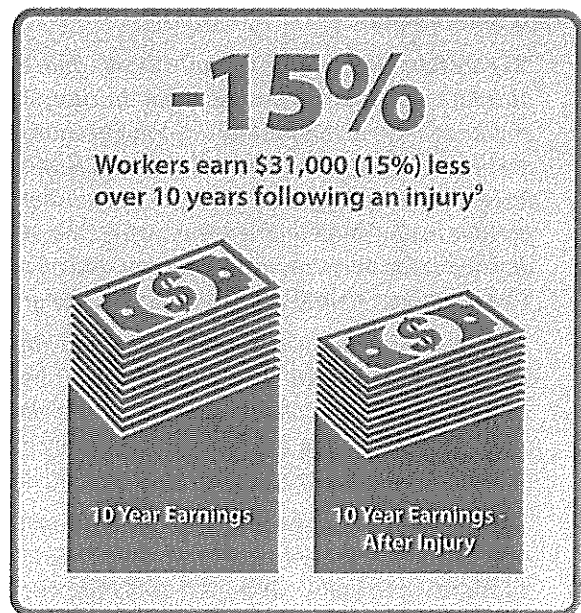
While the estimate of three million serious work-related injuries each year may seem extremely high, it is undoubtedly only a fraction of the true number. Numerous studies provide documentation that many, and perhaps the majority, of work-related injuries are not recorded by employers, and that the actual number of workers injured each year is likely to be far higher than the BLS estimate.⁴

Trying to estimate the burden of work-related illnesses is complicated further by the fact that many chronic illnesses occur long after exposure has ended and are generally not identified as work-related. However, studies have estimated that approximately 50,000 annual U.S. deaths are attributable to past workplace exposure to hazardous agents, such as asbestos, silica

and benzene.⁵ In comparison, about 33,000 people died in traffic crashes in the United States in 2013.⁶

The economic costs of these occupational injuries and illnesses are enormous. The National Safety Council, for example, estimates the cost of fatal and non-fatal work injuries at \$198 billion in 2012.⁷ Compare this cost to the estimated costs of dementia (Rand Corporation estimates the annual costs of dementia, including Alzheimer’s, in 2010 was between \$159 billion and \$215 billion) and of diabetes (2012 costs were estimated by the American Diabetes Association at \$245 billion).⁸

In concept, employer-provided workers’ compensation insurance covers lost wages, first dollar (no co-pay) medical expenses, and rehabilitation costs associated



with work-related injuries. The coverage is actually quite limited, however. A recent study found that workers in New Mexico who receive workers' compensation benefits for wage loss caused by workplace injuries lose an average of 15 percent of the earnings they would have been expected to earn over the 10 years following the injury. Even with workers' compensation benefits, injured workers' incomes are, on average, almost \$31,000 lower over 10 years than if they had not been injured. This figure does not

reflect the even more substantial losses suffered by the many injured workers who never enter the workers' compensation system.⁹

For workers and their families, economic and non-economic losses because of work injuries are inevitable, and some are difficult to measure. These costs have greater impact on lower-wage workers. For example, following a worker injury, family caregivers must often reduce their own hours of work and wages to care for



"Statistics are People with the Tears Washed Off"

Reports and studies based primarily on statistical analyses mask the experiences of real people, aspects of whose complex lives are measured and then quantified in the statistics. This is certainly true of the workers and families coping with the consequences of work injuries and illnesses. Workers trying to support their families after suffering a disabling injury face daunting challenges, and statistics alone cannot convey their experiences and the difficulties they face. Here is one example:

Robert worked for a Virginia employer that manufactured foam insulation. He climbed on a foam grinder to clean out some material and the manager turned on the machine. His right foot was pulled and mangled by the machine. Robert has had multiple surgeries, and must wear a special boot to walk. After his injury, Robert and his wife Jessica could no longer save money toward a new home. The family lived in a shelter until they found a new apartment, mold-ridden and infested with fleas. Jessica wrote to President Obama:

"My husband lives with constant chronic pain every day of the week and he tosses and turns throughout the night. As soon as he wakes up in the morning he has to put on this 'boot' in order to do anything. This boot stays on his foot all day long because he is unable to walk without it on. Before being injured my husband played basketball or football every single day and he ran and played outside with our two toddler sons. He was a weight lifter and a fisherman and a hunter, these are all things he can no longer partake in due to his injuries from work. One of our sons took off towards the road, running full speed one day and I was seven months pregnant and all my husband could do was yell at me and watch from his wheelchair as I scurried as fast as possible to grab my son before he went into the road.

"His life the way he lived it was robbed from him and he will never be the same. We have three children, Evan who is three-and-a-half, Tristan who is two-and-a-half, and their new sister Halley who is three months old, my husband is unable to be the kind of father that so many people wish to be due to his injuries. He cannot be the 'man' that so many men are not, because of his limitations. We are struggling financially so badly because of this 'accident' and the negative effect it has had on his pay.

"We wish to have answers to why there are so many laws in Virginia to protect the employers, when in cases like this, if the employer had done THEIR job enforcing OSHA regulations, accidents like the one my husband was involved in would never happen."

a disabled partner or family member. For working families already struggling to meet basic necessities and set aside some savings, a work injury to a primary wage earner can be especially devastating. There are also less tangible effects that are important but impossible to monetize. Workplace injuries can diminish self-esteem and self-confidence, increase stress between spouses, children and other family members, and strain relations with friends, colleagues and supervisors. These indirect costs can translate into tangible economic costs, including lower wages.¹⁰

Lower wage workers like Robert also disproportionately bear the burden of occupational injuries and illnesses. Many lower-wage jobs (defined as jobs whose median wages do not raise a family of four above the poverty line) are also high-hazard jobs, and low-wage workers are injured on the job at a disproportionate rate.¹¹

Stagnant wages have forced some wage earners, especially those supporting a family, into holding two or more jobs. Beyond its detrimental impact on family life, long work days lead to worker fatigue and increase the risk of both work-related and non-work-related injuries, as well as of motor vehicle crashes.¹²

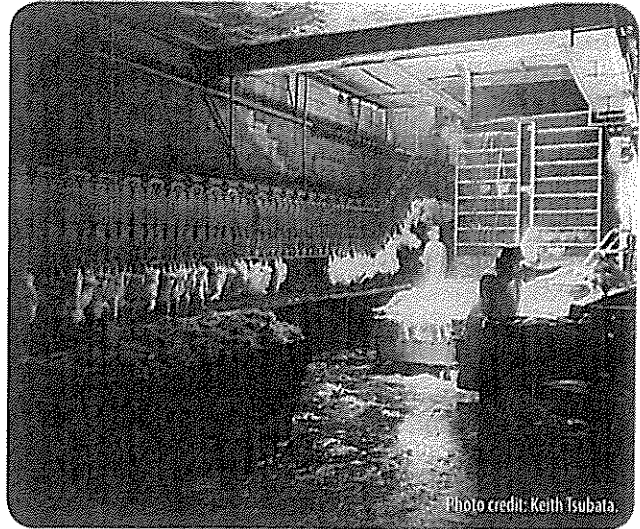


Photo credit: Keith Tsubata.

Injured workers and taxpayers subsidize high hazard employers

The workers' compensation systems created in each state were originally intended to have employer-provided insurance reimburse workers for lost wages while providing first-dollar medical coverage and rehabilitation for work-related injuries. Under this "no-fault" system, workers have lost the right to sue their employer, but, in theory, have gained relatively certain access to benefits following their injury.

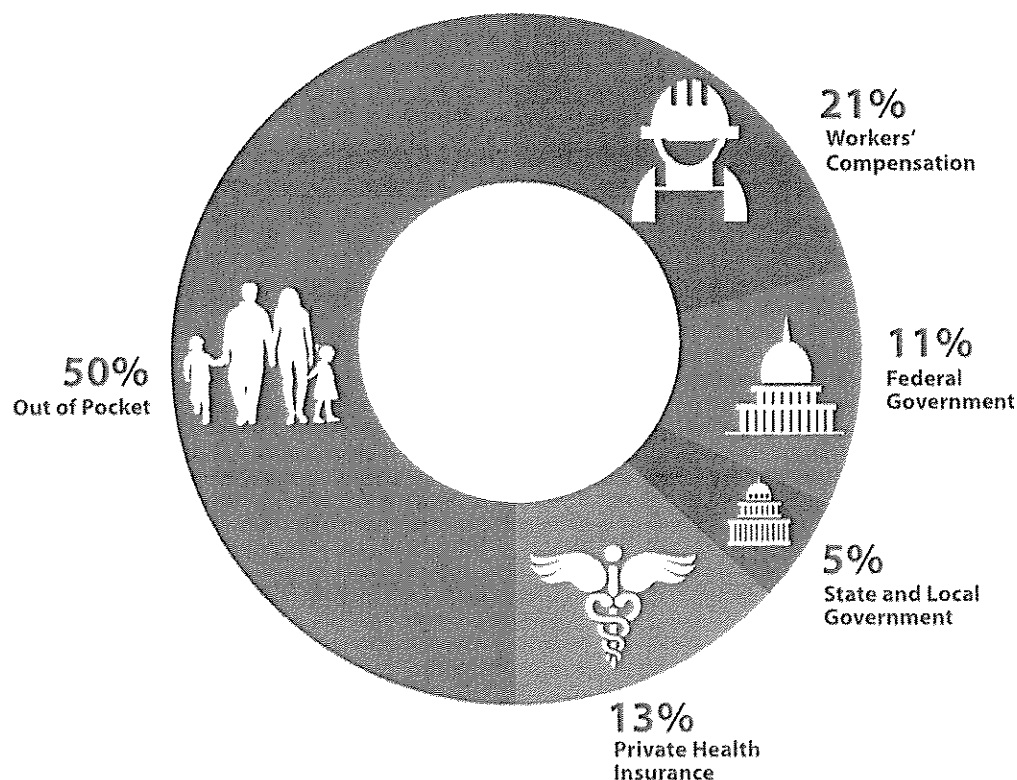
In reality, the costs of workplace injury and illness are borne primarily by injured workers, their families, and taxpayer-supported safety-net programs. State legislatures and courts have made it increasingly

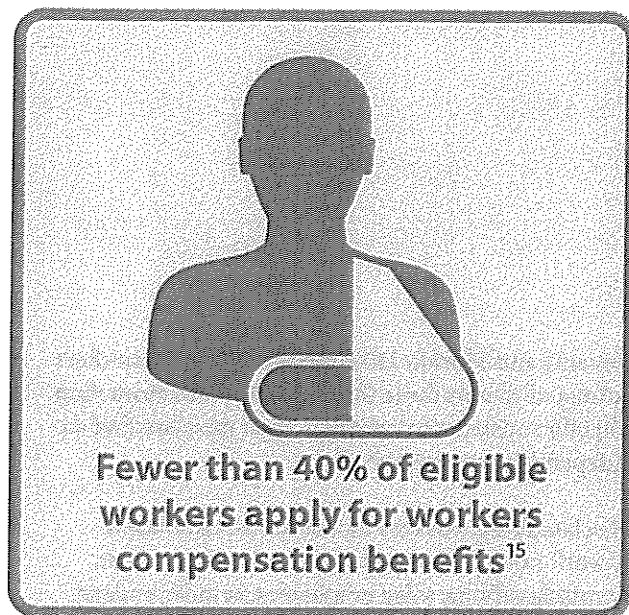
difficult for injured workers to receive the payments for lost wages and medical expenses that they deserve.¹³

As a result of this cost-shifting, workers' compensation payments cover only a small fraction (about 21 percent) of lost wages and medical costs of work injuries and illnesses; workers, their families and their private health insurance pay for nearly 63 percent of these costs, with taxpayers shouldering the remaining 16 percent.

Moreover, only a fraction of injured workers receive any workers' compensation benefits through state workers' compensation programs. Several studies have found that fewer than 40 percent of eligible workers

Who bears the cost of worker injuries?¹⁴





apply for any workers' compensation benefits at all.¹⁵ Indeed, recent BLS-supported analyses that match cases reported to workers' compensation carriers with those cases recorded by their employer on OSHA logs, treated in emergency rooms or admitted to hospitals, found a sizable proportion of injured workers receive no benefits through the workers' compensation system. For example, a review of all recordable work-related amputations in Massachusetts found that less than 50 percent of the cases received any workers' compensation benefits.¹⁶ A similar California study found that one-third of workers who had amputations that were recorded by their employers had not received workers' compensation benefits. That same study also found that one-third of workers with employer recorded carpal-tunnel syndrome had not received workers' compensation.¹⁷

While this system proves inadequate for the average worker, the workers' compensation system performs even more poorly for low-wage workers. Many face additional barriers to filing, including even greater job insecurity, lack of knowledge about their rights, or a limited command of English. OSHA staff members have encountered many injured immigrant workers who have not filed for workers' compensation out of fear

of losing their jobs. These barriers are documented in numerous surveys of low-wage and immigrant workers who report being injured on the job and not filing workers' compensation claims.¹⁸

The challenges facing individuals with work illnesses are even greater than for those with injuries. Few workers with occupational illnesses receive any benefits from the workers' compensation system; one study estimates that as many as 97 percent of workers with occupational illness are uncompensated.¹⁹ Most cases of work-related chronic disease are never diagnosed as work-related. When a linkage is made, the diagnosis generally comes long after employment ends. Even when a proper diagnosis is made, a worker who is eligible for benefits under Medicare, Medicaid, Veterans' Benefits or private insurers is more likely to take that route, and avoid the barriers to obtaining benefits through the workers' compensation system.²⁰

The changing structure of work in the U.S. increases risk of injury and contributes to income inequality

Several trends in the labor market today create even greater challenges to worker safety and health. These trends include the increased presence of employees of multiple employers at the same worksite, the pervasive misclassification of wage employees as independent contractors and the widespread use of temporary employees provided by labor staffing agencies.

If several firms employ workers at the same site, and employers do not actively collaborate to ensure safe workplaces, all workers at the site may be at a higher risk of injury. Although this pattern of employment has been true in the construction industry for many years, it has now become more common in other sectors of the economy. More and more, workers are not actual employees of the employer who owns or controls the workplace where they work. Instead, they may be employed by a contractor or subcontractor, or by a staffing agency.²¹ This trend has a significant, negative impact on the safety and health of U.S. workers. To address this, OSHA often cites employers for endangering the employees of other employers working at the same jobsite.

Misclassification of employees as independent contractors also increases the risks for these individuals. In the construction industry, the proportion of the workforce misclassified as independent contractors is substantial, although the illegality of misclassification makes researching this topic challenging. Researchers associated with the McClatchy newspaper chain recently studied this topic and estimated that in Texas, 37.7 percent of all construction workers were misclassified as independent contractors. They reported smaller but still substantial proportions of misclassified construction workers in North Carolina (35.2

percent) and Florida (15.5 percent). The researchers estimated that in these three states alone, more than 500,000 construction workers were misclassified as independent contractors.²²

Misclassifying workers increases the likelihood of work injuries through two mechanisms. First, by misclassifying wage employees as independent contractors, employers do not have to worry about the OSHA requirement to provide a safe workplace, since the OSHA law does not cover the self-employed. Second, these employers avoid paying workers' compensation insurance premiums (as well as unemployment insurance and other benefits and taxes). The misclassifying employer is no longer concerned about workers' compensation premiums rising following a work injury, so is less likely to invest in safety. The result is increased risk of work injuries at workplaces where employees have been misclassified, and, when those injuries do occur, the injured workers, their families and the taxpayer bear the costs, subsidizing the employer's hazardous operations.

This misclassification hurts not only workers, but also employers who follow the law. These honest employers are put at a disadvantage, having to compete with scofflaws who ignore safety and health requirements, and shirk paying taxes, benefits and insurance premiums.²³

The increased employment of temporary workers also increases the risk of work injuries. Temporary workers, often employed through staffing agencies, are generally at the worksite for shorter time periods. Researchers in the state of Washington found temporary workers in the construction and manufacturing sectors had twice

the rate of injuries of workers in standard employment relationships. For each injury, they lost more days from work than the other workers. At the same time, temporary workers received less medical and time loss reimbursement payments for their injuries.²⁴

Why are temporary workers likely at greater risk of injury? There are several factors. New workers often lack adequate safety training and are likely to be unfamiliar with the specific hazards at their new workplace. As a result, new workers are several times more likely to be injured in the first months on the job than workers employed for longer periods.²⁵ Consistent with these findings, OSHA has investigated numerous incidents in recent months in which temporary workers were killed on their first days on a job.²⁶

Temporary workers are also likely to be newly assigned to unfamiliar workplaces multiple times in any given year and may carry this increased risk as long as they are in the temporary workforce. For employers, there is less financial incentive to invest training resources on temporary employees because shorter tenure will yield a lower return on investment than similar investments for permanent employees. OSHA has encountered many situations, including some in which temporary workers have been killed, in which employers have chosen to not provide required safety training to temporary workers. And the temporary workers themselves, recognizing the precarious nature of their employment, are less likely to complain to their employers, or to OSHA, about the existence of even serious hazards.²⁷

While lacking a financial incentive to train temporary employees, employers do have a financial incentive to contract out their most dangerous jobs. For many employers, the state's workers' compensation premiums are experience-rated, meaning that, in general, employers with fewer claims pay lower premiums. In theory, this experience rating provides some financial incentive for employers to invest in safety to prevent injuries and lower insurance premiums. By assigning workers employed by a staffing agency to the most dangerous tasks, host employers may hope to avoid higher premiums.²⁸

These trends in the labor market also minimize the incentive to provide a safe workplace that exists when an employer who controls the workplace also bears financial responsibility for worker injuries. This is particularly true with temporary workers employed through staffing agencies. Host employers have primary control of the temporary employees' work environments, but the host employers generally have no financial responsibility when temporary workers are injured, since those workers are covered by staffing agencies' insurance policy. This shift in risk is likely to reduce investments in safety and health and create more hazardous workplaces, increasing the number of injuries among both temporary workers and any permanent workers whom they work alongside. Given the practice of outsourcing the more hazardous jobs, and the lower wages of temporary workers, lower-wage workers have the most to lose in this new reality.

As noted earlier, temporary workers are less likely to be compensated for their injuries, making matters worse. Temporary workers say they are more hesitant to report their injuries and claim compensation, out of concern their employer (the staffing agency) will not assign them additional work, or out of confusion as to which employer is responsible. The result is that injured temporary workers are less likely to receive workers' compensation benefits than permanent workers. As a result, neither the temporary staffing agency nor the employer whose work is being performed by temporary workers bears the cost of workplace injuries. Instead, the cost of the injury is shifted completely to the workers, their families and the taxpayers.

Occupational injuries and illnesses strain social insurance programs and result in taxpayer subsidies of unsafe employers

The costs of workplace injuries are massively subsidized by injured workers, their families and the taxpayer-supported components of the social safety net. As discussed above (and presented in Figure One), employers cover only a small percentage of the overall cost of workplace injuries and illnesses through the workers' compensation system; injured workers, their families and taxpayers bear the vast majority of the lost income and medical care costs generated by these conditions. Federal and state programs pick up 16 percent of the overall costs of occupational injuries and illnesses; through Medicare and Medicaid alone, taxpayers pay almost 19 percent of the medical costs of these conditions.²⁹

This proportion of the costs of work injuries and illnesses covered by working families and taxpayers has likely risen in recent years, as many state legislatures and courts have implemented changes in their workers' compensation systems that make it more difficult for injured workers to obtain benefits.³⁰ The number of Social Security Disability Insurance (SSDI) beneficiaries and the amount of benefits paid by that program has also grown dramatically in recent years. An accumulating body of evidence shows that at least part of the growth in SSDI benefit payments is attributable to the program's subsidy for work injuries and illnesses. In one study, for example, 20.5 percent of the participants in the 1992 Health and Retirement Study, a nationally representative sample of the U.S. population aged 51 to 61, reported having a health problem that limits the kind or amount of work they can do. Among those who reported some disability, 36 percent report having become disabled because of an accident, injury,



Photo credit: Marsha Mitchell

or illness at work. Among the entire population sample, 6 percent were enrolled in SSDI, and 37 percent of this group of recipients reported they were disabled as a result of a work-related condition. Extrapolating these findings to overall SSDI and Medicare expenditures, the study's authors estimated that these two taxpayer-supported safety net programs subsidized workplace injuries with \$33 billion in benefits in 2001 alone.³¹

For more evidence of SSDI subsidizing work injury costs, consider a recent study which found that New Mexico workers experiencing lost-time work injuries (for which they received some workers' compensation benefits) have a substantially increased likelihood of becoming SSDI recipients, even after controlling for personal and work characteristics. This is particularly true among the lower-wage workers in the study, who were more likely to have experienced a lost-time work injury, and more likely to become an SSDI recipient, than were the higher-wage workers. The researchers calculated that experiencing a lost-time work injury has the same impact on the risk of becoming a SSDI recipient as aging 10 years. As a consequence, those SSDI recipients who experienced lost-time injuries are likely to receive SSDI benefits at younger ages,

increasing the costs and the length of time for which they receive SSDI. Extrapolating the New Mexico experience to the country as a whole, 7 percent of the roughly one million people who became new SSDI beneficiaries in 2010 became disabled as a result of a work injury. The cost to the SSDI program is substantial: each annual cohort of workers with these lost-time work injuries who become SSDI recipients increases SSDI expenditures by roughly \$12 billion, and adding Medicare costs nearly doubles this amount.³² The magnitude of this subsidy strains the ability of social insurance programs to provide adequate benefits to claimants.

The shifting of cases and costs from workers' compensation to SSDI and Medicare also creates subsidies that may reduce employer financial incentives to prevent work-related injury and illness. As with the shift of workers' compensation coverage from host employer to staffing agency, the overall failure of the workers' compensation system to provide benefits to injured workers, as well as the shifting of the costs from the employer responsible for the injury to the taxpayer, means that any financial incentive from experience rating that encourages high-hazard employers to invest in injury prevention, is lessened or eliminated.

The most effective solution: greater efforts to prevent work injuries and illnesses

The enormous number of workplace injuries and illnesses, the cost-shifting away from state workers' compensation, and the fissuring of U.S. workplaces all increase the burdens on workers and their families, place significant stress on the social safety net, and contribute to income inequality. The costs of injuries not compensated through workers' compensation or through the social safety net increase financial burden on injured low-wage earners and their families, tightening existing financial constraints and making it even more difficult for low-wage workers to support basic family needs, much less pursue education or other investments that increase future opportunities and earning potential.

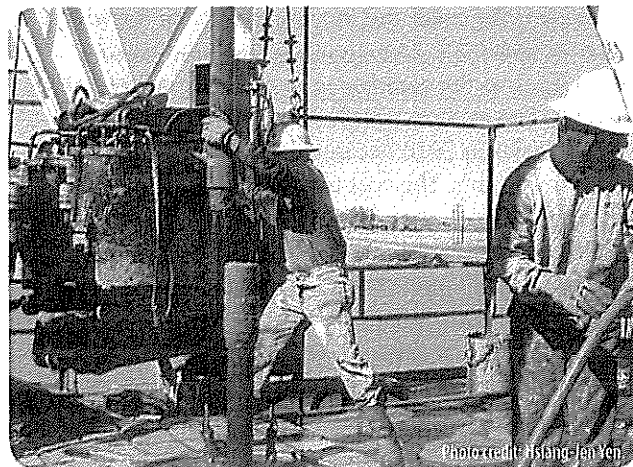
The most effective solution to the problem posed by this paper is, of course, to prevent workplace injuries and illnesses from occurring in the first place. This is what is required by the law, and it would spare workers and their families from needless hardship and suffering, as well as from the loss of income and benefits associated with these conditions.

Reduction in the number of work injuries and illnesses would also have a significant impact on healthcare system costs, reducing expenditures for hospitalizations and other medical care. (The National Safety Council estimates the medical costs of work injuries alone were approximately \$55 billion in 2012.³³)

Over the past several decades, the U.S. has made great strides in reducing the incidence of workplace injuries, illnesses and fatalities. In 1970, an estimated 14,000 workers were killed on the job, an annual rate of 18 per 100,000 or about 38 workers killed on the job every day.³⁴ Today, with a far larger workforce, that rate has fallen to 3.4 per 100,000, or about twelve every day.³⁵ While this represents great progress, twelve deaths a day is still twelve too many.

More can, and must, be done. The acceptable number of work injuries, especially fatal work injuries, is zero. Many employers strive to prevent all injuries and illnesses while others do not. Within a given industry, there is often substantial variation in worksite-specific injury rates, evidence of the tremendous variation in the presence or effectiveness of an employer's injury prevention program. For example, the average DART (more serious injuries or illnesses, the ones that result in Days Away, Restricted work activity or job Transfer) rate among nursing care facilities in 2012 was 5.2 per 100 workers. One-quarter of the nation's nursing care facilities had DART rates less than or equal to 0.8, while the rates of employers in the highest quartile were above seven per 100 workers, or more than eight times higher than the rates of the nursing care facilities in the lowest quartile.³⁶ Similar disparities in injury risk can be seen in international comparisons. The work fatality rate in the United Kingdom is about one-third the rate of the United States and the rate in construction is about one-quarter the U.S. rate. While the rates in both countries are decreasing, the difference between the rates has grown substantially since the 1990s as construction work has become far safer in the United Kingdom than in the United States.³⁷

At the same time, it is vitally important that the state-based workers' compensation systems take steps to eliminate roadblocks that prevent workers with compensable injuries or illnesses from receiving the full benefits (including adequate wage-replacement payments and full coverage for medical expenses) to which they are entitled. Currently, workers with work-related injuries or illnesses who are successful in claiming workers' compensation receive only a small portion of the true costs of their injury or illness, and



many others who are entitled to benefits receive no workers' compensation benefits at all. Without ending this unfair and unwarranted income loss, these workers will never be able to catch up to the income level they maintained before their injury or illness.³⁸

Further, by forcing the costs of injury and illness onto workers, their families and the taxpayer, unsafe employers have fewer incentives to eliminate workplace hazards and actually prevent injuries and illnesses from occurring. Under this broken system, these workers, their families and the tax-payer subsidize unsafe employers, increasing the likelihood that even more workers will be injured or made sick.

Serious workplace injuries are devastating to the injured workers, their families and communities. Low-wage workers and their families are particularly impacted by injuries: unless we as a society take steps to address these issues, many of these people will continue to find it difficult to enter or remain in the middle class, and safety net programs like SSDI will be strained providing benefits to all the beneficiaries entitled to receive them.

In summary, despite a more-than-40-year-old legal obligation to provide safe workplaces, the unwillingness of many employers to prevent millions of work injuries and illnesses each year, and the failure of the broken workers' compensation system to ensure that workers do not bear the costs of their injuries and illnesses, are truly adding inequality to injury.

Endnotes

¹ Occupational Safety and Health Act of 1970, 29 U.S.C. 651-678. The specific requirement of employers to provide workplaces “free from recognized hazards that are causing or likely to cause death or serious physical harm” (OSHA’s General Duty Clause) is 29 U.S.C. 654(a)(1).

² Census of Fatal Occupational Injuries Summary, 2013 (2014, September 11). *U.S. Bureau of Labor Statistics*. Retrieved February 11, 2015 from <http://www.bls.gov/news.release/cfoi.nr0.htm>.

³ Employer-Reported Workplace Injury and Illness Summary. (2013, November 7). *U.S. Bureau of Labor Statistics*. Retrieved February 8, 2015 from <http://www.bls.gov/news.release/osh.nr0.htm>; Nonfatal Occupational Injuries and Illnesses Requiring Days Away From Work, 2013 (2013, November 26). *U.S. Bureau of Labor Statistics*. Retrieved February 8, 2015, from <http://www.bls.gov/news.release/osh2.nr0.htm>.

⁴ Rosenman KD, Kalush A, Reilly MJ, et al. How much work-related injury and illness is missed by the current national surveillance system? *Journal of Occupational and Environmental Medicine* 2006; 48:357-365; Boden LI, Ozonoff A. Capture-recapture estimates of nonfatal workplace injuries and illnesses. *Annals of Epidemiology* 2008; 18:500-506. To begin to understand the workplace injury undercount, BLS has commissioned a series of studies that match the work injuries recorded by employers with those that have led to a workers’ compensation award or that can be identified through hospital or clinic records. These studies suggest that the BLS estimates do not include a substantial proportion of workplace injuries identified in other data sets, with a capture rate ranging between 40 and 70%, depending on the type of establishment and nature of the injury. For the mechanisms through which injuries and illness fail to be recorded by employers, see Azaroff LS, Levenstein C, Wegman DH. Occupational injury and illness surveillance: Conceptual filters explain underreporting. *American Journal of Public Health* 2002; 92:1421-1429. For more on the efforts of BLS to examine the undercount, see Ruser JW. Examining evidence on whether BLS undercounts workplace injuries and illnesses. *Monthly Labor Review* 2008;20-33; Wiatrowski WJ. Examining the completeness of occupational injuries and illnesses: an update on current research. *Monthly Labor Review* June 2014 Retrieved February 8, 2015 from <http://www.bls.gov/opub/mlr/2014/article/examining-the-completeness-of-occupational-injury-and-illness-data-an-update-on-current-research.htm>; and Spieler EA, Wagner GR. Counting matters: implications of undercounting in the BLS survey of occupational injuries and illnesses. *American Journal of Industrial Medicine* 2014; 57:1077-1084. For estimates of the total number of work injuries occurring annually, see Leigh JP. Economic burden of occupational injury and illness in the United States. *Milbank Quarterly* 2011; 89:728-772, who estimates more than 8.5 million non-fatal work injuries occurred in 2007. See also Smith GS, Wellman HM, Sorock GS, et al. Injuries at work in the

US adult population: Contributions to the total injury burden. *American Journal of Public Health* 2005; 95:1213-1219.

⁵ Many illnesses that are caused by workplace exposure to toxic agents appear years after first exposure, and, since the treatment is unconnected to identifying the work-relatedness of the case, are never identified as occupational. The estimate of approximately 50,000 deaths annually was reached by scientists associated with the National Institute for Occupational Safety and Health and the American Cancer Society: Schulte PA. Characterizing the burden of occupational injury and disease. *Journal of Occupational and Environmental Medicine* 2005; 47:607-622 and Steenland K, Burnett C, Lalich N, Ward E, Hurrell J. Dying for work: The magnitude of U.S. mortality from selected causes of death associated with occupation. *American Journal of Industrial Medicine* 2003; 43:461-82. Further, only a very small proportion of these cases ever enter the workers’ compensation system. See: Biddle J, Roberts K, Rosenman KD, Welch EM. What percentage of workers with work-related illnesses receive workers’ compensation benefits? *Journal of Occupational and Environmental Medicine* 1998; 40:325-331.

⁶ National Highway Traffic Safety Administration. 2013 Motor Vehicle Crashes: Overview. 2013 Motor Vehicle Crashes: Overview. Retrieved February 11, 2015 from <http://www-nrd.nhtsa.dot.gov/Pubs/812101.pdf>.

⁷ National Safety Council. Injury Facts. 2014 edition. Itasca, IL. The Council’s estimate is similar to that of Prof. Paul Leigh of the University of California Davis, who calculated the direct and indirect cost of work injuries in 2007 to be \$192 billion. Leigh also estimated the cost of workplace illnesses in 2007 at \$58 billion, resulting in a total cost for workplace injuries and illnesses of \$250 billion (in 2007 dollars). See: Leigh JP. Economic burden of occupational injury and illness in the United States. *Milbank Quarterly* 2011; 89:728-772.

⁸ For the costs of dementia, see Hurd MD, Martorell P, Delavande A, Mullen KJ, Langa KM. Monetary costs of dementia in the United States. *New England Journal of Medicine* 2013; 368:1326-1334. Diabetes costs are from Economic costs of diabetes in the U.S. in 2012. *Diabetes Care* 2013; 36:1033-1046.

⁹ Seabury SA, Scherer E, O’Leary P, Ozonoff A, Boden L. Using linked federal and state data to study the adequacy of workers’ compensation benefits. *American Journal of Industrial Medicine*. 2014; 57:1165-1173. See also Boden LI, Reville RT, Biddle J. “The adequacy of workers’ compensation cash benefits.” In *Workplace Injuries and Diseases: Prevention and Compensation: Essays in Honor of Terry Thomason*. Burton J, Roberts K, Bodah M. eds. Kalamazoo: W.E. Upjohn. 37-68, 2005.

¹⁰ See Keogh JP, Nuwayhid I, Gordon JL, Gucer PW. The impact of occupational injury on injured worker and family: Outcomes of upper extremity cumulative trauma disorders in Maryland

workers. *American Journal of Industrial Medicine* 2000; 38:498–506; Pransky G, Benjamin K, Hill-Fotouhi C, et al. Outcomes in work-related upper extremity and low back injuries: Results of a retrospective study. *American Journal of Industrial Medicine* 2000; 37: 400–409; Strunin L, Boden LI. Family consequences of chronic back pain. *Social Science and Medicine* 2004; 58:1385–1393; Mocan N, Tekin E. Obesity, self-esteem and wages. 2009 National Bureau of Economic Research NBER Working Paper No. 15101. Benabou, R, Tirole J. Self-confidence and personal motivation. *The Quarterly Journal of Economics* 2002; 117:871–915; and Bowles S, Gintis, H, Osborne M. The determinants of earnings: A behavioral approach. *Journal of Economic Literature* 2001; 1137–1176.

¹¹ Baron SL, Steege AL, Marsh SM, Menendez CC, Myers JR. Nonfatal work-related injuries and illnesses - United States, 2010. *Morbidity and Mortality Weekly Report* 2013;62(03):35-40; and Marsh SM, Menendez CC, Baron SL, Steege AL, Myers JR. Fatal work-related injuries - United States, 2005–2010. *Morbidity and Mortality Weekly Report* 2013;62(03):40-45; and Stanbury M, Rosenman KD. Occupational health disparities: A state public health-based approach. *American Journal of Industrial Medicine* 2014; 57:586–604. Estimates of the medical and productivity costs of work injuries and illnesses to low-wage workers are at Leigh JP. Numbers and costs of occupational injury and illness in low-wage occupations, Center for Poverty Research, and Center for Health Care Policy and Research, University of California Davis (December 2012), Retrieved February 11, 2015 from http://defendingscience.org/sites/default/files/Leigh_Low-wage_Workforce.pdf.

¹² “Working in jobs with overtime schedules was associated with a 61% higher injury hazard rate compared to jobs without overtime. Working at least 12 hours per day was associated with a 37% increased hazard rate and working at least 60 hours per week was associated with a 23% increased hazard rate.” Dembe AE, Erickson JB, Delbos RG, Banks SM. The impact of overtime and long work hours on occupational injuries and illnesses: New evidence from the United States. *Journal of Occupational and Environmental Medicine* 2005; 62:588–97. See also Dembe AE, Delbos RG, Erickson JB. The effect of occupation and industry on the injury risks from demanding work schedules. *Journal of Occupational and Environmental Medicine* 2008;50:1185–94; Olds DM, Clarke SP. The effect of work hours on adverse events and errors in health care. *Journal of Safety Research* 2010; 41:153–162. Marucci-Wellman HR, Willetts JL, Lin T-C, Brennan MJ, Verma SK. Work in multiple jobs and the risk of injury in the US population. *American Journal of Public Health* 2014; 104:134–142. For increased risk of motor vehicle crashes, see Barger LK, Cade BE, Ayas NT, et al. Extended work shifts and the risk of motor vehicle crashes among interns. *New England Journal of Medicine* 2005; 352:125–134.

¹³ Spieler, EA, Burton JF. The lack of correspondence between work-related disability and receipt of workers’ compensation benefits. *American Journal of Industrial Medicine* 2012; 55:487–505; Boden LI, Spieler EA. Compensation for work injury and illness. In

D. Béland, C. Howard, and K. J. Morgan, eds. *Oxford Handbook of U.S. Social Policy*. Chapter 25, 451–468. Oxford University Press. 2015. DOI:10.1093/oxfordhb/9780199838509.013.027. For an example, according to the Southern Poverty Law Center, the Alabama Legislature amended that state’s Worker Compensation Act in 1992 to enact a more difficult standard for workers reporting “injuries which have resulted from gradual deterioration or cumulative physical stress disorders” because such claims were “one of the contributing causes of the current workers’ compensation crisis facing [the] state.” This definition includes the musculoskeletal disorders associated with repetitive work prevalent in the poultry industry. Source: The Southern Poverty Law Center and Alabama Appleseed, “Unsafe at These Speeds: Alabama’s Poultry Industry and its Disposable Workers”, 2013. Retrieved February 8, 2015 from <http://www.splccenter.org/sites/default/files/Ala-poultry-report.pdf>.

¹⁴ Leigh JP, Marcin JP. Workers’ compensation benefits and shifting costs for occupational injury and illness. *Journal of Occupational and Environmental Medicine* 2012;54:445–450.

¹⁵ Shannon HS, Lowe GS. How many injured workers do not file claims for workers’ compensation benefits? *American Journal of Industrial Medicine* 2002; 42:467–473; See also Biddle J, Roberts K, Rosenman KD, Welch EM. What percentage of workers with work-related illnesses receive workers’ compensation benefits? *Journal of Occupational and Environmental Medicine* 1998; 40:325–331; and Azaroff LS, Levenstein C, Wegman DH. Occupational injury and illness surveillance: Conceptual filters explain underreporting. *American Journal of Public Health* 2002; 92:1421–1429. An excellent summary of the barriers to collecting the workers’ compensation benefits to which they are entitled facing workers with workplace injuries and illnesses is provided by Spieler EA, Wagner GR. Counting matters: implications of undercounting in the BLS survey of occupational injuries and illnesses. *American Journal of Industrial Medicine* 2014; 57:1077–1084. “Underreporting in workers’ compensation has been well-documented. The same forces that result in underreporting on OSHA 300 logs and in the SOII survey apply to workers’ compensation: workers fear retaliation; health care providers fail to certify work-relatedness; employers discourage filing for benefits both directly and indirectly. Workers may also fail to file for benefits because they are unfamiliar with the system or, alternatively, believe that the system cannot be navigated easily; because they fear stigma and prejudice; or because they simply do not know that a condition is work-related or qualifies for benefits. In addition, many workers believe that the experience of filing a claim can be frustrating and demeaning, potentially involving insurance personnel and doctors who impugn their character and even investigators who spy on them and question their neighbors and friends. While workers’ compensation also provides some incentives to workers to report injuries, by providing partial replacement of lost wages and first-dollar-coverage for medical care associated with a compensable injury, these incentives are often counterbalanced by these other factors.”

¹⁶ Davis LK, Grattan KM, Tak S, et al. Use of multiple data sources for surveillance of work-related amputations in Massachusetts, comparison with official estimates and implications for national surveillance. *American Journal of Industrial Medicine* 2014; 57:1120-32.

¹⁷ Joe L, Roisman R, Beckman S, et al. Using multiple data sets for public health tracking of work-related injuries and illnesses in California. *American Journal of Industrial Medicine* 2014; 57:1110-19.

¹⁸ Smith, R. Immigrant workers and workers' compensation: The need for reform. *American Journal of Industrial Medicine* 2012; 55:537-544; Culp K, Brooks M, Rupe K, Zwerling C. Traumatic injury rates in meatpacking plant workers. *Journal of Agromedicine* 2008; 13:7-16. Scherzer T, Rugulies R, Krause N. Work-related pain and injury and barriers to worker's compensation among Las Vegas hotel room cleaners. *American Journal of Public Health* 2005; 95:483-488; Premji S, Krause M. Disparities by ethnicity, language, and immigrant status in occupational health experiences among Las Vegas hotel room cleaners. *American Journal of Industrial Medicine* 2010; 53:960-975; Herbert R, Janeway K, Schechter C. Carpal tunnel syndrome and workers' compensation among an occupational clinic population in New York State. *American Journal of Industrial Medicine* 1999; 35: 335-342; Dong X, Ringen K, Men Y, Fujimoto A. Medical costs and sources of payment for work-related injuries among Hispanic construction workers. *Journal of Occupational and Environmental Medicine* 2007; 49:1367-1375. This is also seen in the results of numerous studies and surveys, including: Lashuay N, Harrison R. 2006. Barriers to occupational health services for low-wage workers in California: A report to the Commission on Health and Safety and Workers' Compensation, California, Department of Industrial Relations San Francisco. San Francisco, CA: University of California. Wilmsen C, et al. "Healthy Forests, Abused Workers." The Alliance of Forest Workers and Harvesters and The Labor Occupational Health Program, UC Berkeley, 2012. Retrieved February 8, 2015 from <http://www.nwforestworkers.org/publications/surveyreportcolor.pdf>; The Southern Poverty Law Center and Alabama Appleseed, "Unsafe at These Speeds: Alabama's Poultry Industry and its Disposable Workers", 2013. Retrieved February 8, 2015 from <http://www.splcenter.org/sites/default/files/Ala-poultry-report.pdf>; Villarejo D, McCurdy S, Bade B, et al. The health of California's immigrant hired workers. *American Journal of Industrial Medicine* 2010; 53:387-397. Also, Brandworks and the Urban Justice Center, "Feeding New York: Challenges and Opportunities for Workers in New York City's Food Manufacturing Industry", 2014. Retrieved February 8, 2015 from http://www.brandworkers.org/files/Feeding_New_York_0.pdf; Dietz M. Temporary Workers in California are twice as Likely as Non-Temps to Live in Poverty: Problems with Temporary and Subcontracted Work in California. UC Berkeley Labor Center, 2012. Retrieved February 8, 2015 from http://laborcenter.berkeley.edu/jobquality/temp_workers.pdf. And Workers Defense Project, "Construction Emergency: The Hidden Cost of Workplace Injuries", 2011. Retrieved

February 8, 2015 from http://www.workersdefense.org/wp-content/uploads/2013/04/%E2%80%9CTexas_Construction_EmergencyV2%E2%80%9D.pdf.

¹⁹ Leigh, JP, Robbins JA. Occupational disease and workers' compensation: coverage, costs, and consequences. *Milbank Quarterly* 2004; 2:689-721. See also Biddle J, Roberts K, Rosenman KD, Welch EM. What percentage of workers with work-related illnesses receive workers' compensation benefits? *Journal of Occupational and Environmental Medicine* 1998; 40:325-331.

²⁰ Spieler, EA, Burton JF. The lack of correspondence between work-related disability and receipt of workers' compensation benefits. *American Journal of Industrial Medicine* 2012; 55:487-505; Boden LI, Spieler EA. Compensation for work injury and illness. In D. Béland, C. Howard, and K. J. Morgan, eds. *Oxford Handbook of U.S. Social Policy*. Chapter 25, 451-468. Oxford University Press. 2015. DOI:10.1093/oxfordhb/9780199838509.013.027.

²¹ Luo T, Mann A, Holden R. The expanding role of temporary help services from 1990 to 2008. *Monthly Labor Review*. August 2010:3-16; Dey M, Houseman SN, Polivka AE. Manufacturers' outsourcing to staffing services. *Industrial & Labor Relations Review* 2012; 65:533-559. For a discussion of the changing structure of work in the U.S., see Weil D. *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It*. Harvard University Press. 2014.

²² Locke M. Contract to cheat: How the reporting was done. Raleigh (NC) News and Observer. Retrieved February 8, 2015 from <http://www.mcclatchydc.com/static/features/Contract-to-cheat/Investigation-built-on-payroll-records.html?brand=mcd>.

²³ Misclassification hurts honest employers in another way. Some state systems (like that of Massachusetts) pay compensation to injured workers who were misclassified by their actual employer. These payments come from the workers' compensation system reserve funds collected from all employers who pay into the compensation system. This is yet another mechanism through which hazardous employers are subsidized, in this case by law-abiding ones.

²⁴ Smith CK, Silverstein BA, Bonauto DK, Adams D, Fan ZJ. Temporary workers in Washington State. *American Journal of Industrial Medicine* 2010;53:135-4.

²⁵ Recent studies on this topic include: Breslin FC, Smith P. Trial by fire: A multivariate examination of the relation between job tenure and work injuries. *Journal of Occupational & Environmental Medicine* 2006; 63:27-32; Morassaei S, Breslin FC, Shen M, Smith PM. Examining job tenure and lost-time claim rates in Ontario, Canada, over a 10-year period, 1999-2008. *Journal of Occupational & Environmental Medicine* 2013; 70:171-178; "Analysis of the Impact of Job Tenure on Workplace Injury Rates" (n.d.). Statistics -. Retrieved February 8, 2015 from <http://www.hse.gov.uk/statistics/adhoc-analysis/workplace-injury-rates.htm>. The increased risk of injuries among new workers has been known for many decades. For example, see Causes and Prevention of Accidents in the Iron

and Steel Industry, 1910-1919. *U.S Bureau of Labor Statistics*, 1922, Bulletin No. 298.

²⁶ See reports of temporary worker fatalities at: https://www.osha.gov/temp_workers/.

²⁷ ProPublica. Temp Land: Working in the New Economy. Retrieved February 8, 2015 from <http://www.propublica.org/series/temp-land>. See also Foley M, Ruser J, Shor G, Shuford H, Sygnatur E. Contingent workers: Workers' compensation data analysis strategies and limitations. *American Journal of Industrial Medicine*. 2014; 57:764-75.

²⁸ Shifting workers' compensation coverage to staffing agencies is not a zero-sum transition, in which the staffing agency must recoup these costs through higher prices paid by the host employer. In actuality, for workers doing the same high risk jobs, the workers' compensation insurance costs to the staffing agency are lower than those for the host employers. Staffing agencies, whose employees are often spread across many industries, generally pay lower premiums than the higher risk host employers. In addition, staffing agencies pay lower wages, and therefore the wage replacement costs for those injured temporary workers who do receive compensation payments are lower than payments for higher-paid host employer permanent employees. The workers' compensation costs to staffing agencies are further lessened by the reduced likelihood of injured temporary workers applying for workers' compensation: these workers are less likely to know their rights, and, even if they do, they may fear that they are less likely to get the next work assignment if they report any injury, particularly a compensable one.

²⁹ For breakdown of payment sources for medical costs, see Leigh JP, Marcin J. Workers' compensation benefits and shifting costs for occupational injury and illness. *Journal of Occupational and Environmental Medicine* 2012; 54:445-450. In addition, see Leigh, JP. Economic burden of occupational injury and illness in the United States. *Milbank Quarterly* 2011; 89:728-772; Groenewold MR, Baron SL. The proportion of work-related emergency department visits not expected to be paid by workers' compensation: Implications for occupational health surveillance, research, policy, and health equity. *Health Services Research* 2013; 48:1939-1959.

³⁰ Spieler, EA, Burton JF. The lack of correspondence between work-related disability and receipt of workers' compensation benefits. *American Journal of Industrial Medicine* 2012; 55:487-505; Boden LI, Spieler EA. Compensation for work injury and illness. In D. Béland, C. Howard, and K. J. Morgan, eds. *Oxford Handbook of U.S. Social Policy*. Chapter 25, 451-468. Oxford University Press. 2015. DOI:10.1093/oxfordhb/9780199838509.013.027; Boden LI, Ruser JW. Workers' compensation 'reforms,' choice of medical care provider, and reported workplace injuries, *The Review of Economics and Statistics* 2003; 85:923-929. See also Guo XS, Burton JF. The growth in applications for Social Security Disability Insurance: A Spillover effect from workers' compensation. *Social Security Bulletin* 2012; 72:69-88. This paper's conclusions are

not consistent with those of another (McInerney M, Simon K. The effect of state workers' compensation program changes on the use of federal Social Security Disability Insurance. *Industrial Relations* 2012; 51:57-88) whose authors find no correlation between changes in state workers' compensation benefits and the growth of SSDI programs. Since these papers are correlational, they carry far less weight in identifying causal relationships than the other papers cited here on the relationship of work injury, workers' compensation benefits and SSDI.

³¹ Reville RT, Schoeni, RF. The fraction of disability caused at work. *Social Security Bulletin* 2004; 65:31-37. Of those reporting disability, 17% report the impairment was caused by a work injury, 15% said their impairment was due to the nature of their work, and an additional 4% were impaired because of work hazards. Among all study participants who reported being disabled and that their health condition was caused by work, only 12% had ever received workers' compensation benefits, while 29% were currently enrolled in SSDI.

³² O'Leary P, Boden LI, Seabury SA, Ozonoff A, Scherer E. Workplace injuries and the take-up of Social Security Disability benefits. *Social Security Bulletin* 2012; 72:1-17.

³³ National Safety Council. Injury Facts. 2014 edition. Itasca, IL.

³⁴ National Safety Council. Accident Facts. 1994 edition. Chicago, IL.

³⁵ Bureau of Labor Statistics. Revisions to the 2012 Census of Fatal Occupational Injuries (CFOI) counts April 2014. Retrieved February 8, 2015 from http://www.bls.gov/iif/oshwc/cfoi/cfoi_revised12.pdf.

³⁶ Quartile Data: Table Q2. Survey of Occupational Injuries and Illnesses. Bureau of Labor Statistics, Department of Labor, 2012. Retrieved February 11, 2015 from <http://www.bls.gov/iif/oshwc/osh/os/ostb3586.pdf>.

³⁷ Mendeloff J, Staetsky L. Occupational fatality risks in the United States and the United Kingdom. *American Journal of Industrial Medicine*. 2014; 57:4-14.

³⁸ Improvements in benefits provided by the workers' compensation system to injured workers would also, to a limited degree, reduce the economic impact of workplace injuries and illnesses on working families and would decrease income inequality, particularly among low-wage workers. While the Department of Labor has had an interest in improving the state-based workers' compensation programs for many decades (see, for example, 1972 Report of the National Commission on State Workmen's Compensation Laws, available at: http://workscompresources.com/?page_id=28), there is little federal input in or oversight of those systems. Further, under the Occupational Safety and Health Act of 1970 (OSHA's authorizing legislation) the agency has no role in state workers' compensation programs. This paper focuses primarily on prevention injuries and illnesses (rather than improving the compensation of those already injured), clearly the better approach to eliminating the income disparities caused by work injuries.

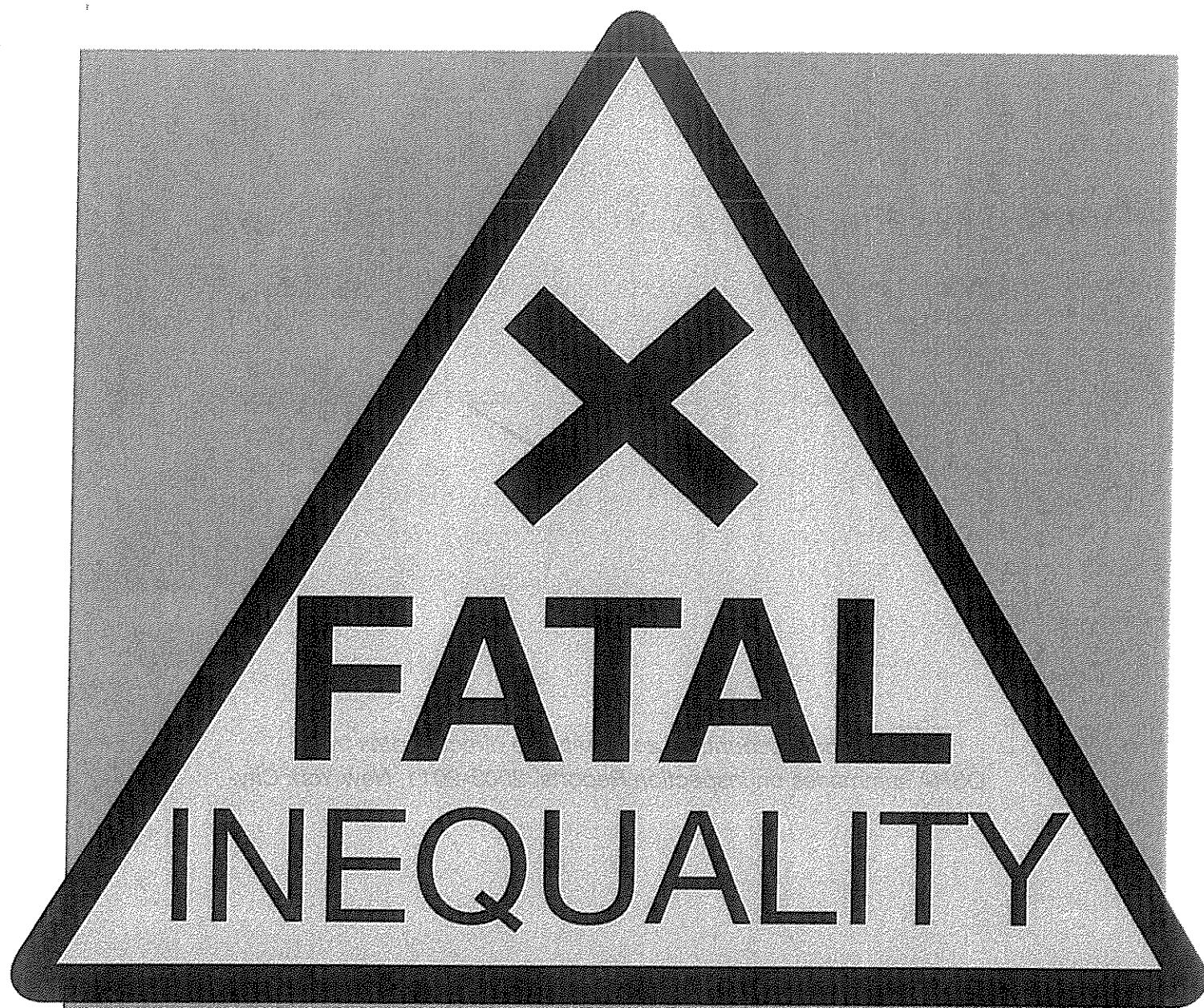
“More can, and must, be done. The acceptable number of work injuries, especially fatal work injuries, is zero. Many employers strive to prevent all injuries and illnesses while others do not.”



Photo credit: Roberto Carlos Vergara.



**OSHA[®] Occupational
Safety and Health
Administration**



**Workplace Safety Eludes
Construction Workers of Color
in New York State**



OCTOBER 2013

A Report by the Center for Popular Democracy

*All sidebar accounts of accidents are direct quotes from
OSHA summaries on Inspection Reports, 2003-2011, New York City.*

EXECUTIVE SUMMARY

The construction industry is full of dangerous jobs. Smaller companies often have particularly unsafe workplaces – they tend to be non-union and lack the necessary training, proper equipment, and respect for workers' reports about unsafe conditions. Workers of color disproportionately face construction dangers because they work in construction in relatively high numbers, they are concentrated in smaller, non-union firms, and they are over-represented in the contingent labor pool.

Our review of 2003-2011 OSHA investigations of construction site accidents involving a fatal fall from an elevation revealed that Latinos and immigrants are disproportionately killed in fall accidents.

- ◆ In 60% of the OSHA-investigated fall from an elevation fatalities in New York State, the worker was Latino and/or immigrant, disproportionately high for their participation in construction work.
- ◆ In New York City, 74% of fatal falls were Latino and/or immigrant.
- ◆ Narrowing further, 88% of fatal falls in Queens and 87% in Brooklyn involved Latinos and/or immigrants.
- ◆ 86% of Latino and/or immigrant fatalities from a fall from an elevation in New York were working for a non-union employer.

In 2011 focus groups, Latino construction workers reported fearing retaliation as a key deterrent to raising concerns about safety.

The primary protection for construction workers' safety, the federal Occupational Safety and Health Administration (OSHA), is ineffective. Understaffed because of inadequate funding, OSHA is unable to inspect a significant number of construction, demolition, and building rehabilitation sites active at any one time in the state. And, when OSHA does inspect a construction site, the monetary penalties imposed for violations are so small that employers can see them as just an incidental cost of doing business. Further, OSHA almost never pursues criminal penalties, even for egregious and willful violations that are directly linked to a worker's death.

New York State offers supplemental protection through the Scaffold Law (Labor Law §240), which requires owners and contractors to provide appropriate and necessary equipment, such as safe hoists, ladders, and scaffolds. The law holds owners and contractors fully liable if their failure to follow the law causes a worker to be injured or killed.

The construction and insurance industries are proposing an amendment to the Scaffold Law that would shift responsibility for workplace safety from owners and contractors, who control site safety, to workers, who do not. The change will have a disparate impact on construction workers of color, which makes the preservation of the current Scaffold Law a civil rights issue.

Construction workers' safety should be improved by:

- ◆ Appropriately funding, staffing and empowering OSHA to effectively prevent dangerous worksite conditions and punish preventable and foreseeable accidents;
- ◆ Ensuring that all construction owners, contractors, and workers receive proper safety training; and
- ◆ Protecting and enforcing the New York State Scaffold Law.

Introduction

Construction workers work in one of the most dangerous industries in the country, in order to build, repair, and rebuild our state. Union worksites are about three times safer than non-unions sites, according to the Occupational Safety and Health Administration (OSHA).¹ But workers of color face a heightened chance of injury or death on the construction site because they work construction in disproportionate numbers and those numbers are concentrated among smaller, non-union contractors.

This risk translates into a fatal inequality as workers of color die in disproportionate numbers on construction sites; for example, 60% of all deaths from a fall from an elevation in New York were Latinos and/or immigrants, but only 34% of all construction workers reported being either Latino and/or an immigrant.²

Construction workers, like other workers, expect the protection of the Occupational Safety and Health Administration (OSHA). However, OSHA is inadequately staffed to do preventive inspections and usually fails to pursue aggressive penalties after serious accidents.³

New York State has filled some of that gap with the Scaffold Law (Labor Law §240), an essential safety measure to protect construction workers. The law holds owners and contractors fully liable if their failure to follow the law causes a worker to be injured or killed. It short-circuits the incentive for owners and general contractors to contract with cut-rate subcontractors who take safety shortcuts. Under the Scaffold Law, owners and general contractors must provide adequate compensation for medical care *and* pain and suffering if their inadequate safety equipment causes serious injury to a worker. Also, the law fills an important gap in workers' compensation. Workers' compensation is time-limited, running out whether or not a worker has recovered. Under the Scaffold Law, owners and contractors cover health care for the life of the covered injury.

The construction and insurance industries are proposing an amendment to the Scaffold Law that would shift responsibility for workplace safety from owners and contractors, who control site safety, to workers, who do not.

The proponents of this change are calling for "comparative liability," which

"Two employees were brick-pointing from a two-point suspension scaffold at a height of 16 ft above ground level. They were moving and adjusting the scaffold when employee #1 fell. Employee #1 was not tied off to his lifeline. Employee #1 was pronounced dead at the hospital."

¹ Michael Gartland, "Death toll at NYC construction sites tripled last year," *New York Post* (April 7, 2013).

² American Community Survey, "ACS 2006-2010 Equal Employment Opportunity Tabulation", US Census Bureau (2012). To get the number of Latinos and immigrants, we added the ACS categories for immigrant blacks, immigrant white, immigrant Asian, and Latino.

³ AFL-CIO, *Death on the Job: A Toll of Neglect – A National and State-by-State Profile of Worker Safety and Health in the US, 22nd Edition*, (April 2013).

would try to apportion culpability between workers and owners or contractors. Comparative liability, though, ignores the realities of construction work. Construction workers often find themselves ordered to work in unsafe conditions, without safety equipment or with defective or improperly installed or secured equipment. This change would place workers at a serious disadvantage when facing unsafe conditions: they may lack knowledge of their legal rights, face language barriers in some cases, and fear retribution for speaking out. The proposed change would disproportionately harm construction workers of color,⁴ possibly leading to more deaths among those workers in particular. The preservation of the Scaffold Law is, at root, an act to protect workers from dangers at work that lead to disparate outcomes based on race, ethnicity, or language.

"Employee #1 stepped off a roof onto a ladder that was placed on top of a scaffold. The scaffold collapsed. Employee #1 fell and was killed."

Construction work is dangerous, with workers of color facing the greatest risks.

Construction is one of the most hazardous industries. Four of the 10 most hazardous jobs in the nation are in construction.⁵ The added dangers of inadequate training, employer inattention to safety and corner-cutting, and an atmosphere of fear created by great job insecurity, increase the risk to workers' lives. Workers of color, particularly Latinos and immigrants,⁶ disproportionately face these dangers because of their relatively large participation in the construction workforce and their concentration in smaller, non-union firms and super-contingent work structures. In 2010, a national study of the medical records of 7,000 construction workers found that Latino construction workers were nearly 30% more likely to have work-related injuries than white non-Latinos, after controlling for sex, age, education, and specific construction occupation.⁷

⁴ Throughout this paper, we have used the term "people of color" to refer to the census racial/ethnic categories Latino/Hispanic of any race; Black/African-American alone; and Asian alone.

⁵ Bureau of Labor Statistics.

⁶ Research on the demographic disparities in injury and fatality rates has largely focused on Latinos and immigrants because OSHA tracks "fatalities among Hispanic and immigrant employees...to assess the impact of potential language barriers and training deficiencies on fatal accidents" (OSHA, *Investigations Field Manual*). Additionally, Latinos make up, by far, the largest share of construction workers of color. Because OSHA does not record the race of workers, we are unable to track the injuries and fatalities to other workers of color; however, we know that they are in many of the same working conditions that increase risk for Latino and immigrant workers.

⁷ Xiuwen Sue Dong et. al., "Work-related injuries among Hispanic construction workers: Evidence from the medical expenditure panel survey," *American Journal of Internal Medicine* (February 2010).

Falls from an elevation cause the most fatalities in the construction industry, accounting for more than one-third of fatal occupational injuries in the industry.⁸ Incidents involving construction workers account for half of all fatal falls in private industry.⁹

People of color account for 40% of New York State's construction workers. In New York City, Westchester, Mount Vernon, New Rochelle, Rochester, White Plains, and Yonkers, people of color constitute the majority of residents working construction. More than a third of construction workers who reside in Nassau and Rockland counties and Buffalo, Schenectady, and Syracuse are people of color (Table 1).

Table 1. Construction workers by race/ethnicity

Jurisdiction	Total Construction Workers	White Alone (%)	Latino/ Hispanic (%)	Black/ African American Alone (%)	Asian Alone (%)
New York State	481,130	59.8	24.8	9.6	3.9
New York City	190,290	29.1	41.1	18.2	9.1
Downstate Suburban Counties					
Suffolk	46,185	72.8	23.1	2.8	0.4
Nassau	29,200	63.4	25.9	8.1	1.8
Westchester	27,300	44.9	46.0	6.6	1.0
Rockland	7,384	62.5	30.1	4.1	1.7
Cities of 55,000 or more					
Albany	1,315	58.5	22.7	16.3	0.0
Buffalo	4,390	63.0	7.0	25.0	0.4
Mt. Vernon	2,350	31.9	16.4	33.6	1.9
New Rochelle	3,190	32.0	58.2	6.1	2.7
Rochester	3,579	48.5	19.9	28.1	1.8
Schenectady	1,464	66.7	10.8	19.8	0.0
Syracuse	2,615	64.8	7.8	23.8	0.6
Utica	1,225	82.8	4.1	9.2	0.8
White Plains	1,440	23.9	72.9	2.8	0.7
Yonkers	6,164	48.9	43.4	5.8	0.4

Source: American Community Survey, "2006-10 Equal Employment Opportunity Tabulation," (2012). Note: Columns do not necessarily equal 100% because workers who selected two or more races, "some other race", or American Indian and Alaska Native" are not shown.

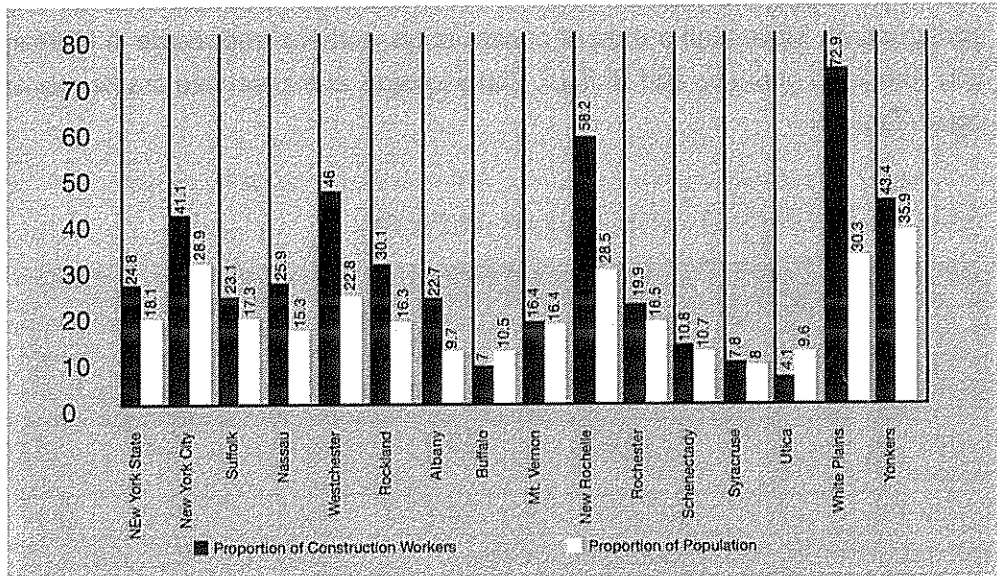
8 Xiuwen Sue Dong et. al., "Fatal falls from roofs among U.S. construction workers," *Journal of Safety Research* (February 2013).

9 OSHA Training Institute, *Construction Focus Four: Fall Hazards* (Instructor Guide) (Washington, DC: OSHA, 2011): 4.

Although significant numbers of African-Americans and Asians/Asian-Americans work in construction, Latinos are disproportionately represented among construction workers across the state.

"Employee #1 fell 8 floors through an unguarded window wall opening. He was killed."

Chart 1. Latinos as proportion of construction workers, general population (in percent)



We have reviewed the violations OSHA cited in New York construction-site fall accidents from 2003 to 2011, with particular attention to those in which a Latino and/or immigrant worker was killed.¹⁰ This study revealed that Latinos and immigrants are disproportionately killed in fall accidents.

- ◆ In 60% of the OSHA-investigated fall from an elevation fatalities in New York State, the worker was Latino and/or immigrant, disproportionately high for their participation in construction work.¹¹
- ◆ In New York City, 74% of fatal falls were Latino and/or immigrant."
- ◆ Narrowing further, 88% of fatal falls in Queens and 87% in Brooklyn involved Latinos and/or immigrants. 51 percent of all the fatal falls that OSHA investigated in New York between 2003 and 2011 involved a Latino and/or immigrant worker at a non-union construction site.
- ◆ 86% of Latinos and/or immigrant fatalities from a fall from an elevation were working for a non-union employer.

¹⁰ We reviewed investigation reports of fatalities in the three construction Standard Industrial Classification codes, 15, 16, and 17. OSHA investigated 136 fatal "fall from elevation" incidents in that time.

¹¹ The American Community Survey reports that approximately 34 percent of construction workers reported that they are Latino and/or non-citizen.

Their concentration in small, non-union contractors accounts for the heightened risk construction workers of color face.

Workers of color disproportionately work for smaller, non-union contractors. According to one national study, "In 2010, only 7% of Hispanic workers in construction were union members, compared to 18% among non-Hispanic construction workers."¹² Non-union contractors tend to offer less training and follow safety procedures less rigorously.¹³

Small, non-union employers disproportionately fail to train and equip workers in accordance with the law. Minority workers, particularly immigrant workers, are more likely to participate in the underground construction labor pool. In 2003, the New York City Construction Industry Partnership issued a report on safety in the city's underground construction industry, *Construction Safety: A Tale of Two Cities*. The report described underground employers that overwhelmingly hire immigrants of color and are characterized by "the lack of any skill or safety training" and a failure "to comply with any city or federal rules and regulations to build in New York City." The report documented that employers in this segment of the construction industry "invest virtually nothing in the safety training of their project management and/or trade labor force" and concludes that the underground employers jeopardize "the safety of the public and their workforces because of poor construction practices."¹⁴

In 2007, the Brennan Center for Justice studied the same industry and found similarly dangerous conditions: "Unregulated workers lack protective equipment, rarely receive mandated safety training, and can be exposed to hazardous materials."¹⁵

Our review of OSHA citations in fatal falls corroborates the findings of the Construction Industry Partnership and Brennan Center. In the vast majority of these fatalities, OSHA found at least one violation of their requirements to provide training in fall protection, scaffolds, ladders or stairway safety.

Small, non-union contractors have poorer safety records overall. A study by the New York State Trial Lawyers Association (NYSTLA) of all OSHA construction site inspections in New York during 2008 found that OSHA safety standards were violated substantially less frequently among the largest contractors

"Employee #1 was removing panels from the roof of a one-story building that was being demolished. He fell over 15 ft into the inside of the building, striking his head first on the concrete wall, and then the concrete floor. He was pronounced dead by the New York Police Department."

¹² The Center for Construction Research and Training, *The Construction Chart Book: The U.S. Construction Industry and its Workers* (Silver Spring, MD: 2013), 18.

¹³ CCRT, 31.

¹⁴ New York City Construction Industry Partnership, *Construction Safety: A Tale of Two Cities* (November 2003), 4.

¹⁵ Brennan Center for Justice, *Unregulated Work in the Global City* (New York, NY: 2007), 73-78.

than among contractors generally. Approximately 13% of inspections of New York's largest building general contractors (e.g., Tishman Construction, StructureTone, Skanska) yielded violations, compared to 51% of inspections of building general contractors as a whole. In this study, NYSTLA found that the substantially lower violation rates among large general contractors results from two key factors:

1. Large contractors are more likely than small contractors to employ site safety professionals who monitor construction sites and require remediation of safety deficiencies; and
2. Their subcontractors are significantly more likely to be unionized and less likely to employ day labor.¹⁶

In our current review of OSHA investigations of fatalities from construction falls in New York, only one of the employers in the 136 incidents was among the 30 largest contractors in New York City in 2004 or 2010.¹⁷ We found that most fatal construction falls from 2003 to 2011 happened at smaller construction and renovation projects and, primarily, in demolition work. For instance, the fall fatalities in Queens involved activities such as demolishing a walk-in cooler in a fruit store, brick-pointing a six-story building, and working on a roof.

Workers fear reprisals for demanding a safe workplace. All workers may hesitate before refusing an order to use unsafe equipment or to perform a task in a dangerous manner. Refusal can mean removal for the day or the loss of the job altogether. For non-union workers, who are disproportionately immigrant and/or of color, factors like a lack of training in proper procedures, incomplete information about their rights, and absence of a grievance procedure" should be " , and the absence of a grievance procedure compound that initial hesitance.

In recent years, the percentage of New York City construction workers who are members of labor unions has declined, limiting access to a vital protection for worker safety. One study estimates the number of unionized construction workers at 45% in the period of 2004-2006, down from 63% in the early 1990s.¹⁸ In the years since, non-union contractors in New York City have expanded beyond just the smaller projects in the outer boroughs and are erecting substantial residential and hotel projects in Manhattan.¹⁹

¹⁶ New York State Trial Lawyers' Association, *Lives in the Balance: Workers at Elevated Heights at Greatest Risk in Construction* (2008), p8.

¹⁷ "New York Tristate's Top Contractors", *ENR New York* (2011, 2004).

¹⁸ Fiscal Policy Institute, *Building Up New York, Tearing Down Job Quality: Taxpayer Impact of Worsening Employment Practices in New York City's Construction Industry* (December 2007), 2 and 11.

¹⁹ See, for example, Daniel Massey, "Zell bends on union construction: Chicago developer lands discount pact with labor on Park Ave. South building," *Crain's New York Business* (April 29, 2012).

"Employee #1, a laborer, was installing floor tile grout with a coworker in a fourth floor hallway, outside the elevator entrance. Earlier, when they were preparing to work on the tile, they moved the 4-foot by 8-foot sheet of plywood that had been leaning against the entrance to the elevator shaft. The coworker was working on the tile and facing the other way, but when he turned to look, Employee #1 was gone. Employee #1 had fallen approximately 50 feet down the shaft and was killed.... The elevator shaft entrances should have had secured barriers, such as guardrails to allow employees to install floor tile with the guardrails still in place."

In addition, the construction industry – particularly in residential construction – relies on day laborers. A 2009 study by a city commission found that “local organizations working with day laborers estimate that this population [day laborers] now totals over 10,000.”²⁰ An earlier study found that employers “routinely abused” day laborers and assigned them to “dirty and/or dangerous jobs” that might “expose them...to occupational hazards.”²¹ Testimony before the New York City Council by the National Employment Law Project reported, “Desperate for work and fearing retaliation, day laborers often risk life and limb without ever reporting work hazards.”²²

One recent study found that this fear of retaliation on a current job or in the future affects Latino construction workers’ actions regarding their workplace safety, regardless of whether they are contingent workers or employees. The 2011 study was specifically designed to learn Latino construction workers’ perspectives on the reasons for higher injury and fatality rates for Latinos in construction. In focus groups, “Participants described an atmosphere of intimidation that prevented workers from speaking up about safety. They feared retaliation, most often in the form of getting fired or not offered future work.”²³

OSHA does not effectively protect construction workers.

OSHA efforts to ensure worker safety are stymied before they begin. OSHA falls woefully short of having sufficient staff to inspect any significant number of construction, demolition, and building-rehabilitation sites active at any one time in the state. According to the AFL-CIO, OSHA has only 113 safety and health inspectors in New York State. It would take those inspectors 107 years to inspect each workplace once.²⁴

When OSHA does inspect a construction site, the monetary penalties imposed for violations are so small that employers can see them as just an incidental cost of doing business. The AFL-CIO’s study found that the average penalty assessed for a “serious” violation of an OSHA standard in New York in 2012 was \$2,164. The average penalty per fatality investigation was a \$12,767. The median initial penalty was \$4,200. Given that the initial penalty is almost always

20 New York City Temporary Commission on Day Laborer Job Centers, *Final Report* (April 2009), 3.

21 Community Development Research Center, *Day Labor in New York: Findings from the New York Day Labor Survey* (New York City: Milano Graduate School of Management and Urban Policy at New School University: 2003), 9-10.

22 National Employment Law Project, Testimony at “Hearing on Day Laborers” (New York City: January 2003).

23 Carla Roefofs et.al., “A qualitative investigation of Hispanic construction worker perspectives on factors impacting worker safety and risk,” *Environmental Health* (September 30, 2011).

24 AFL-CIO, *Death on the Job: A Toll of Neglect – A National and State-by-State Profile of Worker Safety and Health in the US, 22nd Edition* (Washington, DC: 2013), 109 and 112.

reduced if there is a conference or appeal, the current median penalty in fatal incidents was only \$3000 in 2012.²⁵ The New York Committee for Occupational Safety & Health summarizes: "OSHA's penalty structure is insufficient to serve as a deterrent. Fines are reduced, and unsafe workplaces remain."²⁶

OSHA almost never pursues criminal penalties, even for egregious and willful violations that are directly linked to a worker's death. Since 1970, there have been almost 400,000 worker deaths and liable parties have served only 89 months in jail.²⁷

The resulting impunity for employers encourages their maintenance of unsafe working conditions. These unsafe working conditions have a disparate impact on construction workers of color.

Most fatalities from falls from an elevation could have been averted. In OSHA parlance, a "serious" violation is one in which "a substantial probability that death or serious physical harm could result and the employer knew, or should have known, of the hazard." A "Gravity" score of 10 indicates that the violation has the highest level of "severity" with a greater probability that an injury will result. Our review of OSHA reports found that:

- ◆ At 85% of the construction sites where a worker of color or immigrant worker fell from an elevation and died between 2003 and 2011, OSHA accident investigators found there had been a *Serious, Gravity 10* violation of an OSHA construction safety standard.
- ◆ In 78% of these accidents, OSHA found a *Serious, Gravity 10* violation of a construction standard expressly intended to prevent fall from an elevation injury or death.²⁸

"Employee #1 was scraping and painting the fire escape on the second floor of a 5-story building. The side rail gave way causing Employee #1 to fall approximately 20 feet to the ground. Employee #1 suffered a concussion and was killed."

The New York Scaffold Law closes the loopholes left by OSHA.

New York State has filled some of that gap with the Scaffold Law (Labor Law §240), an essential safety measure to protect construction workers. The law holds owners and contractors fully liable if their failure to follow the law causes a worker to be injured or killed. It short-circuits the incentive for owners and general contractors to contract with cut-rate subcontractors who take safety

25 AFL-CIO.

26 NYCOSH, *Dying for Work in New York* (New York, 2009).

27 AFL-CIO.

28 These standards are CFR 1926 Subparts L (Scaffolds), M (Fall Protection), and X (Ladders); CFR 1926.020 and 1926.021 of Subpart C ("general safety and health provisions" and "safety training and education"); three E subpart standards (CFR 1926.106 "working over or near water"; CFR 1926.104, "safety belts, harnesses, and lanyards"; CFR 1926.104, 105 E "safety nets"); and CFR 1926.760 of Subpart R (steel erection "fall protection and protection").

shortcuts. Under the Scaffold Law, owners and general contractors must provide adequate compensation for medical care *and* pain and suffering if their inadequate safety equipment causes serious injury to a worker. Also, the law fills an important gap in workers' compensation. Workers' compensation is time-limited, running out whether or not a worker has recovered. Under the Scaffold Law, owners and contractors cover health care for the life of the covered injury.

The Scaffold Law provides strong incentive for owners and contractors to follow the law requiring appropriate safety equipment for workers at elevations. Given the disproportionate number of people of color working for smaller contractors with poorer safety track records, the Scaffold Law plays a vital role in mitigating the disparate outcomes of OSHA's inability to inspect significant numbers of worksites.

Conclusion

Working in construction is dangerous – and working for small, non-union contractors is particularly dangerous. People of color – who disproportionately work in construction – are concentrated among these more dangerous small, non-union contractors. Because of this, their injury and death rates are exceedingly high, even in relation to their relatively high participation in the construction industry. Currently, OSHA, tasked with protecting the health and safety of all workers, cannot meet the task of preventing workplace accidents and disciplining negligent employers. The New York State Scaffold Law, which works to fill a gap left by OSHA, currently faces attempts to curtail its effectiveness.

Workers have a right to basic safety on the job. To make that right meaningful for construction workers, and workers of color in particular, we must:

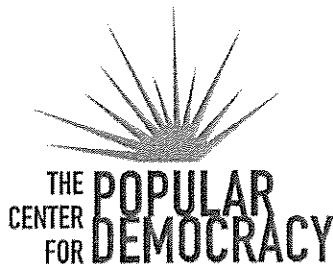
- ◆ **Appropriately fund and empower OSHA** so it can hire and train more inspectors, conduct more inspections to prevent tragic and unnecessary accidents, and increase penalties for violations so that they will be a credible deterrent to ignoring OSHA construction safety standards.
- ◆ **Ensure that all construction owners, contractors, and workers receive proper safety training**, including training on the basics of OSHA safety standards. Owners, contractors, and foremen should be trained on how to inspect and remediate problems with their safety equipment. Employees should be trained on how to inspect their safety equipment and how to report problems to employers, the State, and OSHA.

"An employee, a laborer, was working from a tubular welded frame scaffold. The employee fell from approximately three stories to the top of the freight elevator car below. The employee was transported to the hospital, where he was pronounced dead."

- ◆ **Protect and enforce the New York State Scaffold Law.** The Scaffold Law helps ensure the safest possible workplace conditions for all construction workers. To protecting against disparate injuries and deaths among construction workers of color. The preservation of this critical worker protection law is vital.

About CPD

The Center for Popular Democracy (CPD) works in partnership with innovative community-based organizations, local and state networks, and progressive unions across the country to promote equity, opportunity, and a dynamic democracy. CPD supports partners in developing cutting-edge state & local policy that deliver tangible benefits to communities and also helps to build organization infrastructure and capacity so our partners can grow stronger and expand.





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NYC Construction Safety Fact Sheet

The federal Occupational Safety and Health Administration (OSHA) recently released statistics on construction. According to OSHA's report:

75%

of all NYC workplace fatalities in 2012 were construction related

72%

of construction fatalities in NYC in 2012 occurred on job sites where workers did not participate in state approved training and apprenticeship programs.

52%

of construction fatalities involved immigrant workers or workers who spoke a language other than English.

In 2012, OSHA's federal safety and health experts conducted 741 construction inspections, issued over 1,000 serious, willful or repeat violations and assessed nearly \$3.5 million in penalties to employers in New York City.

In 2012, NYC Department of Buildings inspectors conducted 281,301 building inspections, issued 49,958 violations and 5,130 Stop Work Orders.

Construction Deaths Are Avoidable

By GARY LABARBERA

The recent deaths of six people and injury of 13 others in a Philadelphia building collapse bring home the reality of the dangers faced every day by construction workers and those who live or work near construction sites.

According to recently released 2012 statistics from the Occupational Safety and Health Administration, commonly known as OSHA, for New York City:

75% of all work-related deaths occurred on construction sites;

72% of construction fatalities occurred on sites without high-level, state-approved training and safety programs; and

Immigrant, Latino and non-English speaking workers are at significantly higher risk of losing their lives on the job than other workers, OSHA reports.

Construction work is hard and it can be dangerous.

In 2012, federal safety and health experts conducted 741 construction inspections and issued over 1,000 serious, willful or repeat violations and assessed nearly \$3.5 million in penalties to employers in New York City.

The unfortunate reality is that when New York City gives out subsidies, tax breaks, public land and other incentives to real estate developers, it does not require that the contractors chosen to perform these projects provide adequate training



A 19-year-old Salvadoran worker fell to his death from a scaffold on the 12th floor at a building on 2nd Ave between 42nd & 43rd Sts. photo Alex Vros EDLP 9-28-06

to their employees to protect themselves and the public from harm.

The city does not even disqualify irresponsible contractors banned from building public schools, roads and bridges from building taxpayer subsidized projects for things like affordable housing and economic development.

The policies and resources of the city should promote the best outcomes for our residents and workers – not turn a blind eye to businesses that disregard our laws. City officials should take action to bring at least the same standards to private projects that receive taxpayer subsidies as it applies to public projects that are also paid for by all of us.

Gary LaBarbera
President
Build Up NYC

Hay que detener la alta tasa de mortalidad entre latinos

Por: GARY LABARBERA

Las muertes recientes de seis personas y las lesiones de otras 13 en el colapso de un edificio en Philadelphia nos presenta la realidad de los peligros que enfrentan todos los días los trabajadores en la construcción y aquellos que viven o trabajan cerca de los lugares bajo construcción.

Nuevas estadísticas de la Administración para la Seguridad y Salud Ocupacional (OSHA) señalan que en la ciudad de Nueva York el año pasado, el 75% de todas las muertes relacionadas con el trabajo ocurrieron en construcciones y el 72% de las muertes en construcciones ocurrieron en lugares sin programas de capacitación y seguridad de alto nivel, aprobados por el estado.

OSHA también reportó que los inmigrantes, trabajadores latinos y otros que no dominan el inglés, están expuestos a un riesgo significativamente mayor de perder la vida en el trabajo que los otros trabajadores.

Esto es inaceptable. El trabajo de construcción es fuerte y puede ser peligroso, pero las muertes en la construcción pueden evitarse.

En el 2012, expertos federales de seguridad y salud realizaron 741 inspecciones de construcción y emitieron más de 1,000 violaciones serias, deliberadas o repetidas y evaluaron cerca de \$3.5 millones en penalizaciones a los empleadores en la ciudad de Nueva York.

Lamentablemente, la realidad es que cuando la ciudad de Nueva York otorga subsidios, descuentos fiscales, propiedad pública y otros incentivos a los desarrolladores de bienes raíces, no se les exige a los contratistas seleccionados para llevar a cabo estos proyectos proporcionar un entrenamiento



de acuerdo versiones un salvadoreño de 19 años cayó de un andamio mientras trabajaba, en el piso 12 en un edificio ubicado en la avenida segunda entre la la calle 42 y 43 foto alex vros EDLP 9-28-06

adecuado a sus empleados para protegerse a sí mismos y al público de cualquier daño.

La ciudad ni siquiera descalifica a los contratistas irresponsables, a los que se les ha prohibido construir escuelas públicas, carreteras y puentes, de construir proyectos subsidiados por los contribuyentes para proyectos como viviendas económicas y desarrollos económicos.

Las políticas y los recursos de la ciudad deberían promover los mejores resultados para nuestros residentes y trabajadores —no hacerse de la vista gorda de las empresas que ignoran nuestras leyes.

Los funcionarios de la ciudad deberían por lo menos exigir las mismas normas para aquellos proyectos privados que reciben subsidios de los contribuyentes tal como se aplican a los proyectos públicos que también son financiados por todos nosotros.

Gary LaBarbera
es presidente de Build Up NYC



BUNYC Affiliated Training Programs Create Career Paths for Thousands of NYC Residents

NYC Building and Construction Trades Apprenticeships

NYC Building and Construction Trades unions provide a career path to the middle class through good jobs with family sustaining wages, excellent benefits and unparalleled training opportunities through more than two dozen New York State-approved apprenticeship programs. More than two dozen NYC union apprenticeship programs are currently training more than 8,000 people for middle class careers in the construction industry.

As part of a registered apprenticeship program, apprentices receive:

- a minimum of 144 hours of annual classroom instruction covering the theory, principles and technical knowledge required to do the job; and,
- on-the-job training while employed at wages which increase as their skills progress.

At the successful conclusion of apprenticeship training, which typically lasts 2-5 years depending on the trade, apprentices graduate to become journeypersons. Journeypersons are recognized as the most qualified members of their craft and command the best wages and benefits in the industry.

- **NYC Union Construction Apprenticeship Programs Enrolled An Annual Average of 8,022 Individuals**
- **75% of Union Construction Apprenticeship Program Participants are NYC Residents**
 - From 2010-2012, 6,010 NYC residents were enrolled in NYC construction apprenticeship programs on average, representing 75% of total annual enrollees.
- **65.5% of Apprentices Who Live in NYC Are People of Color**
 - 2,017 apprentices who reside in NYC are African American – 33.6%
 - 1,625 apprentices who reside in NYC are Hispanic – 27%
 - 292 apprentices who reside in NYC are Asian or other ethnicities – 4.9%
- **Innovative Pre-Apprenticeship Programs Create a Community Pipeline to Good Jobs**
 - NYC Building and Construction Trades unions provide a career path through a number of innovative pre-apprenticeship programs:
 - **The Edward J Malloy Initiative for Construction Skills** provides pre-apprenticeship training that prepares graduating New York City public high school seniors and other local populations for entry into unionized building and construction trades apprenticeship programs.
 - **256 recent NYC Public High School graduates placed in union apprenticeships from 2010-2012.**
 - **Helmets to Hardhats** is a national, nonprofit program that connects National Guard, Reserve, retired and transitioning active-duty military service members with skilled training and quality career opportunities in the construction industry.
 - **154 NYC veterans placed in union apprenticeships from 2010-2011.**
 - **Nontraditional Employment for Women (NEW)** prepares, trains, and places women in careers in the skilled construction, utility, and maintenance trades, helping women achieve economic independence and a secure future.
 - **292 NYC women placed in apprenticeships from 2010-2011.**

NY Hotel Trades Council Industry Training Program

The Industry Training Program (ITP) began in 1969 through the joint efforts of the New York Hotel Trades Council and the Hotel Association of New York City, Inc. It was created in response to the growing need for better-trained employees within the workplace and to encourage worker advancement.

Since 2007, the ITP has graduated 1,500 members from its state of the art Training Center who have taken courses in the following areas:

- Engineering Department
 - Air Conditioning and Refrigeration Mechanic
 - Boiler Mechanic
 - Electrical Mechanic
 - Plumbing
- Food and Beverage Department
 - A la Carte Server
 - Banquet Server
 - Tournant (Culinary Arts)
- General Life Skills
 - Computer Skills
 - Referral Service

SEIU 32BJ Training Fund

The 32BJ Training Fund is a joint labor-management partnership that offers training to eligible participants at no cost. The Training Fund offers a wide range of excellent industry and basic education programs designed specifically for building service workers. These courses are developed with input from building owners and union members to give members the skills they need to succeed.

The Training Fund facility is equipped with customized mechanical trainers and simulators that allow students to trouble-shoot boiler and HVAC systems. Members have access to computer labs where they can take classes and develop their computer skills. The 32BJ Training fund is committed to helping 32BJ members achieve success in their careers.

The 32BJ Training Program has developed several Career Tracks intended to provide each student with the essential tools and mechanical abilities needed to achieve the next level in their career. Career Tracks include such tracks as Air Conditioning and Refrigeration License Certification, Cleaning Foreperson/Lead Cleaner, Handyperson, Security Professional, Superintendent/Resident Manager and more.

The 32BJ Training Program also offers courses in the following areas:

- Energy Efficiency
- English as a Second Language
- Green Cleaning
- License and Required Training Updates
- Security
- Superintendent Training and Professional Development



Accidents, Violations and Stop Work Orders at Brooklyn Bridge Park – 3/6/2015

There have been multiple accidents, worker injuries, NYC Department of Buildings violations and Stop Work Orders at Starwood and Toll Brothers' Pierhouse Project at Pier 1 in Brooklyn Bridge Park. Since August, 2013 there have been eleven full or partial Stop Work Orders issued by the NYC Department of Buildings at the project. Since September, 2014 alone, there have been four separate accidents, four worker injuries, and six separate partial stop work orders at the Pierhouse development. One of these accidents resulted in an injured worker filing a lawsuit against the Brooklyn Bridge Park Corporation for negligence, which is still pending.

- **Worker Injury and Partial Stop Work Order on 3/2/2015**
 - On February 27, 2015, the Site Safety Manager reported that glass tipped over as a worker was handling it. An EMS was called. On March 2, a Partial Stop Work Order was issued for site conditions endangering workers.
- **Partial Stop Work Order on 1/26/15 and Alteration of Building Design**

On January 26th, 2015, NYC Department of Buildings issued a Partial Stop Work Order for any work above the second floor slab at the Pierhouse Project at 130 Furman St as the DOB investigated whether the building's plans conform to the area's zoning height requirements. The stop work order was lifted on February 17, 2015 after modifications were made to the project, including the removal of two parapet walls on the roof and lowering the height of the building by 1.5 feet.
- **Partial Stop Work Order on 9/17/14**
 - On September 17th, 2014, the NYC Department of Buildings issued a Partial Stop Work Order for an elevator not being in readiness, causing all work above 75 feet to be halted. The Partial Stop Work Order was fully rescinded on October, 8th.
- **Worker Accident and Partial Stop Work Order on 9/15/14**

On September 15th, 2014, the NYC Department of Buildings issued a Partial Stop Work Order after a worker was hit by a wrench while installing mini piles. The Partial Stop Work was rescinded on September 18th
- **Injured Worker Sues Brooklyn Bridge Park on 10/23/14**
 - On October 23, 2014, a construction worker claiming to have been permanently injured on the job commenced a lawsuit against Hudson Meridian and BBPC, as owner and developer, alleging negligence and violations of New York Labor Law Sections 240 and 241. The suit is currently pending in New York County Supreme Court
- **Worker Injury and Partial Stop Work Order on 9/15/14**
 - On September 15th, 2014, the NYC Department of Buildings issued a Partial Stop Work Order at 90 Furman Street when a worker was struck in the head with an unsecured piece of reshore while stripping the first floor job and another worker was struck on the arm.
 - The order was rescinded two days later.

- **Worker Injury and Partial Stop Work Order on 9/3/14**
 - On September 3rd, 2014, a piece of wood 4x4 fell from the tenth floor of 60 Furman Street six stories down a utility shaft, striking a worker in the head.
 - In response, the NYC Department of Buildings issued a Class 1 violation, which is the highest severity violation, as well as a Partial Stop Work Order on the same day as the accident.
 - The Partial Stop Work Order was later rescinded on 9/10/2014.
- **Worker Injury and Partial Stop Work Order on 6/5/14**
 - On June 5th, 2014, the NYC Department of Buildings fully shut down 60 Furman Street after a worker reportedly fell about 12 to 15 feet.
 - According to the DOB, the project did not have the proper barricades. The DOB partially lifted the Stop Work Order on June 9th.
- **OSHA Violation and \$13,000 in Fines Issued on 9/3/14**
 - OSHA opened an investigation into the worker accident at 60 Furman St on June 5th.
 - On September, 3rd, 2014 OSHA issued \$13,300 in fines against contractor S&E Bridge and Scaffolding for three serious safety violations classified as serious at 60 Furman Street involving the worker fall.
 - The company is contesting this fine.
- **Partial Stop Work Order for Lack of Site Safety Manager on 7/29/14**
 - On July 29th, 2014, the NYC Department of Buildings issued a safety violation at the site for failure to have a site safety manager present.
- **Partial Stop Work Order for Failure to Provide a Sidewalk Shed on 7/29/14**
 - On July 29, 2014, the NYC Department of Buildings issued a Partial Stop Work Order for failing to provide a required sidewalk shed. The Partial Stop Work Order was rescinded on August 14, 2014.
- **Worker Injury and Fine Imposed on 8/14/14**
 - On August 14, 2014, the Site Safety Manager reported that a worker was injured by a chainsaw and transported to the hospital.
 - The NYC Department of Buildings issued a \$2,400 fine against contractor Hudson Meridian for failure to safeguard persons affected by construction.
- **Partial Stop Work Order after a Pile Driving Machine Fell over on 12/9/13**
 - On December 9, 2013, the NYC Department of Buildings issued a Partial Stop Work Order after a pile driving machine fell over at the site.
 - The Partial Stop Work order was rescinded more than two months later February 25, 2014.
- **Partial Stop Work Order for Hitting a Water Main on 8/13/13**
 - On August, 13, 2013 the NYC Department of Buildings issued a Partial Stop Work order after a water main was hit during the excavation phase of the project. The Partial Stop Work Order was rescinded the following day.

Unions to protest at Brooklyn Bridge Park meeting Wednesday over subcontractor that doesn't even have a Buildings Department license

Empire Pile and Foundations does not have workers' comp or disability coverage. Union workers would have been hired if another developer had been chosen.

By Reuven Blau / NEW YORK DAILY NEWS

A contractor selected to build part of a new luxury hotel and condo tower inside Brooklyn Bridge Park does not currently have workers' compensation and disability coverage and has an expired Buildings Department license, records show.

As a result, union workers will show up en masse at Wednesday's meeting of the Brooklyn Bridge Park corporation board to slam the hiring of Empire Pile and Foundations to build part of the Toll Brothers and Starwood Capital Group complex.

"Our primary concern is worker and public safety," said Gary LaBarbera, president of Build Up NYC, a trade union advocacy organization. "Having a contractor that does not play by the rules on a project being promoted by city government is not acceptable."

Empire cancelled its workers' comp coverage in 2010, leaving the developers and the Brooklyn Bridge Park Corporation legally liable to pay for any injured worker at the site, according to the union.

In addition, Empire's disability benefits policy to help workers with long-term injuries or illnesses was cancelled in 2009, records show.

The Buildings Department requires an any contractor performing excavation work to have an active general contractor license, but Empire's license expired in 2009, records reveal.

The company did not return calls seeking comment.

The hotel and condo were added to the popular new waterfront park with breathtaking views of the Manhattan skyline as part of a 2002 agreement to generate part of the \$16 million needed annually to maintain the sprawling park along the Brooklyn waterfront.

The development is slated to provide \$3.3 in revenue annually.

The project is supposed to create 210 permanent jobs and 300 construction jobs — but those are not expected to go to union members.

It's not the first time union workers have protested.

Last February, nearly 100 tradesmen and women rallied against Toll Brothers and Starwood.

Park officials had promised to give preference to developers with a good labor history.

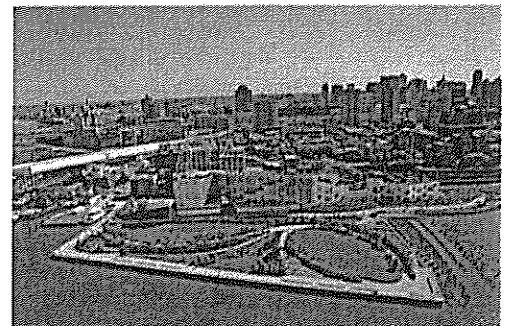
And five of the seven developers who bid on the project last year would have used union workers — but the selected developers made no such promises.

Officially, park operators "continue ... to encourage" the developer to have a "constructive dialogue with the unions," said spokeswoman Teresa Gonzalez.

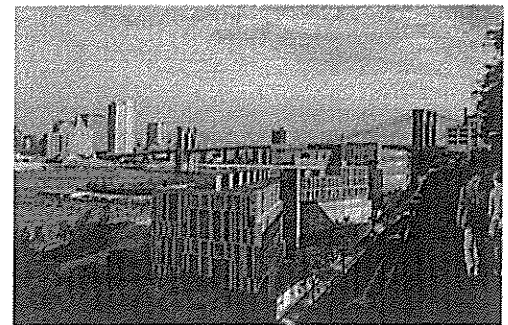
But that's not enough for the area's councilman.

"Anytime there are issues around a contractors standing with city and state agencies while they are at the same time working on a job that is subsidized by our tax dollars its concerning to me," said Councilman Steve Levin (D-Brooklyn Heights).

The hotel and condo development is slated to open in fall 2015.



Starwood Capital Group and Toll Brothers are building this condo and hotel development in Brooklyn Bridge Park — but union members say a subcontractor doesn't treat workers properly.



The complex is designed by Rogers Marvel Architects. It calls for a 10-story luxury hotel and residential complex.

Rogers Marvel Architects PLLC/AP

Rogers Marvel Architects PLLC/AP

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DANIEL McCOY II and FRANCES McCOY,

Plaintiffs,

-against-

BROOKLYN BRIDGE PARK DEVELOPMENT
CORPORATION, BROOKLYN BRIDGE PARK
CORPORATION, THE LAQUILA GROUP, INC.,
THE LAQUILA GROUP EQUIPMENT CORP.,
HUDSON MERIDIAN CONSTRUCTION GROUP LLC
and CONSTRUCTION AND REALTY SERVICES
GROUP, INC.,

Defendants.

Index No.
Date Purchased
Plaintiff(s) designate(s)
NEW YORK
County as the place of trial.

The basis of venue is
addresses of defendants
Brooklyn Bridge Park
Development Corporation and
Hudson Meridian Construction
Group LLC

SUMMONS

Plaintiff(s)' address:

12 Fairview Road
Brookfield, Connecticut 06804

To the above named Defendant(s):

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's Attorney(s) within twenty days after the service of this summons; exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

NOTICE OF COMMENCEMENT OF ACTION SUBJECT TO MANDATORY ELECTRONIC FILING

PLEASE TAKE NOTICE that the matter captioned above, which has been commenced by filing of the accompanying documents with the County Clerk, is subject to mandatory electronic filing pursuant to Section 202.5-bb of the Uniform Rules for the Trial Courts. This notice is being served as required by Subdivision (b) (3) of that Section.

The New York State Courts Electronic Filing System ("NYSCEF") is designed for the electronic filing of documents with the County Clerk and the court and for the electronic service of those documents, court documents, and court notices upon counsel and self-represented parties. Counsel and/or parties who do not notify the court of a claimed exemption (see below) as required by Section 202.5-bb(e) must immediately record their representation within the e-filed matter on the Consent page in NYSCEF. Failure to do so may result in an inability to receive electronic notice of document filings.

Exemptions from mandatory e-filing are limited to: 1) attorneys who certify in good faith that they lack the computer equipment and (along with all employees) the requisite knowledge to comply; and 2) self-represented parties who choose not to participate in e-filing. For additional information about electronic filing, including access to Section 202.5-bb, consult the NYSCEF website at www.nycourts.gov/efile or contact the NYSCEF Resource Center at 646-386-3033 or efile@courts.state.ny.us.

Dated: New York, New York
October 23, 2014

JAROSLAWICZ & JAROS, LLC
Attorneys for Plaintiff
225 Broadway, 24th Floor
New York, New York 10007
(212) 227-2780
dj@lawjaros.com

By: 

David Jaroslawicz

Defendant(s) address(es): SEE RIDER ANNEXED

Brooklyn Bridge Park Development Corporation
633 Third Avenue
New York, NY 10017

Brooklyn Bridge Park Corporation
334 Furman Street
Brooklyn, NY 11201

The Laquila Group, Inc.
The Laquila Group Equipment Corp.
1590 Troy Avenue
Brooklyn, NY 11234

Hudson Meridian Construction Group LLC
40 Rector Street
New York, NY 10016

Construction and Realty Services Group, Inc.
226 East Merrick Road
Valley Stream, NY 11580

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DANIEL McCOY II and FRANCES McCOY,

Index No.

Plaintiffs,

VERIFIED COMPLAINT

-against-

BROOKLYN BRIDGE PARK DEVELOPMENT
CORPORATION, BROOKLYN BRIDGE PARK
CORPORATION, THE LAQUILA GROUP, INC.,
THE LAQUILA GROUP EQUIPMENT CORP.,
HUDSON MERIDIAN CONSTRUCTION GROUP LLC
and CONSTRUCTION AND REALTY SERVICES
GROUP, INC.,

Defendants,

Plaintiffs, by their attorneys, Jaroslawicz & Jaros, LLC, complaining of the
defendants alleges as follows:

THE PARTIES

1. At all times hereinafter mentioned, plaintiffs are citizens of the State of Connecticut.
2. At all times hereinafter mentioned, plaintiffs are husband and wife.
3. At all times hereinafter mentioned, defendant Brooklyn Bridge Park Development Corporation ("BBPDC") is a domestic corporation, duly organized and existing under and by virtue of the laws of the State of New York, authorized to do

business in the State of New York, with its principal place of business in the State of New York.

4. At all times hereinafter mentioned, defendant Brooklyn Bridge Park Corporation ("BBPC") is a domestic corporation, duly organized and existing under and by virtue of the laws of the State of New York, authorized to do business in the State of New York, with its principal place of business in the State of New York.

5. At all times hereinafter mentioned, defendant The Laquila Group, Inc. ("TLG") is a domestic corporation, duly organized and existing under and by virtue of the laws of the State of New York, authorized to do business in the State of New York, with its principal place of business in the State of New York.

6. At all times hereinafter mentioned, defendant The Laquila Group Equipment Corp. ("TLGE") is a domestic corporation, duly organized and existing under and by virtue of the laws of the State of New York, authorized to do business in the State of New York, with its principal place of business in the State of New York.

7. At all times hereinafter mentioned, the defendant Hudson Meridian Construction Group LLC ("HMCG") is a domestic limited liability company, duly organized and existing under and by virtue of the laws of the State of New York, authorized to do business in the State of New York, with its principal place of business in the State of New York.

8. At all times hereinafter mentioned, defendant Construction and Realty Services Group, Inc. ("CRSG") is a domestic corporation, duly organized and existing under and by virtue of the laws of the State of New York, authorized to do business in the State of New York, with its principal place of business in the State of New York.

9. At all times hereinafter mentioned, defendant BBPDC owned the premises known as 130-190 Furman Street, Brooklyn, New York.

10. At all times hereinafter mentioned, defendant BBPDC operated the aforementioned premises.

11. At all times hereinafter mentioned, defendant BBPDC maintained the aforementioned premises.

12. At all times hereinafter mentioned, defendant BBPDC was developing the property located at the aforementioned premises.

13. At all times hereinafter mentioned, defendant BBPC owned the aforementioned premises.

14. At all times hereinafter mentioned, defendant BBPC operated the aforementioned premises.

15. At all times hereinafter mentioned, defendant BBPC maintained the aforementioned premises.

16. At all times hereinafter mentioned, defendant BBPC was developing the property located at the aforementioned premises.

17. At all times hereinafter mentioned, defendant TLG provided equipment with respect to the development taking place at the aforementioned premises, and, upon information and belief, directly or indirectly employed the operator of the equipment.

18. At all times hereinafter mentioned, defendant TLGE provided equipment with respect to the development taking place at the aforementioned premises, and, upon information and belief, directly or indirectly employed the operator of the equipment.

19. At all times hereinafter mentioned, defendant HMCG was the general contractor and/or construction manager with respect to the development of the aforementioned premises.

20. At all times hereinafter mentioned, the defendant HMCG was the statutory agent and agent for the owner of the premises in supervising development of the aforementioned premises.

21. At all times hereinafter mentioned, defendant CRSG was the site safety manager and construction supervisor with respect to the development of the aforementioned premises.

22. At all times hereinafter mentioned, the defendant CRSG was the statutory agent and agent for the owner of the premises in supervising development of the aforementioned premises.

THE UNDERLYING FACTS

23. At all times hereinafter mentioned, plaintiff was employed by Eagle Geotech Construction, 124-16 Rockaway Beach Boulevard, Rockaway Park, New York 11694.

24. On or about September 15, 2014 plaintiff was at the aforementioned premises within the scope of his employment.

25. At all times hereinafter mentioned, plaintiff was performing construction work as defined by the Labor Law of the State of New York at the aforementioned premises and was performing construction work dealing with pile driving.

26. Due to the defendants' recklessness, carelessness and negligence, plaintiff was caused to suffer severe and permanent personal injuries when he was struck by a large wrench while it was being used.

**AS AND FOR A FIRST CAUSE OF ACTION
ON BEHALF OF PLAINTIFF DANIEL McCOY II**

27. Defendants, by their agents, servants and/or employees, were reckless, careless and negligent in providing plaintiff with defective equipment; in failing to properly coordinate the work being performed; in failing to properly supervise the work being performed; in failing to provide plaintiff with a safe place to work; in failing to have efficient and sufficient personnel; in failing to have properly trained personnel; in creating a trap, hazard and nuisance; in violating OSHA standards; in failing to warn; in failing to keep equipment in proper operating condition; in requiring plaintiff to stand on a makeshift scaffold of conduits; in failing to have conduits properly stabilized; in causing plaintiff to be struck by a large wrench when trying to unjam a drilling machine; in failing to provide safety from the hazards of the job; in failing to properly inspect the equipment; in failing to make certain that the equipment was suitable condition for work being performed; in failing to make certain that the equipment was in a clean workable condition and would not jam and get stuck in high gear; in failing to provide a safe work area; in failing to inspect the equipment on a daily basis; in failing to provide properly qualified operators; in failing to have a safe work platform; in violating applicable laws, rules and regulations including Sections 200, 240 and 241(6) of the Labor Law of the State of New York and the regulations promulgated thereunder; and defendants were otherwise reckless, careless and negligent.

28. As a result of defendants' negligence, plaintiff was caused to suffer severe and permanent personal injuries to his left knee and other parts of the body; injury to left ACL; lateral collateral ligament tear requiring surgery with screws; may require additional surgery; required hospital and medical care and attention and will require such care and attention in the future; will probably never be able to walk normally; may require a knee replacement; extreme pain and suffering; mental anguish and distress; osteoarthritic changes are anticipated; will require extension physical therapy and rehabilitation; unable to attend to his usual duties and vocation; unable to engage in daily activities are previously; plaintiff has become substantially disabled; and plaintiff has been otherwise damaged, all of which damages are permanent in nature and continuing into the future.

29. By reason of the foregoing, defendants are jointly and severally liable pursuant to the exceptions set forth in the CPLR.

30. It is hereby alleged pursuant to CPLR 1603 that the foregoing cause of action is exempt from the operation of CPLR 1601 by reason of one or more of the exemptions provided in CPLR 1602, including but not limited to CPLR 1602(7) in that the defendants acted with reckless disregard for the safety of others.

31. By reason of the foregoing, plaintiff is entitled to recover all of his damages from the defendants.

**AS AND FOR A SECOND CAUSE OF ACTION
ON BEHALF OF PLAINTIFF DANIEL McCOY II**

Plaintiff repeats, reiterates and realleges each of the foregoing allegations with the same force and effect as if more fully set forth at length herein.

33. Defendant violated Sections 200, 240 and 241(6) of the Labor Law and the rules promulgated thereunder.

1. Among other things, defendant violated Sections 200, 240 and 241(6) in providing plaintiff with defective equipment; in failing to properly coordinate the work being performed; in failing to properly supervise the work being performed; in failing to provide plaintiff with a safe place to work; in failing to have efficient and sufficient personnel; in failing to have properly trained personnel; in creating a trap, hazard and nuisance; in violating OSHA standards; in failing to warn; in failing to keep equipment in proper operating condition; in requiring plaintiff to stand on a makeshift scaffold of conduits; in failing to have conduits properly stabilized; in causing plaintiff to be struck in a large wrench when trying to unjam a drilling machine; in failing to provide safety from the hazards of the job; in failing to properly inspect the equipment; in failing to make certain that the equipment was suitable for work being performed; in failing to make certain that the equipment was in a clean workable condition and would not jam and get stuck in high gear; in failing to provide a safe work area; in failing to inspect the equipment on a daily basis; in failing to provide properly qualified operators; in failing to have a safe

work platform; and otherwise violated Sections 200, 240 and 241(6) of the Labor Law, and the rules and regulations promulgated thereunder, including 12 NYCRR 23-1.5, 23-1.7, 23-1.22, 23-5.1, 23-9.1, 23-9.2, 23-9.10 and other applicable regulations.

35. By reason of the foregoing, plaintiff was caused to suffer severe and permanent personal injuries as set forth above.

36. By reason of the foregoing, the defendants are strictly liable to the plaintiff for all of the injuries he has suffered as set forth above.

37. By reason of the foregoing, defendants are jointly and severally liable pursuant to the exceptions set forth in the CPLR.

38. It is hereby alleged pursuant to CPLR 1603 that the foregoing cause of action is exempt from the operation of CPLR 1601 by reason of one or more of the exemptions provided in CPLR 1602, including but not limited to CPLR 1602(7) in that the defendants acted with reckless disregard for the safety of others.

39. By reason of the foregoing, plaintiff is entitled to recover all of her damages from the defendants.

**AS AND FOR A THIRD CAUSE OF ACTION
ON BEHALF OF PLAINTIFF FRANCES McCOY**

40. Plaintiffs herein repeat, reiterate and reallege each of the foregoing allegations with the same force and effect as if more fully set forth at length herein.

41. That at all times hereinafter mentioned, this plaintiff was the lawful wife of Daniel McCoy II and as such was entitled to his society, support, services and consortium.

42. By reason of the defendant's negligence as aforesaid, the plaintiff was deprived of the society, support, services and consortium of her husband.

43. By reason of the foregoing, defendants are jointly and severally liable pursuant to the exceptions set forth in the CPLR.

44. It is herein alleged pursuant to CPLR 1603 that the foregoing cause of action is exempt from the operation of CPLR 1601 by reason of one or more of the exemptions provided in CPLR 1602, including but not limited to CPLR 1602(7) in that the defendants acted with reckless disregard for the safety of others.

45. By reason of the foregoing, the plaintiff is entitled to recover all of her damages from the defendants.

WHEREFORE, plaintiffs demand judgment against the defendants, jointly and severally, for all damages properly recoverable in an action of this nature, all together with the costs and disbursements of this action.

JAROSLAWICZ & JAROS, LLC
Attorneys for Plaintiffs
225 Broadway, 24th Floor
New York, New York 10007
(212) 227-2780

By: 

David Jaroslawicz

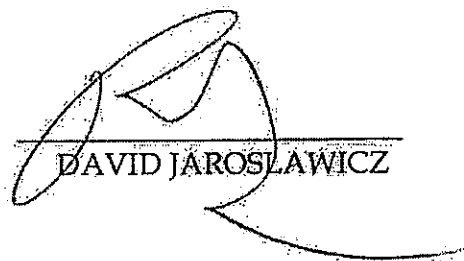
DAVID JAROSLAWICZ, a member of the firm of JAROSLAWICZ & JAROS, LLC, attorneys for the plaintiff(s) in the within action, duly admitted to practice in the Courts of the State of New York, affirms the following statements to be true under the penalties of perjury, pursuant to Rule 2016 of the CPLR:

That he has read the foregoing **Complaint** and knows the contents thereof; that the same is true to his own knowledge except as to those matters therein stated to be alleged upon information and belief, and that as to those matters, he believes them to be true.

Affiant further states that the source of his information and the grounds of his belief are derived from the file maintained in the normal course of business of the attorneys for the plaintiff(s).

Affiant further states that the reason this affirmation is not made by the plaintiff(s) is that at the time this document was being prepared, the plaintiff(s) was (were) not within the County of New York, which is the County where the attorney for the plaintiff(s) herein maintains his office.

Dated: New York, New York
October 23, 2014



DAVID JAROSLAWICZ

Index No.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DANIEL McCOY II and FRANCES McCOY,

Plaintiffs,

-against-

BROOKLYN BRIDGE PARK DEVELOPMENT
CORPORATION, BROOKLYN BRIDGE PARK
CORPORATION, THE LAQUILA GROUP, INC.,
THE LAQUILA GROUP EQUIPMENT CORP.,
HUDSON MERIDIAN CONSTRUCTION GROUP LLC
and CONSTRUCTION AND REALTY SERVICES
GROUP, INC.,

Defendants.

Summons & Verified Complaint

LAW OFFICES OF
JAROSLAWICZ & JAROS, LLC
225 BROADWAY, 24TH FLOOR
NEW YORK, NEW YORK 10007
(212) 227-2780

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DANIEL McCOY II and FRANCES McCOY,

X

Plaintiffs,

Index No.: 160415/2014

-against-

BROOKLYN BRIDGE PARK DEVELOPMENT
CORPORATION, BROOKLYN BRIDGE PARK
CORPORATION, THE LAQUILA GROUP, INC.,
THE LAQUILA GROUP EQUIPMENT CORP.,
HUDSON MERIDIAN CONSTRUCTION GROUP,
LLC, AND CONSTRUCTION AND REALTY SERVICES
GROUP, INC.,

Defendants.

ANSWER TO
VERIFIED COMPLAINT

X

The defendants, BROOKLYN BRIDGE PARK DEVELOPMENT CORPORATION,
BROOKLYN BRIDGE PARK CORPORATION and HUDSON MERIDIAN
CONSTRUCTION GROUP, LLC, by their attorneys, HANNUM FERETIC PRENDERGAST &
MERLINO, LLC, answering the Verified Complaint herein:

THE PARTIES

1. Deny knowledge and information sufficient to form a belief thereof as to the
allegations contained in paragraphs numbered "1", "2", "5", "6", "8", "9", "13", "17", "18",
"19", "21" and "22" of the complaint.

2. Deny each and every allegation contained in paragraphs numbered "10", "11",
"12", "14", "15" and "16" of the complaint and respectfully refer all questions of law to the
Honorable Court.

3. Deny each and every allegation contained in paragraph numbered "20" of the
complaint.

THE UNDERLYING FACTS

4. Deny knowledge and information sufficient to form a belief thereof as to the allegations contained in paragraphs numbered "23", "24" and "25" of the complaint.

5. Deny each and every allegation contained in paragraph numbered "26" of the complaint.

**AS AND FOR A FIRST CAUSE OF ACTION
ON BEHALF OF PLAINTIFF DANIEL McCOY II**

6. Deny each and every allegation contained in paragraphs numbered "27", "28", "29" and "31" of the complaint.

7. Deny each and every allegation contained in paragraph numbered "30" of the complaint and respectfully refer all questions of law to the Honorable Court.

**AS AND FOR A SECOND CAUSE OF ACTION
ON BEHALF OF PLAINTIFF DANIEL McCOY II**

8. As to paragraph numbered "32" of the complaint, defendants repeat, reiterate and reallege each and every answer made with respect to paragraph numbered "1" through "31" with the same force and effect as if more fully set forth at length herein.

9. Deny each and every allegation contained in paragraphs numbered "33", "34", "35", "36", "38" and "39" of the complaint.

10. Deny each and every allegation contained in paragraph numbered "37" of the complaint and respectfully refer all questions of law to the Honorable Court.

**AS AND FOR A THIRD CAUSE OF ACTION
ON BEHALF OF PLAINTIFF FRANCIS McCOY**

11. As to paragraph numbered "40" of the complaint, defendants repeat, reiterate and reallege each and every answer made with respect to paragraph numbered "1" through "39" with the same force and effect as if more fully set forth at length herein.

12. Deny knowledge and information sufficient to form a belief thereof as to the allegations contained in paragraph numbered "41" of the complaint.

13. Deny each and every allegation contained in paragraphs numbered "42", "44" and "45" of the complaint.

14. Deny each and every allegation contained in paragraph numbered "43" of the complaint and respectfully refer all questions of law to the Honorable Court.

AS AND FOR THE FIRST AFFIRMATIVE DEFENSE

15. Whatever injuries and/or damages plaintiffs may have sustained at the time and place mentioned in the Verified Complaint and/or as a result of the occurrence alleged in the Verified Complaint, all of which are denied by the defendants, BROOKLYN BRIDGE PARK DEVELOPMENT CORPORATION, BROOKLYN BRIDGE PARK CORPORATION and HUDSON MERIDIAN CONSTRUCTION GROUP, LLC, were caused in whole or in part by the culpable conduct of plaintiffs. The amount of damages recovered, if any, shall therefore be diminished in the proportion which the culpable conduct, attributable to plaintiffs, bear to the culpable conduct which caused said injuries.

AS AND FOR THE SECOND AFFIRMATIVE DEFENSE

16. All risks and danger of loss or damage connected with the situation alleged in the Verified Complaint were at the same time and place mentioned obvious and apparent and were known by plaintiff and voluntarily assumed by plaintiffs.

AS AND FOR THE THIRD AFFIRMATIVE DEFENSE

17. Upon information and belief, the Court does not have personal jurisdiction over the defendants, BROOKLYN BRIDGE PARK DEVELOPMENT CORPORATION, BROOKLYN BRIDGE PARK CORPORATION and HUDSON MERIDIAN CONSTRUCTION GROUP, LLC.

AS AND FOR THE FOURTH AFFIRMATIVE DEFENSE

18. Plaintiff failed to mitigate or otherwise act to lessen or reduce the injuries, disabilities and damages alleged in the Verified Complaint.

AS AND FOR THE FIFTH AFFIRMATIVE DEFENSE

19. Upon information and belief, this complaint is defective in that it fails to name all necessary and indispensable parties.

AS AND FOR THE SIXTH AFFIRMATIVE DEFENSE

20. Upon information and belief, the Worker's Compensation Law is the sole remedy of plaintiffs.

AS AND FOR THE SEVENTH AFFIRMATIVE DEFENSE

21. If the answering defendants, BROOKLYN BRIDGE PARK DEVELOPMENT CORPORATION, BROOKLYN BRIDGE PARK CORPORATION and HUDSON MERIDIAN CONSTRUCTION GROUP, LLC, are found liable, such liability is less than or equal to 50% of the total liability of all persons who may be found liable and therefore these answering defendants' liability shall be limited to its equitable share, pursuant to CPLR Article 1600, Section 1602.

AS AND FOR THE EIGHTH AFFIRMATIVE DEFENSE

22. Any verdict, judgment or decision that might be obtained by plaintiffs against the defendants, BROOKLYN BRIDGE PARK DEVELOPMENT CORPORATION, BROOKLYN BRIDGE PARK CORPORATION and HUDSON MERIDIAN CONSTRUCTION GROUP, LLC, shall be reduced by the amount of any collateral source payments received by plaintiff pursuant to CPLR §4545(c), as determined by the Court.

AS AND FOR THE NINTH AFFIRMATIVE DEFENSE

23. Upon information and belief, the Complaint fails to state a cause of action upon which relief can be granted.

AS AND FOR THE TENTH AFFIRMATIVE DEFENSE

24. Upon information and belief, the Court does not have jurisdiction of the subject matter of this cause of action.

AS AND FOR THE ELEVENTH AFFIRMATIVE DEFENSE

25. Upon information and belief, another action is pending between the same parties for the same cause of action.

AS AND FOR THE TWELFTH AFFIRMATIVE DEFENSE

26. Plaintiffs have no standing to bring this action if the plaintiffs have previously filed for bankruptcy and failed to list this cause of action as an asset in the bankruptcy petition.

**AS AND FOR A CROSS-CLAIM AGAINST THE CO-DEFENDANTS,
THE LAQUILA GROUP, INC., THE LAQUILA GROUP EQUIPMENT CORP., and
CONSTRUCTION AND REALTY SERVICES GROUP, INC., THE ANSWERING
DEFENDANTS, BROOKLYN BRIDGE PARK DEVELOPMENT CORPORATION,
BROOKLYN BRIDGE PARK CORPORATION AND HUDSON MERIDIAN
CONSTRUCTION GROUP, LLC, ALLEGE AS FOLLOWS**

27. If plaintiffs sustained any of the alleged damages other than through the negligence of the plaintiffs, and if defendants, BROOKLYN BRIDGE PARK DEVELOPMENT CORPORATION, BROOKLYN BRIDGE PARK CORPORATION and HUDSON MERIDIAN CONSTRUCTION GROUP, LLC, are held liable for any portion of those damages, which they deny, those damages were caused in whole or in part by the negligent acts and/or omissions of the co-defendants, THE LAQUILA GROUP, INC., THE LAQUILA GROUP EQUIPMENT CORP., and CONSTRUCTION AND REALTY SERVICES GROUP, INC., and not by any

negligence on the part of the answering defendants, BROOKLYN BRIDGE PARK DEVELOPMENT CORPORATION, BROOKLYN BRIDGE PARK CORPORATION and HUDSON MERIDIAN CONSTRUCTION GROUP, LLC.

**AS AND FOR A CROSS-CLAIM AGAINST THE CO-DEFENDANTS,
THE LAQUILA GROUP, INC., THE LAQUILA GROUP EQUIPMENT CORP., and
CONSTRUCTION AND REALTY SERVICES GROUP, INC., THE ANSWERING
DEFENDANTS, BROOKLYN BRIDGE PARK DEVELOPMENT CORPORATION,
BROOKLYN BRIDGE PARK CORPORATION AND HUDSON MERIDIAN
CONSTRUCTION GROUP, LLC, ALLEGE AS FOLLOWS**

28. In the event that plaintiffs should recover against defendants, BROOKLYN BRIDGE PARK DEVELOPMENT CORPORATION, BROOKLYN BRIDGE PARK CORPORATION and HUDSON MERIDIAN CONSTRUCTION GROUP, LLC, for any of the damages alleged in the complaint, co-defendants, THE LAQUILA GROUP, INC., THE LAQUILA GROUP EQUIPMENT CORP., and CONSTRUCTION AND REALTY SERVICES GROUP, INC., shall be liable to indemnify defendants, BROOKLYN BRIDGE PARK DEVELOPMENT CORPORATION, BROOKLYN BRIDGE PARK CORPORATION and HUDSON MERIDIAN CONSTRUCTION GROUP, LLC, on the basis of apportionment of responsibility.

**AS AND FOR A SECOND CROSS-CLAIM AGAINST THE CO-DEFENDANTS,
THE LAQUILA GROUP, INC., THE LAQUILA GROUP EQUIPMENT CORP., and
CONSTRUCTION AND REALTY SERVICES GROUP, INC., THE ANSWERING
DEFENDANTS, BROOKLYN BRIDGE PARK DEVELOPMENT CORPORATION,
BROOKLYN BRIDGE PARK CORPORATION AND HUDSON MERIDIAN
CONSTRUCTION GROUP, LLC, ALLEGE AS FOLLOWS**

29. Prior to the date of the accident, defendants, BROOKLYN BRIDGE PARK DEVELOPMENT CORPORATION, BROOKLYN BRIDGE PARK CORPORATION and HUDSON MERIDIAN CONSTRUCTION GROUP, LLC, entered into a written agreement with the defendants, THE LAQUILA GROUP, INC., THE LAQUILA GROUP EQUIPMENT CORP., and CONSTRUCTION AND REALTY SERVICES GROUP, INC.

30. That in said agreement defendants, THE LAQUILA GROUP, INC., THE LAQUILA GROUP EQUIPMENT CORP., and CONSTRUCTION AND REALTY SERVICES GROUP, INC., agreed to indemnify and hold defendants, BROOKLYN BRIDGE PARK DEVELOPMENT CORPORATION, BROOKLYN BRIDGE PARK CORPORATION and HUDSON MERIDIAN CONSTRUCTION GROUP, LLC, harmless from and against any and all claims and demands for and in connection with any action, injury or demand whatsoever concerning any injury to person or property arising directly or indirectly on said premises.

31. That said agreement was in full force and effect on the date of the accident as alleged in plaintiffs' complaint.

32. That defendants, BROOKLYN BRIDGE PARK DEVELOPMENT CORPORATION, BROOKLYN BRIDGE PARK CORPORATION and HUDSON MERIDIAN CONSTRUCTION GROUP, LLC, are entitled to be indemnified and held harmless by the defendants, THE LAQUILA GROUP, INC., THE LAQUILA GROUP EQUIPMENT CORP., and CONSTRUCTION AND REALTY SERVICES GROUP, INC., for the claim and suit of the plaintiffs herein based upon said contract/agreement.

AS AND FOR A THIRD CROSS-CLAIM AGAINST THE CO-DEFENDANTS, THE LAQUILA GROUP, INC., THE LAQUILA GROUP EQUIPMENT CORP., and CONSTRUCTION AND REALTY SERVICES GROUP, INC., THE ANSWERING DEFENDANTS, BROOKLYN BRIDGE PARK DEVELOPMENT CORPORATION, BROOKLYN BRIDGE PARK CORPORATION AND HUDSON MERIDIAN CONSTRUCTION GROUP, LLC, ALLEGE AS FOLLOWS

33. The defendants, BROOKLYN BRIDGE PARK DEVELOPMENT CORPORATION, BROOKLYN BRIDGE PARK CORPORATION and HUDSON MERIDIAN CONSTRUCTION GROUP, LLC, repeat, reiterate and reallege each and every allegation heretofore alleged herein with the same force and effect as if more fully set forth at length herein.

34. The aforementioned contract between defendants, BROOKLYN BRIDGE PARK DEVELOPMENT CORPORATION, BROOKLYN BRIDGE PARK CORPORATION and HUDSON MERIDIAN CONSTRUCTION GROUP, LLC, and the co-defendants, THE LAQUILA GROUP, INC., THE LAQUILA GROUP EQUIPMENT CORP., and CONSTRUCTION AND REALTY SERVICES GROUP, INC., provided among other things that the co-defendants, THE LAQUILA GROUP, INC., THE LAQUILA GROUP EQUIPMENT CORP., and CONSTRUCTION AND REALTY SERVICES GROUP, INC., were to obtain insurance coverage protecting answering defendants, BROOKLYN BRIDGE PARK DEVELOPMENT CORPORATION, BROOKLYN BRIDGE PARK CORPORATION and HUDSON MERIDIAN CONSTRUCTION GROUP, LLC, from any claims for damages, particularly claims such as the plaintiffs' claims herein.

35. That the defendants, THE LAQUILA GROUP, INC., THE LAQUILA GROUP EQUIPMENT CORP., and CONSTRUCTION AND REALTY SERVICES GROUP, INC., failed to obtain such insurance coverage.

36. Accordingly, the defendants, THE LAQUILA GROUP, INC., THE LAQUILA GROUP EQUIPMENT CORP., and CONSTRUCTION AND REALTY SERVICES GROUP, INC., will be liable to reimburse BROOKLYN BRIDGE PARK DEVELOPMENT CORPORATION, BROOKLYN BRIDGE PARK CORPORATION and HUDSON MERIDIAN CONSTRUCTION GROUP, LLC, and their insurance carrier for all legal fees, costs, disbursements and related expenses due to the failure of the defendants, THE LAQUILA GROUP, INC., THE LAQUILA GROUP EQUIPMENT CORP., and CONSTRUCTION AND REALTY SERVICES GROUP, INC., to procure insurance coverage pursuant to the subject contract.

WHEREFORE, the answering defendants, BROOKLYN BRIDGE PARK DEVELOPMENT CORPORATION, BROOKLYN BRIDGE PARK CORPORATION and HUDSON MERIDIAN CONSTRUCTION GROUP, LLC, demand judgment dismissing the Complaint against them with costs and disbursements of this action, and further demands that the ultimate rights of the answering defendants, BROOKLYN BRIDGE PARK DEVELOPMENT CORPORATION, BROOKLYN BRIDGE PARK CORPORATION and HUDSON MERIDIAN CONSTRUCTION GROUP, LLC, and the aforesaid co-defendants, between themselves be determined in this action; and that the answering defendants, BROOKLYN BRIDGE PARK DEVELOPMENT CORPORATION, BROOKLYN BRIDGE PARK CORPORATION and HUDSON MERIDIAN CONSTRUCTION GROUP, LLC, have judgment over and against the co-defendants, THE LAQUILA GROUP, INC., THE LAQUILA GROUP EQUIPMENT CORP., and CONSTRUCTION AND REALTY SERVICES GROUP, INC., and for all or any part of any verdict or judgment which may be obtained herein by the plaintiffs against the defendants, BROOKLYN BRIDGE PARK DEVELOPMENT CORPORATION, BROOKLYN BRIDGE PARK CORPORATION and HUDSON MERIDIAN CONSTRUCTION GROUP, LLC, together with the costs and disbursements of this action.

DATED: New York, New York
December 2, 2014

Yours, etc.,

HANNUM FERETIC PRENDERGAST
& MERLINO, LLC



Michael L. Leest

Attorneys for Defendants

**BROOKLYN BRIDGE PARK DEVELOPMENT
CORPORATION, BROOKLYN BRIDGE PARK
CORPORATION and HUDSON MERIDIAN
CONSTRUCTION GROUP, LLC**

Office and Post Office Address

55 Broadway, Suite 202

New York, New York 10006

(212) 530-3900

TO:

Janusz & Jaros, LLC

Attorneys for Plaintiff

DANIEL MCCOY II

and FRANCES MCCOY

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ATTORNEY VERIFICATION

1. I am an attorney at law in the firm of **HANNUM FERETIC PRENDERGAST & MERLINO, LLC**, attorneys for the defendants, **BROOKLYN BRIDGE PARK DEVELOPMENT CORPORATION, BROOKLYN BRIDGE PARK CORPORATION** and **HUDSON MERIDIAN CONSTRUCTION GROUP, LLC**, herein. I have read the annexed Answer to Verified Complaint and it is true to the knowledge of this deponent, except as to the matters alleged upon information and belief, and as to those matters I believe each to be true.

2. This verification is made by the deponent and not by the defendants because the defendants do not reside within the county where **HANNUM FERETIC PRENDERGAST & MERLINO, LLC**, has its office. The information set forth within the annexed Answer to Verified Complaint was obtained from an examination of the file in the office of **HANNUM FERETIC PRENDERGAST & MERLINO, LLC**.

DATED: New York, New York
December 2, 2014



Michael L. Leest

Index No.: 160415/2014

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DANIEL McCOY II and FRANCES McCOY,

Plaintiffs,

-against-

BROOKLYN BRIDGE PARK DEVELOPMENT
CORPORATION, BROOKLYN BRIDGE PARK
CORPORATION, THE LAQUILA GROUP, INC.,
THE LAQUILA GROUP EQUIPMENT CORP.,
HUDSON MERIDIAN CONSTRUCTION GROUP,
LLC, and CONSTRUCTION AND REALTY SERVICES
GROUP, INC.,

Defendants.

**ANSWER TO VERIFIED COMPLAINT, DEMAND FOR VERIFIED BILL OF
PARTICULARS, NOTICE FOR DISCOVERY AND INSPECTION, DEMAND
PURSUANT TO CPLR §4545, DEMAND PURSUANT TO MANDATORY INSURER
REPORTING LAW §111 OF PUBLIC LAW 110-173, DEMAND FOR AD DAMNUM,
NOTICE FOR EXAMINATION BEFORE TRIAL and
NOTICE FOR PHYSICAL EXAMINATION**

HANNUM FERETIC PRENDERGAST & MERLINO, LLC
Attorneys for Defendants
**BROOKLYN BRIDGE PARK DEVELOPMENT CORPORATION,
BROOKLYN BRIDGE PARK CORPORATION and
HUDSON MERIDIAN CONSTRUCTION GROUP, LLC**
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Local One

International Union of Elevator Constructors
Of New York and New Jersey – (AFL-CIO)
47-24 27th Street, Long Island City, New York 11101
Phone: (718) 767-7004 FAX: (718) 767-6730



Testimony From Michael Halpin
International Union of Elevator Constructors Local One
Legislative Affairs
May 11, 2015
Good Morning Mr. Chairman and Councilmembers

My name is Michael Halpin and I am here on behalf of the International Union of Elevator Constructors Local One. I have worked in the field of elevator construction, maintenance and repair for 25 years before accepting the position I currently hold.

I am here today to tell you that the death of Christian Ginesi who died in a fall down an elevator shaft at the Riu Hotel site last Tuesday could have been prevented. Christian worked for an employer who to our knowledge does not participate in industry recognized education and training or state approved apprentice program. The action Christian took by jumping from the stuck platform to the landing is something that our apprentices are taught NOT to do from day 1. What makes this accident even more tragic, Christian was not alone on that platform. Neither he nor his coworker had the benefit of training that tells you "stuck is stuck, you're not going anywhere so just wait for help."

Accidents like Christian's are not only tragic but infuriating because they are preventable.

In June of 2011 New York State Assemblymember Keith Wright introduced the Elevator Safety Bill. The bill calls for education and training leading to a license everyone working on an elevator in New York State. Training equal to what Juan had mentioned before me.

This legislation was introduced prior to the well-publicized tragic death of Suzanne Hart and prior to the subsequent tragic deaths of Jarislaw Mychajluk, Bobby Silva and T J Patane.

Again, the most tragic part of these deaths as well as so many other serious injuries, is that they could have been prevented with adequate training, like the training required by Assemblymember Wright's legislation.

As it stands now, if I were an elevator contractor I could hire any one of you today, make you a mechanic and ask you to go try to fix or install an elevator unassisted. The proposed legislation would change that.

Presently 35 states, including those surrounding New York, have legislation that sets high standards for the education and training of elevator mechanics and a state issued license. As a result, the bad actors are running out of places to go, and they are coming to New York.

According to New York Fire Department statistics there has been a 160 percent increase over a five year period in the number of people that they have rescued from elevators. Without the necessary high standards and licensing, we will continue to have contractors with tainted history building and servicing elevators around the State.

Unfortunately, the NYC DOB and REBNY have repeatedly opposed this life-saving legislation. Both have asked for more time to identify other ways to strengthen training and licensing standards, yet there is no proposed legislation and the clock has run out. The clock has tragically run out on Christian Ginesi; the clock has tragically run out on Jarislaw Mychajluk, a Building Superintendent who died according to the Daily News while fixing an elevator in midtown and whose employer is a REBNY member.

Attached to my testimony is a copy of a Daily News article from Friday in which Christian's friend tells of Christian's thoughts on his new job. To quote the article Christian spoke of his new job "It's not like the Air Force. It's not safe out here."

A very strong action that the New York City Council could do today to increase safety in construction is to pass a resolution to support A-1787 and S-1945, The New York State Elevator Safety Bill.

In closing I would like to say that Local One participates through the New York City Building Trades in a program called Helmets to Hard Hats. This program places returning veterans into state approved apprenticeship programs in the building trades. Local One is proud to have placed more than 130 veterans into our apprenticeship through this program. It is a shame that we had not heard of Christian Ginesi before last week.

For more on elevator safety go to: https://www.youtube.com/channel/UCqrlM-uPgNiQjP_D6uaRgeQ or search youtube nys elevator safety.

To see Assemblymember Wright speak on the legislation see: <http://www.ny1.com/nyc/all-boroughs/politics/2015/02/28/bill-calls-for-state-licensing-for-workers-who-maintain-elevators.html>



FDNY VITAL STATISTICS

CY 2009

<http://www.nyc.gov/fdny>

NYC Land Area: 322 sq. miles

Population: 8,250,567

Fire Houses: 221

EMS Stations: 30

Personnel--Uniformed Fire: 11,213

Uniformed EMS: 3,232

Civilian: 1,641

Key Performance Indicators

- Average Citywide Response Times
 - Structural Fires 4:02
 - Medical Emergencies: (Fire) 4:15
 - Cardiac Arrest /Choke (Fire & EMS) 4:10
 - Life Threatening Segment 1-3 (EMS) 6:41
 - All Incidents (Fire) 4:31
 - All Incidents (EMS) 8:27
- Average Call Processing Time (Fire) 0:29
- EMS Emergency Room Turnaround Time 30:18
- Civilian Fire Fatalities 73

Numbers of Civilians Saved or Rescued

- From Building Fires 745
- Victims Return of Spontaneous Circulation 1,455
- CFR-D Engine Pre-Hospital Saves 212
- Victims Trapped in Elevators 15,104
- From Utility Emergencies 1,258
- Trapped Inside Buildings or Apartments 1,067
- Injured or Extricated at Vehicle Accidents 2,020

Miscellaneous Performance Indicators

- Fire Prevention (AIP) Alternate Issuance
 - Procedure exams available on-line 41
- Licenses Reviewed on-line 1,557
- Random Drug Screenings Conducted 2,007
- Random Drug Screening Pass Rate 99.4%
- Annual Medicals Administered 15,696

Significant Events

Jan. 16th A "Miracle on the Hudson" when US Airways Flight 1549 ditches in the Hudson River and all 155 on board were pulled to safety as the plane slowly sank.

Significant Events Continued

May 4th Citywide rollout of UCT an initiative to unify call-taking among the Police and Fire departments. NYPD 911 call takers now handle calls previously processed by fire dispatchers dramatically reducing call processing times for most fire unit incidents.

Nov. 5th FDNY conducts H1N1 BIPOD exercise where all first responders were offered the H1N1 influenza vaccine. The 4-day drill was part of the Department's ongoing initiative to plan for its response to chemical, biological, radiological, nuclear and explosive incidents. 10 fixed points of distribution (PODs) and three mobile PODs located throughout the five boroughs, were established to reach all of FDNY's first responders

Nov. 9th FDNY reports a 29 percent decrease in burn injuries suffered by firefighters attributed to a new safety initiative aimed at reducing burns and other on-the-job injuries. Teams of specially-trained instructors visited firehouses and conducted in-service training sessions on firefighter safety. As a result burn injuries fell to 252, down from 354, and a 41 percent decline from 2007, when there were 428 burn injuries. The latest statistics are a record low for firefighter burn injuries; the record high was 1,226 in 1994, the year before the introduction of bunker gear.

Dec. 31st FDNY continues to improve performance ending the year with 73 fire deaths, the fewest fatalities since the 77 deaths recorded in 1919, and with response times to structural fires faster than ever before. The citywide average response time to structural fires was 4:02 in CY 2009, 6 seconds faster than the previous record of 4:08 in 1994.

Dec. 31st 2009 Fire Commissioner Nicholas Scoppetta retires ending his nearly half-century of public service. Commissioner Scoppetta lead the FDNY for the past 8 years and left the Department better prepared, better trained, and better equipped than ever before.

2009-2010 Strategic Plan Initiatives

- Develop and Implement a risk-based building inspection program.
- Expand multi-lingual fire safety education programs and community outreach.
- Initiate FDNY New York City Project Hypothermia.
- Advance the development of an electronic Firefighter Locator System as a component of a comprehensive incident management system.
- Implement "green" initiatives Department-wide.
- Establish a Leadership Development Program for Staff Chiefs.

Highlights

- Total Incidents (Fire) 473,024
- Structural Fires 26,666
- Emergencies (non-medical) 194,406
- Medical Emergency Incidents (Fire) 209,563
- Total EMS Incidents 1,236,730
- Total EMS Life Threatening Incidents 444,920
- Hospital Transports 940,519
- Operating Budget FY-10 (\$ M) \$1,616.6
- Revenue Budget Fire FY-10 (\$ M) \$99.3
- Revenue Budget EMS FY-10 (\$ M) \$165.3
- Capital Commitments FY-10 (\$ M) \$105.0
- Total Building Inspections FY-09 259,150



FDNY VITAL STATISTICS

CY 2010

<http://www.nyc.gov/fdny>

NYC Land Area: 322 sq. miles

Population: 8,391,881

Fire Houses: 218

EMS Stations: 32

Personnel--Uniformed Fire: 10,849

Uniformed EMS: 3,399

Civilian: 1,622

Key Performance Indicators

- Average Citywide Response Times
 - Structural Fires 4:01
 - Medical Emergencies (Fire) 4:19
 - Cardiac Arrest /Choke (Fire & EMS) 4:28
 - Life Threatening Segment 1-3 (EMS) 7:03
 - All Incidents (Fire) 4:38
 - All Incidents (EMS) 8:49
- Average Call Processing Time (Fire) 0:27
- EMS Emergency Room Turnaround Time 30:55
- Civilian Fire Fatalities 62

Numbers of Civilians Saved or Rescued

- From Building Fires 773
- Victims Return of Spontaneous Circulation 1,928
- CFR-D Engine Pre-Hospital Saves 284
- Victims Trapped in Elevators 34,787
- From Utility Emergencies 1,123
- Trapped Inside Buildings or Apartments 2,241
- Injured or Extricated at Transportation Accidents 946

Miscellaneous Performance Indicators

- Fire Prevention Alternate Issuance (AIP) on-line filings 1,264
- Random Drug Screenings Conducted 2,080
- Random Drug Screening Pass Rate 99.7%
- Annual Medicals Administered 16,994

Significant Events

Jan. 11th Salvatore J. Cassano was sworn in as the Department's 32nd Fire Commissioner by Mayor Michael Bloomberg.

Jan. 13th Edward Kilduff was sworn in as the Department's 34th Chief of Department.

Significant Events Continued

Jan. 14th Forty-two members of the FDNY's Urban Search and Rescue (USAR) team were deployed to Haiti to assist with the relief efforts following a magnitude-7 earthquake.

Mar. 30th Daniel (Don) Shacknai, the FDNY's Deputy Commissioner of Legal Affairs, was sworn in as the Department's First Deputy Commissioner.

Apr. 22nd The FDNY and the U.S. Marines' Chemical Biological Incident Response Force (CBIRF) conducted a large-scale drill at the FDNY Fire Academy on Randall's Island, simulating the joint response to a terrorist attack.

Apr. 22nd A Manhattan family saved themselves from a second-alarm fire in an Upper East Side apartment building by following one simple, but critical, fire safety step; they closed the door behind them.

Apr. 30th FDNY's new fireboat, the Three Forty Three, arrived in New York Harbor.

Jun. 7th Six FDNY members fly to Port-au-Prince, Haiti, to help build a Community Emergency Response Team.

Jul. 21st Fire Marshals' investigation leads to the indictment of 18 Latin Kings Gang members on arson charges.

Sept. 16th 130 Fire Officers and Firefighters performed special duty in the massive clean-up effort after the devastating storm that hit the city. Rapid Response Teams worked 12-hour shifts removing thousands of trees, limbs and other debris from hundreds of roadways in Brooklyn, Queens and Staten Island.

Dec. 29th The FDNY joined the Make-A-Wish Foundation swearing in 14-year-old Bradley Marcello, of Wisconsin, as an honorary FDNY firefighter.

2009-2010 Strategic Plan Initiatives

- Develop and Implement a risk-based building inspection program.
- Expand multi-lingual fire safety education programs and community outreach.
- Initiate FDNY New York City Project Hypothermia.
- Advance the development of an electronic Firefighter Locator System as a component of a comprehensive incident management system.
- Implement "green" initiatives Department-wide.
- Establish a Leadership Development Program for Staff Chiefs.

Highlights

- Total Incidents (Fire) 507,430
- Structural Fires 26,748
- Emergencies (non-medical) 217,411
- Medical Emergency Incidents (Fire) 218,686
- Total EMS Incidents 1,261,993
- Total EMS Life Threatening Incidents 465,284
- Hospital Transports 953,475
- Operating Budget (\$ M) FY-11 \$1,632.4
- Revenue Budget Fire (\$ M) FY-11 \$117.4
- Revenue Budget EMS (\$ M) FY-11 \$172.1
- Capital Budget (\$ M) FY-11 \$153.3
- Total Building Inspections 287,224



FDNY VITAL STATISTICS

CY 2011

<http://www.nyc.gov/fdny>

NYC Land Area: 322 sq. miles

Population: 8,175,133

Fire Houses: 218

EMS Stations: 33

Personnel--Uniformed Fire: 10,787

Uniformed EMS: 3,200

Civilian: 1,599

Key Performance Indicators

• Average Citywide Response Times	
Structural Fires	4:02
Medical Emergencies (Fire)	4:16
Cardiac Arrest /Choke (Fire & EMS)	4:05
Life Threatening Segment 1-3 (EMS)	6:31
All Incidents (Fire)	4:38
All Incidents (EMS)	8:08
• Average Call Processing Time (Fire)	0:25
• EMS Emergency Room Turnaround Time	30:46
• Civilian Fire Fatalities	64

Numbers of Civilians Saved or Rescued

• From Building Fires	481
• Victims Return of Spontaneous Circulation	2,,285
• CFR-D Engine Pre-Hospital Saves	344
• FDNY EMS Pre-Hospital Saves	376
• Victims Trapped in Elevators	35,552
• From Utility Emergencies	311
• Trapped Inside Buildings or Apartments	2,439
• Extricated at Transportation Accidents	539
• Total - All Incident Types	44,273

Miscellaneous Performance Indicators

• Fire Prevention Alternate Issuance (AIP)	
on-line filings	1,606
• Random Drug Screenings Conducted	1,937
• Random Drug Screening Pass Rate	99.6%
• Annual Medicals Administered	17,494

Significant Events

Jan. 18th Three-year-old Christopher (C.J.) Cooke sworn in as a junior firefighter after being hailed as a hero for notifying his family the smoke alarm was sounding in their home.

Significant Events Continued

May 12th Fire Commissioner Salvatore Cassano announced the release of FDNY's fourth Strategic Plan, outlining the FDNY's top priorities and initiatives through 2013.

May 26th The FDNY christened and commissioned the newest FDNY fireboat, The Bravest, during a ceremony at Manhattan's North Cove Marina.

Jun. 24th Fifty-eight students graduated from the FDNY High School for Fire and Life Safety during a ceremony at the Fire Academy on Randall's Island.

July 18th The FDNY launches a new ad campaign for the Open Competitive Firefighter Exam to be held early 2012.

September 8th The FDNY unveils a Memorial Wall at FDNY HQ for 55 FDNY members who died of illnesses related to their work at the World Trade Center during and after the September 11th attacks.

September 8th FDNY members of the Incident Management Team and the Special Operations Command dispatched to assist in operations in Broome County, which was hit hard by Hurricanes Irene and Lee.

September 11th The FDNY holds a memorial service at St. Patrick's Cathedral for the 343 members killed on 9-11-2001, marking the 10th anniversary of the 9-11 attack.

September 15th FDNY's firefighter recruitment drive ends; a record breaking 49.5% of applicants are people of color.

October 16th 18th The FDNY takes part in two large-scale mutual aid drills with neighboring counties. Nassau County units drill with FDNY units from Queens while Westchester Units drill with FDNY on Randall's Island familiarizing themselves with FDNY operations and communications.

2011-2013 Strategic Plan Initiatives

- Expand terrorism and disaster preparedness training through inter-agency exercises to further enhance the Department's all hazard response protocols.
- Promote the FDNY "culture of safety" to reduce accidents and injuries.
- Enhance leadership training for EMS Deputy Chiefs, supervisory training for EMS Officers, and joint training with Fire and EMS personnel to improve communication and coordination at medical incidents.
- Continue to support and advance initiatives in the recruitment and promotional advancement of men and women of diverse backgrounds.
- Expand fire safety programs to increase safety among special populations, including the disabled.

Highlights

• Total Incidents (Fire)	488,017
• Structural Fires	25,380
• Emergencies (non-medical)	206,798
• Medical Emergency Incidents (Fire)	216,083
• Total EMS Incidents	1,256,547
• Total EMS Life Threatening Incidents	470,294
• Hospital Transports	958,527
• Operating Budget (\$ M) FY-12	\$1,670.9
• Revenue Budget Fire (\$ M) FY-12	\$106.8
• Revenue Budget EMS (\$ M) FY-12	\$180.9
• Capital Budget (\$ M) FY-12	\$123.0
• Total Building Inspections	225,990



FDNY VITAL STATISTICS

CY 2012

<http://www.nyc.gov/fdny>

NYC Land Area: 322 sq. miles

Population: 8,175,133

Fire Houses: 218

EMS Stations: 35

Personnel--Uniformed Fire: 10,227

Uniformed EMS: 3,492

Civilian: 1,649

Key Performance Indicators

• Average Citywide Response Times	
Structural Fires	4:04
Medical Emergencies (Fire)	4:12
Cardiac Arrest /Choke (Fire & EMS)	4:07
Life Threatening Segment 1-3 (EMS)	6:30
All Incidents (Fire)	4:42
All Incidents (EMS)	8:28
• Average Call Processing Time (Fire)	0:25
• EMS Emergency Room Turnaround Time	30:34
• Civilian Fire Fatalities	58

Numbers of Civilians Saved or Rescued

• From Building Fires	481
• Victims Return of Spontaneous Circulation	2,274
• CFR-D Engine Pre-Hospital Saves	417
• FDNY EMS Pre-Hospital Saves	472
• Victims Trapped in Elevators	40,002
• From Utility Emergencies	287
• Trapped Inside Buildings or Apartments	2,661
• Extricated at Transportation Accidents	606
• Total - All Incident Types	54,064

Miscellaneous Performance Indicators

• Random Drug Screenings Conducted	1,874
• Random Drug Screening Pass Rate	99.68%
• Annual Medicals Administered	17,306

Significant Events

May 8th FDNY announced that 42,161 people took the recent firefighter exam - including a record-breaking 19,260 minorities, a 130% increase over the previous 2007 exam. In addition, 1,952 women took this test, more than the total number of women (1,788) who took the three prior tests.

Significant Events Continued

May 10th Commissioner Cassano opens a new state-of-the-art FDNY firehouse for Marine Company 9.

June 22nd Commissioner Cassano and COD Ed Kilduff, preside over the FDNY High School graduation ceremony with 59 students in the school's fifth graduating class.

July 2nd FDNY joined researchers from the National Institute of Standards and Technology (NIST) and Underwriters Laboratories (UL) on Governor's Island for six live tests to learn more about the science of fires.

July 26th The FDNY hosted representatives from the deaf and hearing impaired community at FDNY Headquarters to discuss fire safety education. The group discussed new ways to engage and teach fire safety to individuals who are deaf or hearing impaired.

Aug 30th Commissioner Cassano and COD Kilduff promoted James Esposito to Chief of Operations.

Sept 6th Nine FDNY members who died from illnesses related to their work at the World Trade Center site are added to the WTC Memorial Wall at FDNY Headquarters. Joining the 55 members already on the Wall which was unveiled in September 2011 to remember all such victims.

Oct 29th Hurricane Sandy brings high winds and a 13 foot storm surge to NYC- Members of the FDNY take part in one of the largest and most successful search and rescue missions ever conducted in NYC.

November 24th The FDNY IMT deploys to Floyd Bennett Field for Operation Sandy Support.

December 28th The FDNY IMT transitions command to the Lone Star State IMT making this the longest team deployment to date- 35 days.

2011-2013 Strategic Plan Initiatives

- Expand terrorism and disaster preparedness training through inter-agency exercises to further enhance the Department's all hazard response protocols.
- Promote the FDNY "culture of safety" to reduce accidents and injuries.
- Enhance leadership training for EMS Deputy Chiefs, supervisory training for EMS Officers, and joint training with Fire and EMS personnel to improve communication and coordination at medical incidents.
- Continue to support and advance initiatives in the recruitment and promotional advancement of men and women of diverse backgrounds.
- Expand fire safety programs to increase safety among special populations, including the disabled.

Highlights

• Total Incidents (Fire)	494,354
• Structural Fires	25,612
• Emergencies (non-medical)	214,757
• Medical Emergency Incidents (Fire)	218,328
• Total EMS Incidents	1,299,594
• Total EMS Life Threatening Incidents	448,812
• Hospital Transports	983,247
• Operating Budget (\$ M) FY-13	\$1,785.3
• Revenue Budget Fire (\$ M) FY-13	\$116.9
• Revenue Budget EMS (\$ M) FY-13	\$202.5
• Capital Budget (\$ M) FY-13	\$248.5
• Total Building Inspections	239,783



FDNY VITAL STATISTICS

FY 2013

<http://www.nyc.gov/fdny>

NYC Land Area: 322 sq. miles

Population: 8,175,133

Fire Houses: 218

EMS Stations: 34

Personnel--Uniformed Fire: 10,282

Uniformed EMS: 3,240

Civilian: 1,594

Key Performance Indicators

- Average Citywide Response Times*
 - Structural Fires 4:06
 - Medical Emergencies (Fire) 4:16
 - Cardiac Arrest /Choke (Fire & EMS) 4:15
 - Life Threatening Segment 1-3 (EMS) 6:45
 - All Incidents (Fire) 4:46
 - All Incidents (EMS) 9:14
- Average Call Processing Time (Fire) 0:25
- *Excludes 911 & EMD Call Processing Times
- EMS Emergency Room Turnaround Time 31:42
- Civilian Fire Fatalities 47

Numbers of Civilians Saved or Rescued

- From Building Fires 413
- Victims Return of Spontaneous Circulation 2,080
- CFR-D Engine Pre-Hospital Saves 363
- FDNY EMS Pre-Hospital Saves 374
- Victims Trapped in Elevators 39,288
- From Utility Emergencies 283
- Trapped Inside Buildings or Apartments 2,483
- Extricated at Transportation Accidents 460
- Total - All Incident Types 50,072

Miscellaneous Performance Indicators

- Random Drug Screenings Conducted 1,909
- Random Drug Screening Pass Rate 99.69%
- Annual Medicals Administered 18,168

Significant Events

July 2nd: FDNY joined researchers from the National Institute of Standards and Technology (NIST) and Underwriters Laboratories (UL) on Governor's Island for six live tests to learn more about the science of fires.

Significant Events Continued

July 26th: The FDNY hosted reps. from the deaf and hearing impaired community at FDNY HQ to discuss fire safety education. The group discussed ways to engage and teach fire safety to individuals who are deaf or hearing impaired.

Aug 30th: Commissioner Cassano and COD Kilduff promoted James Esposito to Chief of Operations.

Sept 6th: Nine FDNY members who died from illnesses related to their work at the World Trade Center site are added to the 55 members already on the WTC Memorial Wall at FDNY Headquarters. The Wall was unveiled in September 2011 to remember all such victims.

Oct 29th: Hurricane Sandy brings high winds and a 13 foot storm surge to NYC- Members of the FDNY take part in one of the largest and most successful search and rescue missions ever conducted in NYC.

December 28th: The FDNY IMT deployed after Hurricane Sandy transitions command to the Lone Star State IMT, making this the longest FDNY team deployment to date- 35 days.

January 1st: FDNY announces that in CY-2012 NYC had the fewest fire deaths in recorded history and the fastest-ever ambulance response times to high priority calls.

March 4th: The FDNY partners with the V Foundation for Cancer Research, which gave a \$1 million grant to the Albert Einstein College of Medicine to study early detection of hematological cancers that effect first responders.

June 21st: Fifty-two seniors graduate the 6th class of the FDNY High School for Fire and Life Safety in Brooklyn.

2011-2013 Strategic Plan Initiatives

- Expand terrorism and disaster preparedness training through inter-agency exercises to further enhance the Department's all hazard response protocols.
- Promote the FDNY "culture of safety" to reduce accidents and injuries.
- Enhance leadership training for EMS Deputy Chiefs, supervisory training for EMS Officers, and joint training with Fire and EMS personnel to improve communication and coordination at medical incidents.
- Continue to support and advance initiatives in the recruitment and promotional advancement of men and women of diverse backgrounds.
- Expand fire safety programs to increase safety among special populations, including the disabled.

Highlights

- Total Incidents (Fire) 493,377
- Structural Fires 25,278
- Emergencies (non-medical) 214,467
- Medical Emergency Incidents (Fire) 218,779
- Total EMS Incidents 1,310,770
- Total EMS Life Threatening Incidents 450,423
- Hospital Transports 989,329
- Operating Budget (\$ M) FY-14 \$1,771.7
- Revenue Budget Fire (\$ M) FY-14 \$112.6
- Revenue Budget EMS (\$ M) FY-14 \$203.9
- Capital Budget (\$ M) FY-14 \$77.8

EXCLUSIVE: Worker who fell down elevator shaft 'dodged death' in Air Force but was afraid of 'sketchy' construction job

BY BARRY PADDOCK
NEW YORK DAILY NEWS
Friday, May 8, 2015, 2:30 AM



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[ANDREW SAVULICH/NEW YORK DAILY NEWS](#)

A group of construction workers stand outside the work area after Christian Ginesi fell to his death Tuesday while working on the RIU Hotel-Times Square at 301 W. 46th St. near Eighth Ave.

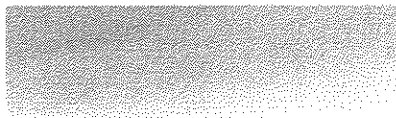
The construction worker who fell 24 stories down an elevator shaft to his death Tuesday in a half-built Midtown luxury hotel was a decorated Air Force veteran who had dodged rocket fire in Afghanistan — but was more frightened by his

new civilian job.

“He would tell us how scared he was,” said John Rapp, an Air Force buddy who last spoke to Christian Ginesi two days before his death.

“He said, ‘It’s not like the Air Force. It’s not safe out here.’ But he was happy to have a job.”

The Daily News reported Thursday that Ginesi’s employer, New Jersey-based elevator company G-Tech Associates LLC, was not licensed to perform work in the city and is now being investigated by the Department of Buildings.



Ginesi had only been working for G-Tech for a month when he died, his friend said.

Ginesi was a decorated Air Force veteran who “dodged death” while serving but was more afraid of the civilian construction job, a friend says.



Military officials confirmed Ginesi served five years in the Air Force, until May of last year, rising to the rank of staff sergeant. He served as a maintenance worker specializing in aircraft lifts and special mission aircraft, and was awarded an Air Force achievement medal.

Ginesi did tours of duty in Iraq, Kuwait and Afghanistan, according to Rapp, who met him when both were deployed in Iraq.

In 2013, a rocket hit a grounded aircraft next to one Ginesi was repairing in Afghanistan, showering him and fellow soldiers with shrapnel, Rapp said.

“He dodged death multiple times,” Rapp added. “He was top-notch.”

Going up and down without these rails protecting us, it's really sketchy.

But Ginesi confessed to friends he was spooked by his new high-rise elevator installation job.

Rapp remembers his pal saying, "Going up and down without these rails protecting us, it's really sketchy."

Ginesi perished while working on the RIU Hotel-Times Square, a 600-room, 31-story tower rising at 301 W. 46th St. near Eighth Ave.

He was installing elevator door frames when the car he and a colleague were riding in stalled five feet above the 24th floor landing around 12:40 p.m. Tuesday.

The hotel project has had previous safety problems.

Ginesi told his Air Force pal he thought the elevator work at the Midtown hotel was "not safe."

Ginesi's co-worker was able to jump safely to the landing. But when Ginesi tried, he slipped backward down the shaft and plummeted all the way to the basement, according to a Department of Buildings report. He was rushed to Bellevue Hospital but could not be saved.

The city immediately issued a stop work order at the site and slapped G-Tech with a violation for failing to safeguard workers.

G-Tech is run by Dominick Glenn and his son, Brock. Reached by telephone Thursday by The News, Dominick Glenn said "I have no comment" and hung up.

The hotel project has had previous safety problems. In July 2013 the Buildings Department shut down the site after a worker fell three stories. Inspectors found floor openings without rails, as required, and cited the owner, 301 West 46 Street Owners LLC, for unsafe work conditions.



ANDREW SAVULICH/NEW YORK DAILY NEWS

Ginesi served five years in the Air Force, rising to staff sergeant.

Work resumed a few days later, but inspectors found more unsafe conditions in May and September — scaffolding without the proper support and a worker without proper safety training certification.

A contractor, Anthony Rinaldi LLC, has since defaulted on answering two violations and paying \$16,000 in fines.

A spokesman for Anthony Rinaldi LLC expressed condolences to Ginesi's family Thursday and noted that to date there have been no violations issued related to the shaft or the rails in the shaft, which are maintained by G-Tech.

Super Falls to His Death in Gramercy Elevator Shaft, Police Say

By Janon Fisher and Ben Fractenberg | December 4, 2013 4:44pm

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The superintendent of 331 Park Ave. South died in a 10-story fall down the building's elevator shaft, police said. [View Full Caption](#)

DNAinfo/Ben Fractenberg

GRAMERCY — The superintendent of a vacant building died Wednesday afternoon in a 10-story plunge down an elevator shaft, police said.

The 60-year-old man, who was not immediately identified, was found at the bottom of the shaft

in 329-331 Park Ave. South by co-workers about 12:30 p.m., according to the NYPD.

The superintendent of the building next door, Amer Sahamanovic, said that he saw the victim yesterday when the victim sneaked up behind Sahamanovic to surprise him.

"Oh, my god," Sahamanovic said. "He's a nice guy."

The 12-story office building, which once housed the restaurant Sage, is owned by F.M. Ring Associates, made up of eccentric brothers Frank and Michael Ring, who inherited a small real estate empire of 15 buildings in the Flatiron and Gramercy neighborhoods, according to *The Real Deal*.

A woman who answered the phone at the company on Wednesday declined to comment.

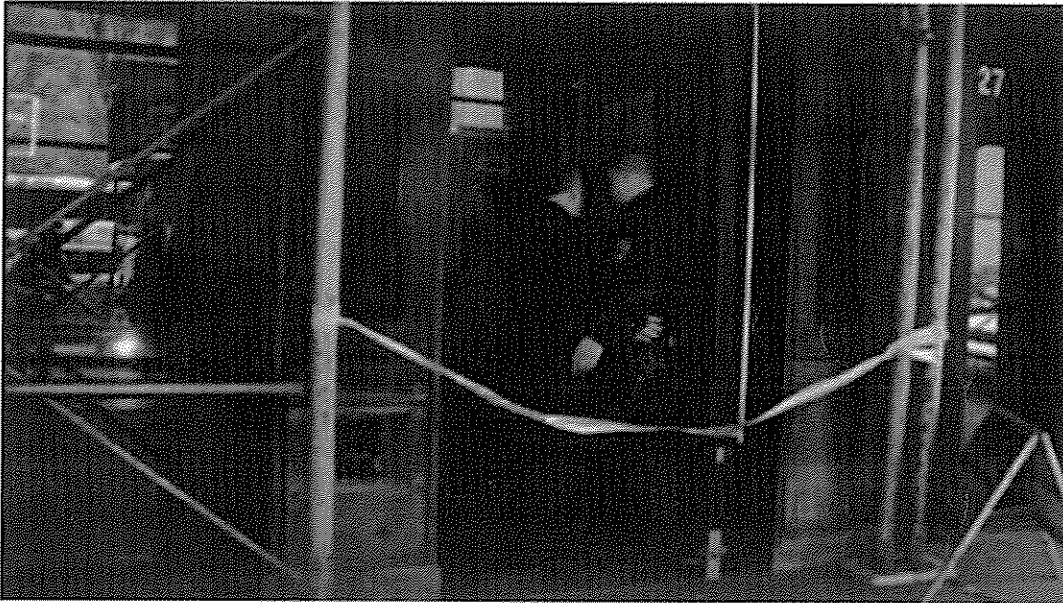
The brothers, who took over the business from their father Leo Ring, are known for leaving prime locations empty, choosing not to rent them out, according to the real estate magazine.

The Park Avenue South building's elevator inspection records show minor administrative violations, but no safety issues, according to a Department of Buildings spokeswoman.

The building was cited for safety violations regarding its facade in January 2013. Scaffolding has been covering the property since 2009, but there is no active work going on, according to building records and neighbors.

Manhattan Building Superintendent Killed While Working On Elevator

- By: NY1 News
- Updated 12/04/2013 11:21 PM



TWC

News: Manhattan Building Superintendent Killed While Working On Elevator
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A Manhattan building superintendent was killed Wednesday while working on an elevator.

Fire officials were called to a mid-rise office building on Park Avenue South just before 12:30 p.m. Wednesday.

That's where they say they found the victim, who appeared to have fallen.

Officials say they're treating the death as accidental.

One neighbor said that the victim was well known.

NY1 reached out to the building's owner, but did not get a comment.

The Department of Buildings said that it had no complaints on file regarding elevators at the site, and said that there's no active construction going on.

Queens man plunges to his death down elevator shaft: witnesses

A repairman reportedly found the man's body on top of a broken elevator in an apartment building on Frame Place near Maple Ave. in Flushing on Wednesday afternoon.

BY JOSEPH STEPANSKY

NEW YORK DAILY NEWS

Thursday, August 7, 2014, 6:21 AM

19

12

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CREDITS: ROY RENNA / BMR BREAKING NEWS

The dead man was reportedly moving a mini-fridge when he fell down the elevator shaft.

A man plunged to his death down an elevator shaft while moving a mini-fridge in Queens Wednesday afternoon, authorities and witnesses said.

The body of the man, whose identity had not been released, was found on top of an elevator in an apartment building on Frame Place near Maple Ave. in Flushing, shortly

after 1 p.m., police said.

Resident Justice Moss, 18, said a repairman had discovered the man's body in the broken elevator. The dead man was apparently trying to move the fridge when he fell.

"I heard he was rolling a refrigerator over there and he fell down with it," Moss said. "That elevator hasn't been going up and down for a week and a half, but it's constantly broken. I've been stuck in there countless times."

It appears the man fell to his death, police said, but the city medical examiner's office was determining the cause of death.

The building had one open complaint dating to March for a broken elevator, according to the Department of Buildings.

Authorities were investigating the death.



Bill A1787-2015

Requires the licensing of persons engaged in the design, construction, operation, inspection, maintenance, alteration and repair of elevators

Requires the licensing of persons engaged in the design, construction, operation, inspection, maintenance, alteration and repair of elevators and other automated people moving conveyances and creates the New York state elevator safety and standards board and the elevator and related conveyances safety program account.

Details

- Same as: S1945-2015
 - Versions A1787-2015
 - Sponsor:Wright
 - Multi-sponsor(s): Arroyo, Braunstein, Buchwald, Clark, Cook, Crouch, Curran, Cusick, DenDekker, Dinowitz, Farrell, Giglio, Glick, Goodell, Graf, Hooper, Lentol, Lupardo, Magnarelli, McDonald, Perry, Ra, Rodriguez, Ryan, Sepulveda, Tenney
 - Co-sponsor(s): Miller, Benedetto, Ortiz, Moya, Colton, Galef, Markey, Quart, Simanowitz, Ramos, Rozic, Mosley, Skoufis, Gunther, Aubry, Dilan, Gottfried
 - Committee: LABOR
 - Law Section: Labor Law
 - Law: Add Art 32 §§925 - 933, Lab L; add §97-1111, St Fin L
-

Actions

- Jan 12, 2015: referred to labor



Bill S1945-2015

Requires the licensing of persons engaged in the design, construction, operation, inspection, maintenance, alteration and repair of elevators

Requires the licensing of persons engaged in the design, construction, operation, inspection, maintenance, alteration and repair of elevators and other automatic people moving devices and creates the New York state elevator safety and standards board and the elevator and related conveyances safety program account.

Details

- Same as: A1787-2015
- Versions S1945-2015
- Sponsor: BONACIC
- Multi-sponsor(s): None
- Co-sponsor(s): SAVINO, ADDABBO, AVELLA, BOYLE, BRESLIN, CARLUCCI, DILAN, ESPAILLAT, FLANAGAN, FUNKE, GALLIVAN, GIANARIS, GOLDEN, GRIFFO, HANNON, HASSELL-THOMPSON, HOYLMAN, KENNEDY, KRUEGER, LANZA, LARKIN, LATIMER, LIBOUS, MARTINS, MONTGOMERY, MURPHY, PANEPINTO, PARKER, PERALTA, PERKINS, RITCHIE, RIVERA, ROBACH, SAMPSON, SANDERS, SERRANO, SQUADRON, STAVISKY, VALESKY
- Committee: LABOR
- Law Section: Labor Law
- Law: Add Art 32 §§925 - 933, Lab L; add §97-1111, St Fin L

Actions

- Jan 15, 2015: REFERRED TO LABOR

Text

STATE OF NEW YORK

1787

2015-2016 Regular Sessions

IN ASSEMBLY

January 12, 2015

Introduced by M. of A. WRIGHT, MILLER, BENEDETTO, ORTIZ, MOYA, COLTON, GALEF, MARKEY, QUART, SIMANOWITZ, RAMOS, ROZIC, MOSLEY, SKOUFIS, GUNTHER, AUBRY -- Multi-Sponsored by -- M. of A. ARROYO, BRAUNSTEIN, BUCHWALD, CLARK, COOK, CROUCH, CURRAN, CUSICK, DenDEKKER, DINOWITZ, FARRELL, GIGLIO, GLICK, GOODELL, GRAF, HOOPER, LENTOL, MAGNARELLI, McDONALD, PERRY, RA, RODRIGUEZ, RYAN, SEPULVEDA, TENNEY -- read once and referred to the Committee on Labor

AN ACT to amend the labor law and the state finance law, in relation to requiring the licensing of persons engaged in the design, construction, inspection, maintenance, alteration, and repair of elevators and other automated people moving devices

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The labor law is amended by adding a new article 32 to read as follows:

ARTICLE 32

ELEVATORS AND OTHER CONVEYANCES; LICENSING

SECTION 925. LEGISLATIVE FINDINGS AND DECLARATION.

926. APPLICATION.

927. DEFINITIONS.

928. LICENSING, PERMIT, REGISTRATION AND COMPLIANCE REQUIREMENTS.

929. LICENSE AND PERMIT PROCEDURE.

930. QUALIFICATIONS, TRAINING AND CONTINUING EDUCATION.

931. POWERS OF THE COMMISSIONER.

932. NEW YORK STATE ELEVATOR SAFETY AND STANDARDS BOARD.

933. EXEMPT PERSONS.

S 925. LEGISLATIVE FINDINGS AND DECLARATION. THE LEGISLATURE HEREBY FINDS THAT THE USE OF UNSAFE AND DEFECTIVE ELEVATORS AND OTHER AUTOMATED PEOPLE MOVING CONVEYANCES MAY EXPOSE THE PUBLIC TO UNSAFE CONDITIONS AND INCREASE THE RISK OF INJURY. THE LEGISLATURE FINDS THAT IMPROPER DESIGN,

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [] is old law to be omitted.

LBD02916-01-5

CONSTRUCTION, MAINTENANCE AND REPAIR OF SUCH CONVEYANCES IS PREVENTABLE BY REQUIRING PROPER TRAINING OF PERSONS EMPLOYED TO PERFORM WORK ON ELEVATORS AND OTHER AUTOMATED PEOPLE MOVING CONVEYANCES AND BY REQUIRING THE LICENSING OF CONTRACTORS AND THE CERTIFICATION OF INDIVIDUALS INVOLVED IN ELEVATOR AND OTHER AUTOMATED PEOPLE MOVING CONVEYANCES PROJECTS.

NOTHING IN THIS ARTICLE IS INTENDED TO CREATE, EXPAND, DIMINISH, LIMIT, IMPAIR, OR SUPERSEDE ANY RIGHTS UNDER CURRENT LAW, RULE, OR REGULATION, OR RESULTING FROM A DETERMINATION OF A COURT OR THE NATIONAL LABOR RELATIONS BOARD WITH REGARD TO BUILDING TRADES AND THE WORK OF SUCH BUILDING TRADE. NOR IS IT INTENDED TO ABROGATE ANY RIGHTS OR DUTIES UNDER ANY CONTRACT WITH REGARD TO BUILDING TRADES AND THE WORK OF SUCH BUILDING TRADE.

S 926. APPLICATION. 1. THE DESIGN, CONSTRUCTION, ERECTION, INSTALLATION, INSPECTION, TESTING, MAINTENANCE, ALTERATION, SERVICE, AND REPAIR OF THE FOLLOWING EQUIPMENT ARE COVERED BY THIS ARTICLE:

(A) HOISTING AND LOWERING MECHANISMS EQUIPPED WITH A CAR OR PLATFORM WHICH MOVES BETWEEN TWO OR MORE LANDINGS. THIS EQUIPMENT INCLUDES, BUT IS NOT LIMITED TO ELEVATORS, PLATFORM LIFTS AND STAIRWAY CHAIR LIFTS;

(B) POWER DRIVEN STAIRWAYS AND WALKWAYS FOR CARRYING PERSONS BETWEEN LANDINGS. THIS EQUIPMENT INCLUDES, BUT IS NOT LIMITED TO, ESCALATORS AND MOVING WALKS;

(C) HOISTING AND LOWERING MECHANISMS EQUIPPED WITH A CAR, WHICH SERVES TWO OR MORE LANDINGS AND IS RESTRICTED TO THE CARRYING OF MATERIAL BY ITS LIMITED SIZE OR LIMITED ACCESS TO THE CAR. THIS EQUIPMENT INCLUDES, BUT IS NOT LIMITED TO, DUMBWAITERS, MATERIAL LIFTS, AND DUMBWAITERS WITH AUTOMATIC TRANSFER DEVICES AS DEFINED IN SECTION NINE HUNDRED TWENTY-SEVEN OF THIS ARTICLE; AND

(D) AUTOMATIC GUIDED TRANSIT VEHICLES ON GUIDEWAYS WITH AN EXCLUSIVE RIGHT OF WAY. THIS EQUIPMENT INCLUDES, BUT IS NOT LIMITED TO, AUTOMATED PEOPLE MOVERS.

2. THE FOLLOWING EQUIPMENT IS NOT COVERED BY THIS ARTICLE:

(A) MATERIAL HOISTS;

(B) MANLIFTS;

(C) MOBILE SCAFFOLDS, TOWERS, AND PLATFORMS;

(D) POWERED PLATFORMS AND EQUIPMENT FOR EXTERIOR AND INTERIOR MAINTENANCE;

(E) CONVEYOR AND RELATED EQUIPMENT;

(F) CRANES, DERRICKS, HOISTS, HOOKS, JACKS AND SLINGS;

(G) INDUSTRIAL TRUCKS;

(H) PORTABLE EQUIPMENT, EXCEPT FOR PORTABLE ESCALATORS;

(I) TIERING AND PILING MACHINES USED TO MOVE MATERIALS TO AND FROM STORAGE LOCATED AND OPERATING ENTIRELY WITHIN ONE STORY;

(J) EQUIPMENT FOR FEEDING OR POSITIONING MATERIALS INCLUDING, BUT NOT LIMITED TO, MACHINE TOOLS AND PRINTING PRESSES;

(K) SKIP OR FURNACE HOISTS;

(L) WHARF RAMPS;

(M) RAILROAD CAR LIFTS OR DUMPERS;

(N) LINE JACKS, FALSE CARS, SHAFTERS, MOVING PLATFORMS AND SIMILAR EQUIPMENT USED FOR INSTALLING AN ELEVATOR BY A CONTRACTOR LICENSED IN THIS STATE.

3. THE LICENSING, PERMITTING AND CERTIFICATION PROVISIONS OF THIS ARTICLE SHALL NOT APPLY TO THE OWNERS OR LESSEES OF PRIVATE RESIDENCES WHO DESIGN, ERECT, CONSTRUCT, INSTALL, ALTER, REPAIR, SERVICE OR MAINTAIN CONVEYANCES THAT ARE LOCATED OR WILL BE LOCATED IN SUCH OWNER OR LESSEE'S PRIVATE RESIDENCE. HOWEVER, ANY PERSON HIRED TO DESIGN, ERECT,

CONSTRUCT, INSTALL, ALTER, REPAIR, SERVICE, MAINTAIN, OR PERFORM ANY OTHER WORK RELATED TO SUCH CONVEYANCES MUST COMPLY WITH THE PROVISIONS OF THIS ARTICLE.

4. NO LICENSE SHALL BE REQUIRED FOR THE REMOVAL OR DISMANTLING OF CONVEYANCES.

5. THE PROVISIONS OF THIS ARTICLE AND THE RULES ADOPTED PURSUANT THERETO SHALL BE THE MINIMUM STANDARD REQUIRED AND SHALL SUPERSEDE ANY SPECIAL LAW OR LOCAL ORDINANCE INCONSISTENT THEREWITH, AND NO LOCAL ORDINANCE INCONSISTENT THEREWITH SHALL BE ADOPTED, BUT NOTHING HEREIN CONTAINED SHALL PREVENT THE ENACTMENT BY LOCAL LAW OR ORDINANCE OF ADDITIONAL REQUIREMENTS AND RESTRICTIONS.

§ 927. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING DEFINITIONS:

1. "AUTOMATED PEOPLE MOVER" MEANS A GUIDED TRANSIT MODE WITH FULLY AUTOMATED OPERATION, FEATURING VEHICLES THAT OPERATE ON GUIDEWAYS WITH EXCLUSIVE RIGHT-OF-WAY.

2. "BOARD" MEANS THE NEW YORK STATE ELEVATOR SAFETY AND STANDARDS BOARD ESTABLISHED BY SECTION NINE HUNDRED THIRTY-TWO OF THIS ARTICLE.

3. "CERTIFICATE OF OPERATION" MEANS A DOCUMENT ISSUED BY THE COMMISSIONER THAT INDICATES THAT THE ELEVATOR OR RELATED CONVEYANCE HAS HAD THE REQUIRED SAFETY INSPECTION AND TESTS AND THAT THE FEES REQUIRED BY THIS ARTICLE HAVE BEEN PAID.

4. "TEMPORARY CERTIFICATE OF OPERATION" MEANS A DOCUMENT ISSUED BY THE COMMISSIONER WHICH PERMITS THE TEMPORARY USE OF A NON-COMPLIANT ELEVATOR OR RELATED CONVEYANCE BY THE GENERAL PUBLIC FOR A LIMITED TIME, NOT TO EXCEED THIRTY DAYS, WHILE MINOR REPAIRS ARE BEING COMPLETED.

5. "CONVEYANCE" MEANS ANY ELEVATOR, DUMBWAITER, ESCALATOR, MOVING SIDEWALK, PLATFORM LIFTS, STAIRWAY CHAIRLIFTS AND AUTOMATED PEOPLE MOVERS.

6. "DORMANT ELEVATOR, DUMBWAITER, OR ESCALATOR" MEANS AN INSTALLATION PLACED OUT OF SERVICE UNDER THE FOLLOWING CIRCUMSTANCES: (A) WHEN AN INSTALLATION'S POWER HAS BEEN DISCONNECTED AND (I) WHEN AN ELECTRIC ELEVATOR, DUMBWAITER, OR MATERIAL LIFT WHOSE SUSPENSION ROPES HAVE BEEN REMOVED, WHOSE CAR AND COUNTERWEIGHT REST AT THE BOTTOM OF THE HOISTWAY, AND WHOSE HOISTWAY DOORS HAVE BEEN PERMANENTLY BARRICADED OR SEALED IN THE CLOSED POSITION ON THE HOISTWAY SIDE; OR (II) A HYDRAULIC ELEVATOR, DUMBWAITER, OR MATERIAL LIFT WHOSE CAR RESTS AT THE BOTTOM OF THE HOISTWAY AND WHOSE DOORS ARE PERMANENTLY BARRICADED OR SEALED; OR (III) AN ESCALATOR OR MOVING WALK WHOSE ENTRANCES HAVE BEEN PERMANENTLY BARRICADED; OR (B) AS DETERMINED BY STATE OR LOCAL LAW, CODE, RULE, OR REGULATIONS.

7. "ELEVATOR" MEANS A HOISTING AND LOWERING MECHANISM, EQUIPPED WITH A CAR, THAT MOVES WITHIN GUIDES AND SERVES TWO OR MORE LANDINGS.

8. "ELEVATOR CONTRACTOR" MEANS, A PUBLIC CORPORATION, OR INSTRUMENTALITY OF A PUBLIC CORPORATION, SELF-EMPLOYED PERSON, COMPANY, UNINCORPORATED ASSOCIATION, FIRM, PARTNERSHIP, LIMITED LIABILITY COMPANY, CORPORATION, OR ANY OTHER ENTITY, OR ANY OWNER OR OPERATOR OF ANY OF THE FOREGOING ENTITIES, WHO POSSESSES AN ELEVATOR CONTRACTOR'S LICENSE IN ACCORDANCE WITH THE PROVISIONS OF SECTIONS NINE HUNDRED TWENTY-EIGHT AND NINE HUNDRED TWENTY-NINE OF THIS ARTICLE AND IS ENGAGED IN THE BUSINESS OF DESIGNING, ERECTING, CONSTRUCTING, INSTALLING, ALTERING, REPAIRING, SERVICING OR MAINTAINING ELEVATORS OR OTHER AUTOMATED PEOPLE MOVING CONVEYANCES COVERED BY THIS ARTICLE.

9. "ELEVATOR HELPER/APPRENTICE/ASSISTANT MECHANIC" MEANS ANY PERSON WHO WORKS UNDER THE GENERAL DIRECTION OF A LICENSED ELEVATOR MECHANIC.

10. "ELEVATOR INSPECTOR" MEANS ANY PERSON WHO POSSESSES AN ELEVATOR INSPECTOR'S LICENSE IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE.

11. "ELEVATOR MECHANIC" MEANS ANY PERSON WHO POSSESSES AN ELEVATOR MECHANIC'S LICENSE IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE.

12. "ESCALATOR" MEANS POWER-DRIVEN, INCLINED, CONTINUOUS STAIRWAY USED FOR RAISING OR LOWERING PASSENGERS.

13. "EXISTING INSTALLATION" MEANS AN INSTALLATION THAT HAS BEEN COMPLETED OR IS UNDER CONSTRUCTION PRIOR TO THE EFFECTIVE DATE OF THIS ARTICLE.

14. "LICENSE" MEANS A LICENSE DULY ISSUED BY THE COMMISSIONER, AUTHORIZING THE DESIGN, ERECTION, CONSTRUCTION, INSTALLATION, ALTERATION, REPAIR, SERVICE, MAINTENANCE, OR INSPECTION OF ELEVATORS OR OTHER CONVEYANCES COVERED BY THIS ARTICLE.

15. "ELEVATOR CONTRACTOR'S LICENSE" MEANS A LICENSE WHICH ENTITLES THE HOLDER THEREOF TO ENGAGE IN THE BUSINESS OF DESIGNING, ERECTING, CONSTRUCTING, INSTALLING, ALTERING, REPAIRING, SERVICING OR MAINTAINING CONVEYANCES COVERED BY THIS ARTICLE.

16. "ELEVATOR INSPECTOR'S LICENSE" MEANS A LICENSE WHICH ENTITLES THE HOLDER THEREOF TO ENGAGE IN THE BUSINESS OF INSPECTING OR TESTING CONVEYANCES COVERED BY THIS ARTICLE.

17. "ELEVATOR MECHANIC'S LICENSE" MEANS A LICENSE WHICH ENTITLES THE HOLDER THEREOF TO INSTALL, CONSTRUCT, ALTER, SERVICE, REPAIR, TEST, MAINTAIN, AND PERFORM WORK ON CONVEYANCES OR OTHER AUTOMATED PEOPLE MOVERS COVERED BY THIS ARTICLE.

18. "MOVING WALK/SIDEWALK" MEANS A TYPE OF PASSENGER-CARRYING DEVICE ON WHICH PASSENGERS STAND OR WALK, AND IN WHICH THE PASSENGER-CARRYING SURFACE REMAINS PARALLEL TO ITS DIRECTION OF MOTION AND IS UNINTERRUPTED.

19. "PERMIT" MEANS A DOCUMENT ISSUED BY THE COMMISSIONER PRIOR TO THE COMMENCEMENT OF WORK THAT PERMITS A CONVEYANCE TO BE ERECTED, CONSTRUCTED, INSTALLED, OR ALTERED UNDER PLANS APPROVED BY THE COMMISSIONER PURSUANT TO THIS ARTICLE.

20. "PERSON" MEANS ANY NATURAL PERSON.

21. "PRIVATE RESIDENCE" MEANS A SEPARATE DWELLING OR A SEPARATE APARTMENT IN A MULTIPLE DWELLING, WHICH IS OCCUPIED BY MEMBERS OF A SINGLE FAMILY UNIT.

22. "REPAIR" MEANS RECONDITIONING OR RENEWAL OF PARTS, COMPONENTS, AND/OR SUBSYSTEMS NECESSARY TO KEEP EQUIPMENT IN COMPLIANCE WITH APPLICABLE CODE REQUIREMENTS.

23. "ALTERATION" MEANS ANY CHANGE TO EQUIPMENT, INCLUDING ITS PARTS, COMPONENTS, AND/OR SUBSYSTEMS, OTHER THAN MAINTENANCE, REPAIR, OR REPLACEMENT, BUT SHALL NOT INCLUDE THE PROFESSIONAL SERVICES OF ENGINEERING OR ARCHITECTURE AS DEFINED IN SECTIONS SEVENTY-TWO HUNDRED ONE AND SEVENTY-THREE HUNDRED ONE OF THE EDUCATION LAW.

24. "DESIGN" MEANS THE ACT OR PROCESS OF PLANNING THE REPAIR, ALTERATION OR CONSTRUCTION OF ANY CONVEYANCE, BUT SHALL NOT INCLUDE THE PROFESSIONAL SERVICES OF ENGINEERING OR ARCHITECTURE AS DEFINED IN SECTIONS SEVENTY-TWO HUNDRED ONE AND SEVENTY-THREE HUNDRED ONE OF THE EDUCATION LAW.

25. "CONSTRUCTION" MEANS THE ACT OR PROCESS OF CONSTRUCTING ANY CONVEYANCE.

26. "INSPECTION" MEANS A CRITICAL EXAMINATION, OBSERVATION OR EVALUATION OF QUALITY AND CODE COMPLIANCE OF ANY CONVEYANCE.

27. "TESTING" MEANS A PROCESS OR TRIAL OF OPERATION OF ANY CONVEYANCE.

28. "MAINTENANCE" MEANS A PROCESS OF ROUTINE EXAMINATION, LUBRICATION, CLEANING, AND ADJUSTMENT OF PARTS, COMPONENTS, AND/OR SUBSYSTEMS FOR THE

PURPOSE OF ENSURING PERFORMANCE IN ACCORDANCE WITH ANY APPLICABLE CODE REQUIREMENTS.

29. "SERVICE OR SERVICING" MEANS A SERVICE CALL OR OTHER UNSCHEDULED VISIT, NOT INCLUDING ROUTINE MAINTENANCE OR A REPAIR, FROM A LICENSED ELEVATOR MECHANIC TO TROUBLESHOOT, ADJUST OR REPAIR AN IMPROPERLY FUNCTIONING OR AN OTHERWISE SHUT DOWN CONVEYANCE.

30. "TEMPORARILY DORMANT ELEVATOR, DUMBWAITER, OR ESCALATOR" MEANS AN INSTALLATION TEMPORARILY PLACED OUT OF SERVICE UNDER THE FOLLOWING CIRCUMSTANCES: (A) (I) WHEN SUCH INSTALLATION'S POWER SUPPLY HAS BEEN DISCONNECTED; AND (II) THE CAR IS PARKED AND ANY DOORS ARE CLOSED AND LATCHED; AND (III) A WIRE SEAL IS INSTALLED ON THE MAINLINE DISCONNECT SWITCH BY A LICENSED ELEVATOR INSPECTOR; OR (B) AS DETERMINED BY STATE OR LOCAL LAW, CODE, RULE, OR REGULATION.

31. "ERECT" MEANS TO VERTICALLY CONSTRUCT OR CONNECT ANY CONVEYANCE OR PART OR SYSTEM THEREOF.

32. "INSTALLATION" INSTALL MEANS TO PLACE OR FIX ANY CONVEYANCE OR PART OR SYSTEM THEREOF, IN POSITION FOR OPERATION.

TEMPORARILY DORMANT INSTALLATIONS SHALL NOT BE USED UNTIL SUCH INSTALLATION HAS BEEN RESTORED TO A SAFE RUNNING ORDER AND IS IN CONDITION SUITABLE FOR USE IN ACCORDANCE WITH ALL APPLICABLE LAWS, CODES, RULES AND REGULATIONS. SUCH TEMPORARILY DORMANT INSTALLATION SHALL BE SUBJECT TO CONTINUED INSPECTIONS FOR THE DURATION OF THE "TEMPORARILY DORMANT" STATUS BY A LICENSED ELEVATOR INSPECTOR. SUCH INSPECTOR SHALL FILE A REPORT WITH THE COMMISSIONER DESCRIBING THE CONDITIONS OF SUCH TEMPORARILY DORMANT INSTALLATION. THE REPORT SHALL BE FILED ANNUALLY OR MORE OR LESS FREQUENT AS DETERMINED BY THE COMMISSIONER. "TEMPORARILY DORMANT" STATUS SHALL BE RENEWABLE ON AN ANNUAL BASIS, BUT SHALL NOT EXCEED A FIVE-YEAR PERIOD.

NO PERSON SHALL REMOVE THE WIRE SEAL AND PADLOCK FOR ANY PURPOSE WITHOUT THE EXPRESS PERMISSION OF THE ELEVATOR INSPECTOR.

S 928. LICENSING, PERMIT, REGISTRATION AND COMPLIANCE REQUIREMENTS. 1. EXCEPT AS OTHERWISE PROVIDED FOR IN SUBDIVISIONS THREE AND FOUR OF SECTION NINE HUNDRED TWENTY-SIX OF THIS ARTICLE, IT SHALL BE A VIOLATION OF THIS ARTICLE FOR ANY ELEVATOR CONTRACTOR TO DESIGN, ERECT, CONSTRUCT, INSTALL, ALTER, REPLACE, SERVICE, OR MAINTAIN, ANY CONVEYANCE CONTAINED WITHIN BUILDINGS OR STRUCTURES IN THIS STATE UNLESS SUCH ELEVATOR CONTRACTOR HOLDS AN ELEVATOR CONTRACTOR'S LICENSE.

2. EXCEPT AS OTHERWISE PROVIDED FOR IN SUBDIVISIONS THREE AND FOUR OF SECTION NINE HUNDRED TWENTY-SIX OF THIS ARTICLE, IT SHALL BE A VIOLATION OF THIS ARTICLE FOR ANY PERSON TO WIRE ANY CONVEYANCE, FROM THE MAINLINE FEEDER TERMINALS ON THE CONTROLLER, IN THIS STATE UNLESS SUCH PERSON HAS AN ELEVATOR MECHANIC'S LICENSE AND IS WORKING UNDER THE DIRECT SUPERVISION OF A LICENSED ELEVATOR CONTRACTOR PURSUANT TO THIS ARTICLE. NO OTHER LICENSE SHALL BE REQUIRED FOR THIS WORK, EXCLUDING THE INSTALLATION OF BRANCH CIRCUITS AND WIRING TERMINATIONS FOR MACHINE ROOM AND PIT LIGHTING, RECEPTACLES AND HVAC AS DESCRIBED IN THE NFPA NATIONAL ELECTRIC CODE 620.23 AND 620.24 AS WELL AS FIRE AND HEAT DETECTORS AND ALARMS, MAY BE PERFORMED BY A LICENSED ELECTRICAL CONTRACTOR. ADDITIONALLY, WITHIN NEW YORK CITY, THE INSTALLATION OF BRANCH CIRCUITS AND WIRING TERMINATIONS FOR THE CAR FAN, LIGHTS AND RECEPTACLES, AS DESCRIBED IN THE NFPA NATIONAL ELECTRIC CODE 620.22, AND INTERCOMS AND VOICE COMMUNICATIONS AS WELL AS SIGNAL EQUIPMENT OR SYSTEMS, AS DEFINED IN NFPA ARTICLE 620.2, THAT IS NOT DIRECTLY ASSOCIATED WITH THE OPERATION OR SAFETY OF ANY CONVEYANCE, MAY BE PERFORMED BY A LICENSED ELECTRICAL CONTRACTOR.

3. EXCEPT AS OTHERWISE PROVIDED FOR IN SUBDIVISION THREE OF SECTION NINE HUNDRED TWENTY-SIX OF THIS ARTICLE, IT SHALL BE A VIOLATION OF THIS ARTICLE FOR ANY PERSON TO INSPECT OR TEST ANY CONVEYANCE WITHIN BUILDINGS OR STRUCTURES UNLESS SUCH PERSON HOLDS AN ELEVATOR INSPECTOR'S LICENSE.

4. EXCEPT AS OTHERWISE PROVIDED FOR IN SUBDIVISIONS THREE AND FOUR OF SECTION NINE HUNDRED TWENTY-SIX OF THIS ARTICLE, IT SHALL BE A VIOLATION OF THIS ARTICLE FOR ANY ELEVATOR CONTRACTOR TO ERECT, CONSTRUCT, INSTALL, OR ALTER CONVEYANCES WITHIN BUILDINGS OR STRUCTURES WITHIN THIS STATE UNLESS A PERMIT THEREFOR HAS BEEN ISSUED BY THE COMMISSIONER BEFORE WORK IS COMMENCED. NO PERMIT SHALL BE ISSUED EXCEPT TO A PERSON HOLDING A VALID ELEVATOR CONTRACTOR'S LICENSE. A COPY OF SUCH PERMIT SHALL BE KEPT AT THE CONSTRUCTION SITE AT ALL TIMES WHILE THE WORK IS IN PROGRESS.

5. EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION THREE OF SECTION NINE HUNDRED TWENTY-SIX OF THIS ARTICLE, ALL NEW CONVEYANCE INSTALLATIONS SHALL BE PERFORMED BY AN ELEVATOR CONTRACTOR LICENSED TO INSTALL SUCH CONVEYANCE. SUBSEQUENT TO INSTALLATION, THE ELEVATOR CONTRACTOR MUST CERTIFY COMPLIANCE TO THE COMMISSIONER WITH THE APPLICABLE SECTIONS OF THIS ARTICLE AS WELL AS ANY OTHER APPLICABLE LAW, RULE, REGULATION OR CODE. PRIOR TO SUCH CONVEYANCES BEING USED, THE PROPERTY OWNER OR LESSEE MUST OBTAIN A CERTIFICATE OF OPERATION FROM THE COMMISSIONER. A FEE, AS SET FORTH IN THIS ARTICLE, SHALL BE PAID FOR SUCH CERTIFICATE OF OPERATION, HOWEVER, NO SUCH FEE SHALL BE REQUIRED FOR CONVEYANCES IN PRIVATE RESIDENCES. IT IS THE RESPONSIBILITY OF THE LICENSED ELEVATOR CONTRACTOR TO COMPLETE AND SUBMIT REGISTRATIONS FOR NEW INSTALLATIONS. A CERTIFICATE OF OPERATION SHALL BE VALID FOR ONE YEAR, EXCEPT FOR CERTIFICATES ISSUED FOR PLATFORM AND STAIRWAY CHAIRLIFTS FOR PRIVATE RESIDENCES, WHICH SHALL BE VALID FOR A PERIOD OF THREE YEARS. CERTIFICATES OF OPERATION MUST BE CLEARLY AND CONSPICUOUSLY DISPLAYED ON, IN OR AROUND EACH CONVEYANCE AND BE ACCESSIBLE TO THE STATE OR LOCALITY INSPECTING OR ENFORCING ANY APPLICABLE LAW, RULE, REGULATION OR CODE.

6. EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION THREE OF SECTION NINE HUNDRED TWENTY-SIX OF THIS ARTICLE, THE CERTIFICATE OF OPERATION FOR NEWLY INSTALLED PLATFORM LIFTS AND STAIRWAY CHAIRLIFTS FOR PRIVATE RESIDENCES SHALL BE ISSUED ONLY SUBSEQUENT TO AN INSPECTION BY A LICENSED THIRD PARTY INSPECTION FIRM. THE CERTIFICATE OF OPERATION FEE FOR ALL NEW AND EXISTING PLATFORM AND STAIRWAY CHAIRLIFTS FOR PRIVATE RESIDENCES AND ANY RENEWAL CERTIFICATE FEES ARE HEREBY WAIVED. THE INSPECTION OF PRIVATE RESIDENCE PLATFORM AND STAIRWAY CHAIRLIFTS SHALL BE DONE AT THE REQUEST AND CONSENT OF THE PRIVATE RESIDENCE'S OWNER OR LESSEES.

7. IT SHALL BE THE RESPONSIBILITY OF LICENSEES TO ENSURE THAT THE INSTALLATION, SERVICE OR MAINTENANCE OF CONVEYANCES IS PERFORMED IN COMPLIANCE WITH EXISTING STATE AND LOCAL BUILDING AND MAINTENANCE CODES.

S 929. LICENSE AND PERMIT PROCEDURE. ALL APPLICATIONS FOR ELEVATOR CONTRACTOR'S, ELEVATOR MECHANIC'S, AND ELEVATOR INSPECTOR'S LICENSES AND REQUIRED PERMITS SHALL BE SUBMITTED TO THE DEPARTMENT IN WRITING ON FORMS FURNISHED BY THE COMMISSIONER AND SHALL CONTAIN THE INFORMATION SET FORTH IN THIS SECTION AS WELL AS ANY ADDITIONAL INFORMATION THAT THE COMMISSIONER MAY REQUIRE. THE COMMISSIONER SHALL ALSO SET FEES FOR LICENSING AND PERMITTING UNDER THIS SECTION.

1. APPLICATIONS FOR LICENSES. EVERY APPLICATION FOR A LICENSE UNDER THIS ARTICLE SHALL INCLUDE THE FOLLOWING:

- (A) THE NAME, RESIDENCE ADDRESS AND BUSINESS ADDRESS OF THE APPLICANT;
- (B) THE NUMBER OF YEARS THE APPLICANT HAS ENGAGED IN THE BUSINESS OR PRACTICE OF DESIGNING, CONSTRUCTING, ERECTING, INSTALLING, INSPECTING,

TESTING, REPAIRING, ALTERING, MAINTAINING, OR SERVICING CONVEYANCES COVERED BY THIS ARTICLE;

(C) THE APPROXIMATE NUMBER OF PERSONS, IF ANY, TO BE EMPLOYED BY THE APPLICANT FOR AN ELEVATOR CONTRACTOR'S LICENSE;

(D) EVIDENCE THAT THE APPLICANT IS OR WILL BE COVERED BY GENERAL LIABILITY, PERSONAL INJURY AND PROPERTY DAMAGE INSURANCE; AND

(E) ANY OTHER INFORMATION WHICH THE COMMISSIONER MAY REQUIRE.

UPON APPROVAL OF AN APPLICATION FOR A LICENSE THE COMMISSIONER SHALL ISSUE SUCH LICENSE WHICH SHALL BE VALID FOR TWO YEARS. THE FEES FOR SUCH LICENSE AND RENEWAL THEREOF SHALL BE SET BY THE COMMISSIONER. ANY DENIAL FOR SUCH APPLICATION SHALL SET FORTH THE REASONS THEREFOR.

2. APPLICATION FOR PERMITS. EVERY APPLICATION FOR A PERMIT UNDER THIS ARTICLE SHALL INCLUDE PLANS AND SPECIFICATIONS STAMPED AND SIGNED BY A PROFESSIONAL ENGINEER AND/OR AN ARCHITECT LICENSED PURSUANT TO ARTICLE ONE HUNDRED FORTY-FIVE AND/OR ARTICLE ONE HUNDRED FORTY-SEVEN OF THE EDUCATION LAW. EVERY APPLICATION FOR A PERMIT UNDER THIS ARTICLE SHALL INCLUDE THE FOLLOWING:

(A) COPIES OF THE SPECIFICATIONS AND ACCURATELY SCALED AND FULLY DIMENSIONED PLANS SHOWING THE LOCATION OF THE INSTALLATION IN RELATION TO THE PLANS AND ELEVATION OF THE BUILDING;

(B) THE LOCATION OF THE MACHINERY ROOM AND THE EQUIPMENT TO BE INSTALLED, RELOCATED OR ALTERED;

(C) ALL STRUCTURAL SUPPORTING MEMBERS THEREOF, INCLUDING FOUNDATIONS;

(D) A LIST OF ALL MATERIALS TO BE EMPLOYED AND ALL LOADS TO BE SUPPORTED AND CONVEYED;

(E) ANY OTHER INFORMATION THAT THE COMMISSIONER MAY REQUIRE TO ENSURE THAT SUCH PLANS AND SPECIFICATIONS ARE SUFFICIENTLY COMPLETE AND ILLUSTRATE ALL DETAILS OF CONSTRUCTION AND DESIGN; AND

(F) ANY REQUIRED PERMITTING FEES, WHICH ARE SUBJECT TO RETURN UPON DENIAL OF A PERMIT APPLICATION.

UPON APPROVAL OF AN APPLICATION FOR A PERMIT THE COMMISSIONER SHALL ISSUE SUCH PERMIT. SUCH PERMIT SHALL STATE THE TIME BY WHICH THE WORK SHALL COMMENCE AND ALSO WHEN SUCH PERMIT EXPIRES. IF AFTER THE WORK HAS BEEN STARTED, WORK IS SUSPENDED OR ABANDONED FOR A PERIOD OF SIXTY DAYS, OR SUCH SHORTER PERIOD OF TIME AS THE COMMISSIONER MAY SPECIFY AT THE TIME THE PERMIT IS ISSUED, THE PERMIT SHALL EXPIRE. UPON EXPIRATION OF A PERMIT FOR WHICH WORK HAS NOT BEEN COMPLETED, THE COMMISSIONER MAY EXTEND SUCH PERMIT.

3. LICENSING AND PERMITTING EXEMPTIONS. WHENEVER AN EMERGENCY EXISTS IN THIS STATE DUE TO A DISASTER OR ACT OF GOD, WHICH IMPERILS THE HEALTH, SAFETY OR WELFARE OF AN INDIVIDUAL OR INDIVIDUALS AND PLACING SUCH INDIVIDUAL OR INDIVIDUALS IN IMMINENT DANGER OF INJURY OR DEATH AND THE NUMBER OF PERSONS IN THE STATE HOLDING LICENSES GRANTED BY THE BOARD IS INSUFFICIENT TO COPE WITH SUCH EMERGENCY, ANY PERSON CERTIFIED BY A LICENSED ELEVATOR CONTRACTOR TO HAVE AN ACCEPTABLE COMBINATION OF DOCUMENTED EXPERIENCE AND EDUCATION TO PERFORM ELEVATOR WORK WITH DIRECT AND IMMEDIATE SUPERVISION SHALL SEEK AN EMERGENCY ELEVATOR MECHANIC'S LICENSE FROM THE COMMISSIONER WITHIN FIVE BUSINESS DAYS AFTER COMMENCING WORK REQUIRING A LICENSE. THE COMMISSIONER SHALL ISSUE EMERGENCY ELEVATOR MECHANIC'S LICENSES TO ADDRESS THE EMERGENCY THAT EXISTS. THE LICENSED ELEVATOR CONTRACTOR SHALL FURNISH PROOF OF COMPETENCY AS THE COMMISSIONER MAY REQUIRE. EACH SUCH LICENSE SHALL RECITE THAT IT IS VALID FOR A PERIOD OF FIFTEEN DAYS FROM THE DATE THEREOF AND FOR SUCH PARTICULAR ELEVATORS OR GEOGRAPHICAL AREAS AS THE COMMISSIONER MAY DESIGNATE TO ADDRESS THE EMERGENCY SITUATION AND OTHERWISE SHALL ENTITLE THE LICENSEE TO THE RIGHTS AND PRIVILEGES OF AN ELEVATOR MECHANIC'S

LICENSE ISSUED IN THIS ARTICLE. THE COMMISSIONER SHALL RENEW AN EMERGENCY ELEVATOR MECHANIC'S LICENSE DURING THE EXISTENCE OF AN EMERGENCY AS NEEDED. NO FEE SHALL BE CHARGED FOR ANY EMERGENCY ELEVATOR MECHANIC'S LICENSE OR RENEWAL THEREOF.

S 930. QUALIFICATIONS, TRAINING AND CONTINUING EDUCATION. 1. NO LICENSE SHALL BE GRANTED TO ANY PERSON WHO HAS NOT PAID THE REQUIRED APPLICATION FEE AND DEMONSTRATED HIS OR HER QUALIFICATIONS AND ABILITIES. APPLICANTS FOR A MECHANIC'S LICENSE MUST DEMONSTRATE ONE OF THE FOLLOWING QUALIFICATIONS: (A) AN ACCEPTABLE COMBINATION OF DOCUMENTED EXPERIENCE AND EDUCATION CREDITS CONSISTING OF (I) NOT LESS THAN FOUR YEARS WORK EXPERIENCE IN THE CONSTRUCTION, MAINTENANCE AND SERVICE REPAIR OF ELEVATORS, AS VERIFIED BY CURRENT AND PREVIOUS EMPLOYERS AND (II) SATISFACTORY COMPLETION OF A WRITTEN EXAMINATION, ADMINISTERED BY THE COMMISSIONER, ON THE MOST RECENT NATIONAL, STATE, AND LOCAL CONVEYANCES CODES AND STANDARDS; OR

(B) ACCEPTABLE PROOF THAT HE OR SHE HAS WORKED ON ELEVATOR CONSTRUCTION, MAINTENANCE OR REPAIR WITH DIRECT AND IMMEDIATE SUPERVISION IN THIS STATE FOR A PERIOD OF NOT LESS THAN FOUR YEARS IMMEDIATELY PRIOR TO THE EFFECTIVE DATE OF THIS ARTICLE, PROVIDED THAT SUCH APPLICANT SHALL FILE SUCH APPLICATION WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS ARTICLE; OR

(C) A CERTIFICATE OF SUCCESSFUL COMPLETION AND SUCCESSFULLY PASSING THE MECHANIC EXAMINATION OF A NATIONALLY RECOGNIZED TRAINING PROGRAM FOR THE ELEVATOR INDUSTRY INCLUDING, BUT NOT LIMITED TO, THE NATIONAL ELEVATOR INDUSTRY EDUCATIONAL PROGRAM OR ITS EQUIVALENT; OR

(D) CERTIFICATE OF SUCCESSFUL COMPLETION OF THE JOINT APPRENTICE AND TRAINING COMMITTEE OF THE ELEVATOR INDUSTRY OF LOCAL 3, IBEW, EE DIVISION TRAINING PROGRAM OR AN APPRENTICESHIP PROGRAM FOR ELEVATOR MECHANICS, HAVING STANDARDS SUBSTANTIALLY EQUAL TO THOSE OF THIS CHAPTER, AND REGISTERED WITH THE BUREAU OF APPRENTICESHIP AND TRAINING, U.S. DEPARTMENT OF LABOR OR A STATE APPRENTICESHIP COUNCIL.

2. APPLICANTS FOR AN ELEVATOR CONTRACTOR'S LICENSE MUST DEMONSTRATE TO THE COMMISSIONER THAT SUCH ELEVATOR CONTRACTOR EMPLOYS LICENSED ELEVATOR MECHANICS WHO PERFORM THE WORK DESCRIBED IN SECTION NINE HUNDRED TWENTY-SIX OF THIS ARTICLE AND HAVE PROOF OF COMPLIANCE WITH THE INSURANCE REQUIREMENTS SET FORTH IN PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION NINE HUNDRED TWENTY-NINE OF THIS ARTICLE.

3. ANY APPLICANTS FOR AN ELEVATOR INSPECTOR'S LICENSE MUST DEMONSTRATE TO THE SATISFACTION OF THE COMMISSIONER THAT SUCH APPLICANT MEETS OR EXCEEDS APPLICABLE NATIONAL STANDARDS. PRIVATE ELEVATOR INSPECTORS SHALL MAINTAIN THE SAME INSURANCE REQUIREMENTS AS AN ELEVATOR CONTRACTOR.

4. (A) THE RENEWAL OF ALL LICENSES GRANTED UNDER THE PROVISIONS OF THIS SUBDIVISION SHALL BE CONDITIONED UPON THE SUBMISSION OF A CERTIFICATE OF COMPLETION OF A COURSE DESIGNED TO ENSURE THE CONTINUING EDUCATION OF LICENSEES ON NEW AND EXISTING NATIONAL, STATE, AND LOCAL CONVEYANCES CODES AND STANDARDS. SUCH COURSE SHALL CONSIST OF NOT LESS THAN EIGHT HOURS OF INSTRUCTION THAT SHALL BE ATTENDED ANNUALLY AND COMPLETED PRECEDING ANY SUCH LICENSE RENEWAL. THE COMMISSIONER SHALL ESTABLISH REQUIREMENTS FOR CONTINUING EDUCATION AND TRAINING PROGRAMS, AND SHALL APPROVE SUCH PROGRAMS, AS WELL AS MAINTAIN A LIST OF APPROVED PROGRAMS WHICH SHALL BE MADE AVAILABLE TO LICENSE APPLICANTS, PERMIT APPLICANTS, RENEWAL APPLICANTS AND OTHER INTERESTED PARTIES UPON REQUEST. THE COMMISSIONER SHALL PROMULGATE RULES AND REGULATIONS SETTING FORTH THE CRITERIA FOR APPROVAL OF SUCH PROGRAMS, THE PROCEDURES TO BE FOLLOWED IN APPLYING FOR SUCH APPROVAL, AND OTHER RULES AND REGULATIONS AS THE

COMMISSIONER DEEMS NECESSARY AND PROPER TO EFFECTUATE THE PURPOSES OF THIS SECTION.

(B) THE COMMISSIONER SHALL ASSESS A FEE FOR EACH TRAINING PROGRAM COMPLETION CERTIFICATE AND FOR EACH REFRESHER TRAINING PROGRAM COMPLETION CERTIFICATE, PROVIDED, HOWEVER, THAT IN NO EVENT SHALL THE COST OF SUCH CERTIFICATES BE ASSESSED BY THE SPONSOR OF SUCH TRAINING PROGRAM AGAINST THE PARTICIPANTS.

5. THE RENEWAL OF ALL LICENSES GRANTED UNDER THE PROVISIONS OF THIS SECTION SHALL BE CONDITIONED UPON THE SUBMISSION OF A CERTIFICATE OF COMPLETION OF A COURSE DESIGNED TO ENSURE THE CONTINUING EDUCATION OF LICENSEES ON NEW AND EXISTING REGULATIONS OF THE DEPARTMENT. SUCH COURSE SHALL CONSIST OF NOT LESS THAN EIGHT HOURS OF INSTRUCTION THAT SHALL BE ATTENDED AND COMPLETED ANNUALLY PRIOR TO ANY SUCH LICENSE RENEWAL.

THE COURSES SHALL BE TAUGHT BY INSTRUCTORS THROUGH CONTINUING EDUCATION PROVIDERS THAT MAY INCLUDE, BUT SHALL NOT BE LIMITED TO, ASSOCIATION SEMINARS, AND LABOR TRAINING PROGRAMS. THE COMMISSIONER SHALL APPROVE THE CONTINUING EDUCATION PROVIDERS. ALL INSTRUCTORS SHALL BE EXEMPT FROM THE REQUIREMENTS OF THE PRECEDING PARAGRAPH WITH REGARD TO THEIR APPLICATION FOR LICENSE RENEWAL PROVIDED THAT SUCH APPLICANT WAS QUALIFIED AS AN INSTRUCTOR AT ANY TIME DURING THE ONE YEAR IMMEDIATELY PRECEDING THE SCHEDULED DATE FOR SUCH RENEWAL.

APPROVED TRAINING PROVIDERS SHALL KEEP UNIFORM RECORDS, FOR A PERIOD OF SIX YEARS, OF ATTENDANCE OF LICENSEES FOLLOWING A FORMAT APPROVED BY THE COMMISSIONER AND SUCH RECORDS SHALL BE AVAILABLE FOR INSPECTION BY THE COMMISSIONER AT HIS OR HER REQUEST. APPROVED TRAINING PROVIDERS SHALL BE RESPONSIBLE FOR THE SECURITY OF ALL ATTENDANCE RECORDS AND CERTIFICATES OF COMPLETION; PROVIDED, HOWEVER, THAT FALSIFYING OR KNOWINGLY ALLOWING ANOTHER TO FALSIFY SUCH ATTENDANCE RECORDS OR CERTIFICATES OF COMPLETION SHALL CONSTITUTE GROUNDS FOR SUSPENSION OR REVOCATION OF THE APPROVAL REQUIRED UNDER THIS SECTION.

S 931. POWERS OF THE COMMISSIONER. 1. THE COMMISSIONER SHALL HAVE THE AUTHORITY TO INSPECT, OR CAUSE TO BE INSPECTED, ONGOING OR COMPLETED CONVEYANCES PROJECTS AND TO CONDUCT AN INVESTIGATION THEREOF UPON THE COMMISSIONER'S OWN INITIATION OR UPON RECEIPT OF A COMPLAINT BY ANY PERSON OR ENTITY. HOWEVER, NOTHING IN THIS SUBDIVISION SHALL PERMIT THE COMMISSIONER TO ENTER A PRIVATE RESIDENCE.

2. IF, UPON RECEIPT OF A COMPLAINT ALLEGING A VIOLATION OF THIS ARTICLE, THE COMMISSIONER REASONABLE BELIEVES THAT SUCH VIOLATION EXISTS, HE OR SHE SHALL INVESTIGATE AS SOON AS PRACTICABLE TO DETERMINE IF SUCH VIOLATION EXISTS. IF THE COMMISSIONER DETERMINES THAT NO VIOLATION OR DANGER EXISTS, THE COMMISSIONER SHALL INFORM THE COMPLAINING PERSON OR ENTITY.

3. IF, UPON INVESTIGATION, THE COMMISSIONER DETERMINES THAT THE ALLEGED VIOLATION EXISTS, THE COMMISSIONER MAY DELIVER TO SUCH OWNER OR ELEVATOR CONTRACTOR OR HIS OR HER AGENT OR REPRESENTATIVE A WRITTEN ORDER TO CURE SUCH VIOLATION AND MAY ORDER THAT THEIR PERMIT TO WORK ON SUCH INSTALLATION, REPAIR OR MAINTENANCE PROJECT SHALL BE SUSPENDED UNTIL SUCH VIOLATION IS CURED. SUCH ORDER SHALL SPECIFICALLY ENUMERATE THE VIOLATIONS WHICH CONSTITUTE THE BASIS OF THE ORDER TO CURE OR ORDER OF SUSPENSION AND SHALL SPECIFY THE CORRECTIVE ACTION TO BE TAKEN. THE COMMISSIONER MAY ALLOW THE PERMIT TO TOLL DURING THE TIME OF SUCH ORDER.

4. UPON RECEIPT OF A WRITTEN NOTICE FROM THE ELEVATOR CONTRACTOR, OR HIS OR HER AGENT OR REPRESENTATIVE, THAT SUCH VIOLATION HAS BEEN CORRECTED, THE COMMISSIONER SHALL, WITHIN TEN DAYS, ISSUE A DETERMINATION AS TO WHETHER SUCH ORDER TO CURE HAS BEEN SATISFIED AND SUCH ORDER OF SUSPENSION, IF ANY, SHALL BE LIFTED. IF THE COMMISSIONER DETER-

MINES THAT THE ORDER TO CURE HAS NOT BEEN SATISFIED HE OR SHE MAY CONTINUE SUCH ORDER FOR A REASONABLE PERIOD OF TIME UPON THE CONSENT OF THE CONTRACTOR, OR HIS OR HER AGENT OR REPRESENTATIVE. IF THE COMMISSIONER DOES NOT CONTINUE THE ORDER, OR IF THE CONTRACTOR, OR HIS OR HER AGENT OR REPRESENTATIVE DOES NOT CONSENT TO SUCH CONTINUATION, THE CONTRACTOR SHALL HAVE THE RIGHT TO A HEARING TO DETERMINE IF SUCH ORDER SHALL BE LIFTED. ANY ENTITY OR CONTRACTOR WHO MAY BE ADVERSELY AFFECTED BY A NOTICE, SUSPENSION, OR DETERMINATION ISSUED UNDER THIS SECTION MAY COMMENCE A PROCEEDING PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

5. THE COMMISSIONER MAY, AFTER A NOTICE AND HEARING, SUSPEND OR REVOKE A LICENSE ISSUED UNDER THIS ARTICLE BASED ON ANY OF THE FOLLOWING VIOLATIONS:

- (A) ANY FALSE STATEMENT AS TO A MATERIAL MATTER IN THE APPLICATION;
 - (B) FRAUD, OR MISREPRESENTATION, IN SECURING A LICENSE;
 - (C) FAILURE TO NOTIFY THE COMMISSIONER AND THE OWNER OR LESSEE OF A CONVEYANCE OF ANY CONDITION NOT IN COMPLIANCE WITH THIS ARTICLE;
 - (D) A VIOLATION OF SECTION NINE HUNDRED TWENTY-EIGHT OF THIS ARTICLE;
- OR

(E) A FINDING BY THE COMMISSIONER THAT A CONTRACTOR HAS VIOLATED THIS ARTICLE OR ANY RULE OR REGULATION PROMULGATED THEREUNDER TWICE WITHIN A PERIOD OF THREE YEARS, OR THAT A CONTRACTOR HAS VIOLATED A PROVISION OF THIS ARTICLE AND SUCH VIOLATION RESULTED IN A SERIOUS THREAT TO THE HEALTH OR SAFETY OF AN INDIVIDUAL OR INDIVIDUALS. THE COMMISSIONER MAY, IN ADDITION TO ORDERING THAT SUCH CONTRACTOR'S LICENSE BE REVOKED, BAR SUCH INDIVIDUAL FROM BEING ELIGIBLE TO REAPPLY FOR SUCH LICENSE FOR A PERIOD NOT TO EXCEED TWO YEARS.

6. THE COMMISSIONER MAY, AFTER NOTICE AND HEARING, REVOKE A PERMIT ISSUED UNDER THIS ARTICLE BASED ON ANY OF THE FOLLOWING VIOLATIONS:

- (A) ANY FALSE STATEMENTS OR MISREPRESENTATION AS TO A MATERIAL FACT IN THE APPLICATION, PLANS, OR SPECIFICATIONS ON WHICH THE PERMIT WAS BASED;
- (B) ANY APPLICATION WHICH BY OMISSION OR MISTAKE FAILS TO COMPLY WITH THE REQUIREMENTS OF THIS ARTICLE;
- (C) ANY FAILURE TO PERFORM WORK IN ACCORDANCE WITH THE PROVISIONS OF THE APPLICATION, PLANS OR SPECIFICATIONS OR WITH THE REQUIREMENTS OF THIS ARTICLE OR CONDITIONS OF THE PERMIT;
- (D) A FAILURE BY THE OWNER OR ELEVATOR CONTRACTOR TO WHOM THE PERMIT WAS ISSUED TO COMPLY WITH AN ORDER ISSUED PURSUANT TO SUBDIVISION FOUR OF THIS SECTION; OR

(E) A FINDING BY THE COMMISSIONER THAT AN INDIVIDUAL OR CONTRACTOR WHO HAS BEEN ISSUED A PERMIT HAS VIOLATED ANY PROVISION UNDER SECTION NINE HUNDRED TWENTY-EIGHT OF THIS ARTICLE.

7. (A) EXCEPT AS PROVIDED IN PARAGRAPH (B) OF THIS SUBDIVISION, IF THE COMMISSIONER FINDS, AFTER NOTICE AND HEARING, THAT AN INDIVIDUAL HAS VIOLATED ANY PROVISION OF THIS ARTICLE, HE OR SHE MAY IMPOSE A CIVIL PENALTY NOT TO EXCEED ONE THOUSAND DOLLARS FOR EACH SUCH VIOLATION. UPON A SECOND OR SUBSEQUENT VIOLATION WITHIN THREE YEARS OF THE DETERMINATION OF A PRIOR VIOLATION, THE COMMISSIONER MAY IMPOSE A CIVIL PENALTY NOT TO EXCEED TWO THOUSAND DOLLARS.

(B) THE PENALTY PROVIDED FOR IN PARAGRAPH (A) OF THIS SUBDIVISION MAY BE INCREASED TO AN AMOUNT NOT TO EXCEED FIVE THOUSAND DOLLARS IF THE VIOLATION RESULTED IN A SERIOUS THREAT TO THE HEALTH OR SAFETY OF AN INDIVIDUAL OR INDIVIDUALS.

8. ANY ENTITY OR CONTRACTOR WHO MAY BE ADVERSELY AFFECTED BY AN ORDER ISSUED UNDER THIS SECTION MAY COMMENCE A PROCEEDING PURSUANT TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

9. THE COMMISSIONER MAY BRING AN ACTION IN A COURT OF COMPETENT JURISDICTION TO ENJOIN ANY CONDUCT THAT VIOLATES THE PROVISIONS OF THIS ARTICLE.

10. THE COMMISSIONER MAY PROMULGATE RULES AND REGULATIONS NECESSARY TO CARRY OUT AND EFFECTUATE THE PROVISIONS OF THIS ARTICLE.

S 932. NEW YORK STATE ELEVATOR SAFETY AND STANDARDS BOARD. 1. AN ELEVATOR SAFETY AND STANDARDS BOARD IS HEREBY CREATED, TO CONSIST OF NINE MEMBERS. THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE, AND THE SPEAKER OF THE ASSEMBLY SHALL EACH APPOINT THREE MEMBERS. THE GOVERNOR'S APPOINTEES SHALL BE COMPRISED OF A REPRESENTATIVE OF A MAJOR ELEVATOR MANUFACTURING COMPANY, A MEMBER OF THE GENERAL PUBLIC AND A BUILDING OWNER, MANAGER OR REPRESENTATIVE; THE TEMPORARY PRESIDENT OF THE SENATE'S APPOINTEES SHALL BE COMPRISED OF AN ELEVATOR SERVICING COMPANY, AN ELEVATOR ARCHITECTURAL DESIGNER OR CONSULTANT, AND AN ELEVATOR INSPECTOR; THE SPEAKER OF THE ASSEMBLY'S APPOINTEES SHALL BE COMPRISED OF AN ELEVATOR CONTRACTOR EMPLOYEE LABOR UNION, AN ELEVATOR MECHANIC, AND A FIRE MARSHAL. THE COMMISSIONERS OF HEALTH, LABOR, EDUCATION, AND ECONOMIC DEVELOPMENT OR THEIR DESIGNEES SHALL BE EX-OFFICIO MEMBERS. THE BOARD SHALL MEET ON AN AS NEEDED BASIS TO ADVISE THE COMMISSIONER ON THE IMPLEMENTATION OF THIS ARTICLE. THE BOARD SHALL ELECT A CHAIRPERSON TO SERVE FOR THE TERM OF THEIR APPOINTMENT TO THE BOARD. THE BOARD SHALL PREPARE AN ANNUAL REPORT FOR THE GOVERNOR AND THE LEGISLATURE, COPIES OF WHICH SHALL BE SENT TO THE COMMISSIONERS OF HEALTH, EDUCATION, ECONOMIC DEVELOPMENT, AND LABOR.

2. THE FIRST MEMBER APPOINTED BY THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE, AND THE SPEAKER OF THE ASSEMBLY SHALL HAVE A TERM OF ONE YEAR; THE SECOND MEMBER APPOINTED BY EACH SHALL HAVE A TERM OF TWO YEARS AND THE REMAINING MEMBERS SHALL HAVE A TERM OF THREE YEARS. EACH OF SUCH APPOINTED MEMBERS SHALL HOLD OFFICE FOR THE TERM FOR WHICH SUCH MEMBER WAS APPOINTED AND UNTIL HIS OR HER SUCCESSOR SHALL HAVE BEEN APPOINTED OR UNTIL HE OR SHE SHALL RESIGN. THE TERM OF OFFICE OF ALL SUCCESSOR MEMBERS SHALL BE THREE YEARS. THE MEMBERS SHALL SERVE WITHOUT SALARY OR COMPENSATION, BUT SHALL BE REIMBURSED FOR NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR DUTIES.

3. THE BOARD MAY CONSULT WITH ENGINEERING AUTHORITIES AND ORGANIZATIONS CONCERNED WITH STANDARD SAFETY CODES, RULES AND REGULATIONS GOVERNING THE OPERATION, MAINTENANCE, SERVICING, CONSTRUCTION, ALTERATION, INSTALLATION, AND INSPECTION OF CONVEYANCES AND THE ADEQUATE, REASONABLE, AND NECESSARY QUALIFICATIONS OF ELEVATOR MECHANICS, CONTRACTORS, AND INSPECTORS.

4. THE DUTIES OF THE BOARD ARE AS FOLLOWS:

(A) ASSIST THE COMMISSIONER AND THE DEPARTMENT IN ESTABLISHING THE STATE REGULATIONS FOR EQUIPMENT COVERED BY THIS ARTICLE;

(B) DEVELOP RECOMMENDATIONS FOR AN ENFORCEMENT PROGRAM WHICH WILL ENSURE COMPLIANCE WITH THE REGULATIONS AND REQUIREMENTS PROMULGATED BY THE COMMISSIONER PURSUANT TO THIS ARTICLE;

(C) ASSIST THE COMMISSIONER IN GRANTING EXCEPTIONS AND VARIANCES FROM THE LITERAL REQUIREMENTS OF THE APPLICABLE CODE AND STANDARDS, REGULATIONS, AND LOCAL LEGISLATION, IN CASES WHERE SUCH VARIANCES WOULD NOT JEOPARDIZE THE PUBLIC SAFETY AND WELFARE;

(D) ASSIST THE COMMISSIONER IN SETTING FEE SCHEDULES FOR LICENSES, PERMITS, AND INSPECTIONS. THE FEES SHALL REFLECT THE ACTUAL COSTS AND EXPENSES TO CONDUCT THE DUTIES AS DESCRIBED IN THIS ARTICLE; AND

(E) ASSIST THE COMMISSIONER IN ANY AND ALL THINGS NECESSARY OR CONVENIENT TO THE COMMISSIONER'S DUTY TO CARRY OUT THE PURPOSES OF THIS ARTICLE.

S 933. EXEMPT PERSONS. THIS ARTICLE SHALL NOT BE CONSTRUED TO APPLY TO THE PRACTICE, CONDUCT, ACTIVITIES, OR SERVICES BY A PERSON LICENSED TO PRACTICE ARCHITECTURE WITHIN THIS STATE PURSUANT TO ARTICLE ONE HUNDRED FORTY-SEVEN OF THE EDUCATION LAW OR ENGINEERING WITHIN THIS STATE PURSUANT TO ARTICLE ONE HUNDRED FORTY-FIVE OF THE EDUCATION LAW.

S 2. The state finance law is amended by adding a new section 97-1111 to read as follows:

S 97-1111. ELEVATOR AND RELATED CONVEYANCES SAFETY PROGRAM ACCOUNT.

1. THERE IS HEREBY ESTABLISHED IN THE CUSTODY OF THE STATE COMPTROLLER THE ELEVATOR AND RELATED CONVEYANCES SAFETY PROGRAM ACCOUNT.

2. SUCH FUND SHALL CONSIST OF MONEYS COLLECTED PURSUANT TO THE PROVISIONS OF ARTICLE THIRTY-TWO OF THE LABOR LAW.

3. MONEYS OF THE FUND SHALL BE AVAILABLE TO THE COMMISSIONER OF LABOR FOR PURPOSES OF OFFSETTING THE COSTS INCURRED BY THE COMMISSIONER OF LABOR FOR THE ADMINISTRATION OF ARTICLE THIRTY-TWO OF THE LABOR LAW, INCLUDING THE ADMINISTRATION OF ELEVATOR AND RELATED CONVEYANCES SAFETY PROGRAMS, THE ADMINISTRATION OF LICENSES AND PERMITS, AND THE ADMINISTRATION OF CERTIFICATES OF OPERATION AS SET FORTH IN SUCH ARTICLE THIRTY-TWO.

4. THE MONEYS SHALL BE PAID OUT OF THE FUND ON THE AUDIT AND WARRANT OF THE COMPTROLLER ON VOUCHERS CERTIFIED OR APPROVED BY THE COMMISSIONER OR HIS OR HER DESIGNEE.

5. NOTWITHSTANDING THE PROVISIONS OF ANY GENERAL OR SPECIAL LAW, NO MONEYS SHALL BE AVAILABLE FROM THE FUND UNTIL A CERTIFICATE OF ALLOCATION AND A SCHEDULE OF AMOUNTS TO BE AVAILABLE THEREFOR SHALL HAVE BEEN ISSUED BY THE DIRECTOR OF THE BUDGET, AND A COPY OF SUCH CERTIFICATE FILED WITH THE COMPTROLLER. SUCH CERTIFICATE MAY BE AMENDED FROM TIME TO TIME BY THE DIRECTOR OF THE BUDGET AND A COPY OF EACH SUCH AMENDMENT SHALL BE FILED WITH THE COMPTROLLER.

S 3. This act shall take effect on the one hundred eightieth day after it shall have become a law, provided, however, that effective immediately, the addition, amendment and/or repeal of any rules or regulations necessary for the implementation of this act on its effective date, and the appointment of the New York state elevator safety and standards board, are authorized and directed to be established, made and completed on or before such effective date.

Comments



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**TESTIMONY PRESENTED TO
NEW YORK CITY COUNCIL
HOUSING AND BUILDINGS COMMITTEE

CONSTRUCTION SAFETY OVERSIGHT
MAY 11, 2015**

Submitted By
Louis J. Coletti
President & CEO
Building Trades Employers' Association

Good morning Chairman Williams and members of the Committee. I am Louis Coletti, President and CEO of the Buildings Trades Employer's Association (BTEA), an organization representing 27 contractor associations, and 2,000 union construction managers, general contractors and specialty trades contractors doing business in New York City. Thank you for allowing me the opportunity to testify today on a subject of great importance to everyone in NYC. Public and worker safety is THE highest priority for BTEA contractors. Eighteen years ago it was the BTEA that brought together in the same room, for the first time, the NYC Buildings Department, Fire Department and federal Occupational Safety and Health Administration to seek ways to improve construction safety with the industry. Today, the BTEA and these agencies continue to meet every month to improve safety in New York City.

Today, we have announced a new, "Zero Tolerance Safety Initiative" in an effort to strengthen the culture of construction safety in our City. Our program is founded upon 7 basic principles:

- 1) A demonstrated management commitment that starts at the CEO level and is transmitted down the chain of command through the job site superintendent to the entire workforce we employ.
- 2) A financial commitment for the staffing levels to achieve this objective.
- 3) Pre-project safety planning.
- 4) Safety education with workers on the jobsite.
- 5) Safety evaluation and recognition rewards for safety compliance.
- 6) Subcontractor safety management.
- 7) Accident investigation.

These are principles that are followed each and every day on each and every job site under the supervision of BTEA contractors. I would like for a moment to address what has been referred to as the “Elephant in the Room”. The issue no one really wants to talk about but the issue which the facts on construction safety in our City make crystal clear: the difference between union and non-union contractors.

Here are the facts:

- 1) 75% of fatalities in 2014 were on non-union job sites
- 2) 65% of Stop Work Orders issued by the Buildings Department in 2013-2014 were to non-union contractors
- 3) 61% of the accidents reported in 2014, in which the Buildings Department issued ECB violations — were on non-union job sites. What is especially significant about this fact is that BTEA contractor Site Safety Managers are required to report every single accident to the Buildings Department from a hang nail to a fatality. That is why you will see the names of BTEA contractors listed often on any DOB report. I guarantee you non-union contractors are not doing that because they are not demanding their site safety managers comply with that requirement — they don’t want DOB and OSHA inspectors on their sites—we not only want them to inspect our sites—our personnel policies compel our supervisors to remove any worker from a jobsite where they cause an accident that endangers public or worker safety. The statistics on the DOB website prove it, 60% of the reported accident sites where DOB took “no action” were Union job sites.

Without belaboring the point any further, let me say we come here today with recommendations we urge you to adopt, that will provide higher standards of protection that ALL contractors, union and non-union alike should be required to follow in order to be able to build in New York City. We recommend the City Council amend the Building Code by requiring the following mandatory provisions for projects 10 stories or higher:

- 1) Installation of a cocoon system for concrete projects that will provide additional protection to the public from debris or material that may fall from these high rise buildings and provide an additional level of worker protection. The additional costs of this requirement could be offset by the opportunity to sell signage on the cocoon which is done in cities throughout the world. A picture is attached here of a project in Australia.
- 2) Drug and Alcohol Testing.
- 3) Crane Operator signed inspection verification that the crane they will be operating on the site has been inspected on each shift in which the crane will be operating—similar to OSHA requirements.
- 4) For projects below 10 stories, a requirement that every worker have a 10 Hour OSHA Training card, just as is required on public works over \$250,000 in NYS and is required for projects in NYC 10 stories and above—and which we recommended to this Committee back in 2008. Why do OSHA statistics show that 75% of construction fatalities in 2014 occurred on non-union sites? Because they do not train their workers, and they do not provide safety equipment to the same degree a union contractor does - and if that worker, in most cases a Latino immigrant worker, complains—they are fired.

We want to commend the Mayor for his commitment in the Executive Budget to funding for the Buildings Department for over 200 new inspectors and other staff. For too many years, the Buildings Department has been a “Step Child” when it came to funding. Over the last 5 years, there has been a 30% increase in the number of permits issued or renewed by the Department while at the same time—the number of DOB employees has decreased by 20% according to the January 2015 Mayor’s Management Reports.

We urge the Council to adopt this budget funding and allocate additional resources for the Buildings Department Major Projects Initiative which has been hampered by a lack of funding to fully support this effort. This Initiative was designed to increase site safety by dedicating senior DOB managers and inspectors to working with developers, contractors and construction managers in pre-construction planning and bi-weekly meetings, before there is even a shovel in the ground for the most complex high rise projects—and we have a number of these new projects in the pipeline.

The results of this program in the past have proven its effectiveness. According to the 2011 Buildings Department Annual Report projects in the Initiative reported: 1) 40% fewer accidents; 2) 49% fewer violations; 3) 82% fewer full Stop Work Orders, an indicator of a safe site.

Members of the Committee, now is the time to raise the bar of construction safety for all contractors—on all construction sites. City residents, workers and visitors to the city expect no less. Thank you.





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**NYSFAH Testimony before the New York City Council
Committee on Housing and Buildings
Oversight Hearing - Construction Safety
By Jolie Milstein, President and CEO
May 11th, 2015**

The New York State Association for Affordable Housing (NYSFAH) applauds the Council's efforts to examine construction safety in New York City. Construction is an inherently dangerous business. Any serious injury or death is tragic and all possible steps should be taken to ensure the safety and wellbeing of workers on construction sites, as well as the safety of all New York City residents who come into close proximity with the City's many construction sites on a daily basis.

One topic that has been central to the construction safety conversation in recent years is how union versus nonunion sites compare. In response to claims that nonunion worksites are inherently less safe, NYSFAH conducted an analysis of New York City construction site fatalities using data from the federal Occupation and Health Administration (OSHA). The analysis revealed that despite claims to the contrary, the rate of fatalities between 2008 and 2014 was higher at union sites than non-union sites when accounting for representation in the industry.

The data show that there were 93 construction site fatalities in New York City between 2008 and 2014; 60 fatalities or 65% occurred at non-union sites while 33 or 35% occurred union sites. Given that New York City safety standards do not distinguish between union and non-union jobs, the fatality rate for both union and non-union sites should be in proportion to the participation rate. However, during this time period, the average labor participation rate at New York State construction sites was 73% non-union and 27% union. The number of fatalities shows that the fatality rate at union construction sites was higher than the union participation rate.

In response to claims about the lack of safety on affordable housing construction sites, NYSFAH also reviewed records related to fatalities on member sites. From 2003 through 2014, affordable housing projects built by NYSFAH member developers saw two fatalities. This represents approximately 1 fatality per 82,500 affordable units created and preserved, or just 1% of overall construction fatalities during this twelve year time period.

In addition, arguments about safety claiming that nonunion contractors actively perpetuate unsafe work environments presume that contractors are not acting in their own best interests: there are very real economic impacts to a lack of safety given the realities of New York's Scaffold Law. The Scaffold Law assigns absolute liability to the owner in New York State – the last state in the nation to do so – and is one of the reasons insurance costs here are so high. Contractors working in New York already pay astronomically high insurance rates. Many smaller contractors – even those with incident-free histories – struggle to find adequate coverage

that allows them to compete and grow their business. There is absolutely no good economic reason for any contractor to ignore job site safety practices.

At the end of the day, both union and non-union developers are committed to worker safety. Union and nonunion contractors are required to comply with the same New York City, State and Federal regulations. Ultimately strong safety standards and enforcement provide the best protection for New York City's construction workforce regardless of union affiliation. Since 2008, New York City has enacted more than 25 laws to enhance safety at construction sites, including new safety training courses, stronger certification for crane operators and third-party inspections of construction sites. NYSAFAH supported and advocated for many of these proposals and we look forward to continuing to work with the Council to advance the cause of construction safety. Thank you for your consideration of NYSAFAH's comments.

NYSAFAH is the trade association for New York's affordable housing industry statewide. Our 350 members include for-profit and nonprofit developers, lenders, investors, attorneys, architects and others active in the financing, construction, and operation of affordable housing. Together, NYSAFAH's members are responsible for most of the housing built in New York State with federal, state or local subsidies.



Union Construction Sites Have Higher Fatality Rates than Non-union Sites

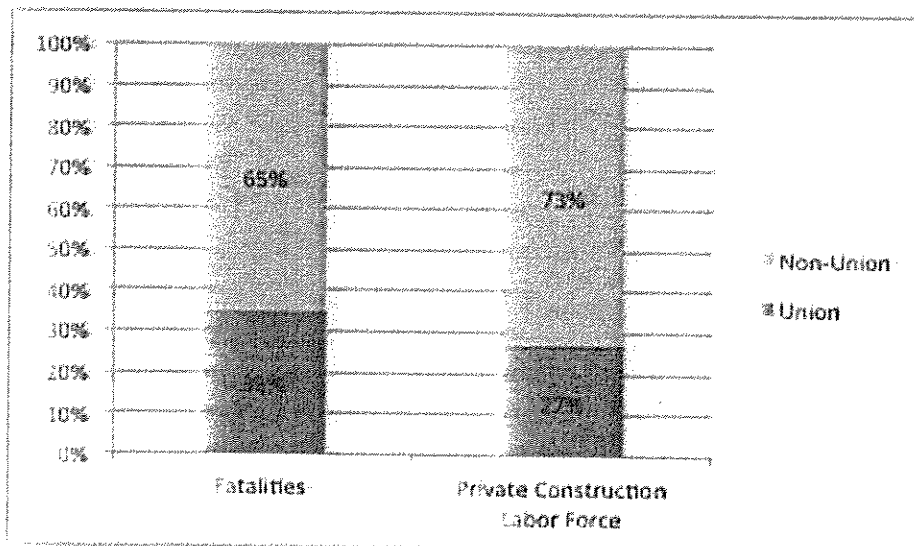
Fatality rates at union construction sites are higher than fatality rates at non-union construction sites, according to a new analysis by the New York State Association for Affordable Housing (NYSFAH).

There has been a strong debate in recent years over how safety at union and non-union construction sites compare, with union advocates alleging that construction sites that are unionized are safer than non-union construction sites. This argument has become part of the larger debate over whether to require the prevailing, or union-negotiated, wage at affordable housing projects that receive 421-a property tax abatements.

But a new analysis of the actual data reveals that the opposite is true.

A study of New York City construction site fatalities based on data from the federal Occupational and Health Administration (OSHA) reveals that the rate of fatalities between 2008 and 2014 was higher at union sites than non-union sites.

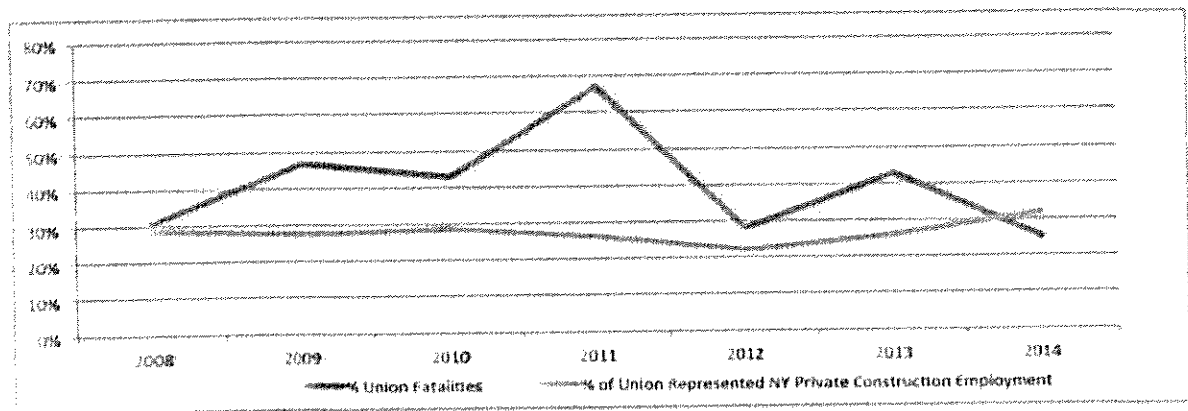
Construction Fatalities and Labor Status 2008-2014



During this time period, the average labor participation rate at New York State construction sites was 73% non-union and 27% union. However, the number of fatalities shows that the fatality rate at union construction sites was higher than the union participation rate.

- There were 93 construction site fatalities in New York City between 2008 and 2014; 60 fatalities or 65% occurred at non-union sites while 33 or 35% occurred union sites.
- Given that New York City safety standards do not distinguish between union and non-union jobs, the fatality rate for both union and non-union sites should be in proportion to the participation rate. This data proves that this is not the case.

Year-by-Year 2008-2014 Fatal Incidents and Union Participation at NYC Construction Sites



The above chart shows that the percentage of fatalities of union workers was often higher than the union labor participation rates between 2008 and 2014. If union jobs were safer, the percentage of fatal incidents would be lower than the participation rate.

Conclusion

This analysis demonstrates that there is no evidence to suggest that non-union construction sites are less safe than union sites, rather the opposite. The reason is that both union and non-union developers are committed to worker safety and that all construction sites are subject to the same New York City, State, and Federal safety standards.

The fact is that all private construction sites in the City face unannounced inspections by the Department of Buildings. And all workers must comply with the

same certification requirements for all skills, from operating equipment to scaffold safety.

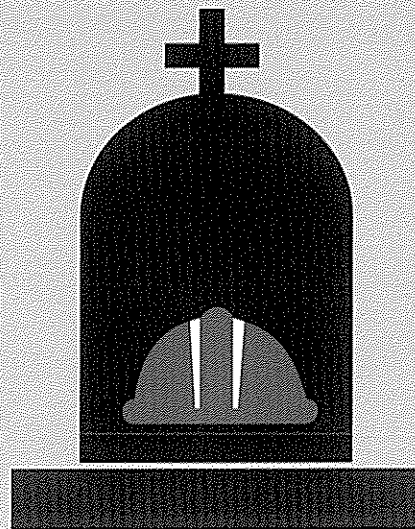
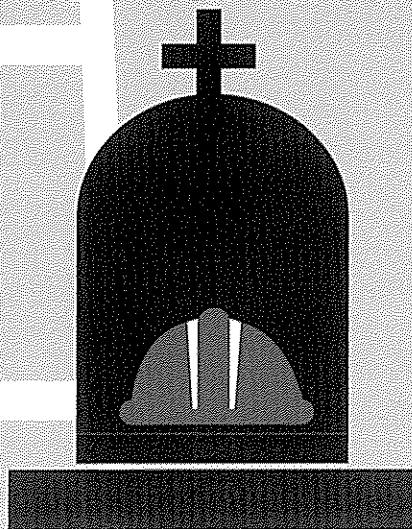
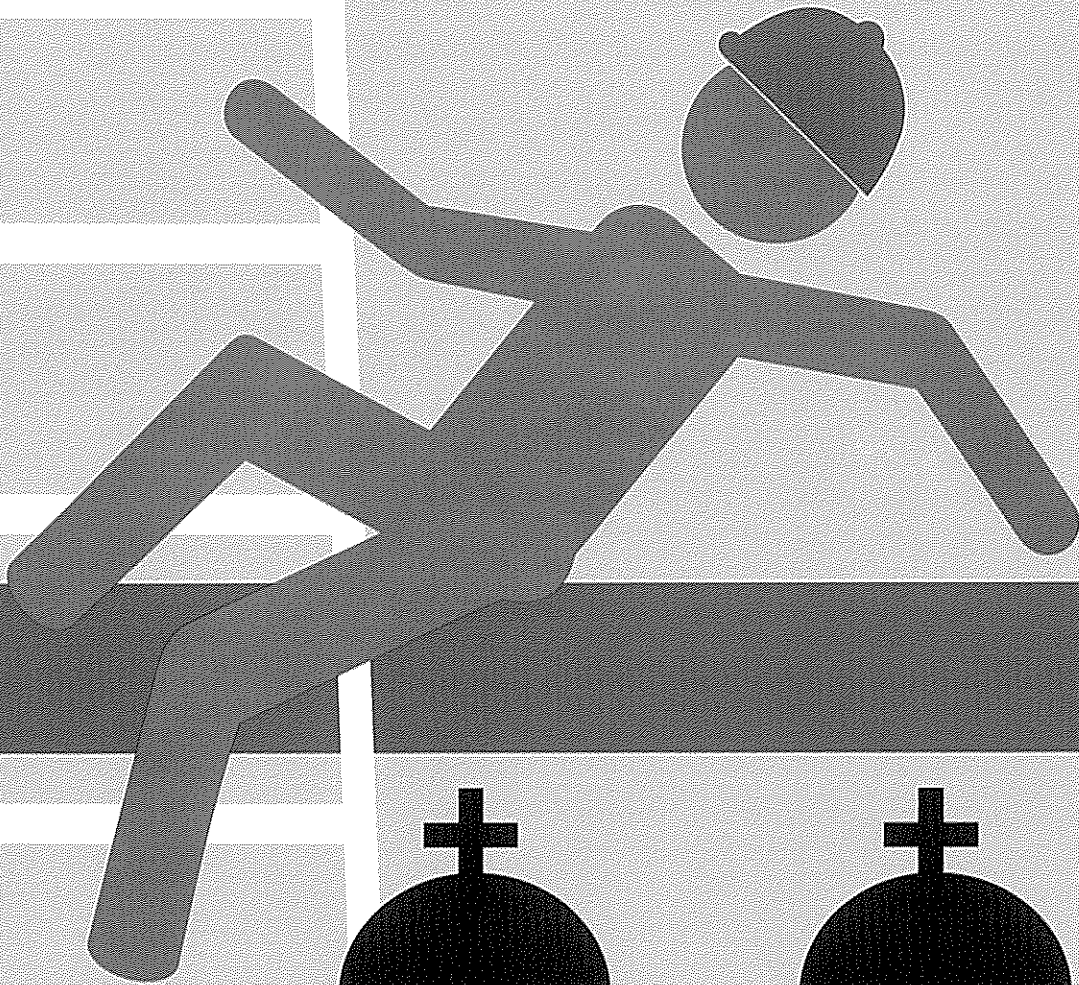
It is strong standards, not the presence of a union, that protects worker safety. Since 2008, New York City has enacted more than 25 laws to enhance safety at construction sites, including new safety training course, stronger certification for crane operators and third-party inspections of construction sites.

From 2003 through 2014, affordable housing projects built by NYSFAH member developers saw two fatalities. This represents approximately 1 fatality per 82,500 affordable units created and preserved, or just 1% of overall construction fatalities during that time period.

###

The Price of Life

2015 Report on Construction Fatalities in NYC



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TABLE OF CONTENTS

In Memoriam: Workers who Died from Occupational Injuries in 2013 and 2014 --- 2

Introduction --- 3

Summary of Findings --- 4

Summary of Recommendations --- 5

Construction Remains a Hazardous Occupation in New York- --- 6

 Working at Elevated Heights Poses the Greatest Risk- --- 6

 2/3 Of OSHA Construction Inspections Result in Violations --- 7

 Severe Violators are Nearly All Non-Union - --- 8

 Non-Union Workplaces are the Least Safe - --- 9

 NYC Department of Housing Preservation and Development and Unsafe Contractors ---10

 Consequences of Unsafe Job Site for Workers --- 11

Latino and Immigrant Workers — Disproportionate Risks --- 12

Towards More Effective Regulation - --- 14

 Occupational Safety and Health Administration --- 14

 Public Employees Safety and Health Bureau - --- 18

Recommendations - --- 19

Conclusion - ---20

Endnotes ---21

Appendix A ---23

Appendix B ---25

IN MEMORIAM

Following are names, ages, dates and locations of the fatal accidents of workers died performing construction work in New York in 2013 and 2014 that could be identified.

This list was obtained from the U.S. Occupational Safety and Health Administration, United Support and Memorial for Workplace Families, and original research by the New York Committee for Occupational Safety and Health.

2014

Delfino Jesus Valazquez Mendizabal, 43

Staten Island, November 28

Julian Castellanos, 47

Huntington Station, November 10th

Alex Shell, 51

Verrazano-Narrows Bridge, October 29th

Rodolfo Vasquez-Galian, 27

Manhattan, September 23

Lech Chrostowski, 57

Farmingdale, September 20

Christopher Getman, 28

Watertown, August 18

Nick Cavataio, 62

Bronx, August 5

Michael R. Hauf, 54

Malta, June 26

Thomas Pastane, 26

Queens, June 5

Grover Lehman, 60

Newfield, May 15

Frank Mack, 39

Rensselaer, April 14

Lukasz P. Stolarski, 55

Manhattan, April 14

Harmit Singh, 58

Manhattan, April 2

Manuel Colorado, 33

Brooklyn, March 6

Jorge Juca, 29

Bronx, January 10

2013

Ahmad Luqman, 46
Elmont, December 28

Scott Winkler, 50
Maybrook, December 10

Timothy Lang, 53
Maybrook, December 2

Kyle M. Browne, 23
Pulaski, November 18

Jaime Sillart, 56
Manhattan, November 15

Igor Kalocay, 45
Hudson, October 29

Claudinei Martins, 34
North Salem, August 17

Christopher Premo, 34
Wyantskill, July 29

Abbas Behnambakhish, 55
Manhattan, July 5

William Schaefer, 52
Corning, June 17

John Halstead, Jr., 44
Oswego, June 11

Juan De La Cruz, 30
Brooklyn, May 21

Margarito Hernandez-Moreno, 36
Brooklyn, May 3

Gary T. Feeney, 24
Ballston Spa, April 13

Ebrima Jallow, 48
Manhattan, March 20

Ricardo Gonzalez, 45
Queens, January 24

Zhanbin Li, 56
Port Jefferson, January 22

Ying Cao, 39
Port Jefferson, January 22

Paul Schisler, 54
Bronx, January 15

INTRODUCTION

All workers' lives have value, and all workers should be able to leave their loved ones knowing that they will return home safely at the end of the day. However, New York's construction workers, particularly immigrant and non-union workers, are more likely than workers in any other economic sector to die on the job.

In this update of NYCOSH's 2014 report, "It's No Accident", we continue to document on-the-job deaths that could have been prevented had employers not put workers at risk by taking safety shortcuts. We analyzed the OSHA citations issued to employers during fatality cases to highlight the need to increase penalties on employers that violate health and safety regulations.

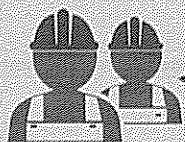
New York had the nation's sixth lowest construction worker injury rate from 2000 to 2012,¹ but construction still remains a very hazardous occupation. While the construction industry's overall fatality rate dropped from 11.5 deaths per 100,000 workers in 2004 to 8.6 in 2013;² in New York, construction work accounts for less than four percent of employment, yet the sector represents nearly 20 percent of occupational fatalities in the state.

This report focuses on construction work at elevated heights because it is especially hazardous, and contractors are more likely to violate health and safety standards in this category. Additionally, as construction and insurance interests have stepped up their efforts to weaken New York's Scaffold Safety Law (Section 240 of the Labor Law), this report shows the necessity of "special protections" for workers who perform some of the most dangerous jobs in the country: construction workers working at elevated

heights. Sixty-five percent of construction workers work on a scaffold, where they are at risk of falling. Other construction workers face fall hazards such as open stairways and elevator shafts. In recent years, falls from working at elevated heights accounted for nearly half of construction fatalities in New York.

All workers—from construction workers to nurses, teachers to farmworkers, office managers to retail workers—deserve a safe and healthy workplace. The Occupational Safety and Health Administration was established to ensure safer and healthier workplaces, but its penalties are often so low that employers view them as just a small cost of doing business. Additional protections, like the Scaffold Safety Law in New York, are necessary to protect construction workers from the daily threat of injury and death on the job.

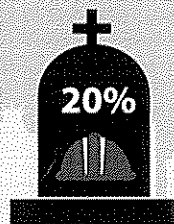
Construction work accounts for **LESS THAN FOUR PERCENT OF EMPLOYMENT,**



<4%

EMPLOYMENT

but the sector represents nearly **20 PERCENT OF OCCUPATIONAL FATALITIES** in New York State.



NYCOSH

SUMMARY OF FINDINGS

1) Construction work at an elevation is especially hazardous. Roofing and siding workers take extreme risks to do their everyday jobs. In 2011 and 2012, falls to a lower level comprised 49 percent of construction fatalities in New York.³ Additionally, 71 percent of construction accidents with injuries reported to the New York City Buildings Department between 2008 and 2013 were height-related — workers who work at an elevation are at an increased risk. Eighty percent of roofing and siding contractor inspections between 2010 and 2012 resulted in violations, compared to two-thirds in all construction inspections. Contractors who violate health and safety regulations are often at fault when an employee is injured or killed.

2) Nonunion employers are the least safe. In 2012, 79 percent of fatal fall construction accidents investigated by OSHA in New York occurred at nonunion construction sites. Ninety percent of construction companies in OSHA's Severe Violator Enforcement Program (SVEP) in New York are nonunion. According to OSHA, the SVEP focuses "on recalcitrant employers that endanger workers by committing willful, repeat or failure-to-abate violations."

3) NYC Department of Housing Preservation and Development continues to do business with contractors that have extraordinary high violation rates. Eighty-nine percent of contractors that are currently working on affordable housing projects and are flagged for "enhanced review" by the New York City Department of Housing Preservation and Development, had OSHA violations.

4) Construction employers in New York routinely violate OSHA safety standards. Two-thirds of OSHA construction inspections in New York between 2010 and 2012 resulted in citations for "serious" safety violations. Most of the violations were of safety requirements for scaffolds, ladders, and fall protection equipment. OSHA defines a "serious" violation as one which could "cause an accident or illness that would most likely result in death or serious physical harm."

5) When a worker dies in a construction site fall, OSHA almost always finds there were safety violations. In 2012, serious violations were cited in 89 percent of the fatal height-related construction accidents OSHA investigated in New York. Violations of safety standards specifically intended to prevent height-related injuries were cited in 68 percent of these fatalities.

6) Immigrant and Latino workers are disproportionately at risk of dying in construction. Latinos made up 25 percent of NYS construction workers, but represented 38 percent of construction fatalities in 2012.⁴ Additionally, in 60 percent of OSHA fall from elevation fatalities, the worker was immigrant and/or Latino.⁵ Risks are associated with nonunion employers, lack of training and language challenges.

7) Construction worker fatalities result in puny penalties for unsafe contractors. Nationally, OSHA inspects fewer than four percent of construction sites. In New York, there are only 71 inspectors to monitor all worksites in all industries, so most construction sites are not inspected. When OSHA does inspect and cites violations, the penalties they assess are so low, they are a mere slap on the wrist, even if a worker died. The average penalty in fatal height-related construction accidents in New York in 2012 was only \$7,620.

SUMMARY OF RECOMMENDATIONS

Every person has the right to a safe and healthy workplace. Too many New Yorkers are exposed to injury, fears for their health and life, or witnesses a co-worker harmed by an unsafe, hazardous workplace. And too many New Yorkers have died because the safety systems in place require vast improvements. Workers are legally entitled to a safe workplace, but many workplaces fail to follow even the most basic health and safety regulations, and, as this report shows, this is too often true with New York's construction sites. The following are a summary of recommendations NYCOSH urges to both defend and extend workers' rights to safe and healthy workplaces.

At the national level, OSHA enforcement must become an effective deterrent to endangering workers.

To become an effective deterrent to safety violations that cause injuries and fatalities, the number of OSHA inspectors and inspections must be increased substantially. OSHA must also expand its staff that are qualified to interpret and are fluent in languages most commonly spoken by Limited English Proficiency workers. This would help ensure that those likely to die in construction—immigrant and Latino workers—are able to communicate effectively about health and safety concerns on the job.

Repeat and willful violators of health and safety laws must be prosecuted under criminal statutes and should pay into a special fund to increase inspections.

Given the limited number of OSHA inspectors and low fines for violators, many employers do not take OSHA violations seriously. Local district attorneys, attorney general's offices, and federal prosecutors must be more proactive in identifying criminal cases against employers who regularly show disregard for the lives of their employees. One egregious example of criminal negligence by Formica Construction Company, detailed later in this report, makes the case for increasing the number of workplace safety cases that are flagged for criminal investigation. Additionally, fines paid by repeat and willful violators should go towards increasing the number of inspectors and inspections, so that some of the most egregious violators will help pay towards making New Yorkers safer.

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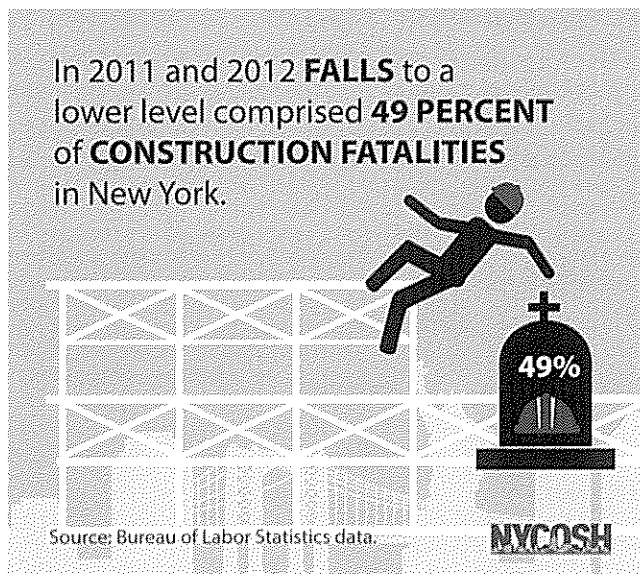
New York's Scaffold Safety Law must be protected.

Construction work in New York is made safer by this law, which holds employers accountable when they cut corners on the safety of people working at heights and put workers lives at risk. Jaime Sillart was one of many construction workers working on a scaffold when he fell to his death and was the victim of a preventable incident that indeed was no accident. Not only did the hoist area where Mr. Sillart fell not have guardrails, but Mr. Sillart also did not have proper training certification to work on a support scaffold. The Department of Buildings issued citations including lack of training certification, loose planks, broken hoist equipment, no guardrail system, and no fall protection.⁶ The Scaffold Safety Law protects workers like Mr. Sillart from unscrupulous employers.

CONSTRUCTION REMAINS A VERY HAZARDOUS OCCUPATION IN NEW YORK.

WORKING AT ELEVATED HEIGHTS POSES THE GREATEST RISK.

Construction work at elevated heights is by far the greatest construction safety challenge. According to the U.S. Bureau of Labor Statistics, deaths from falls to a lower level comprised 49 percent of the construction fatalities in the New York State in 2011 and 2012. Forty-two percent of falls to a lower level were from heights of at least 30 feet, compared to 19 percent nationwide, an indication that construction work is more likely to be at greater heights and more hazardous in New York.



FALL PREVENTION VIOLATIONS ARE OFTEN ACCOMPANIED BY OTHER CONSTRUCTION SAFETY VIOLATIONS.

OSHA VIOLATIONS GLOSSARY

Repeat violation - A repeat violation is reported if the same standard had been cited in the previous five years.

Willful violation - According to OSHA, a willful violation is one where the employer knew a hazardous condition exists, knows that it is a violation, and made no reasonable effort to correct it.

Serious violation - Defined by OSHA as one which could "cause an accident or illness that would most likely result in death or serious physical harm."

Gravity classifications - The gravity classifications are: Gravity 10 (high severity, greater probability), Gravity 5 (medium severity, greater probability), Gravity 4 (low severity, greater probability), Gravity 3 (high severity, less probability), Gravity 2 (medium severity less probability) and Gravity 1 (low severity, less probability).

2/3 OF OSHA CONSTRUCTION INSPECTIONS RESULT IN VIOLATIONS

There were safety violations in nearly two-thirds of OSHA construction inspections in New York State. Violation rates rose even higher for work at elevated heights.



The New York Committee for Occupational Safety and Health (NYCOSH) reviewed all OSHA construction inspections in New York from 2010 to 2012 and presented their findings in a report issued in 2014.⁷ In 66 percent of the inspections at least one construction safety violation was cited. Nearly all of these were classified as “serious” violations, which OSHA defines as one which could “cause an accident or illness that would most likely result in death or serious physical harm.”

The following table shows the results of further analysis of the NYCOSH data. The percentage of inspections resulting in a violation citation was high throughout the state, from 57 percent in the 18 counties covered by the OSHA Albany area office to 85 percent on Staten Island. Roofing-siding-sheet metal work is arguably the construction industry subsector in which workers are most exposed to injury from falls. Eighty percent of the inspections in roofing-siding-sheet metal work between 2010 and 2012 cited safety standard violations. Most violations were of OSHA fall prevention standards. Training requirement violations also were common.

**Percent of construction inspections with violations in New York
2010-2012**

OSHA area office	All construction	Roofing, siding, sheet metal work
Albany	57%	72%
Avenel (Staten Island portion)	85%	*
Bayside (Queens)	71%	79%
Buffalo	63%	78%
Long Island	75%	84%
Manhattan (includes Brooklyn)	69%	74%
Syracuse	65%	81%
Tarrytown (includes Bronx)	65%	85%
TOTAL	66%	80%

*Percentages are shown in this table only if there were at least 50 inspections.

Fifty-one percent of construction violations from 2010 to 2012 were of safety standards intended to prevent worker falls, including those for scaffolds, ladders, stairways and fall protection.⁸ Examples of these standards are a requirement that workers on suspended scaffolds be protected by both a personal fall arrest system and guardrail system, and a requirement for ladders to be able to support four times the maximum intended load.

OSHA requires construction workers receive safety training, specifies the topics that must be covered, and requires the trainer to be qualified in the subject matter. Our review found that nine percent of OSHA construction violations between 2010 and 2012 were for failure to provide training. On Long Island, 26 percent of inspections found at least one training requirement violation, in Queens it was 14 percent, in Manhattan and Brooklyn 13 percent. Upstate, these percentages were slightly lower – 11 percent of inspections in the Albany area cited training violations, for instance – but still significant.

IN 85 PERCENT OF
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"SEVERE VIOLATORS" ARE NEARLY ALL NONUNION.

OSHA explains that the agency's Severe Violator Enforcement Program (SVEP) "focuses on recalcitrant employers that endanger workers by committing willful, repeat or failure-to-abate violations."⁹ Twenty-eight of 31 New York construction companies listed on the October 2014 quarterly SVEP list were nonunion. (To be sure, if OSHA could inspect more than a fraction of active construction sites there would be many more than 31).

Twenty-three of the 28 nonunion SVEP construction employers were listed because they met the program's criteria of at least two willful or repeated violations in one inspection. Four others were listed because OSHA's fatality investigators cited at least one willful or repeated violation. One nonunion employer on the SVEP list had an extraordinary 41 violations.¹⁰

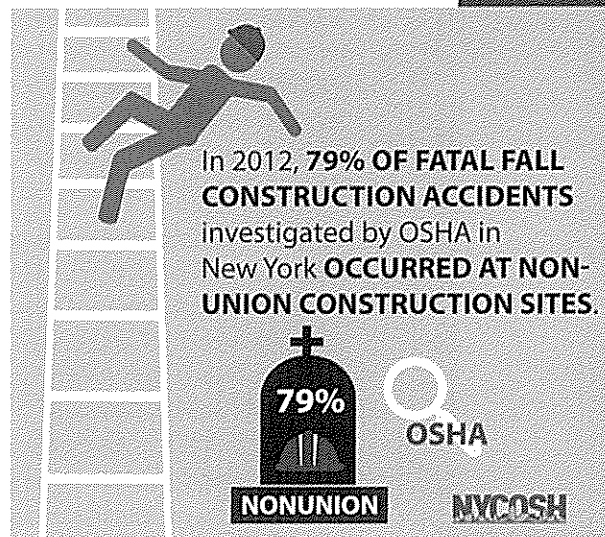
A 2013 OSHA news release described how some nonunion construction companies endanger their workers. It described the violations issued against four nonunion construction firms that were working on a 23-story hotel in Manhattan. One of these, Flintlock Construction Services, was in the SVEP as of the January 2015 quarterly update.¹¹ According to the release:

Flintlock failed to provide and ensure the use of fall protection, such as guardrails or personal fall-arrest systems, for workers on the scaffold; the scaffold lacked a safe means of access, causing workers to climb its cross-bracing to reach their work platforms; the work platforms were not fully planked; and the scaffold was not tied off to restrain it from tipping.

Flintlock is currently contesting the violations. In 2012, *Crain's New York Business* reported that Flintlock Construction Services "is making deep inroads into the Manhattan market, which has long been dominated by union firms." The president of the Building Trades Employers' Association was quoted, "To us, Flintlock's ability to win work is a poster child for how much more we need to accomplish in reducing costs to be competitive."¹² But nonunion contractors cut costs by cutting corners on workplace safety for nonunion workers, primarily workers of color and Latino immigrants, including undocumented workers.

NONUNION EMPLOYERS OPERATE THE LEAST SAFE WORKPLACES.

- Nonunion employers accounted for 79 percent of the New York construction accidents in which a worker fell and died from 2004 to 2010, according to the NYCOSH study. Our update for 2012 found similar results — 79 percent of fatal fall accidents investigated by OSHA occurred at nonunion construction sites.
- Ninety percent of New York construction companies in OSHA's Severe Violator Enforcement Program (SVEP) are nonunion. According to OSHA, "SVEP focuses on recalcitrant employers that endanger workers by committing willful, repeat or failure-to-abate violations."
- Eighty-nine percent of contractors on the New York City Department of Housing Preservation and Development "Enhanced Review" list that OSHA inspected during the last five years had at least one serious OSHA violation. Most had multiple serious violations and one contractor had been cited for an extraordinary 14 violations in a single inspection. All of these were nonunion employers.



NINE PERCENT
OF OSHA
CONSTRUCTION
VIOLATIONS
BETWEEN 2010
AND 2012 WERE
FOR FAILURE TO
PROVIDE TRAINING

NYC DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT AND UNSAFE CONTRACTORS

The New York City Department of Housing Preservation and Development maintains a list of “Enhanced Review” contractors, which is simply their list of contractors currently working on affordable housing projects that have prevailing wage, health and safety, or labor law violations. Our review found that 62 percent of the “Enhanced Review” contractors had been inspected by OSHA since 2009 based on a November 2014 list. Eighty-nine percent had OSHA violations, compared with 66 percent of all construction inspections in New York that cited violations. One of these 16 contractors was cited for an extraordinary 14 violations during a 2012 inspection, including two willful and a repeat violation. In 2013, the *Daily News* reported that this contractor had been paying workers “as little as \$8 an hour even though it was required to pay more than \$53 an hour” and was being made to pay back \$600,000 in wages.¹³

Since 2012, the *New York Daily News* has reported that twelve of the 29 contractors on the list underpaid their workers; they were charged by the federal government and/or failed to pay prevailing wages. Some owed their workers hundreds of thousands of dollars. Ten of the twelve contractors had been inspected by OSHA and all but one had worker safety violations. Appendix B shows the results for all 29 listed contractors. In addition to the twelve contractors the *Daily News* cited for underpayment, the *Daily News* also reported on one contractor (MC & O Contracting) on the list for worker safety lapses. According to the *Daily News*, this contractor had an extraordinary 14 violations since 2004 and was assessed OSHA penalties totaling \$266,000, an astronomical amount by OSHA standards. The *Daily News* also reported that the chief of another contractor, Great American Construction, was indicted for bribery. Great American was inspected three times since 2009 and serious violations were found each time.

OSHA issues news releases when inspectors cite an especially large number of violations or repeat or willful violations.

These excerpts from recent OSHA news releases illustrate how fall prevention violations may be accompanied by other serious violations. An employer that cuts corners on fall prevention may take other safety shortcuts.¹⁴ All three of these employers are nonunion.

- *Brooklyn, July 2014. “[A]n OSHA inspector discovered... employees working on the second- and third-floor levels without fall protection” and “other fall hazards including missing guardrails for planking used by the employees to access different sections of the second- and third-floor levels.” Employees also “faced dangers of lacerations and broken bones from being struck by falling construction materials and debris and electric burns and shock from handling ungrounded power tools.”*
- *Buffalo, April 2013. An employer was issued citations for ten serious violations “for exposing workers to lead and fall hazards.” Inspectors found “workers exposed to falls of 15 feet from the unguarded edge of the roof, from which they were throwing materials into a dumpster. They were also exposed to unguarded floor holes on the roof. An additional hazard stemmed from a scaffold whose casters were not locked to prevent movement.” Workers also “were exposed to lead while tearing down and disposing of walls that contained lead paint,” and their employer “did not conduct monitoring and sampling to determine the lead exposure levels and did not provide workers with training, respiratory protection, protective clothing, medical surveillance and information about lead hazards.”*
- *Fairport, January 2013. “OSHA inspectors observed... employees exposed to falls of 15 to 30 feet while working at the unprotected edges of the building’s roof.” In addition, the employer was issued serious citations... for not providing medical evaluations and training for employees required to wear respirators, allowing an untrained employee to operate a forklift,*

not providing employees with information and training on hazardous chemicals, and for the safety monitor's failure to warn employees of fall hazards." OSHA cited one willful and one repeat violation as well as five serious violations.

CONSEQUENCES OF UNSAFE JOB SITE FOR WORKERS

At least one serious OSHA violation was cited in 80 percent of fatal falls.

In 2013, New York Committee for Occupational Safety and Health (NYCOSH) released the results of its review of all OSHA investigations of construction accidents in which a worker fell and died in New York State between 2004 and 2010.¹⁵ NYCOSH found that at least one "serious" fall prevention violation was cited in 80 percent of the fatalities, at least two such violations were cited in 60 percent of the fatalities, and at least three violations were cited in at least 34 percent of the fatalities. All of these were classified as Gravity 10 violations, the agency's most severe gravity score,¹⁶ which meant that they had "high severity" and a "greater probability" of occurring. NYCOSH focused on worker deaths from falls because they were the single most common construction worker fatality event. OSHA accident investigators records show that in 79 percent of the accidents, the employer was nonunion.

The violations encompassed a wide array of fall protection deficiencies, according to the NYCOSH report:

"Among these were missing and broken guardrails, failing anchor bolts, cracked planks, platforms with no fall protection, a scaffold that collapsed in the wind, scaffold control buttons that got stuck, a scaffold that broke in two, scaffolds found to be improperly anchored, an unprotected skylight, a ladder with a broken foot and latch, open elevator shafts not protected with a barrier, a floor that collapsed and planking that gave way with no fall protection provided."¹⁷

NYCOSH updated this review by looking at the 19 fatal height-related construction accidents in New York that OSHA investigated in 2012. At least one "serious" violation was cited in 89 percent of these fatalities. OSHA standards intended to prevent height-related injuries were cited in 68 percent. OSHA accident investigators cited training violations in 37 percent. And 79 percent of fatal height-related accidents in 2012 occurred at nonunion sites.

"THIS NEEDLESS FALL AND RESULTING DEATH WERE ENTIRELY PREVENTABLE."

OSHA Syracuse area director in OSHA news release, May 2014

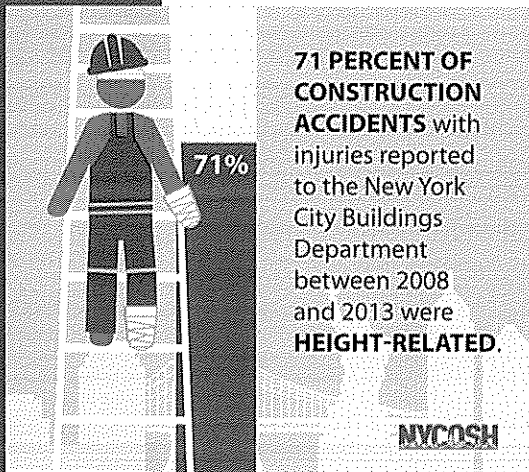
OSHA cited a willful violation in the 2013 death of 23 year-old construction worker Kyle Brown in Pulaski, Oswego County. His employer was nonunion. According to the OSHA news release on the tragedy:

Brown "was part of a crew installing metal decking atop the roof of an automobile dealership under construction. As Brown attempted to secure sheets of decking, he was blown off the roof by a wind gust and fell 24 feet to his death. OSHA's investigation found that while Brown was wearing a fall protection harness, it was useless, as the workers were not provided with a means to connect to an independent anchorage point to stop a fall... The company failed to train employees to recognize fall hazards, ensure adequate anchorage for lifelines and secure the decking against displacement by the wind."

AT LEAST ONE
SERIOUS OSHA
VIOLATION
WAS CITED IN
80 PERCENT OF
FATAL FALLS.

Violations of the New York City construction safety code were cited in most reported accidents.

Construction accidents resulting in a fatality or injury in which an ambulance is summoned must be reported to the New York City Department of Buildings (DOB). Between 2008 and 2013, height-related accidents accounted for 71 percent of reported accidents:



- 441 “worker fell” accidents
- 234 “material fell” accidents
- 47 scaffold/shed/fence/ shoring/installation” accidents.¹⁸

The New York City’s Building Code requires contractors to observe construction and demolition safety regulations.¹⁹ Review of the accidents DOB investigated between 2011 and 2013 found that inspectors cited at least one violation of safety regulations in 56 percent of “worker fell” and 67 percent of “material fell” accidents in which a worker was injured.

Many of the injuries in these accidents could have been prevented had the employer complied with the City’s safety rules. The causes of accidents in 2012 and 2013, as described by DOB inspectors, illustrate:²⁰

- a crane that attempted to lift twice its load and collapsed and injured seven workers;
- numerous instances of failure to provide workers with fall prevention or arrest systems;
- numerous instances of failure to install required guardrails and/or toe boards;
- failure of personal arrest systems;
- open elevator shafts workers fell down;
- workers fell when planks split or broke;
- workers fell when flooring overloaded with cement blocks collapsed and, in one instance, when an overloaded “makeshift platform” collapsed;
- “improperly erected scaffolds”;
- “a worker fell from the balcony... No site protection system was in place;”
- workers fell through holes that were not properly covered, including a hole with “unsecured plywood” and another where “someone had removed the cover from a previously covered hole.”
- “no evidence of a tie off point from where the worker fell”;
- “no guardrails were installed around the shaft”;
- “cross braces missing”;
- a worker “walked across unsecured planks that led from the first escape to the stair tower.”

Appendix A has DOB inspectors’ descriptions of several dozen selected “worker fell” and “material fell” accidents with injuries reported to DOB during 2012 and 2013.

A *New York Daily News* investigation in 2013 reported “a damning portrait of construction in New York City, with contractors who fail to inspect damaged equipment, pay no attention to unsafe worksites, neglect to train or supervise workers and deliberately hide accidents from investigators.”²¹ The DOB investigations, together with the earlier OSHA findings, provide ample documentation to support the *Daily News*’s conclusions.

“... A DAMNING PORTRAIT OF CONSTRUCTION IN NEW YORK CITY, WITH CONTRACTORS WHO FAIL TO INSPECT DAMAGED EQUIPMENT, PAY NO ATTENTION TO UNSAFE WORKSITES, NEGLECT TO TRAIN OR SUPERVISE WORKERS AND DELIBERATELY HIDE ACCIDENTS FROM INVESTIGATORS,”
—NEW YORK DAILY NEWS, 2013.

THREE RECENT NEW YORK CITY DEATHS ILLUSTRATE THE HAZARDS THAT CONSTRUCTION LABORERS FACE WHEN WORKING AT ELEVATED HEIGHTS. DOB ISSUED SAFETY VIOLATIONS IN ALL OF THEM.

April 2014, Dream Hotel, West 55th Street, Manhattan. A worker plummeted seven stories from a scaffold at the site of the Dream Hotel on West 55th Street, Manhattan, which was being renovated. DOB found that planks had been removed from the area from where the worker fell. The Department halted work and issued seven violations. WBCS-TV reported, "Even before the accident, people who saw the worksite wondered if proper precautions were being taken" and one witness was quoted, "We do see the workers often out there without harnesses on, so it's always kind of scary when we're watching out the window."

April 2014, 424 West 33rd Street, Manhattan. WABC-TV reported, "The Department of Buildings says there are more than three dozen open violations at a Manhattan construction site where a worker fell 13 stories to his death. . . Multiple violations were issued including failure to safeguard persons or property; failure to report an accident; no record of daily inspection of suspended scaffold; work doesn't conform to approved plans; failure to provide approved plans; failure to **provide guardrails**; and failure to provide protection." The worker was engaged in façade restoration work on the building.

November 2013, 19 University Place, Manhattan. DNAinfo New York reported: "A construction worker died Friday morning after falling about 70 feet from an unprotected area on a 6-story NYU building, officials said. Jaime Sillart, 56, who fell onto the roof of the adjacent building about 11:30 a.m. The hoist area where the worker fell is supposed to have safety protections like guardrails, according to the Department of Buildings. Sillart, of Bergenfield, NJ, also did not have the proper training certification to work on a support scaffold, the DOB said. The DOB issued several violations for Sillart's lacking proper certification, the lack of a guardrail, no fall protection system, loose planks and hoist equipment in disrepair, according to the agency."

LATINO AND IMMIGRANT WORKERS DEAL WITH DISPROPORTIONATE DEADLY RISKS IN CONSTRUCTION

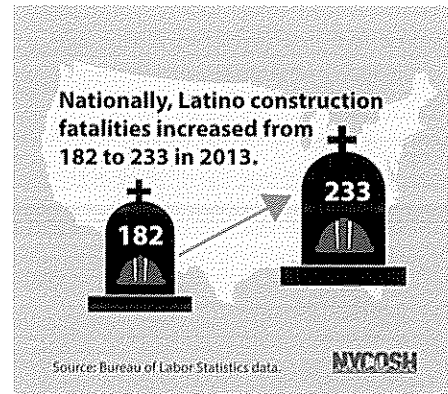
Latinos make up 25 percent of NYS construction workers, but represented 38 percent of construction fatalities in New York in 2012.²² Nationally, Latino construction fatalities increased from 182 in 2010 to 233 in 2013.

A study of the medical records of 7,000 U.S. Latino construction workers found that they were 30 percent more likely than white non-Latino workers to be injured on the job.²³ Several studies

have shown that lack of training is one reason for the higher injury rates of Latino construction workers.²⁴ In addition, many New York construction workers are non-citizens, according to the U.S. Census's American Community Survey, including 40 percent of New York's 124,240 construction laborers, 36 percent of the 7,710 drywall installers, 28 percent of the 10,405 roofers and 25 percent of the 88,475 carpenters.²⁵ They, too, are less likely to receive safety training. People of color and immigrant construction workers are more likely to work off the books, to be misclassified as independent contractors,

to work as day laborers, or to have limited English proficiency that does not often include technical terms²⁶, and therefore are less likely to receive safety training.

Eighty percent of immigrant workers in construction are Latino. A Center for Popular Democracy report finding showed that 60% of New York construction fall fatalities OSHA investigated from 2003 to 2011 were Latino and or immigrant.²⁷ In addition, non-unionized



contractors are less likely to provide safe work conditions, OSHA training and safety equipment. Undocumented workers are less likely to refuse to work in hazardous conditions or speak up for better health and safety conditions for fear they will be fired or deported.²⁸

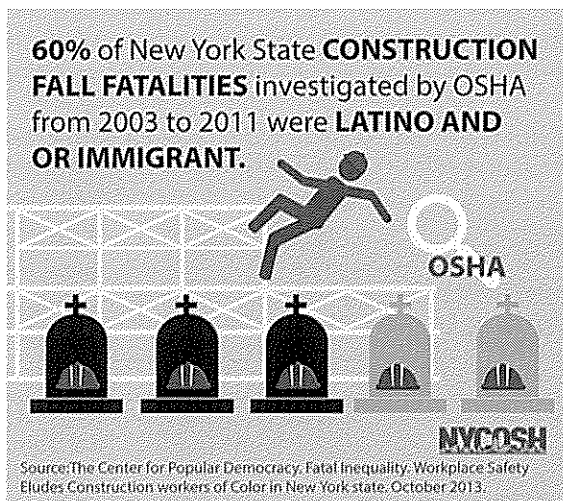
In-depth information on all cases is difficult to come by, as many fatalities are announced prior to names being released, and there are no follow-up media reports. The following fatalities illustrate the disregard for Latino workers' lives—and for worker safety in general—by one contractor, Formica Construction Company:

In November 2014 in Staten Island, Delfino Jesus Velazquez Mendizabal, a 43-year-old husband and father was one of four workers working to demolish a car dealership when the mezzanine, located inside the building at 266 W. Service Road, collapsed and left him trapped and crushed to death under the debris. The nonunion contractor, Formica Construction Company, did not have any valid work permits for the site.²⁹

Formica Construction Company has a long history of creating unsafe workplaces, particularly for Latino workers. Ken Formica, one of the owners of the companies, was found guilty of criminally negligent homicide when a worker, Lorenzo Pavia, was buried alive by a trench that Formica admitted he had known was unsafe. Formica served sixteen weekends in jail and paid a \$5,000 fine.³⁰ His conviction was marked the first time in recordable history that a Staten Island contractor was found criminally liable in a worker fatality case.³¹ The criminal prosecution was the result of the Staten Island district attorney, due to OSHA making a recommendation to the US Department of Justice.

A few weeks prior to Velazquez's death, Flag Container Services, which is also owned by the Formica family, had a fatality on one of their job sites. Robert Meehan, a 40 year old sanitation worker, was crushed by a ten-foot dumpster on November 12, 2014.³² OSHA continues to investigate the incident.

Despite Formica serving time in one of the very few criminal negligence cases won against an employer in New York City in the past decade, the deaths that continue to coincide with health and safety violations in construction highlight the urgency of more vigorously enforcing of criminal laws against such employers.



SEVERAL STUDIES
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RATES OF LATINO
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WORKERS.

TOWARDS MORE EFFECTIVE, BETTER FUNDED REGULATORY AGENCIES

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

OSHA administrators express a sincere desire to effectively enforce workplace safety standards. But they are stymied by a U.S. Congress that refuses to fund the agency so it can adequately monitor workplaces or to enact penalties that are strong enough to deter employers from endangering their workers.

Understaffed and overwhelmed

OSHA has only a small fraction of the compliance staff needed to adequately inspect and enforce safety standards in the construction industry. According to our research at NYCOSH, in April 2014, there were only 71 OSHA safety and health inspectors to cover all workplaces in the state, a decline from 76 inspectors in 2013, 82 in 2011 and 76 in 2009.³³

Because there are so few inspectors, only a small fraction of construction sites are ever inspected. The Center for Construction Research and Training reports that in 2010 OSHA inspected only

four percent of construction employers and that the actual percentage of construction worksites inspected was even smaller because multiple employers usually work at one worksite.³⁴ We found that from 2010 to 2012, OSHA conducted an average of only 4.4 construction inspections per day in New York State.³⁵ Considering that these were inspections not only of new construction, but renovation and demolition, there were potentially thousands of active job sites at any one time that could have been inspected. The chances of getting inspected were indeed slim.

As noted earlier, OSHA investigations of 89 percent of the height-related construction fatalities in New York in 2012 resulted in violation citations. Given the inadequate number of OSHA inspectors, it is not surprising that only 21 percent of employers with

fatalities had been inspected during the preceding decade and that one employer was previously inspected solely because there had been a previous fatality in 2010.³⁶

Running a business with only a slight chance of facing an OSHA inspection not only undermines OSHA's credibility as an enforcer of worker safety requirements, but it denies public and private builders important information about the safety records of contractors they are considering hiring. Public construction agencies such as the New York City School Construction Authority report that as part of the process for pre-qualifying a contractor to work on a capital project they review the contractor's safety record. We reviewed OSHA records of the 351 contractors the School Construction Authority pre-qualified in six categories with the high exposure to height-related accidents dating back to 2009. Height-related accidents involved scaffolding, waterproofing, steel erection, membrane roofing, cast-in-place concrete, flashing and sheet metal. We found:

- Of the 351 pre-qualified contractors, 239 had not been inspected since at least 2009. For those contractors, there was no OSHA safety record to review.

In April 2014, there were **ONLY 71 OSHA SAFETY AND HEALTH INSPECTORS TO COVER ALL WORKPLACES IN THE STATE**, a decline from 76 inspectors in 2013, 82 in 2011 and 76 in 2009.



VS



OSHA INSPECTORS (2011)

OSHA INSPECTORS (APRIL 2014)

Source: New York Committee for Occupational Safety and Health, from a FOIA request to OSHA. Nationally, OSHA staffing levels have remained nearly unchanged despite population and employment growth. The agency had 1,006 federal compliance officers in 2012, 1,017 in 2011, 1,106 in 1992 and 1,003 in 1982, and has gone from 10.1 officers per million workers in 1982 to 7.1 per million workers in 2012, according to the AFL-CIO's 2014 Death on the Job report.

NYCOSH

- Eighty-two of the 112 contractors that had been inspected since 2009, 74 percent had at least one OSHA violation. Virtually all of these were “serious” violations, mostly of fall protection standards.
- If 74 percent of non-inspected contractors also had at least one violation, another 176 contractors would have had at least one violation on their record, had they also been inspected.

OSHA penalties rarely rise to be proportionate to the level of danger of the violations

Congress has not increased OSHA penalties since 1990, and even then penalties were so low that they were not a credible deterrent to employers cutting safety corners. In 2010, OSHA administrators increased penalties modestly through administrative means. For instance, they increased from three to five years the period for classifying a violation as “repeat” and began to increase penalties by 10 percent if the employer had been cited for a high-gravity serious, willful or repeat violation within the previous five years. However, in 2012, the Assistant Secretary of Labor for Occupational Safety and Health testified before Congress that the average penalty per violation nonetheless was “still quite low” and that his agency’s penalties were “still far lower than most regulatory agencies.”

**CONGRESS HAS
NOT INCREASED
OSHA PENALTIES
SINCE 1990**

CONGRESS HAS NOT INCREASED OSHA PENALTIES SINCE 1990; the only time in 40 years that Congress has increased the penalties since it passed the Act in 1970. Even then, penalties were so low that they were not a credible deterrent to employers cutting safety corners.

MAXIMUM PENALTIES ADJUSTED FOR INFLATION, 2000 TO 2010

IMAGINE if OSHA fines were adjusted with inflation...

Current Max
Penalty for a
Willful Violation
\$70,000



Penalty Adjusted for Inflation
Using the CPI

YEAR	AMOUNT
2010	\$116,053
2009	\$114,901
2008	\$115,311
2007	\$111,048
2006	\$107,972
2005	\$104,598
2004	\$101,171
2003	\$98,546
2002	\$96,350
2001	\$94,851
2000	\$92,226

Current Max
Penalty for a
Serious Violation
\$7,000



Penalty Adjusted for Inflation Using the CPI

YEAR	AMOUNT
2010	\$11,605
2009	\$11,490
2008	\$11,531
2007	\$11,105
2006	\$10,797
2005	\$10,460
2004	\$10,117
2003	\$9,855
2002	\$9,635
2001	\$9,485
2000	\$9,223

Source: House Hearing, 111 Congress, PROTECTING AMERICA'S WORKERS ACT: MODERNIZING OSHA PENALTIES, HEARING HELD IN WASHINGTON, DC, MARCH 16, 2010. t.usa.gov/1N8bMHS

Thus, according to the AFL-CIO's 2014 report on OSHA enforcement, *Death on the Job, A Toll of Neglect*, in FY 2013 the average penalty assessed for a serious violation in New York was only \$2,016.³⁷ And these already small fines almost always are reduced through an appeal before an administrative law judge, a formal conference, or an informal settlement. In the interest of reaching a settlement, employer negotiations with OSHA over penalties also often result in the agency deleting some violations, and their accompanying penalties.

Among the violations cited in 17 of 19 investigations of height-related construction fatalities in New York in 2012, the initial fine per fatality averaged \$10,328 and, after negotiated or adjudicated reductions, the fines averaged only \$7,620 per fatality³⁸ of which 14 were for less than \$10,000 and ten were for \$5,000 or less.

The following fatal accidents that occurred in 2012 illustrate the small initial penalties and the substantial penalty reductions that are obtained when OSHA settles with employers.

In Manhattan, a worker lost his footing coming off a roof and fell through a skylight. Two Gravity 10 fall protection violations were issued including the requirement to protect workers from stepping through holes, including skylights, by using covers. Penalties were reduced from \$5,000 to \$3,300 for each of the two violations.

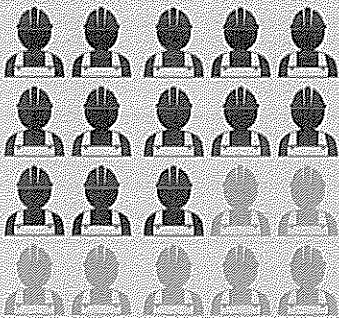
- In Manhattan, a worker fell three stories from scaffolding. Gravity 10 violations of the requirement for workers on scaffolds to be protected by personal fall arrest or guardrail systems and of fall protection training requirement were cited. Penalties for the two violations were reduced from \$2,800 to \$1,848 each.
- In Lindenhurst, two employees were working on a scaffold when it collapsed. One employee had broken legs and the other a head injury. Four days later the employee with the head injury died. OSHA cited four Gravity 10 violations of scaffold standards and assessed penalties of \$11,200, reduced to \$8,000.
- In Merrick, a worker leaning over parapet at a school building construction project in died when he fell approximately 40 feet to ground. A Gravity 10 violation was cited for “unprotected sides and edges.”³⁹ The final penalty of \$2,700 was reduced from \$5,200.

As noted earlier, only four of the 17 employers which had been assessed penalties in fatal accidents in 2012 had been inspected by OSHA during the preceding decade. The penalties they were assessed as a result of the 2012 fatality investigation and the prior inspections were very modest:

- In Oswego, 37 year-old Lateef Haskins was installing a metal roof deck when he lost his footing coming down off the roof and fell through a skylight. His employer was issued a repeat Gravity 10 violation of the fall protection-in-steel-erection standard that requires a guardrail, safety net, personal fall arrest system. The penalty was reduced from \$10,780 to \$8,624 by an administrative law judge.⁴⁰ This employer had previously been cited for a total of ten violations and penalties totaling only \$15,330 as a result of inspections in November 2009, January 2011, July 2012, and July 2012.
- In Manhattan, a worker lost his balance while doing masonry work and fell five stories down a shaft. Total penalties of \$20,790 for two Gravity 10 scaffolding and fall protection violations were reduced to \$14,000 in a settlement. In four of the five previous inspections, the most recent in 2010, violations were cited and penalties were assessed. In all four of these inspections there was at least one violation of a scaffold or fall prevention standard. Penalties for the twelve violations between 2006 and 2010 totaled just \$21,875.
- In Manhattan, a worker was killed when a warehouse under demolition collapsed. A Gravity 10 violation was cited and a penalty of \$4,900 was assessed. This employer had been inspected in 2010 after a worker fell three stories and died. At that time a Gravity 10 fall protection violation and a Gravity 3 training requirements violation were assessed and the reduced penalty was \$1,687.

To be sure, occasionally a larger penalty more appropriate to the seriousness of the violations was assessed, typically when willful or repeat violations were cited. In the 2013 death of Kyle Brown, OSHA proposed an \$88,900 penalty, including for a willful violation, for which the maximum penalty is \$70,000. However, willful violations are rarely cited. From 2010 to 2012, OSHA issued a mere 30 “willful” violations in construction in New York, less than one percent of violations cited. The maximum penalty for a repeat violation is also \$70,000. From 2010 to 2012, there were only 164 repeat violations, five percent of the violations cited. And, nationally, the average penalty actually assessed is much smaller than the maximum allowed -- only \$39,509 for a willful violation and \$6,272 for a repeat violation. In Kyle Brown’s death, the willful violation penalty was reduced

**65% OF WORKERS WORK
ON SCAFFOLDING.**



NYCOSH

from \$70,000 to \$35,000 and the total penalty was reduced to \$44,450 in an Administrative Law Judge decision.

The enforcement history of Long Island contractor Painting & Decorating illustrates how even an unusually large fine does not necessarily deter further violations.⁴¹ In March 2010, Painting & Decorating was cited for four willful and three serious violations and assessed total penalties of \$102,600. The next month, at another site, this employer was cited for four willful, one repeat, and three serious violations, also of scaffold requirements, and assessed \$122,600. Yet in May 2013, Painting & Decorating was cited for an extraordinary ten repeat and five serious violations and assessed \$460,300, one of the largest OSHA penalties ever in New York.⁴² The OSHA news release said that Painting & Decorating's workers had "repeatedly been exposed to deadly or disabling falls and crushing injuries."

UNSAFE CONTRACTORS RAMPANT AFTER SANDY, OSHA VIOLATIONS NOT A DETERRENT

The *New York Daily News* investigation of post-Sandy cleanup work illustrated how OSHA is limited in its ability to force employers to comply with safety and health regulations, even in the face of the most serious safety lapses by employers:

"In the harrowing weeks after Hurricane Sandy, thousands of workers descended upon the destruction zone to safely clean up, tear down and rebuild homes wrecked by the storm. But for some, the good deed turned into a nightmare of dangerous conditions that led to serious injuries and even death. At the height of the Sandy cleanup, workers without protection fell from roofs, were shocked by exposed wires and injured by chemicals, records show. Federal inspectors... encountered 3,100 instances of unsafe job conditions, removing some 7,900 workers from hazards.

Although OSHA found thousands of cleanup workers doing jobs in unsafe conditions, almost no one was punished: OSHA issued violations in 32 cases, imposing minimal fines between \$1,000 and \$11,600 that totaled just \$141,934."

One worker, 54-year-old Ignacio Maldonado, was on a ladder when it crashed. He was in a coma for weeks before he died. His employer was assessed a \$4,000 fine for a faulty ladder. The *Daily News* reported that a co-worker was supposed to have held his ladder steady but no one was available.

— Erica Pearson, Greg B. Smith, "Safety rules often ignored in post-Hurricane Sandy cleanup, many workers put at risk," *NY Daily News*, April 28, 2013.

"... ONLY ABOUT
12 PERCENT OF
OSHA DEBTS HAVE
BEEN COLLECTED
IN RECENT YEARS."

— CENTER FOR
PUBLIC INTEGRITY

About 30% of penalties have never been paid.

Enforcement is made even weaker because some penalties are never paid. According to an analysis by the Center for Public Integrity in 2012, none of the original penalties in one out of ten cases since 2001 were collected. Overdue debts are given to a private collection agency to pursue, but according to the Center for Public Integrity's analysis of U.S. Treasury data, "only about 12 percent of OSHA debts have been collected in recent years."⁴³

We found that five of the 17 employers that were assessed penalties for violations as a result of OSHA investigations of fatal height-related accidents in New York 2012 were referred to debt collection, owing total penalties of \$55,400.

Criminal penalties are not credible because, in 35 years, less than 85 cases have been prosecuted.

A case can be referred for criminal prosecution under the Occupational Safety and Health Act, but this is virtually never done. According to the 2014 AFL-CIO report, *Death on the Job: The Toll of Neglect*, since the act was enacted in 1970, only 84 cases have been prosecuted, with defendants serving a total of just 89 months in jail. One reason there are so few prosecutions is that the maximum penalty is a mere misdemeanor, with at most a six-month sentence, so it is hardly worth prosecutors' time to pursue. Another reason is that criminal enforcement may be pursued only for those cases in which a willful violation results in a worker's death or where false statements are made in required reporting.

PUBLIC EMPLOYEE SAFETY AND HEALTH BUREAU

The Public Employee Safety and Health Bureau (PESH), created in 1980, enforces safety and health standards spelled out under OSHA (with the exception of the recordkeeping rule) and several state standards for public sector employees. There are over 2 million public sector employees in New York State, which includes state, county, town, village governments, public authorities, school districts, and fire departments. PESH responds to deaths related to occupational safety and health, accidents that send public employees to the hospital, and complaints from public employees or their representatives.

While PESH and OSHA are two separate and distinct agencies, the two must work together where both have jurisdiction and a mandate to enforce safety rules in construction. PESH, like OSHA, is underfunded and has an inadequate number of inspectors across the state. The Public Employees Safety and Health Bureau (PESH) and the Occupational Safety and Health Administration (OSHA) must work together on construction and other public works project where both have jurisdiction and a mandate to enforce standards. Additionally, the number of PESH inspectors and the State Plan Budget for PESH need to be increased to ensure the agency's effectiveness.

RECOMMENDATIONS

MAKE OSHA ENFORCEMENT AN EFFECTIVE DETERRENT TO ENDANGERING WORKERS.

In 2003, contractors' liability insurance premiums were soaring nationwide, including in New York.⁴⁴ The New York State Department of Insurance held a public hearing on whether residual market insurance should be made available to help contractors afford coverage. The Executive Director of the General Building Contractors of New York testified, "Safety is the key to solving this problem, no question about it. It's within our control. It does make a difference."⁴⁵

More than a decade later, his observation that safety is the key to solving contractors' rising liability insurance costs is still correct. This report shows, unfortunately, that there is still a long way to go in making construction sites safer. The first, and perhaps most important step, is to make OSHA a much more effective worker safety agency.

OSHA has launched efforts to reduce the rate of construction worker falls, including a *National Safety Stand-Down* this May to raise awareness among employers and workers about the hazards of falls and a Stop Falls Web page, <http://www.osha.gov/stopfalls>, with fact sheets, posters and videos in English and Spanish that vividly illustrate various fall hazards and appropriate preventive measures. These initiatives are part of OSHA's *Fall Prevention Campaign*, a nationwide outreach program to raise awareness among workers and employers about the hazards of falls from ladders, scaffolds and roofs. Such efforts are welcome, but to make a real impact on employers' safety practices and investment they must be backed by effective enforcement.

Lastly, OSHA must do more to protect immigrant workers by hiring additional bilingual OSHA compliance officers that can communicate with immigrant workers for whom English is not the primary language.

REPEAT AND WILLFUL VIOLATORS OF HEALTH AND SAFETY LAWS MUST BE PROSECUTED UNDER CRIMINAL STATUTES AND SHOULD PAY INTO A SPECIAL FUND TO INCREASE THE NUMBER OF INSPECTIONS.

Given the limited number of OSHA inspectors and low fines for violators, many employers do not take OSHA violations seriously. Local district attorneys, attorney general offices, and federal prosecutors must more proactively identify criminal cases against employers who regularly show disregard for the lives of their employees. Currently, criminal charges are issued so infrequently that hazardous employers do not take them seriously.

As shown in the case of Formica Construction, many negligent contractors continue to create unsafe workplaces that result in deaths on the job. District attorney offices must be vigilant in identifying cases of criminal conduct and press for increased penalties for employers who break the law. In the case of Mr. Formica, 16 weekends in jail, where he would check in at 9AM and leave at 6PM so as not to disrupt his business, is a negligible price to pay for willingly creating an unsafe workplace. Employers who willingly create unsafe workplaces that lead to worker fatalities deserve to have their businesses disrupted, if not closed down altogether.

Additionally, fines paid by repeat and willful violators should go toward increasing the number of inspectors and inspections, so that egregious violators will help pay to make New York workers safer.

DISTRICT ATTORNEY
OFFICES MUST
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OF CRIMINAL
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BREAK THE LAW.

KEEP THE SCAFFOLD SAFETY LAW

Even though construction work at elevated heights is the most hazardous type of construction work and OSHA safety enforcement has proved ineffective, the construction and insurance industries are pressing Albany to “reform” New York’s Scaffold Safety Law (Section 240 of the Labor Law). Their “reform,” unfortunately, would relieve owners and contractors of much of their legal responsibility when their failure to provide appropriate and necessary equipment for work at heights causes a worker’s injury or death. If enacted, an effective deterrent to comprising safety would be lost.

The Scaffold Safety Law is effective because it prevents owners and contractors from excusing their safety lapses by blaming workers. Applying so-called “comparative” liability in height-related construction accident claims -- the “reform” the insurance and construction industries demand -- would make it much easier for contractors and owners who fail to provide the safe equipment the law requires to blame their workers for any injuries that result. It would ignore the construction site reality that workers who decline or use unsafe equipment may be told to take the day off without pay or could even be fired. “Comparative” liability does not recognize that owners and contractors, not workers, control construction site safety.

This report documents that there already are far too many preventable injuries at New York construction sites. Construction and insurance industry lobbyists must not be allowed to shift the safety burden onto workers. Their proposed “reform” would relieve owners and contractors of an effective incentive to make worksites safer. The Scaffold Safety Law must be protected to prevent even more worker injuries and deaths.

CONCLUSION

The data presented in this report shows a disturbing trend in New York’s construction industry . Many employers tally fines with the cost of doing business instead of prioritizing workers’ safety and health on the job. As a result, construction workers—particularly non-union immigrant workers—often fear they are putting their lives at risk when they step onto a construction site. Advocates must continue to call for enhanced enforcement with heftier consequences for unsafe employers. All New Yorkers must be guaranteed a safe workplace. Construction work will always be hazardous, but it should not be deadly. In New York, that means protecting the Scaffold Safety Law, increasing OSHA staffing and enforcement, and finally enforcing the criminal laws against unsafe employers. New York’s construction workers deserve nothing less.

ENDNOTES

- 1 2012 is the most recent year for which the U.S. Bureau of Labor Statistics has issued this data; 2013 data is preliminary.
- 2 Noriega, David. "Construction Work Is Getting More Deadly, But Only For Latinos." *Buzzfeed News*, January 6, 2015.
- 3 U.S. Bureau of Labor Statistics data.
- 4 U.S. Census American Community Survey "2006-2010 Employment Opportunities Tabulation"
- 5 The Center for Popular Democracy, *Fatal Inequality. Workplace Safety Eludes Construction Workers of Color in New York State*, October 2013.
- 6 Fisher, Janon, "Construction Worker Dies in Fall From NYU Building." *DNAinfo*, November 15, 2013.
- 7 New York Committee for Occupational Safety and Health, *It's No Accident, Examining New York's Workplace Deaths and the Construction Industry*, April 28, 2014. Inspections in the three construction Standard Industrial Classifications two-digit classifications, 15, 16 and 17, were reviewed.
- 8 Scaffold standards: 29 CFR 1926.450, 451, 452, 453; Fall protection standards: 29 CFR 1926.500, 501, 502; Steel erection standards: 29 CFR 1926.759, 760. Ladder standards: 29 CFR 1926, 1050, 1051; Stairway standards: 26 CFR 1926, 1052. Scaffold training standards: 29 CFR 1926.454; Ladder and stairway general requirements: 29 CFR 1926.1060; Fall protection training standards: 29 CFR 1926.503; Steel erection training standards: 29 CFR 1926.761.
- 9 As stated in an OSHA Region 2 news release, "US Labor Department's OSHA proposes more than \$272,000 in fines, cites four contractors for safety hazards at midtown Manhattan site," September 24, 2013,
- 10 Employers are in the SVEP if they had a non-fatality/catastrophe inspection with two or more willful or repeated violations or failure-to-abate notices that are high gravity (Gravity 10) violations related to High-Emphasis Hazards; a fatality/catastrophe investigation with one or more willful or repeated violations or failure-to-abate notices; non-fatality/catastrophe inspection with three or more willful or repeated violations or failure-to-abate notices that are high gravity violations related to the potential release of a highly hazardous chemical; or an egregious (e.g. per instance citations) case. The employer with 41 violations was in the "egregious" category.
- 11 OSHA Region 2 news release, *op cit*. The release reported that V&P Altitude Corp., a Brooklyn-based siding contractor, was issued five serious citations, with \$13,200 in penalties. OSHA subsequently settled for three serious violations and \$5,000 in fines. Also, the release reported, SMK Associates, an Astoria-based masonry contractor, was issued three serious citations, with \$7,600 in fines, and Maspeth Steel Fabricators Inc., a Maspeth-based steel framing contractor, was issued one serious citation, with a \$2,000 fine. Maspeth has settled for \$1,250.
- 12 Daniel Massey, "Flintlock: The Outsiders – How the Weiss brothers built NY's dominant nonunion contractor," *Crain's New York Business*, July 15, 2012.
- 13 Daniel Beekman, "City contractor to pay back \$600,000 it scammed from workers," *New York Daily News*, August 13, 2013.
- 14 The OSHA news releases reported that the violations and penalties in the examples below were proposed. The employers had an opportunity to comply, contest, or meet informally with the OSHA area director.
- 15 New York Committee for Occupational Safety and Health, *NY Scaffold Law Still Needed to Protect Construction Workers from Falls*, 2013.
- 16 The gravity classifications are: Gravity 10 (high severity, greater probability), Gravity 5 (medium severity, greater probability), Gravity 4 (low severity, greater probability), Gravity 3 (high severity, less probability), Gravity 2 (medium severity less probability) and Gravity 1 (low severity, less probability).
- 17 NYCOSH, *op. cit*.
- 18 According to DOB, a "worker fell" accident is one "where a worker's fall was not caused by material failure or construction equipment failure. Included in this category are accidents due to worker inattention, error or where the worker's protection equipment failed (e.g. harnesses)." DOB defines a "material fell" accident as, "Drop, displacement or failure of material or building element from its intended position or location. Included in this category are imminent material displacements, fall or failure." The material must have fallen on public property, such as a sidewalk. Scaffold/Shed/Fence/Shoring Installation accidents are defined as, "Failure of site protection, temporary support and access installations. This category also includes both supported and suspended scaffolds."
- 19 Chapter 33, New York City Building Code, Safeguards During Construction and Demolition.
- 20 The Department's website provides a brief description of each accident and of the violation that was cited. These are available at <https://www.osha.gov/oshstats/index.html>
- 21 Greg B. Smith, "Jobsite accidents in New York City jumped 31 percent from 2011 to 2012, while injuries up 46% in same period," *New York Daily News*, Sunday, January 13, 2013.
- 22 U.S. Census, American Community Survey "2006-2010 Employment Opportunities Tabulation."
- 23 Xiuwen Sue Dong, et al, "Work-related injuries among Hispanic construction workers: Evidence from the medical expenditure panel survey," *American Journal of Internal Medicine*, February 2010. The researchers controlled for factors such as age and construction occupation.
- 24 The Center for Popular Democracy, *Fatal Inequality. Workplace Safety Eludes Construction Workers of Color in New York State*, October 2013.
- 25 As reported in the ACS 2006-2010 survey, the most recent survey that asked for this information.
- 26 Michele Gonzalez Arroyo and Kelsie Scruggs, *Latino Construction Worker Resources Collection*, CPWR. 2014.
- 27 Center for Popular Democracy, *op. cit*.
- 28 Esther Hsiu Lee, "Vast Majority of Construction Site Deaths are Latino or Immigrant Workers." *Think Progress*. October 2013.

- 29 Construction worker dies after roof collapses at Staten Island car dealership. New York Daily News, November 28, 2014. <http://nydn.us/19BEOcc>
- 30 Monforton, Celeste, "Not an 'accident': Jesus Mendizabal, 43, Suffers Fatal Work-Related Injury on Staten Island, NY." Pump Handle. December 4, 2014.
- 31 Noriega, David, "Construction Work Is Getting More Deadly, But Only For Latinos." BuzzFeed News, January 6, 2015.
- 32 Wassef, Mirah, "OSHA to Investigate Sanitation Worker's Death at Richmond County Golf Course." Staten Island Live, November 14, 2014.
- 33 Source: New York Committee for Occupational Safety and Health, from a FOIA request to OSHA. Nationally, OSHA staffing levels have remained nearly unchanged despite population and employment growth. The agency had 1,006 Federal compliance officers in 2012, 1,017 in 2012, 1,106 in 1992 and 1,003 in 1982, and went from 10.1 officers per million workers in 1982 to 7.1 per million workers in 2012, according to the AFL-CIO's 2014 *Death on the Job* report.
- 34 Center for Construction Research and Training, *The Construction Chart Book, Fifth Edition*, April 2013.
- 35 This counts all of the inspections reported in OSHA's Integrated Management Information System.
- 36 Employers must report within eight hours all accidents in which a worker died and/or at least three workers were hospitalized as an inpatient as a result of a work-related injury. Beginning in 2015, employers must report within 24 hours all work-related accidents in which at least one worker was hospitalized as an inpatient and continue to report fatalities within eight hours. Also beginning in 2015, amputations and loss of an eye for the first time have to be reported within 24 hours.
- 37 AFL-CIO, *Death on the Job: A Toll of Neglect – A National and State-by-State Profile of Worker Safety and Health in the US*, 23rd Edition, May 2013. Initial fines are calculated according to the gravity of the violation and the number of employees a worker has. The largest penalty can be assessed for high gravity violations (also known as Gravity 10 violations). The maximum fine for a "low gravity" (Gravity 3) violation is \$3,000.
- Fines are automatically reduced by 60 percent for employers with 1 to 25 employees, 30 percent for employers with 26 to 100 employees and ten percent for employers with 101 to 250 employees. A ten percent good history reduction is also provided for employers that were not cited for high gravity serious, repeat or willful violations within the previous five years. Penalties for violations other than high gravity serious violations can be further reduced for "good faith," which is evidenced by an employer's effort to implement an effective workplace safety and health management system.
- 38 As of October 2014. It is possible that this average will decline further as a result of settlements or administrative law judge determinations.
- 39 The OSHA website reports that this inspection "has not been indicated as closed and information may change, e.g. violations may be added or deleted."
- 40 A final order was issued. However, the inspection has still not been indicated as closed.
- 41 Nationally, there were 119 cases in FY 2013 that had total penalties greater than \$100,000.
- 42 OSHA is not authorized to force an employer to remedy a hazard while a citation is being contested. The 2010 cases were not closed until March 2014. The 2013 case is still indicated as open.
- 43 Center for Public Integrity, *Even after workplace deaths, companies avoid OSHA penalties*, December 21, 2012. Their findings echoed those of a study in 2008 by the majority staff of the US Senate, Health Education, Labor and Pensions Committee, *Discounting Death: OSHA's Failure to Punish Safety Violations That Kill Workers* that found that employers fail to pay almost half of OSHA assessed penalties.
- 44 Construction industry trade groups in New York claimed that soaring premiums were making it difficult for many contractors to afford insurance and they attributed the increases to the Scaffold Safety Law. In fact, contractors' liability insurance premiums were soaring nationwide, in states without this law. One national industry publication reported at the time, "Probably the most critical issue in the roofing industry today is skyrocketing insurance rates." In 2003, the *Arkansas Business* reported, "Just three years ago, Larry Oaks paid about \$5,000 for general liability insurance for his Little Rock construction company. Today he's paying \$90,000 — a 1,700 percent increase. In Arkansas and across the country, contractors have seen their general liability rates soar. Some contractors in other states are seeing their rates rise 600-1,000 percent."
- 45 New York State Department of Insurance, transcript, Public Hearings on Insurance Coverage for Commercial Liability Markets, New York City, November 21, 2003.

APPENDIX A

New York City Department of Buildings Accident Details

Following are illustrative examples of accidents with at least one injury in which a “worker fell” or “material fell” in 2012 and 2013. The descriptions of the accidents are quotes from the “final descriptions” in DOB Monthly Accident Details reports and the descriptions of the cited violations are from the DOB Building Information Systems website, “Specific Violation Condition(s) and Remedy.” Bold text was added.

ACCIDENTS REPORTED IN 2013

January 9. “Seven workers were injured when a crane collapsed. It was **“attempting to lift a load that was double the weight of its lifting capacity.”**

January 30. A construction worker “was working on two sections of pipe scaffold when he lost his balance and fell approximately ten feet to the ground level. **No fall protection was in place.** The worker was taken to the hospital.”

February 21. “A worker sustained two broken legs when he was **pinned under a Temporary Switch Board that fell.** The unit fell onto the worker **when one of the slings used to hoist it shifted** causing the unit to drop onto the worker.”

March 18. “Three workers fell approximately twenty-five feet from the edge of the building within the core of the building when **the section of Q-decking on which they were standing gave way.**”

March 22. “Two workers were injured and transported to the hospital when the third floor partially collapsed. **The flooring system was not properly installed and was overloaded with CMU block and other construction material.**”

April 15. “A worker fell approximately thirty feet from a walkable platform being supported **by unsecured aluminum extension ladders** with cantilever mechanisms.”

April 26. “A worker was struck in the back of the head by formwork. Workers were removing concrete formwork from the thirteenth floor and passing it through an opening to the twelfth floor striking and injuring the worker.” A violation was cited for **“holes/openings not covered/secured.”**

May 6. “A worker was injured when a **2’x2’ section of wall dislodged**, striking the worker’s hip. The worker was performing façade brick worker from a supported scaffold. The worker was taken to the hospital.” Violations were cited.

May 21. “A worker was fatally injured when he fell while installing sheeting. The worker tried to **brace himself on an unsecured 2’x4’** during the construction of a dormer extension. The work was being performed without permits or plans.”

June 12. “A worker fell through the roof while moving filled plastic bags to the chute. **The staging area by the chute was overloaded** causing the roof to collapse.”

August 22. “A worker fell approximately twelve feet from a retaining wall **when the cinder block wall on top of the retaining wall collapsed.**” Violation cited: “Failure to safeguard all persons and property affected by construction operations... Work does not conform to approved construction documents.”

August 23. “A worker fell approximately twenty feet down the elevator shaft when the **cables he was leaning against snapped.** The worker suffered a laceration to his leg and was taken to the hospital in stable condition.”

September 11. “A worker fell five stories while installing corrugated decking at the roof level. The worker sustained multiple fractures and was taken to the hospital by ambulance. **The worker was not wearing a harness and no fall protection was installed.**” A violation noted “failure to provide guardrails (none on all openings throughout building on all floors, failure to provide handrails (none on all stairways on all floors), failure to provide toeboards (none at all openings throughout the building).”

September 24. “A worker fell approximately ten feet while performing stripping operations from a scaffold. **The worker was wearing a harness but was not tied to a lifeline.** The worker was taken to the hospital by ambulance with unknown injuries.” Violation cited, “**Failure to provide lifeline** while working on scaffold.”

September 30. “A worker was injured when a stone wall fell during excavation. **Shoring was not installed.**”

October 15. “A worker was injured when the **brick façade collapsed** at the sixteenth floor causing bricks to fall. The building was undergoing façade restoration at time of the collapse. **Improper shoring and lack of proper tie backs** contributed to the failure.”

October 21. “A worker fell approximately ten feet from a **makeshift ladder system** being used to access the interior water tank on the fourth floor.”

October 24. “A worker fell approximately eleven feet from the ground level into the vault on which he was working. **No fall prevention or arrest systems** were in place. The worker was taken to the hospital.” Among violations: “Tripping hazards on public walkway. Workers w/o OSHA 10 certification cards – had not been issued them... Failure to provide/use lifeline while working on scaffold.... On approx. 4 areas of public walkway, loose pieces of plywood covering holes, not secured. 2 workers doing pointing work at approx. 5th fl lvl of bldg. exterior. Workers were not tied off using lifeline system.”

November 14. “A worker lost his balance and fell approximately four or five feet through an **opening in the guardrail.**” Violations noted, “Failure to provide 3’-6” guardrail around open and accessible sides of excavation. Worker removed egress ladder and neglected to replace a guardrail at this location... Egress ladders were erected with poor footing and to move from 1 ladder to the next, workers had to straddle a plank.”

ACCIDENTS REPORTED IN 2012

January 25. A worker fell from the balcony injuring his leg. **No site protection system was in place.** DOB: “**Inadequate fall protection noted:** upon inspection tension cables used as guard rails and toe boards. Loose pipe. Failure to institute/maintain safety equipment measures.”

February 10. "A construction worker was injured while removing a concrete bulkhead on the top of a **makeshift platform**. The platform **was overloaded and collapsed** approximately 20 feet into an open stairwell."

March 2. "Three workers were performing water proofing on the foundation wall **without sheeting or shoring**. A trench approximately three feet by four feet caved in trapping one worker. The worker was extracted and taken to the hospital."

March 6. "The Site Safety Manager reported to DOB that a construction worker **fell approximately ten feet from an unsecured ladder** and was taken to the hospital." In addition, DOB reported, "**Failure to conduct worker site safety orientation program** per site safety plan."

March 22. "During demolition operations **a section of the structure collapsed** injuring three workers, one fatality." DOB issued a stop work order and violation.

April 3. "A 1 1/2 story wood **frame building collapsed** injuring four workers, one fatality." DOB issued violations and a stop work order.

April 13. "A scaffold, from which workers were performing a façade inspection, dropped one story. **The left motor kept running and the emergency brake did not engage until the motor became jammed with a cable.**" Violations included, "Failure to provide designated site safety manager at time of inspection of incident," and "suspended scaffold motor & noted operating a hoist motor with a defective plate over descent lever or auto descent level could not be enough due to a bent plant protecting lever."

April 13. A worker fell from the first floor to the basement. Violation noted, "**Improperly erected scaffoldings.**"

May 17. "A construction worker was fatally injured when he lost his footing and fell to the sidewalk shed below. The worker was attempting to retrieve his jacket and walked **across unsecured planks** that led from the fire escape to the stair tower. Violation stated: "All platforms shall be tied down (cleated) or otherwise restrained by books or equivalent means to prevent dislodgement." A stop work order was issued.¹

May 24. "A construction worker was fatally injured when he fell from the third floor while working on the wood door of the library during an interior renovation." Violation: Noted interior renovation of 3rd story, Apt 3A, "**failure to provide required height guardrails or fall protection.**"

June 21. "A worker was fatally injured when the worker was **struck by asphalt that collapsed into the trench** he was working in. Specific violations included: "Upon inspection no protection 45 angle of repose (there) septic tanks & dry well are being installed. **Excavation 20 ft deep no sheeting/shoring.** Work w/o permit. Upon inspection no permit issued for dry wells and septic tanks being installed at site."

July 2. "A worker was rescued from a fifth floor **window after the suspended scaffold he was working on collapsed.**" DOB issued violations and a stop work order. Specific violations included, "Failure to maintain equipment in a safe manner. Noted @ time of inspection suspended scaffold @ EXP#1 had collapsed and was hanging by 1 cable. The motor on the right side failed when down button was rel."

July 3. "A worker fell from the eleventh floor to the tenth floor when he stepped on an **unsecured plywood covering** a vent hole." Violations included: "Plywood covering mechanical vent opening at south tower (11th floor) was not properly secured."

July 16. "A worker fell approximately sixty feet down an elevator shaft. **No evidence of a tie off point was observed** from where the worker fell."

July 24. "A construction worker fell twelve feet from a supported scaffold. **The workers personal safety equipment failed.**"

July 30. "A worker fell onto the plank deck of scaffolding in an elevator shaft when he climbed onto the form work to access a bolt. The worker was conscious when taken to the hospital." Among violations: "Failure to institute & maintain safety equipment measures or temp construction. **No toe boards around an excavation approx. 25' deep @ 1 floor.**"

August 7. "A worker fell approximately fifteen feet while extending the steel deck at the second floor. The worker was taken to the hospital." "Work w/o a permit. Illegal work noted."

September 10. "Two workers were injured, **one fatally, when the roof they were working on collapsed.**" DOB issued violations and a stop work order. Specific violations included, "Failure to maintain adequate housekeeping. Construction materials/debris strewn throughout construction side creating hazardous conditions. Observed work in progress @ roof & structural work @ 1st and 2nd floors aren't complete. Substandard flooring, tie-back missing & full stop work order failure to maintain adequate housekeeping"

September 25. "A worker was fatally injured when he fell into a shaft. **No guardrails were installed around the shaft.**" DOB issued violations and a stop work order. Specific violations included, "Worker fell down open shaft taken to hospital. (defects) throughout the job site... **Open shafts throughout, improper demo...**"

October 3. A worker fell approximately twelve feet when a **plank broke on the supported scaffold** being dismantled. DOB issued a violation." Violations included, "Work does not conform to approved construction plans. As per plan equipment installation notes: item 8 plank quality – plank @ top section gave way **causing injury to worker contrary to plan** which..."

October 8. "A worker was injured when the **top section of a wall being removed collapsed onto the scaffold** from which two workers were working. The work was being performed without a permit."

Violation stated: "Noted upon inspection at 1st flr space two workers removing an approx 20' high x 14' wide block wall w/o permits per records."

October 9. "A worker fell approximately twenty-five feet down an elevator shaft under the shaft protection during a concrete pour on the second floor. The worker was taken to the hospital with unknown injuries." Specific violations stated: "Failure to provide standard guardrail as per section." November 30. "A worker fell down the stairs and was taken to the hospital. **Exterior stairwell at the tenth and eleventh floors had no guardrail system installed.**" Violation stated, "Failure to institute/maintain safety equipment measures or temporary construction no guard rails. Noted at corner of bldg. at northeast side on floors 9, 10, 11 wall has been removed @ no guard rail..."

¹ DNAINfo reported that the worker who died was not given the mandatory 30-hour training course on safety and a DOB spokesperson was quoted, "He was not working in a protected area with guardrails, and therefore should have been wearing a safety harness and have it secured to an anchorage point."

APPENDIX B

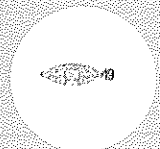
OSHA inspections since January 1, 2014 of HPD Enhanced Review contractors (Nov 2014 list)

CONTRACTOR	# OF VIOLATIONS, 1 INSPECTION PER ROW	COMMENT ON VIOLS	OTHER INFO
Allstate Interiors	0		"Allstate Interior Demolition" -- same address
	0		
	1		
Apartment Rehabilitation Corp	No inspections		
Applied Construction	0		Daily News, 8/8/13: "In March, the owner and two employees of Applied Construction Inc. were arrested on underpayment charges in the Bronx."
	0		
	0		
Artec Construction & Development	1	1 serious, "fall protection" (2011)	
	1	1 serious, "stairways" (2011)	
	4	All serious, a Gravity 10 violation was "duty to have fall protection. (2012)	
Bayview Real Estate Consultants	No inspections		
C & A General Contracting	No inspections		
C.J.L. Construction	5	5 serious, 2 are Gravity 10, including ladders (2011)	Listed by OSHA as CjL, Inc (Bronx)
Delight Construction	3	3 serious violations relating to wiring	
DeWaters Plumbing and Heating	No inspections		
Enviro & Demo Masters Inc	No inspections		
Fairmont Industries	No inspections		
F. Rizo[s] Renovation Corporation*	No inspections		Daily News 4/12/14: But at an affordable housing project a few blocks away, builder MDG Design and subcontractor F. Rizo, settled federal wage-cheating charges in April 2013 by agreeing to pay \$960,000 in back wages.
U.S. Tech	No inspections		
Galaxy General Contractors	2	2 serious violations re stairways, 2010	
	3	2 serious violations re stairways (one repeated) and 1 serious re fall protection 2010	
	0	(2010)	
	0	(2010)	
Great American Construction	1	Gravity 5, duty to have fall protection (2011)	Daily News: 9/19/12 "City urged to dump Great American Construction, whose chief William Clarke was indicted on bribery charges. Company has 4 projects working in Brooklyn and the Bronx. Activist group Communities for Responsible and Equitable Housing is pushing Department of Housing Preservation & Development to bar Great American, arguing for new policy to exclude firms facing criminal charges." NY Times, 8/19/12: "The developer, Thomas J. Metallo, president of Great American Construction, which built the 31 Marcy row houses, referred questions to the city's housing agency. But a spokesman for the company later issued a statement saying the company "stands behind the quality of its homes."
	2	Both were Gravity 3, serious (2010)	
	5	All violations were Gravity 3, serious. (2010)	
Larino Masonry	5	Included two repeat violations re "stairways" (2010)	April 2014 DN article said they were on HPD list. "In February, Larino and another subcontractor agreed to pay \$959,000 in back wages, and Larino can't bid on federal jobs for three years. Larino remains on HPD's list of "enhanced review" contractors." Larino's lawyer, Vincent Martinelli, said the firm worked out a settlement to provide "full and satisfactory reimbursements," adding, "Larino Masonry regrets the mistakes made and is extremely thankful that all claims have been fully satisfied to those valued employees."
	8	Includes Gravity 10 duty to have fall protection, scaffold violations, among others. (2010)	
	0	(2009)	
Lemle & Wolff	No inspections		DN, 11/16/14: The department noted the developer was Lemle & Wolff, but did not mention that the company was on the review list and owed \$500,000 in back wages. As of last week, the developer was down to \$100,000. Lemle & Wolff did not return calls seeking comment.

Lettire Constuction	0	(2011)	NY Times --July 2012 "The Labor Department announced on Thursday that Mr. Lettire, a founder of Lettire Construction, had agreed to guarantee payment of about \$960,000 in back wages and fringe benefits for dozens of workers employed by his subcontractors as part of a settlement of a case brought against the company last year."
	3	All are Gravity 10. Two are regarding stairways. (2011)	
	0	(2009)	
Masonry Services, Inc	14	Two willful, 1 repeat. Proposed penalty of \$181,280 (2012)	Daily News: 8/8/13. "City contractor that cheated workers out of \$600,000 agrees to pay back wages. Masonry Services Inc. paid workers on a taxpayer-funded affordable-housing project in Brooklyn as little as \$8 an hour even though it was legally required to pay more than \$53 an hour."
	4	OHSA: Penalties Referred to Debt Collection (2011)	
	1	Aerial Lifts -- Gravity 10 (2011)	
	2	1 viol for fall protection (2010)	
	2	(2010)	
	2	(2010)	
	4	Includes gas welding, scaffold (2010)	
	0	(2010)	
	0	(2010)	
Mascon Restoration	3	Includes 1 repeat violation of duty to have fall protection.	Daily News 4/8/12: "Mascon and three other construction management firms -- JF Contracting, Promanagement Associates and Delcor Associates -- had to shell out \$1,178,323 to the controller's office for failing to pay prevailing wages and benefits to workers as the law mandates on city funded projects. The firms were hired by the Department of Housing Preservation and Development to inspect and repair the agency's buildings.
Mega Contracting	0	(2013)	Daily News 11/16/14: "One of the contractors got off the list earlier this year. Mega Contracting settled up by paying \$1.1 million in back wages owed by its subcontractors and agreeing to be monitored on three projects. The monitor gave the company a clean bill of health, and it was taken off the list."
	0	(2013)	
	0	(2012)	
	0	(2010)	
	1	(2009)	
	5	(2009)	
	2	(2009)	
MCR Restoration	No inspections		
MC & O Contracting	0		Daily News 4/12/14: MC&O has been hit with \$266,000 in federal Occupational Safety and Health Administration fines for dangerous work-site conditions in 14 incidents since 2004, starting with a worker who fell 64 feet to his death at a job in the Bronx. To date the firm has paid \$149,000 to settle the cases.
	1		
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	1		
	1		
	1		
	0		
	1		
	1		
	2		
	3		
	2		
MDG Design and Construction	1	Serious re medical services, 1 st aid (2011)	DN, 4/12/14 "To date, the biggest wage cheating case in the city involves MDG Design. The \$4.5 million decision ordered by the U.S. Department of Labor found MDG owed back wages from work at an HPD-funded project called Grand Street Guild. MDG has contested the finding"
Mountco Construction	1	Serious, re wiring (2014)	DN: 11/16/14: At the time, a Sugar Hill contractor, Mountco Construction, had been placed on the enhanced review list, owing \$610,000 in back wages. As of last week, Mountco still owed \$300,000, and is building more apartments at another project in the Bronx, Common Ground.
	1	Serious, re stairways (2012)	
NotiasConstruction	7	Violations were serious, 3 repeat, inc fall protection, stairways etc (2011)	Daily News 11/16/14: Notias Construction also got off the list by paying off \$500,000 in back wages.
Procida Construction	0		Daily News 3/4/13: "A Bronx contractor is set to pay nearly \$1 million to workers stiffed during taxpayer-funded construction of affordable housing for seniors. Procida Construction Corp. must reimburse dozens of underpaid workers and owes the state \$50,000 in penalties, Attorney General Eric Schneiderman announced Monday."
	0		
	0		
TMA Contracting	No inspections		
Sant-Tec Electric	1		

ABOUT NYCOSH

The New York Committee for Occupational Safety and Health (NYCOSH) is a membership organization of workers, unions, community-based organizations, and workers' rights activists. NYCOSH uses training, education, advocacy, and organizing to improve health and safety conditions in our workplaces, our communities, and our environment. Founded 35 years ago on the principle that workplace injuries, illnesses and deaths are preventable, NYCOSH works to extend and defend every person's right to a safe and healthy workplace and community.



Labor Donated

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

Name: ~~RITA~~ **(PLEASE PRINT)** Ronald Lauria

Address: 670 Leverett Ave

I represent: Local 28

Address: 500 Greenwich St.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

Name: **(PLEASE PRINT)** Marco Alcocer / Translate: Jessica Ramos

Address: _____

I represent: _____

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☒ in favor ☐ in opposition

Date: 5/11/15

Name: **(PLEASE PRINT)** Ligia Gualpa

Address: 1275 Grand Concourse 3c Bronx NY

I represent: Worker's Justice Project (WJP)

Address: 8973 Bay Parkway Brooklyn NY

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 5/11/15

(PLEASE PRINT)

Name: Peter Fontanes

Address: _____

I represent: NY REC

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 5/11/15

(PLEASE PRINT)

Name: Charles Oberaner

Address: 61 Broadway, NY NY

I represent: NY COSH

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Terrence Moore

Address: 1322 Third Ave

I represent: Metal Hitters + Reinforcing

Address: Ironworkers Local 46

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 5/11/15

(PLEASE PRINT)

Name: Rick Chandler

Address: Commissioner

I represent: DOB

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☒ in favor ☐ in opposition

Date: 5/11/15

(PLEASE PRINT)

Name: Santos Rodriguez

Address: _____

I represent: Building Construction Trades Council of

Address: Greater NY, 71 W 23rd St., Suite 501

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 5/11/15

(PLEASE PRINT)

Name: Tim Hogg

Address: Deputy Commissioner

I represent: DOB

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

Const ☐ in favor ☐ in opposition
safety

Date: _____

(PLEASE PRINT)
Name: James B. Fulco
Address: 751 Broadway Bay Ridge NY 10702
I represent: TSC North America
Address: 751 Broadway Bay Ridge

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

Construction ☐ in favor ☐ in opposition
Safety

Date: 5/11/15

(PLEASE PRINT)
Name: Lou Coletti
Address: _____
I represent: BTEA
Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 5/11/15

(PLEASE PRINT)
Name: Marco Alcocer
Address: NYC
I represent: Build Up NYC 5/11/15
Address: 25 W 18th St

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 5/11/15

(PLEASE PRINT)

Name: Carol Raffrey

Address: NYC

I represent: Build Up NYC

Address: 25 W 18th St

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 5/11/15

(PLEASE PRINT)

Name: Tamarah Brimmer

Address: NYC

I represent: Build Up NYC

Address: 2nd W 18th St

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 5/11/15

(PLEASE PRINT)

Name: Ithier Lopez

Address: Iron worker

I represent: _____

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 5/11/15

(PLEASE PRINT)

Name: Dave Ramsey

Address: NYC

I represent: Build Up NYC

Address: 25 W 18th

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☒ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Juan Aboji

Address: NYC

I represent: Build Up NYC

Address: 25 West 18th

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☒ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Michael Halpin

Address: NYC

I represent: Build Up NY

Address: 25 West 18th

◆ Please complete this card and return to the Sergeant-at-Arms ◆

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 5/11/15

(PLEASE PRINT)

Name: BUD GRIFFIS NYC
Address: 25 Claremont Ave #3B (10027)
I represent: New York University Poly Sch of Engr
Address: 6 MetroTech Center, Brooklyn

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 5/11/15

(PLEASE PRINT)

Name: Michael Odenthal
Address: 395 Hudson St
I represent: NYC Carpenters
Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
☐ in favor ☐ in opposition

Date: 5/11/15

Name: Allen Wright (PLEASE PRINT)

Address: _____

I represent: Local 14, IUOE

Address: _____

▶ Please complete this card and return to the Sergeant-at-Arms ◀

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
☐ in favor ☐ in opposition

Date: 5/11/15

Name: Thomas Gordon (PLEASE PRINT)

Address: _____

I represent: Local 14, IUOE

Address: _____

▶ Please complete this card and return to the Sergeant-at-Arms ◀