

Dying for Work in New York

**A summary of up-to-date and historic data on
occupational health and safety in New York City and New York State**

June 11, 2009

Executive Summary

- Workplace fatalities in New York City and New York State cause pain, suffering, and financial loss to affected families and businesses.
- The rate of workplace fatalities in New York City and New York State remains unacceptably high, although both saw decreases in 2007.
- The number of construction fatalities in New York City and New York State declined in 2007. New York City saw a decrease in construction deaths by falls; the remainder of the state saw an increase in construction deaths by falls. This may be a reflection of the new regulations, fines and increased enforcement of scaffolding regulations enacted in 2006 in New York City.
- Last year, 69% of the workplace injuries in New York City involved non-union workers; 58% involved non-English-speaking immigrants.
- The number of OSHA inspectors in New York State and New York City is insufficient to protect the health and safety of workers. Although New York State added over thirty thousand new private-industry workplaces between 2001 and 2007, OSHA actually had fewer inspectors in the state in 2007 than in 2001. The ratio of inspectors to workers remains well below that recommended by the International Labor Organization.
- OSHA provides little incentive to abate hazards. The average proposed OSHA fine resulting from a fatality inspection in New York State was \$5,193.
- OSHA's concentration of its enforcement resources on the construction industry, while justified as an efficient use of its scarce resources, results in inadequate coverage of other sectors of the economy. Construction made up 4.9% of the state's private-sector employment in 2007 and accounted for approximately 20% of the fatalities, but received 61% of OSHA inspections.

Introduction

New York is the nation's third-largest state by population. New York City by itself would be the 11th largest state. The workforce of the city and state comprises a diverse group of workers who are exposed to a wide range of workplace hazards. Occupational fatalities in New York City and State are a major public health problem that demands additional attention by the Occupational Safety and Health Administration (OSHA), the New York State Department of Labor, Division of Occupational Safety and Health and other federal, state, and local agencies with safety and health responsibility and oversight.

Most recent death on the job statistics

A total of 219 workers were killed as a result of occupational injuries in New York State in 2007; 81 died in New York City.[1] Though this is a decline from the 234 workers who died in New York State and the 99 killed in New York City in 2006, immigrant, minority, and non-union workers continue to be at particular risk for on-the-job fatalities. More needs to be done to protect these vulnerable populations.

Labor performed by immigrants and members of minority groups is particularly fraught with peril. Forty-one of New York State's 219 occupational fatalities (19%) in 2007 were among Hispanic/Latino workers.[1] In New York City, the proportion was even higher; 24 of the 81 occupational fatalities (30%) in 2007 were among Hispanic/Latino workers.[1] Of 24 Hispanic/Latino fatalities, 9 were caused by falls, suggesting involvement in the private construction industry, which experienced 14 of 24 fatalities from falls.[1] The 2005 report "Lives in the Balance" found that non-English speaking workers "were the victims in 48% of accident inspections statewide, and 67% in New York City, in which a worker was killed or at least three

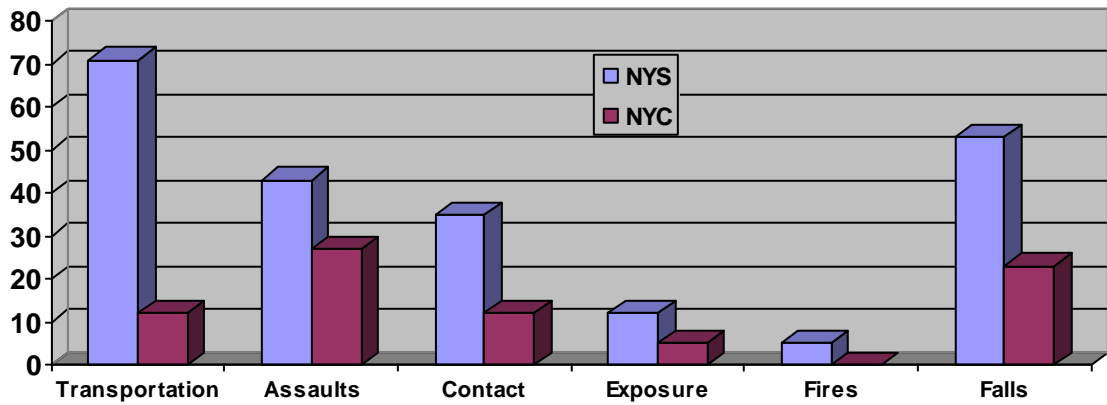
workers were hospitalized overnight.”[2] Immigrants made up 47% of New York City’s workforce in 2006, compared to 15.7% nationally.[3, 4]

Official employment data may not include undocumented workers. In 2005, New York State was estimated to have 650,000 undocumented workers, and construction is one of the most common industries for undocumented workers to find employment.[5] New residential building permits rose from 44,105 units in 2000 to 54,059 units in 2007 [6], a 27% increase, and official employees increased only from 325,325 to 352,062 [7], an 8% increase. It appears likely that undocumented—and “informal”—workers contributed a large portion of the construction boom of the 2000s. Within New York City, the disparity is even more notable; new residential construction permits rose from 15,050 units in 2000 to 31,902 units in 2007 [6], a 112% increase, while the official number of construction employees working in the city rose only from 117,189 to 124,367—an increase of 6%.[7]

A 2006 review by the Associated Press of internal OSHA reports indicated that “workers were more likely to die on construction jobs if they were foreign-born, Hispanic, spoke a language other than English, or worked for a nonunion crew. They were also more likely to die from falls.”[8]

Causes of death are shown in the following figure:

Figure. Occupational fatalities by cause, New York State and New York City, 2007.[1]



“Transportation” indicates transportation incidents; “assaults” indicates assaults and violent acts; “contact” indicates contact with objects or equipment; “exposure” indicates exposure to harmful substances or environments.

Table. Occupational fatalities by cause of death and sector, 2007 (all of New York State).[1]

	Transportation	Assaults	Contact	Exposure	Fires	Falls	Other/not recorded
Private industry	58	36	33	9	3	51	0
State government	4	0	0	0	0	0	2
Local government	8	6	0	3	0	0	6

Causes of death are as in figure above. Note: there were no data available on recorded occupational fatalities in New York State in 2007 of federal government employees.¹

New York State industries with the highest numbers of fatalities included construction and trade/transportation/utility (see table).

¹ When examining causes of death, it is important to remember that these numbers may not incorporate deaths from disease that are caused or exacerbated by occupational hazards—for example, cardiac failure related to hypertension that is made worse by job stress. The Census of Fatal Occupational Injuries, from which these data come, generally includes only those deaths from acute incidents at work.

Table. Fatalities by industry sector, 2007 (all of New York State).[1]

Trade/transportation/utility	62
Construction	57
Public administration	17
Natural resources and mining	16
Professional and business services	13
Leisure and hospitality	13
Manufacturing	12
Education and health services	9
Financial activities	7
Information	6
Other service industries besides public administration	6

Trade/transportation/utility sector has a high risk of vehicle accidents. Thirty-five of the 62 fatalities in the sector were from transportation incidents; this sector also includes interaction with the general public that can also be dangerous. For example, 7 fatalities occurred from assaults/violent acts in food service and drinking places. [1] Vehicle collisions were the most frequent cause of death among government workers.

Fatalities among construction workers remained among the highest of all occupational sectors. New York State had 351,992 workers in the construction industry in 2007,[9] and 57 were killed in 2007. The rate of fatalities in this industry was 16.2 per 100,000—over six times the state fatality rate for all workers.[1, 9] In New York City the fatality rate among construction workers was even higher—18.5 deaths per 100,000.[1, 9] Though New York had lower fatality rates than the national average for the entire workforce, this was not the case with the private construction industry. Nationwide, there were 7,562,732 private construction workers and 1,178 fatalities, a rate of 15.6 per 100,000, versus New York State’s rate of 16.2 per 100,000; in New York City there were 124,286 workers in private construction and 24 fatalities for a rate of 19.3 per 100,000.[1, 9]

In New York City, the number of deaths from falls dropped from a historic high of 33 in 2006 to 15 in 2007.[1] Prior to 2006, the dramatic increase in fatal falls led the City of New York

to hire 10 additional inspectors, enact new regulations governing scaffolding, dramatically increase fines for safety violations, and give inspectors the right to shut down unsafe operations.[10] Although a record number of building permits were issued in 2007, there was a significant decrease in fatal falls during the year.[1, 11, 12] It is likely that newly instituted regulations, increased fines and enforcement may have contributed to the significant decrease in fatal falls in 2007. Outside of New York City, falls rose from 12 in 2006 to 30 in 2007,[1] indicating that the strategy of increased enforcement and regulation should be considered for the entire state.

Trends in on-the-job fatalities

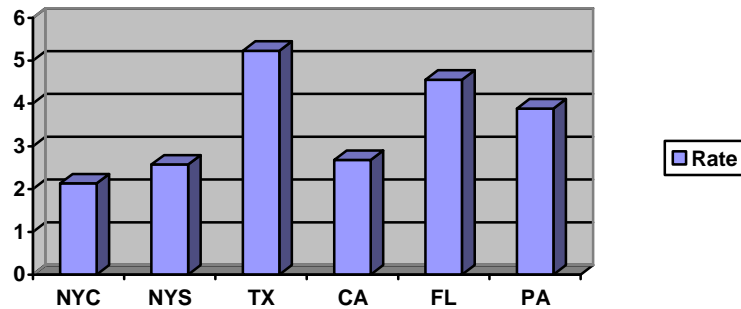
New York State, compared to the nation as a whole, has both a much higher percentage of unionized workers (24.9% in 2008 vs. 12.4% for the entire nation) and a lower rate of occupational fatalities (2.57 per 100,000 vs. 3.7 per 100,000 nationally).[1, 13] Although New York State’s rate of occupational fatalities is below the national average, only four states had higher numbers of occupational fatalities (Texas, California, Florida, and Pennsylvania). Numbers and recent trends of occupational fatalities are found in the following table. A comparison of the 2007 rates of occupational fatalities per 100,000 is shown in the figure.

Table. Numbers of occupational fatalities by state/city.[1, 14]

	NYC	NYS	TX	CA	FL	PA
2007	81	219	527	407	362	220
2006	99	234	489	537	360	240
2005	88	239	495	465	406	224
2004	107	254	440	467	422	230
2003	94	227	491	459	347	208

2002	100	240	417	478	354	188
2001	100	220	536	515	368	225
2000	111	233	572	553	329	199

Figure. 2007 rates of occupational fatalities by state/city, per 100,000.[1, 9]



Over the past five years, New York State fatality rates for workers in state, local, and federal government have tended to be comparable but slightly lower than those in the private sector, as illustrated in the table below.

Table. Occupational fatalities in New York State.[1]

	Private industry	State government	Local government	Federal government	All
2007	190	6	23	No data	219
2006	211	8	13	No data	234
2005	209	3	23	4	239
2004	225	3	22	4	254
2003	191	No data	18	13	227

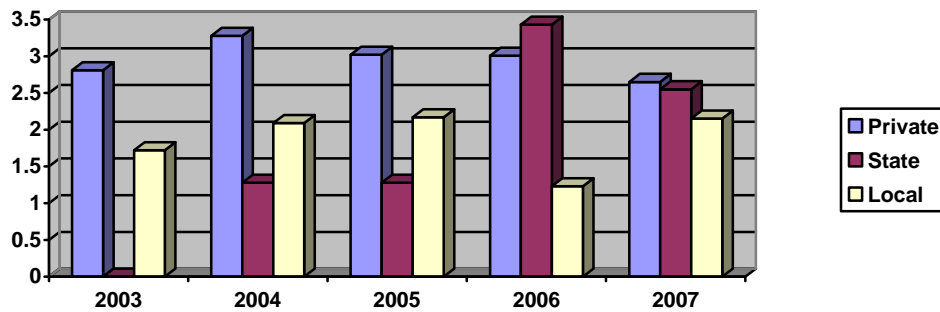
Table. New York State employment.[9]

	Private industry	State government	Local government	Federal government	All
2007	7,122,485	234,947	1,069,920	126,660	8,554,012
2006	7,011,126	233,002	1,058,737	126,655	8,429,519
2005	6,928,662	233,629	1,057,933	128,515	8,348,739
2004	6,854,296	234,958	1,052,578	130,095	8,271,927
2003	6,803,570	236,614	1,049,000	135,204	8,224,387
2002	6,848,947	240,059	1,046,036	137,232	8,272,274
2001	7,019,823	239,082	1,026,371	138,036	8,423,312

Table. Rates of occupational fatalities in New York State per 100,000.[1, 9]

	Private industry	State government	Local government	Federal government	All
2007	2.65	2.55	2.15	N/A	2.56
2006	3.01	3.43	1.23	N/A	2.78
2005	3.02	1.28	2.17	3.11	2.86
2004	3.31	1.28	2.09	3.07	3.07
2003	2.81	N/A	1.72	9.62	2.76

Figure. New York State fatality rates per 100,000, by sector.[1, 9]



Note: The 2003 fatality rate for state workers could not be calculated because there was no data available for this year.

Workplace injury statistics

The injury/illness rate among New York State workers for 2007 was 3.7 per 100—a decline of 0.1% from the 2006 rate of 3.8 per 100.[15] “Recordable cases” include work-related injuries and illnesses that result in death, loss of consciousness, days of work missed, job transfer or restrictions in work activity, medical treatment beyond first aid, or significant work-related injuries or illnesses diagnosed by a licensed health care professional, among other criteria.

Table. Total recordable occupational illnesses/injuries, New York State.[15]

Year	Numbers, in thousands	Rates per 100,000 full-time workers
2007	254.7	3,700
2006	255.4	3,800
2005	259.2	4,000
2004	236.5	3,600
2003	243.6	3,800

Table. Details of occupational illnesses and injury rates, per 100,000 workers, for New York State.[15]

	Total recordable cases of skin disease	Total recordable cases of hearing loss	Total recordable cases of respiratory illnesses	Total recordable cases of poisoning	All injury cases	All injury and illness cases
2007	18	14	27	1	3,600	3,700
2006	22	13	27	2	3,600	3,800
2005	22	15	27	1	3,800	4,000
2004	22	12	25	1	3,500	3,600
2003	28	No data	26	2	3,600	3,800

The private-sector construction industry in New York State had a 4.7 per 100 rate of recordable cases of nonfatal occupational illness and injury in 2007.[16] Though this industry is

primarily associated with injuries, most of the serious work-related illnesses in construction, such as asbestosis or cancers, take years to develop and would not be reported as absences from work.

Whether the decline in the injury and illness rate is meaningful is an open question. The accuracy of OSHA's data has been called into question by some, such as Bob Whitmore, the former head of OSHA's recordkeeping requirements division, who stated before a House committee: "I contend that the current OSHA injury and illness information is inaccurate in part due to wide-scale underreporting by employers and OSHA's willingness to accept these falsified numbers...not enforcing OSHA recordkeeping rules will mean many employers will not record injuries and illnesses affecting their workers." [17] Recent scientific studies have found that government counts of occupational injury and illness are underestimated by as much as 69%. [18] This is particularly true of occupational diseases, which are notoriously grossly underreported. [19]

Enforcement

In New York State, the federal government inspects the workplaces in the private sector—those operated by private industry—through the Occupational Safety and Health Administration (OSHA); state and local government workplaces are inspected by a state agency, the New York State Department of Labor, Division of Safety and Health's Public Employee Safety and Health Bureau (PESH).

OSHA has eight area offices that cover New York State: Albany, Avenel (NJ), Buffalo, Long Island, Manhattan, Bayside, Syracuse, and Tarrytown. Statistics on OSHA inspections in New York State include the Avenel, NJ office, because its territory includes Richmond County (Staten Island); inclusion of this area office's figures means that a small amount of inspections made in New Jersey will be included.

There were 190 occupational fatalities in New York State's private sector in 2007, but there were only 84 OSHA inspections in fatality cases.[1, 20] The total penalties issued by the eight New York State area offices was \$9,493,168 in 2007.[20] Penalties levied in the 84 inspections related to fatalities amounted to \$436,180, for an average penalty of \$5,192.61 per fatality.[20] These fines are well below the national average of \$12,226 for penalties for fatalities in 2007. The national figures may be inflated by large fines levied in several high-profile cases. The average fine per fatality investigation in New York still remains below the national average of \$6,100 for the fiscal years 2003-2006.[21] Furthermore, it should be noted that these numbers show the fines initially issued by OSHA—fines may be reduced if employers contest penalties, and the amount actually collected may be substantially lower. Not one employer cited for a hazard leading to fatality was referred to the Solicitor's Office for criminal prosecution.

The number of OSHA inspectors is totally inadequate to protect New York State's private sector employees. OSHA's budget, when adjusted for inflation, has been cut every year since fiscal year 2001.[22] Though New York added over thirty thousand new private-industry workplaces between 2001 and 2007, OSHA actually had more inspectors in 2001 (98) than in 2007 (95), although inspections rose from 3,687 to 4,048 over the same period.[9, 20] The ratio of inspectors to workers covered in New York State is 1:88,731—far exceeding the International Labor Organization benchmark for industrialized nations of 1:10,000 workers. According to the AFL-CIO's 2008 report "Death on the Job," it would take OSHA 110 years to inspect every workplace in New York State within its jurisdiction.[21]

Although OSHA conducts a disproportionate number of inspections to monitor the construction industry, job safety is effectively enforced by the New York City Department of Buildings, which has 400 inspectors who share the purpose of ensuring safety at construction sites.[23] However, the Buildings Department is pre-empted from enforcing job safety and is tasked with protecting the health and safety of the public. In reality, it is the City's inspectorate

that provides oversight of the hundreds of construction job sites which operate throughout the city.

Fines levied by OSHA for fatalities or for violating the agency’s standards do not serve as a serious deterrent. Nationwide, the average OSHA fine for a serious violation (a violation that exposes a worker to death or bodily harm) in fiscal year 2006 was \$907 [24], an amount that does not represent a significant cost to large employers. OSHA frequently drastically reduces fines after negotiations with the employer. A 2008 analysis by Pro Publica of the 25 highest announced OSHA fines found that in “19 cases, the fines were sharply reduced after appeals and negotiations, dropping an average of 65 percent. Three others were settled the day they were announced after closed-door talks between the agency and companies and three remain open.”[25] Criminal charges, when employed, are mild; as noted in the New York State Trial Lawyers’ Association (NYSTLA) report “Lives in the Balance 2”: “criminal penalties for violation of OSHA requirements are extremely rare, and prison time is almost never served.”[26]

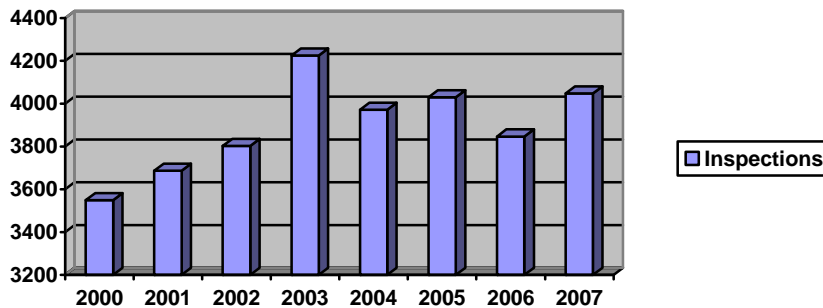
Table. Violations Penalized by OSHA in New York State, 2007 (averages rounded to nearest dollar).[20]

	Number	Average penalty
All violations	9,532	\$996
Willful violations	50	\$22,053
Repeat violations	245	\$3,388
Serious violations	7,448	\$962
Fatality investigations	84	\$5,193
Violations in fatality investigations (all categories)	239	\$1,856

A willful violation is one committed with an intentional disregard of, or plain indifference to, the requirements of the OSH Act and regulations. A serious violation is defined as one in which there is a substantial probability that death or serious physical harm could result, and the employer knew, or should have known, of the hazard. An other-than-serious violation is defined as a condition which would probably not cause death or serious physical harm but would have a direct and immediate relationship to the safety and health of employees. A repeated violation is defined as one where, upon reinspection, a substantially similar violation is found.[26]

Out of the 4,048 total inspections made by OSHA in NYS in 2007, 2,486 were of the construction industry.[20] As discussed, construction has a relatively high rate of fatalities and injuries. However, it only made up 4.9% of the state’s private-sector employment in 2007 [9] but received 61% of OSHA inspections. Targeting enforcement to the construction industry may be an efficient use of limited resources by OSHA, which has been under-funded since it was established in 1970, but it leaves the remainder of the workforce severely under-protected.

Figure. OSHA Inspections in New York State, 2000-2007.[20]



State/local enforcement; PESH

The New York State Division of Occupational Safety and Health (PESH) made 1,560 inspections in 2007. In 2007 there were 1,304,867 workers in New York state and local government.[9] Consequently the ratio of inspections to state and local government workers was 1:836. PESH issued 4,246 violations in 2007. [27]

Table. OSHA (in NYS) and PESH inspectors, inspections, and workplaces (2007).[9,20,27-29]

	Inspectors	Inspections	Workplaces within purview	Workplaces per inspector	Inspections per workplace
OSHA	95	4,048	563,450	59,311	.007
PESH	53	1,560	7,288	138	.214

PESH's 1,560 inspections in 2007 were down from the 2,082 it made in 2006, the 2,019 it made in 2005, the 2,093 it made in 2004, and the 2,059 it made in 2003.[27-29] This is in spite of increasing numbers of workplaces.

PESH's number of inspections did not represent an increase from the previous decade. In 1999, the agency was subjected to complaints by public sector union representatives and critical oversight and review by OSHA when it made 1,863 inspections and failed to meet several of OSHA's major benchmarks.[30]

PESH's penalties are limited to a maximum of \$200 per day for a serious violation and \$50 per day for a non-serious violation, until abatement of the hazard. Penalties are only assessed for failure to abate a violation.[31] OSHA penalties are not limited to such a small amount. During 2007, PESH assessed \$478,988 in penalties and collected a paltry \$29,327,[27] arguably reflecting the agency's difficulty with the State Attorney General's Office which litigates the collection of fines.

Despite the fact that PESH has a dramatically higher ratio of inspectors to the number of workers in the state than OSHA, public sector workers continue to face workplace hazards which result in death and serious injury.

According to a report issued by the President of the New York State Civil Service Commission, for Fiscal Year 2007/08 there were 15,846 work-related injuries.[32] Using New York State Workers' Compensation Data, CSEA, a union representing state, county and municipal workers, found the overall incident rate for the executive branch of New York State is **9.6%** (defined as the number of injuries per 100 employees). The national average is **4.2**.

Approximately 1 in 4 incidents (4,271) resulted in lost time, with 247,075 lost workdays.[32] This only counts injuries with six or more lost workdays and only in the executive branch.

The **top three causes of incidents** were:

1. overexertion/exertion (26.3%)
2. falls (19.1%)
3. assaults (11.2%).

The **top three kinds of injuries** were:

1. soreness and pain, excluding the back (30.1%)
2. sprains, strains and tears (15.8%)
3. bruises and contusions (8.5%).

In fiscal year 2007/08, \$18,690,687 was paid for lost wages, and \$19,690,167 for medical treatment. This puts the total direct cost for the executive branch reported incidents at \$38,380,854.[32] Applying the OSHA formula for indirect costs (overtime, retraining, etc.) for people out on workers' compensation, the total potential indirect cost to New York State for injuries in the executive branch in fiscal year 2007/08 could be as high as \$209 million, making the potential costs \$248 million!

Since August 2006, PESH has operated under a revised State Plan agreement with OSHA, under which the Commissioner of Labor “has the authority to prohibit the use of any machinery, equipment or device in a dangerous condition, and to prohibit work in, or occupancy of, areas found in a dangerous condition, until the condition is corrected and the notice is removed by the Commissioner.”[31] In such private sector cases of “imminent danger,” OSHA can only ask a federal judge to order the employer to eliminate the imminent danger.[33] However, according to representatives of the New York State Department of Labor, this provision of the law is rarely exercised.

Conclusions

No worker should have to risk his or her life just to go to work; yet in 2007, 219 workers in New York State and 81 in New York City did not come home from work. The real tragedy is that these deaths are preventable, yet government agencies, charged with the responsibility of ensuring all workers have “a place of employment which are free from recognized hazards” do not have the resources to do their jobs.

OSHA lacks the resources to ensure that New York State workers “are provided with a workplace which is free from recognized hazards.” Immigrant and nonunion workers are particularly at risk. Given its lack of resources to enforce the law, OSHA’s regulations are widely violated. Even when employers are cited for violations of the agency’s standards, OSHA’s penalty structure is insufficient to serve as a deterrent. Fines are reduced, and unsafe workplaces remain. In New York State, and in New York City in particular, though the construction boom seems to be abating, the numbers of fatalities in this sector are still high compared to workers in general, and many employers fail to prioritize safety and contribute further to the dangers. More vigorous enforcement is needed, along with penalties severe enough to act as practical deterrents.

Many of these problems need to be addressed structurally. OSHA’s enforcement budget needs to be dramatically increased. According to OSHA’s Region 2 Director, given the staffing levels, the agency can conduct approximately one construction inspection per day in the New York metropolitan area. In a city with hundreds of construction sites, this is unacceptable.

The Occupational Safety and Health Act needs to be amended. The AFL-CIO and Change to Win are urging the enactment of legislation called the “Protecting America’s Workers Act,” which would dramatically improve OSHA enforcement. This legislation would greatly improve safety in the American workplace by ensuring that all workers are covered by health and safety laws, increasing penalties for those companies that break these laws, strengthening

protections for whistleblowers, and enhancing the public's right to know about workplace safety violations.

Recent fatalities resulting from crane collapses have forced OSHA to move forward to promulgate a new crane standard, which had been delayed by the Bush administration. While the standard would be an improvement over the current, outdated 1972 standard, it pre-empts localities such as New York from enforcing standards stronger than those in the regulation. For New York City, pre-emption would result in significant risks to workers and the general public since it would prevent the New York City Department of Buildings from licensing crane operators, inspecting work sites and enforcing regulations which are significantly stronger than those required in the proposed OSHA regulations.

New York State and New York City must develop a strategy for reduction of worker injuries, occupational diseases and fatalities. Currently, no agency has the overall responsibility for devising and implementing a strategic plan to reduce workplace fatalities and injuries. Working cooperatively with the unions representing New York State, county and municipal employees, government agencies need to develop a concerted program to reduce workplace injuries and illnesses.

Acknowledgments

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