

2013

Preventable Deaths: The Tragedy of Workplace Fatalities

A Report Presented by the National Council
for Occupational Safety and Health (COSH)

OUR MISSION

The National Council for Occupational Safety and Health is dedicated to promoting safe and healthy working conditions for all working people through organizing and advocacy. Our belief that almost all work-related deaths and serious injuries and illnesses are preventable motivates us to encourage workers to take action to protect their safety and health, promote protection from retaliation under job safety laws, and provide quality information and training about hazards on the job and workers' rights.

TABLE OF CONTENTS

Overview	p.3
The Latest Data	p.4
Topics Covered	p.5
Temporary Workers	p.6-8
OSHA Fines	p.7
Immigrant Workers	p.9-12
Whistleblower Protection	p.11
Young Workers	p.13-16
Heat Stress	p.17
Workplace Violence	p.18-20
Energy	p.21-24
Conclusion	p.25-26
Glossary	p.27-28
Endnotes	p.29

OVERVIEW

Each year, thousands of working men and women die on the job. On April 28, we observe Workers' Memorial Day to remember those men and women who have suffered or died on the job from workplace injuries and diseases. It is our opportunity to renew our efforts for safe workplaces and bring together workers, their families, community-based worker centers, unions, environmentalists, and other health and safety advocates in a unified effort to alert the public and the government to our outrage and our demands for action that leads to better workplace health and safety.

This report will highlight stories of workers killed on the job last year; data about worker fatalities from 2011– the latest year for which we have complete records; new and ongoing trends in workplace safety; and our recommendations to keep workers safe on the job.

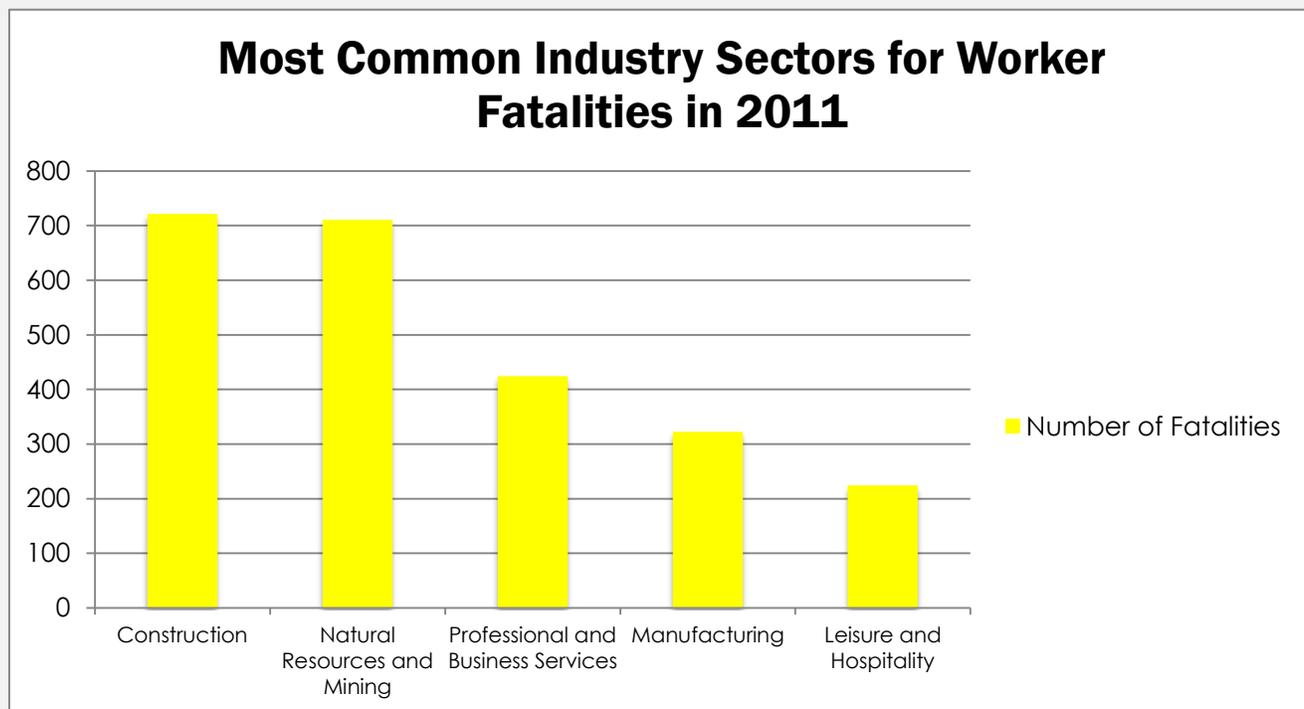
This report is not intended to be comprehensive. The fatalities depicted here represent only a fraction of the workers killed on the job, and the issues discussed throughout the report only begin to touch on hazards that many workers experience on the job. Additionally, this report does not cover the tens of thousands of workers who develop occupational illnesses every year – the “silent killers” at many American workplaces.

Information for this report was compiled by using a variety of resources, including the U.S. Bureau of Labor Statistics' Census of Fatal Occupational Injuries (CFOI), documentation from the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) and from the U.S. Centers for Disease Control and Prevention's National Institute for Occupational Safety and Health (NIOSH), as well as from news stories and analyses.

THE LATEST DATA

In 2011, 4,609 workers were killed on the job, spanning many industries and causes of death.

Of the workers killed on the job in 2011, the most common industry sectors were construction (721 fatalities); natural resources and mining (711 fatalities); professional and business services (424 fatalities); manufacturing (322 fatalities); and leisure and hospitality (224 fatalities).¹



The most common causes of death on the job that year were from transportation incidents (1,898 fatalities); violence and other injuries by people or animals (780 fatalities, most of which were inflicted by humans); fatal contact with objects and equipment (708 fatalities); and falls, slips and trips (666 fatalities).²

Most Common Causes of Worker Fatalities in 2011	
Cause of Death	Number of Fatalities
Transportation Incidents	1,898
Violence and Other Injuries by People or Animals	780
Fatal Contact With Objects and Equipment	708
Falls, Slips and Trips	666

TOPICS COVERED

This report will cover trending topics in workplace safety, including the health and safety of temporary workers, immigrant workers, young workers, and workers in the energy sector, as well as topics like whistleblower protection, workplace violence, OSHA fines, and heat stress.

These issues are all priorities of the National Council for Occupational Safety and Health. This coming year, National COSH will pay particular attention to the safety of temporary and immigrant workers, as well as the issues of retaliation and workplace violence.

TEMPORARY WORKERS



On August 16, 2012, 21-year-old Lawrence Daquan "Day" Davis – just days over the legal drinking age – showed up to the Bacardi Bottling Corp. in Jacksonville, Fla., for his first day as a temporary worker. The facility bottles all of the rum Bacardi distributes around North America.

Just before 5 p.m. on that first day, Davis was cleaning glass from under the hoist of a palletizing machine, which stacks cases of Bacardi's rum, when another employee restarted the palletizer. Davis was crushed to death by the machine.

Bacardi Bottling had failed to train temporary employees on using locks and tags to prevent the accidental startup of machines and to ensure its own employees utilized lock-out/tag-out procedures.

Federal OSHA cited Bacardi Bottling with 12 safety violations in the incident – two "willful," nine "serious," and one "other-than-serious." The company was fined \$192,000. According to a statement from Bacardi Bottling, the company has addressed or put in place plans to resolve all safety and health matters identified by OSHA.

"A worker's first day at work shouldn't be his last day on Earth," OSHA chief David Michaels said in a news release about the citations. "We are seeing untrained workers – many of them temporary workers – killed very soon after starting a new job. This must stop. Employers must train all employees, including temporary workers, on the hazards specific to that workplace – before they start working. Had Bacardi done so, this tragic loss of life could have been prevented."



Dr. Michaels is absolutely correct, and unfortunately, Davis' death was not unusual for the temporary staffing industry.

In October 2012, Terry Palmer, a 42-year-old temporary worker from Winston-Salem, N.C., was working at the Chipita America plant in Yadkinville, N.C. Chipita America manufactures products like 7 Days croissants, New York Style Bagel Chips, and Old London Melba Toast.



While trying to free a pan that had become stuck, Palmer crawled under a conveyor belt and got caught in the machinery. First responders were able to free Palmer and perform CPR, but he died a short time later.

This wasn't the first time a worker was caught in a conveyor belt at the plant. The North Carolina Department of Labor fined the plant twice in 2011 for "serious" and "other-than-serious" safety violations; the plant paid the \$3,250 fine for an incident in which another employee was caught in the conveyor belt, but survived.

Just one month before Palmer was killed, B&G Foods, Inc., announced an agreement to

acquire the Yadkinville plant and Chipita America's key brands for \$62.5 million in cash, which makes the plant's OSHA fine a drop in the bucket.

The U.S. Bureau of Labor Statistics reports that as of August 2012, there were 2.54 million temporary workers in the country; in 1990, there were 1.1 million. As corporations, small businesses, and nonprofits alike have struggled through the Great Recession, many have employed temporary workers as a way to reduce costs.

A report by the Labor Relations and Research Center at the University of Massachusetts indicated that an astonishing 90 percent of American businesses use temporary labor.

The American Staffing Association, a trade group, says the hiring of contingent workers allows employers to staff up at their busiest times and downsize during lulls.³

But temporary workers face a tough employment predicament: Many receive insufficient training or are inexperienced with how to protect themselves on the jobsite, but are reluctant to mention that to employers so that they aren't replaced. Additionally, when compared to standard employees, temporary workers tend to be younger, less educated and disproportionately consist of minority workers, many of whom might be immigrant workers, UMass researchers found.

OSHA Fines Are Inadequate

The Occupational Safety and Health Act limits the fines that OSHA can levy against negligent employers to a maximum of \$7,000 per safety violation deemed "serious" – even if the violations resulted in a worker death.

The average fine under federal OSHA for a serious violation is a paltry \$1,680. And in states with their own OSHA program, the average fine is even lower.

But because many companies found to disregard workers' safety and health make significantly higher profits than the cost of their OSHA fines, they may factor in the fines simply as a cost of doing business instead of merely ensuring on-the-job safety for workers.

Repeated attempts to amend the OSH Act to raise these maximum penalties – even to keep up with inflation over the decades since they were established – have failed in the U.S. Congress.

National COSH and its allies will continue to press for a stronger OSH Act, including tougher penalties on and criminal sanctions against negligent employers.

At the same time, temporary workers are employed in some of the country's most hazardous jobs, including waste recycling, fish processing and construction.

As a recent Center for Public Integrity feature on the plight of temporary workers reported, "there's little incentive for host employers to rigorously train and supervise temp workers because staffing agencies carry their [workers'] comp insurance. If an agency has a high number of injuries within its workforce, it — not the host employer — is penalized with higher premiums."⁴

Cal/OSHA, California's OSHA program, has taken a proactive stance to holding dual employers in the warehouse and recycling industries responsible for worker health and safety. Prompted by warehouse worker complaints, inspectors throughout Southern California identified unguarded machinery, inadequate fall protection and forklift safety programs, and lack of training and personal protective equipment among temporary workers. Southern California, with the largest concentration of warehouses in the world, is increasingly relying on temporary workers. The inspection led to more than \$250,000 in fines and 29 serious citations. Issued in January 2012, they held both the warehouse operator and the temporary staffing agency responsible for these violations.

Cal/OSHA's approach to dual citations conveyed a critical message to the warehouse industry and, later in the year, to the recycling industry.

The state of Massachusetts also has taken action to protect temporary workers. This year, the Bay State enacted the Temporary Worker Right to Know Law. Now, temporary staffing agencies across the state are required to give each worker a written job order, providing information that every worker has a right to expect before going to a job. It also protects temporary workers against retaliation; some temporary staffing agencies blacklist or threaten deportation to temporary workers who speak up about safety or other issues on the job. Finally, the legislation provides tools for the Department of Labor Standards to bring temporary staffing agencies into the light to ensure transparency and accountability.

MassCOSH and partners in the Reform Employment Agency Law (REAL) Coalition worked with Massachusetts lawmakers to pass this important bill.

"This law will bring essential sunlight to the shadows where these abuses have taken place, and help ensure fairness for workers and employers who follow the state's labor laws," said Marcy Goldstein-Gelb, executive director of MassCOSH and coordinator of the REAL Coalition.⁵

National COSH calls on more states to enact similar legislation to provide protections for temporary workers. In fact, the organization will make it a priority to work with local, state and federal government officials to make similar legislation a reality throughout the country.

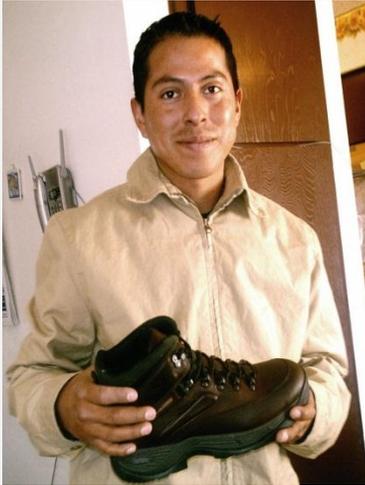
Dr. Michaels also indicated recently that temporary workers' safety is an ongoing focus for the agency.

To learn more about the Massachusetts legislation, visit: <http://masscosh.org/node/800>.

IMMIGRANT WORKERS

¡BASTA CON LAS MUERTES!

An expression in Spanish meaning ENOUGH DEATHS!



One day in April 2009, Orestes Martinez (29) and two co-workers were working at a construction site for the M.D. Anderson Cancer Center in Houston, Texas, helping to install a two-ton, lead-lined door in the radiation department of the hospital. They were moving the door by hand since no lift device was available. During the installation, the door fell on Martinez, crushing him to death.

Federal OSHA investigated and cited Martinez's employer, J.T. Vaughn Enterprises, for two serious violations. The agency proposed a penalty of \$10,000 against the employer, but J.T. Vaughn Enterprises contested the citation and penalty by trying to shift the blame on to the workers. An administrative law judge withdrew one citation and reduced the penalty for the other violation to \$3,500. The case closed in April 2011.

This, unfortunately, is not an isolated incident. These heart-wrenching stories are echoed across the country for immigrant working families, and countless go untold.

While the overall U.S. fatality rates for workers have gradually decreased over time (though they are still too high), the fatality rate for immigrant workers has increased at an alarming rate.

The occupational fatality rate for Latinos has been the highest among all groups in the United States for 15 years, with a fatality rate of 3.9 per 100,000 workers in 2010.

The high death toll of immigrant workers in the U.S. shows the urgent need to improve their working conditions. Studies suggest that foreign-born workers are more likely to work in risky jobs than native-born workers. For example, immigrants are disproportionately employed in agriculture and construction – sectors that see some of the highest injury and fatality levels. Moreover, immigrants may be in riskier jobs or perform more dangerous tasks than natives within those sectors.



Losing my husband, my best friend, my love has left an empty space in my heart. The pain is indescribable. Nothing will ever be the same again, EVER. I have to learn how to live again, how to enjoy life, how to smile, how to be happy without feeling guilty, how to deal with this pain, how to deal with lonely nights. I need to learn how to face simple life situations, like the happiness of others, couples getting married and having babies, hearing about someone's romantic dinner, knowing that they have someone to hold their hand and give them a hug when they are down, and knowing they still have someone to share their accomplishments and their life with. I am left with pain; my happiness was taken away from me in a matter of seconds. My life completely changed because someone put a price tag on my husband, because they did not do the right thing. I feel empty and broken. What hurts the most is that his death was preventable.

I am not the same happy person that I was 4 years ago. I do not smile as often. My feelings are like a roller coaster that I have no control over. Anger takes over me. I would give everything to hold his hand again, hug him, or just see his smile.

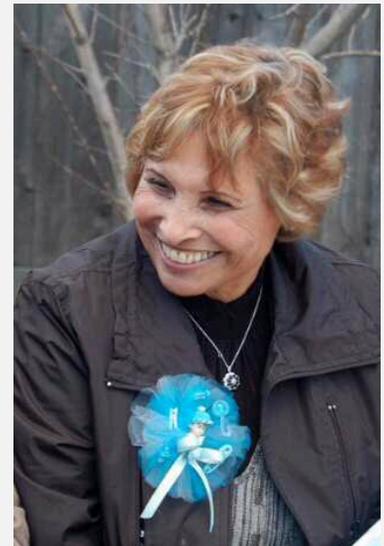
Every day I have to fight a battle. I do not want this to happen to anyone. Although this is a long and difficult journey, I have chosen to fight in his name and for others, and to make a difference in someone's life. My fight...his fight... has just started!

-Adriana Martinez, wife of Orestes Martinez

Evangelina "Eva" Macias (66), an immigrant from La Palma Michoacan, Mexico, loved to work. For nearly 30 years, Macias worked in an East Bay plant making wood for Number 2 pencils. When that plant closed, she was hired at Waste Management's Davis St. material recycling and transfer plant in San Leandro, Calif. It is North America's largest recycling company.

Macias thrived there for 13 years, working as traffic director, directing the public to drop-off areas. But on June 18, 2012, she was hit and run over by a front-end loader truck driven by a co-worker. The operator couldn't see her because the bucket on the loader was too high off the ground. She died that night in the hospital.

Cal/OSHA inspected and cited the company for two serious safety violations in response to Macias' death, proposing a total penalty of \$50,750. Waste Management is appealing.



Macias' death, among other reasons, inspired a wide coalition to form the Sustainable Recycling Coalition. The coalition includes 18 environmental, worker, community, immigrant rights, workplace health and safety, governmental, faith and legal organizations. For more information about it, see <http://warehouseunion6.wordpress.com/category/sustainable-recycling/>.

Immigrant workers face multiple obstacles to finding and keeping decent employment in the U.S. Many have limited English abilities, lower levels of education, and insecure immigration status. Even when documentation is not a major issue, immigrant workers may be subject to discrimination and exploitation in the workplace. Their ability to access information and services about workers' rights and other health and social services might be hampered by barriers imbedded in the systems workers turn to for help. These include lack of language accessibility; justice, social services and health care personnel who lack knowledge about immigrant workers' legal rights; incorrect assumptions about the immigrant workers' culture; and anti-immigrant sentiment. The gap between resources and the realities of immigrant workers is one of the many contributing factors to the high rate of immigrant worker injuries and fatalities.

COSH groups across the country have been vital and vocal advocates for immigrant workers' rights. They have established education and training programs for hard-to-reach workers, empowering them to come out of the shadows and exercise their rights, and have urged OSHA to escalate enforcement efforts.

In 2012, the Southern California Coalition for Occupational Safety and Health (SoCalCOSH) and the California OSH Activist Network were instrumental in assisting the Don't Waste LA Campaign file a Cal/OSHA complaint against American Reclamation Inc. and its affiliated subsidiaries, which are recycling waste companies subjecting immigrant workers to deplorable working conditions. In response, Cal/OSHA issued a total of 36 citations to three recycling companies; five of the 36 citations were issued against American Reclamation.

Whistleblower Protection

A health and safety issue affecting all workers is whistleblower protection. Without protection for workers who blow the whistle on unsafe conditions or practices on the job, workers are afraid of retaliation for speaking up.

This is particularly worrisome for immigrant and temporary workers. Immigrant workers may be fearful to report unsafe conditions because of a threat – spoken or unspoken – of deportation or other forms of retaliation. Similarly, temporary workers may be fearful to report unsafe conditions because they worry about being easily replaced in an already precarious employment situation.

Workers who report safety and health hazards on the job are supposed to be protected from retaliation under section 11c of the OSH Act. Sadly, the system for protecting whistleblowers from retaliation is badly broken and has never effectively functioned to protect workers from retaliation. Several independent government audits have found that very few workers who are fired for reporting hazards ever get their jobs back.

National COSH believes that the OSH Act can never truly protect workers if they don't have a real right to speak up for their health and safety. That's why we are working to promote real protections for whistleblowers, both through proposed changes to the OSH Act and through changes in the way that local and regional offices handle whistleblower complaints. Additionally, OSHA must make efforts to communicate whistleblower protections to employees and employers, even if they have limited English proficiency.

SOME RECOMMENDATIONS TO IMPROVE ACCESS TO SAFER AND HEALTHIER WORKPLACES FOR IMMIGRANT WORKERS INCLUDE:

- Meaningful immigration reform that would encourage immigrant workers to come out of the shadows and report unsafe working conditions without fear of retaliation and to exercise their labor rights.
- Coordinated enforcement projects involving various Department of Labor offices, such as developing and implementing pilot projects that target specific industries where high percentages of immigrants work. These efforts would include the involvement of the enforcement arms of the U.S. Department of Labor's Wage and Hour Division and state workers' compensation programs.
- Full implementation of an OSHA policy granting community and worker advocacy organizations the authority to file complaints in order to ensure that immigrant workers and family members can fully participate in the investigation process.
- An increased number of OSHA staff members who can serve as qualified interpreters and who are fluent in the most common languages spoken by Limited English Proficiency (LEP) workers. Additionally, implementation of an OSHA policy prohibiting supervisors from interpreting for LEP employees during an inspection is necessary.
- Posting of inspection notices and workers' rights – in languages spoken by the workforce – throughout a facility upon initiating an OSHA inspection. Furthermore, OSHA should require employers to post citation notices in the languages spoken by their employees.
- Removal of the OSHA directive instructing inspectors to ask workers for identification.
- OSHA recognition that immigrant workers are especially vulnerable to company retaliation when reporting conditions. OSHA should make efforts to communicate whistleblower protections to employees and employers.

YOUNG WORKERS



Wyatt Whitebread (14)

On a stifling hot day in July 2010, Wyatt Whitebread (14) of Mt. Carroll, Ill., joined his friends Alex Pacas (19) and Will Piper (20) at their work at the Haasbach LLC grain storage complex in Mt. Carroll. It was Pacas' second day on the job; Piper had been there for three weeks.

That day, the three boys climbed a ladder to the top of the four-story grain bin to break up the kernels that had clung to the wall and were clogging the drain hole at the bottom of the bin – an illegal process called “walking the grain down.”

Not long after starting, Whitebread sank into the 250,000 bushels of wet corn contained in the half-full bin and disappeared. Pacas and Piper also began to sink and struggled to stay on the surface as they awaited help. Six hours later – after rescuers, harnessed and tethered to avoid being pulled in themselves, worked to free the boys – only Piper was carried out alive.

As many as 200 rescuers and helpers were involved in draining the corn from the bin in attempts to free the boys, and 30 semi trucks were required to carry away the corn that had suffocated them. Piper later described the corn as acting like quicksand.

This horrific story was the center of a recent investigation by NPR, the Center for Public Integrity, and the Kansas City Star. Even worse were the findings of how common grain bin deaths are – and how infrequently employers are held accountable.

The news organizations found that nearly 500 people have suffocated in grain bins since 1964, and 2010 was the deadliest year on record, with 26 workers dying in grain entrapments.

Nearly 500 people have suffocated in grain bins since 1964, and 2010 was the deadliest year on record.

“At least 165 more people drowned in wagons, trucks, rail cars or other grain storage structures. Almost 300 were engulfed but survived,” the Center for Public Integrity reported.

And most tragic of all – 20 percent of the 946 people caught in grain were under 18.

20 percent of the 946 people caught in grain were under 18 years old.

Federal law already imposes age restrictions for grain bin work both on and off farms. Grain bins are defined as confined spaces. On farms, kids younger than 16 are prohibited from working in them; in commercial grain bins, 18 is the minimum age for work, NPR reported.

But on farms in general, it is not unusual to see children as young as 12 years old putting in their hours, thanks to a loophole in the Fair Labor Standards Act.

The Obama administration proposed a rule in 2011 that would have put dangerous farm work off-limits to young people, but the administration withdrew the proposal in April 2012 amidst pressure from the powerful agriculture industry.

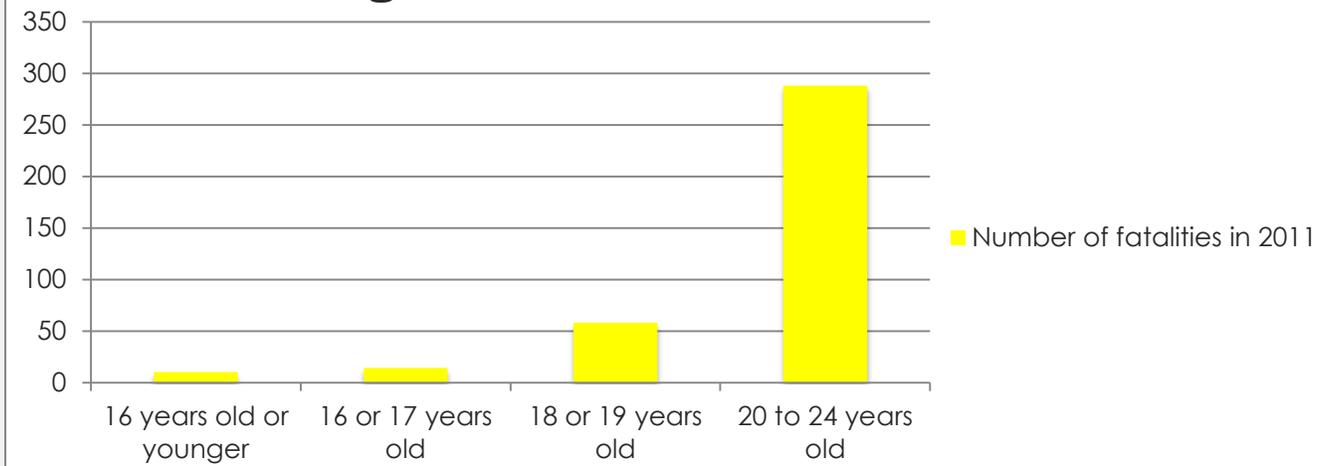
However, even the 2011 proposal fell short of true protection. There is much evidence about a number of hazards mentioned, such as working in grain silos and other grain handling facilities, that should be prohibited for all minors. Other elements of the proposal for those under 16 included the use of tractors if they are not involved in a vocational education program; working at heights greater than 6 feet; roofing and construction work on farms; handling green tobacco; and pesticide categories compatible with those regulated by the EPA.

The proposal requested input on protections for youth exposed to temperature extremes, such as heat stress, and received some comments addressing the increased vulnerability of youth. Currently, there are no limits on the number of hours minors may work in agriculture, except in those few states that have child labor regulations of their own, such as Washington.

There has been no indication that the Obama administration plans to reintroduce the proposed rule to protect young farm workers – or any version of it.

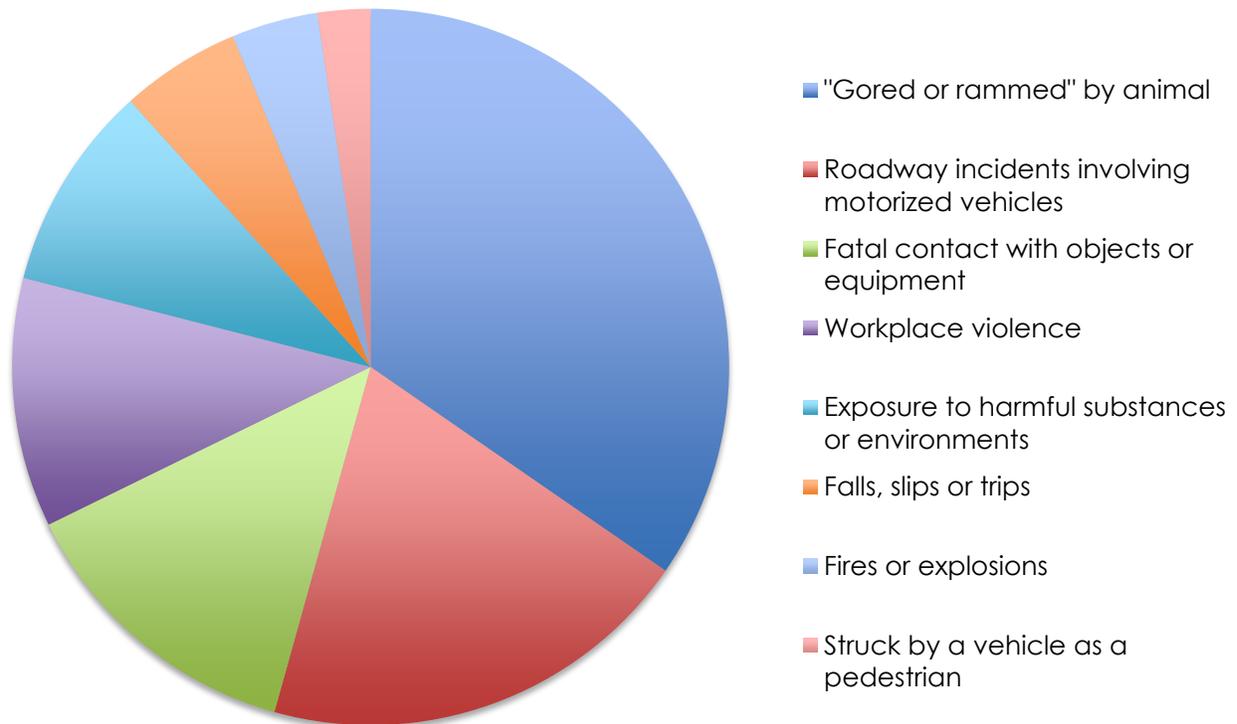
Of the 4,609 workers who were killed on the job in 2011, 370 were under the age of 25: 10 were 16 years old or younger; 14 were either 16 or 17 years old; 58 were 18 or 19 years old; and 288 were between 20 and 24 years old.

Young Workers' Fatalities in 2011



The most common causes of death in these age groups were from being “gored or rammed” by an animal (160 fatalities); from roadway incidents involving motorized vehicles (91 fatalities); from fatal contact with objects and equipment (62 fatalities); from workplace violence (52 fatalities); from exposure to harmful substances or environments (43 fatalities); from falls, slips or trips (25 fatalities); from fires or explosions (18 fatalities); and from being struck by a vehicle as a pedestrian (11 fatalities).

Causes of death for young workers in 2011



In response to the news organizations' prominent investigations, the U.S. Department of Justice reportedly has asked the U.S. Department of Labor for the Mt. Carroll case files, an indication that the Justice Department may again consider criminal charges regarding the grain bin deaths.⁶

Also, possibly in response to the recent series, Sen. Patty Murray (D-Wash.) has reintroduced the Protecting America's Workers Act (PAWA – SB 665). The legislation has failed to make it through the legislative process in previous years.

PAWA would make felony charges possible when repeated and willful violations result in a worker's death or serious injury; the bill also calls for tougher penalties.

RECOMMENDATIONS:

National COSH urges the Obama administration to once again issue a proposal to protect the nation's youngest workers who toil on farms across the nation.

National COSH also calls on Congress to pass the Protecting America's Workers Act to ensure that all workers – not just those working in dangerous grain bins – return home safely at the end of the day.

HEAT STRESS

Every year, thousands of workers become sick from occupational heat exposure, and 134 workers died from excessive heat between 2009-2011, OSHA reports. Agricultural and construction workers and workers not accustomed to high heat conditions are particularly vulnerable to heat stress because of the hours they log in hot weather and direct sunlight or hot environments inside.

Excessive heat exposure while on the job can result in heat exhaustion, with symptoms such as nausea, headaches and extreme thirst, which, if not promptly treated, can progress to heat stroke and death. Workers are particularly susceptible to the effects of heat, in part, because certain types of clothing, such as personal protective equipment, block the normal sweat evaporation response, the body's most critical cooling mechanism. The most vulnerable are agricultural workers, who account for more than one in five deaths resulting from environmental heat exposure.

NIOSH undertook an extensive study in 1972 on heat exposure and recommended that OSHA adopt a standard to protect workers from dangerous heat-related effects. In response, OSHA appointed an advisory committee that proposed a heat exposure standard.

In 2011 – nearly 20 years later – OSHA launched an educational campaign for employers and workers on the dangers of heat exposure, but has yet to enact a federal standard to protect workers. When OSHA does address dangerously hot conditions for workers, it relies primarily on its indirect authority under the General Duty Clause of the 1970 law that created the agency. In reality, OSHA rarely uses the General Duty Clause to issue a citation because of the difficulty in proving knowledge of the dangerous conditions if the employer appeals.

Three states – California, Washington and Minnesota – and the military have enacted standards that go a long way toward protecting their workers from extreme heat conditions. The standards require employers to do such things as provide drinking water, shade and rest breaks, in addition to training employees on the hazards of heat stress.

OSHA has launched a campaign to protect workers from excessive heat exposure, but has stopped short of promulgating a rule to explicitly provide protections.

OSHA should enact a federal standard that protects workers – both indoors and out – from excessive heat exposure. The standard should include access to sufficient drinking water and shade, as well as mandatory rest breaks on particularly hot days, among other measures.

WORKPLACE VIOLENCE



On Jan. 20, 2011, Stephanie Moulton, a 25-year-old social worker, arrived for her day shift at a group home in Revere, Mass. Seven of the patients living in the group home had already left to attend other programs, but Moulton was scheduled to accompany 27-year-old Deshawn Chappell, a newer client at the house, to a counseling session.

Chappell, a diagnosed schizophrenic man with five assault arrests behind him, had stopped taking his medication in the midst of his move from a Charlestown, Mass., group home, from which he was transferred after getting into a fight with another resident.

Moulton and Chappell were scheduled to be alone together in the house until another employee arrived to pick them up for the counseling session. It was not unusual for employees of the North Suffolk Mental Health Association to be working alone. Moulton was not aware of her client's violent history.

The other North Suffolk employee had pulled up to the Revere house to take the two to the counseling session when she discovered blood in the driveway and noticed that Moulton's Chrysler PT Cruiser, which was typically parked in the driveway, was missing.

Moulton's 5-foot-1, 100-pound body was later found, partially nude, dumped in a nearby church parking lot. Chappelle had severely beaten and repeatedly stabbed her to death.

In the wake of Moulton's murder, OSHA cited the North Suffolk Mental Health Association for a "number of incidents of violence or threatened violence" at locations operated by North Suffolk, and suggested a fine of \$7,000 – the maximum amount that can be levied against an employer for a "serious" violation. North Suffolk is contesting those citations for being "overly vague" and for stigmatizing mentally ill patients as a "preventable recognized hazard." The case is currently pending at the OSHA Review Commission.

OSHA dismissed another North Suffolk worker's complaint about inadequate staffing in August 2011, saying it lacked jurisdiction. In the complaint, the worker had said that North Suffolk's cuts "resulted in violence," as well as "health and safety violations for both clients and staff."

An independent investigation by New England Center for Investigative Reporting and WBUR (Boston's NPR affiliate) found widespread concern from direct-care workers about workplace safety and security. The investigation also found that "even when safety concerns were brought to the attention of federal regulators, action was not always taken, in part because of a lack of workplace violence standards and jurisdictional issues."

Without a federal standard for workplace violence, OSHA has to resort to using the agency's General Duty Clause to protect workers' safety in this capacity.

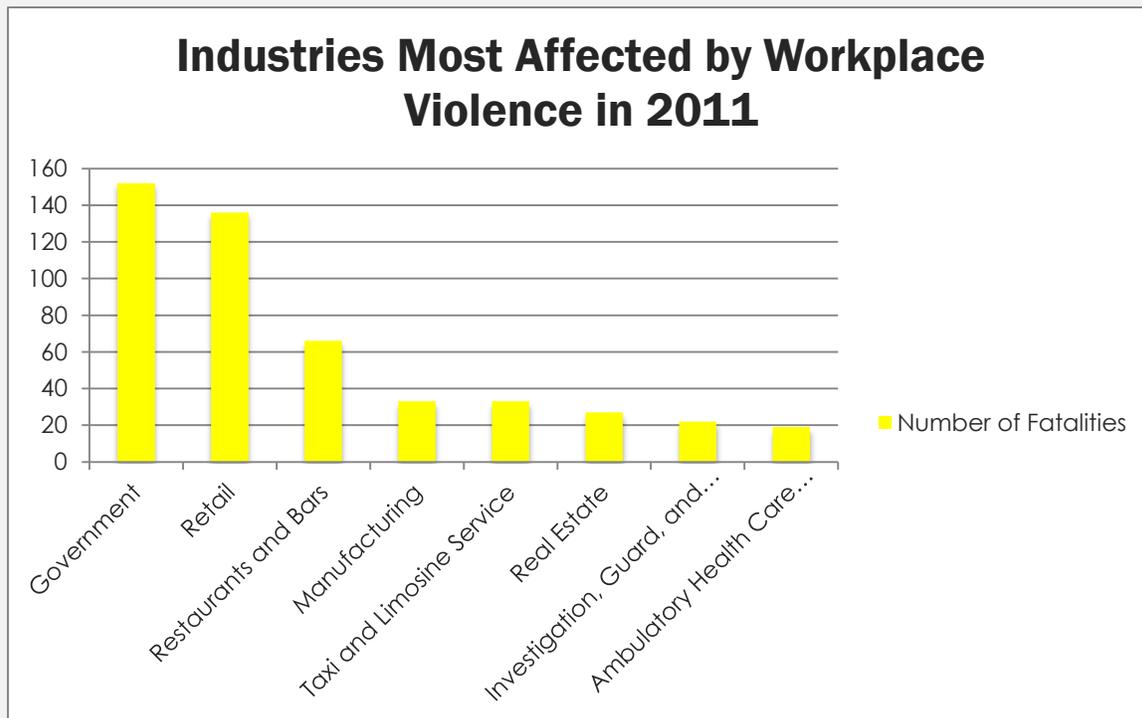
Moulton's mother, Kim Flynn, has filed a wrongful death suit against North Suffolk. She also has testified about occupational safety for social workers at the Massachusetts Statehouse, and she is working with lawmakers to pass "Stephanie's Law," a state law that would give all workers in mental health facilities a panic button to summon emergency help.

Additionally, Massachusetts Gov. Deval Patrick in February of this year signed into law the "Social Work Safety in the Workforce" bill, which requires all direct services providers that receive funding from the Executive Office of Health and Human Services (HHS) to provide workplace violence prevention and crisis response plans.⁷

MassCOSH had heartily endorsed the legislation.⁸

But unfortunately, social workers are far from the only workers exposed to violence on the job.

There were 458 fatalities officially categorized as "at-work homicides" in 2011. Of these, 358 were gun-related.



Industries most affected by workplace violence in 2011 were retail (136 fatalities) – particularly food and beverage stores (65 fatalities) and gas stations (16 fatalities) – restaurants and bars (66 fatalities); manufacturing (33 fatalities); taxi and limousine service (33 fatalities); real estate (27 fatalities); investigation, guard and armored car services (22 fatalities); and ambulatory health care services (19 fatalities). An additional 152 government workers were killed violently on the job in 2011, CFOI reported.

RECOMMENDATIONS:

To address these and other concerns, federal OSHA should enact an Injury and Illness Prevention Standard, which would require employers to identify hazards and develop systems to reduce these hazards. This would apply to violence as well as all other hazards.

In the meantime, state and federal OSHA agencies should put employers on notice that workplace violence is a serious job hazard and that they will use the General Duty Clause to enforce the law requiring employers to ensure a workplace free of recognized hazards.

OSHA's violence prevention guidelines include a zero-tolerance policy for threats of violence, a comprehensive plan for maintaining security in the workplace, and periodic assessments of which work-related tasks could leave to violence. Specific recommendations include employing the "buddy system" for at-risk workers, installing metal detectors, using a closed-circuit video camera to monitor high-risk areas, providing employee "safe rooms," and providing handheld emergency relief devices, such as panic buttons, private channel radios, or cellular phones.¹

These guidelines would go a long way toward protecting workers from on-the-job violence, but an Injury and Illness Prevention Standard could do more to hold employers accountable for potential violence in the workplace.

ENERGY

The energy sector remains one of the country's top employers, with companies creating thousands of jobs as they try to innovate and create new ways of powering the nation. Unfortunately, too often, these companies place a premium on profits, and workers in the energy sector – toiling away in unsafe conditions for modest compensation – pay the toll.

According to the Bureau of Labor Statistics' Census of Fatal Occupational Injuries, 711 workers were killed on the job in 2011 in the “natural resources and mining” industry.

The most common causes of death for these workers were transportation incidents (336 fatalities); being struck by objects or equipment (136 fatalities); exposure to harmful substances or environments (54 fatalities); falls, slips or trips (51 fatalities); and fires and explosions (27 fatalities).

We will now further examine a few industries that comprise the energy sector.

Mining:

It has been more than three years since an explosion at Massey Energy's Upper Big Branch mine killed 29 workers, but the mining industry – particularly in West Virginia – does not seem much safer.

In the first quarter of this year, eight miners were killed on the job; five of the miners killed worked in West Virginia. At the same time, the state is sitting on proposed rules to improve mining safety – and workers are paying the price.

State inspectors have issued 45 violations to the Pocahontas Coal Company in the deaths of two of these miners.

One, 43-year-old Edward Finney of Bluefield, Va., was working at Pocahontas' Affinity mine on Feb. 7 when he was pinned under a hoist he had been using to remove trash from the mine. Two weeks after Finney was killed, a state inspector found that a newly installed switch at the bottom of the shaft housing the 30-ton service hoist had been improperly rigged. He issued a “serious” violation and called it “an extremely high degree of negligence,” the Associated Press reported.⁹

This wasn't the first time the Affinity mine has been in trouble with mine safety regulators. In March 2012, the U.S. Mine Safety and Health Administration (MSHA) included Affinity in a list of three mines that had been caught giving illegal, advance warning that inspectors were onsite the month before. The practice lets miners and managers underground conceal potentially deadly conditions from inspectors.

After this year's spate of miner deaths in the state, West Virginia Gov. Earl Ray Tomblin called for a halt in production – for one hour – for coal companies to review safety laws and procedures at some 500 operations across the state.

“Yes, after a slew of on-the-job fatalities in any industry, it is beneficial to take time to review safety standards to prevent further injury, if only for an hour, but Gov. Tomblin's work doesn't stop there,” National COSH's Tom O'Connor told Ken Ward Jr. of the Charleston Gazette, a news organization that is feverishly covering mine safety in West Virginia.¹⁰

Last year, Gov. Tomblin helped usher through the State Legislature new mine safety standards that would implement tougher methane-monitoring requirements for underground coal mines, increase fines for violators, and require close supervision of apprentice miners. But these provisions have been delayed repeatedly.

“What is really needed is for the Tomblin administration to take action on the critically important mining safety measures mandated by the 2012 legislation,” O'Connor told the Gazette.¹¹ “What is not needed is further watering down of the rules under pressure from the mining industry.

“The rules are already overdue, and miners clearly are paying the price, as we have seen with the latest series of deaths,” he said.

On the national level, House Democrats recently reintroduced the Robert C. Byrd Mine Safety Protection Act of 2013, which would bring the nation's mine health and safety laws up to date, give mine safety officials the ability to effectively investigate and shut down habitually dangerous mines, and hold mine operators accountable for putting their workers in unnecessary danger. Congress should pass it now.

Oil and Gas:

In April 2012, Jose Adrian Govea, 33, was working as a derrick hand for Houston-based Express Energy Services Operating on an oil rig owned by EOG Resources in Gonzales County, Texas.

While doing service work on the rig, he climbed 50 feet to help other derrick hands move pipes, when suddenly, he lost his footing. He slipped and plummeted those 50 feet, smacking into the steel rig floor. He was killed on impact.

OSHA is still reviewing the case.

But the agency has fined Express Energy \$5,650 for violations from two out of three other fatal accidents since 2007. In one, a worker was killed by flying debris in a blowout at a natural gas well; the other two workers were killed after getting caught in or struck by drilling equipment, according to the *Houston Chronicle*.¹²

Govea was far from alone.

The *Houston Chronicle* – in an analysis of five years of fatal accidents investigated by OSHA – found that oil and gas field services and drilling workers were killed on the job in the Lone Star State more than those in any other profession. Between 2007 and 2011, 197 oil and gas workers were killed on the job in Texas – an average of 39 workers a year.¹³

In Texas, more oil and gas workers were killed on the job than those in any other profession. Nationally, **oil and gas workers die on the job at a rate seven times the national average** across all industries.

In fact, one in five deaths investigated by OSHA in South Texas in the past decade has been at a gas or oil company.¹⁴

For these deaths, OSHA fines initially averaged \$10,900 per death, but penalties were reduced to an average of \$6,100 per death.¹⁵

Those are only the cases in which OSHA investigated. Dozens more died in job-related traffic accidents, which OSHA does not investigate, the *Houston Chronicle* reported. Between 2009 and 2011, 40 oil and gas workers were killed in traffic accidents on Texas public roads.¹⁶

While traffic incidents are often not thought of as preventable, work-related incidents, there is a strong connection between production pressure and transportation fatalities in this industry, as noted by a recent *New York Times* analysis. The *Times* article reported that over the past decade, more than 300 oil and gas workers have been killed in highway crashes – the largest cause of fatalities in the industry.¹⁷

“Many of these deaths were due in part to oil field exemptions from highway safety rules that allow truckers to work longer hours than drivers in most other industries,” the *Times* reported. “Many oil field truckers say that while these exemptions help them earn more money, they are routinely used to pressure workers into driving after shifts that are 20 hours or longer.”

Nationally, oil and gas workers die on the job at a rate seven times the national average across all industries, the *New York Times* reported; between 2003 and 2009, there were 27.5 deaths per 100,000 workers.¹⁸ The Centers for Disease Control and Prevention’s National Institute for Occupational Safety and Health (NIOSH) attributed this to longer shifts, the hiring of more inexperienced workers, and older rigs being pressed into service, the *Times* reported.

Yet, workers continue to rush to jobs in the oil and gas industry, despite the risks, largely because of the compensation, which can bring in more than \$2,000 a week.

Fracking:

The latest buzz in the energy sector is hydraulic fracturing, more commonly known as fracking. Fracking is a process used to “stimulate” well production in the oil and gas industry. It involves pumping large volumes of water and sand into a well at high pressure to fracture shale and other tight formations, allowing oil and gas to flow into the well.

The Centers for Disease Control and Prevention’s National Institute for Occupational Safety and Health (NIOSH) recently conducted field studies on fracking and found that workers may be exposed to dust with high levels of respirable crystalline silica in the fracking process.

Based on this study, OSHA and NIOSH issued a Hazard Alert in August 2012 to ensure that employers in hydraulic fracturing operations take appropriate steps to protect workers from silica exposure.¹⁹ The alert states that employers must ensure that workers are properly protected from overexposure to silica through a combination of engineering controls, work practices, protective equipment and product substitution, where feasible.

OSHA also submitted to the U.S. Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) in February 2011 a proposed rule that would protect workers from exposure to dangerous levels of silica dust. OIRA was supposed to review the proposed rule within 90 days, but more than two years later, the proposal is still stuck at the agency.

NIOSH estimates that 1.7 million workers in the U.S. are exposed to silica dust. Worse, those are just the cases we know about; many cases of silicosis go unreported. So, as OIRA sits on this rule, hundreds of workers have been killed and thousands sickened by preventable exposure to silica dust.

RECOMMENDATIONS:

While the energy boom has been a good source of high-paying jobs, workers in the industry should not be asked to sacrifice their health or their lives for this work.

State and federal OSHA programs should be particularly vigilant in enforcing safety standards in this sector. Additionally, companies should ensure that new workers – especially young workers – receive adequate training before they are put in harm's way.

In terms of new safety standards, OIRA should release the proposed silica rule, and states engaging in or considering fracking should examine the health impacts on workers and communities from silica dust and consider possible state regulations.

CONCLUSION

Many things can be done on the local, state, and federal levels to ensure that America's workers are safe on the job. From legislative action to agency implementation, workers deserve protection from on-the-job hazards.

Here are just a few solutions:

Federal OSHA should:

- Enact an Injury and Illness Prevention Standard, which would require employers to identify hazards and develop systems to reduce these hazards.
- Ensure that both staffing agencies and companies that employ temporary workers are held accountable for providing safe and healthy working conditions.
- Ensure that workers – regardless of their immigration status or language – know their rights on the job and are adequately trained in a language that they understand. This includes ensuring that workers are informed about their rights during an OSHA inspection, verbally and in writing, in a language they understand.
- Carefully monitor state OSHA programs to ensure that they are effectively enforcing workers' rights to safe and healthy job conditions.
- Collect and share information on workplace fatalities that can be shared with the public. The must include the names of victims and other important information so the public can help turn these tragedies into lessons for prevention.
- Consistently implement a policy that allows community and worker advocacy groups to file complaints, which would help ensure that immigrant workers and family members can fully participate in the investigation process.

U.S. Congress should:

- Pass meaningful immigration reform legislation, which would bring undocumented workers out of the shadows and give them protection from retaliation for reporting safety hazards on the job.
- Pass the Protecting America's Workers Act (SB 665), which was recently reintroduced by Sen. Patty Murray (D-Wash.). This legislation, which would strengthen the OSH Act, would make felony charges possible when repeated and willful violations result in a worker's death or serious injury, and would increase the penalties OSHA can impose on negligent employers.
- Pass the Robert C. Byrd Mine Safety Protection Act of 2013, which would bring the nation's mine health and safety laws up to date, give mine safety officials the ability to effectively investigate and shut down habitually dangerous mines, and hold mine operators accountable for putting their workers in unnecessary danger.

States should:

- Coordinate enforcement projects involving various department of labor offices, such as developing and implementing pilot projects that target specific industries with high percentages of vulnerable and immigrant worker populations. These efforts would include the involvement of the enforcement arms of OSHA, the Wage and Hour Division and state Workers' Compensation programs, and would build on models in states like California, Massachusetts and New Jersey.
- Pass legislation to protect temporary workers on the job. This legislation can be modeled after Massachusetts' new Temporary Workers Right to Know Law, which requires temporary staffing agencies across the state to give each worker a written job order, providing information that every worker has a right to expect before going to a job.
- Pass "responsible contractor" laws to ensure that taxpayer funds are not used to provide public workers contracts to employers who cut corners on safety and put their workers' lives at risk.
- Pass legislation for minimum penalty amounts for citations related to workplace fatalities, which can be modeled after Minnesota's legislation that requires its state OSHA program to levy fines of no less than \$25,000 and, in cases involving repeat or willful violations, no less than \$50,000.

GLOSSARY

BLS – The Bureau of Labor Statistics of the U.S. Department of Labor is the principal Federal agency responsible for measuring labor market activity, working conditions, and price changes in the economy.

CFOI – The U.S. Bureau of Labor Statistics' Census of Fatal Occupational Injuries (CFOI) is one of the more complete sources of workplace fatalities, though it takes longer to release data.

Fracking – A term for hydraulic fracturing, which is a process that creates fractures in rocks and rock formations by injecting fluid into cracks to force them further open, allowing more oil and gas to flow out for extraction.

General Duty Clause – The General Duty Clause of the U.S. Occupational Safety and Health Act requires employers to provide a workplace free from hazards that are likely to cause death or serious harm to employees. OSHA can use the General Duty Clause to cite an employer for a known hazard – even when the agency has not issued a standard for that specific hazard.

I2P2 – An Injury and Illness Prevention Program (I2P2) would require employers to identify hazards in the workplace and provide them with the flexibility to determine how to prevent these hazards in their workplaces.

Injury and Illness Prevention Program – An Injury and Illness Prevention Program (I2P2) would require employers to identify hazards in the workplace and provide them with the flexibility to determine how to prevent these hazards in their workplaces.

Lockout/Tagout – or lock and tag – is a safety procedure that is used in industry and research settings to ensure that dangerous machines are properly shut off and not started up again prior to the completion of maintenance or servicing work.

NIOSH – The U.S. Centers for Disease Control and Prevention's National Institute for Occupational Safety and Health (NIOSH) is the federal agency responsible for conducting research and making recommendations for the prevention of work-related injury and illness.

OIRA – The U.S. Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) is a federal office that reviews all collections of information by the federal government. OIRA also develops and oversees the implementation of government-wide policies in several areas, including information quality and statistical standards. In addition, OIRA reviews draft regulations under Executive Order 12866.

OMB – The U.S. Office of Management and Budget is the largest office within the Executive Office of the President of the United States, whose purpose is to assist the President to prepare the budget. The OMB also measures the quality of agency programs, policies, and procedures and to see if they comply with the President's policies.

OSHA

- **Federal OSHA** – The U.S. Occupational Safety and Health Administration, housed within the U.S. Department of Labor, is the government agency responsible for ensuring that workers have safe and healthful working conditions by setting and enforcing standards and by providing training, outreach, education and assistance.
- **State OSHA programs** - Section 18 of the Occupational Safety and Health Act of 1970 encourages states to develop and operate their own job safety and health programs. OSHA approves and monitors state plans. There are currently 26 states that operate OSHA-approved state plans.

OSH Act - U.S. Occupational Safety and Health Act is the primary federal law that governs occupational health and safety in the private sector and federal government in the United States. It was enacted by Congress in 1970.

Temp Workers – Temporary workers are hired on a temporary – not permanent – basis, and often do not have access to the benefits of full-time, permanent employees. The use of temporary workers has skyrocketed in recent years.

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- ¹ <http://bls.gov/iif/oshwc/cfoi/cftb0267.pdf>
 - ² <http://bls.gov/iif/oshwc/cfoi/cftb0259.pdf>
 - ³ <http://www.publicintegrity.org/2012/12/20/11925/they-were-not-thinking-him-human-being>
 - ⁴ <http://www.publicintegrity.org/2012/12/20/11925/they-were-not-thinking-him-human-being>
 - ⁵ <http://masscosh.org/node/800>
 - ⁶ <http://www.publicintegrity.org/2013/03/29/12411/new-federal-scrutiny-wake-center-and-npr-grain-bin-drownings-reports>
 - ⁷ <http://ohsonline.com/articles/2013/03/12/massachusetts-governor-signs-social-worker-safety-bill.aspx?admgarea=news>
 - ⁸ <http://masscosh.org/node/680>
 - ⁹ <http://www.huffingtonpost.com/huff-wires/20130226/us-mine-fatalities/>
 - ¹⁰ <http://wvgazette.com/News/201302210143>
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 - ¹⁷ <http://www.nytimes.com/2012/05/15/us/for-oil-workers-deadliest-danger-is-driving.html?pagewanted=all>
 - ¹⁸ <http://www.nytimes.com/2012/05/15/us/for-oil-workers-deadliest-danger-is-driving.html?pagewanted=all>
 - ¹⁹ http://www.osha.gov/dts/hazardalerts/hydraulic_frac_hazard_alert.html



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