

JANUARY 2019

DEADLY SKYLINE



**AN ANNUAL REPORT ON CONSTRUCTION
FATALITIES IN NEW YORK STATE**

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New York Committee for
Occupational Safety & Health

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ABOUT THE NEW YORK COMMITTEE FOR OCCUPATIONAL SAFETY AND HEALTH (NYCOSH)

NYCOSH is a membership organization of workers, unions, community-based organizations, workers' rights activists, and health and safety professionals. NYCOSH uses training, education, and advocacy to improve health and safety conditions in our workplaces, our communities, and our environment. Founded in 1979 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.

NYCOSH appreciates the assistance provided by many during this project, including but not limited to: the Bureau of Labor Statistics (BLS), Occupational Safety and Health Administration (OSHA), the New York State Department of Labor, New York City Department of Health, and the New York City Department of Buildings (NYC DOB).



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INTRODUCTION

CONSTRUCTION WORKERS BUILDING NEW YORK'S ICONIC BRIDGES, skyscrapers, and homes have become fixtures in the landscape for every New Yorker. Scaffolds and active construction sites are a common scene in the streets of New York City as the real estate industry booms and more and more construction jobs are created. Construction work is woven into the economic and cultural fabric of the city and state, with historic sites as go-to destinations.

The dangers of construction work are apparent throughout New York's history. The Brooklyn Bridge, a historic symbol of New York City built in 1869, is recognized as an engineering masterpiece and a symbol of unity after the Civil War. Lesser known is the sacrifice of construction workers who died building the project. Even the Bridge's designer, John A. Roebling, died when his foot was crushed between some pilings and a boat. His toes were amputated and he died of tetanus. Historian Jesse Greenspan noted:

Other workers fell off the 276-foot-high towers, were hit by falling debris or succumbed to caisson disease, better known as "the bends." No official figure exists for the number of men killed, but estimates range from 20 to over 30." Dozens more suffered debilitating injuries, including Roebling's son Washington, who became bedridden with the bends after taking over as chief engineer from his father.¹

Other well-known moments in New York history illustrate the dangerous working conditions for construction laborers. The famous "Lunch atop a Skyscraper" photograph, taken in 1932, depicts eleven construction workers eating lunch while sitting on an I-beam atop the steelwork of 30 Rockefeller Plaza, overseeing the City's skyline.² The workers are casually chatting without any harnesses, seemingly unconcerned that they could fall eight hundred feet to their deaths.

Construction was dangerous then, though improvements such as the Scaffold Safety Law (passed in 1885) and the establishment of workers' compensation (established through an amended New York State constitution in 1913) have certainly made an impact. Further, the establishment of the Occupational Safety and Health Administration (OSHA) has been credited with dramatically reducing the rate of fatalities, from 14,000 workers reportedly dying on the job in 1970³ to 5,147 workers dying today.⁴

The State is reliant on the federal agency, OSHA, to conduct inspections and enforce safety on job sites. Under the Trump Administration, the agency has conducted a record-low number of inspections, released

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record-low press releases on safety violations, and frozen hiring. As a result, New York State—one of the most regulated states in the country—is mainly relying on one of the most anti-regulatory administrations in modern history to protect the health and safety of construction workers.

In this 2019 update of “Deadly Skyline: An Annual Report on Construction Fatalities in New York State,” NYCOSH finds that over the past five years, as construction deaths on the job have been mostly decreasing in New York City, they have been mostly increasing in New York State. The rate of construction worker fatalities in New York State is much higher than the rate in New York City, which has been the trend.

Construction falls continue to be the top cause of death for construction workers, and OSHA’s top citation issued against employers continues to be for construction fall violations. This report finds that workers die as a result of employer’s disregard for workers’ health and safety and notes the difference between construction fatality numbers on union versus non-union job sites, proving that unionized construction jobs keep New York’s workers safer. Further, Latino workers are more likely to die on the job than non-Latino workers in New York State, as anti-immigrant policies at the federal level make these workers more likely to be exploited.

“Deadly Skyline” points to the need for New York State to proactively protect construction workers—particularly Latino and immigrant workers—with legislation like the Scaffold Safety Law, and through increasing criminal penalties against negligent employers. The report also suggests that New York State must investigate how to protect all workers, including exploring the creation of a New York State OSHA plan, similar to that which exists in California, to create higher standards for the protection of New York’s workforce.

A note on Methodology: NYCOSH develops the Deadly Skyline report using data reported by a number of different sources, including the Bureau of Labor Statistics, New York City Department of Buildings, the Occupational Safety and Health Administration (OSHA) and media reports. The most complete information comes from the Bureau of Labor Statistics, which issues its worker fatality data for the 2017 calendar year in December of 2018, and much of the fatality data included in this report is based on those reports.

NYCOSH is grateful to all of the construction laborers who have joined us in various education, empowerment, and safety trainings over the past year and dedicates this report to New York’s construction workers.

SUMMARY OF FINDINGS

New York's construction industry continues to be highly dangerous for workers, with high fatality numbers and high rates of fatalities in New York State. In 2017, the most recent data year available, 69 construction workers died in New York State, exemplifying a five-year trend of increasing fatalities in the State. New York State's construction fatality rate has increased by 39% in the past five years.

New York City construction fatalities continued to drop in 2017, with the rate trending downwards. In New York City, 20 workers died in 2017, and over the past five years, the New York City fatal occupational injury rate in construction decreased by 23%. Therefore, this indicates that fluctuations in the number of construction projects in New York City does not correlate with the decreasing number of fatalities, as construction is booming yet fatalities are falling.

In 2017, New York State had a 52% higher construction fatality rate than New York City. Over the past five years, the New York City fatal occupational injury rate in construction decreased by 23%, while the New York State rate increased by 39% over the same period of time.

Fatal falls continue to be the top cause of construction fatalities in both New York State and New York City. In all of New York State in the past ten years, 187 workers died in falls, which account for 49% of all construction fatalities. In New York City alone, over the past ten years, 78 workers died due to falls, which on average accounted for 46% of all construction deaths and 55% of construction deaths in 2017.

Increased prosecutions of criminal construction contractors in New York City have raised awareness about workplace crimes as well as demonstrating the connection between fatalities, wage theft, and other crimes. In the past year, criminal prosecutions have demonstrated that it is possible to hold employers accountable for violations of the law that lead to serious worker injuries and deaths on the job. In addition, many cases have exposed the intertwined violations of wage theft, health and safety, workers compensation, and other laws.

OSHA construction fines for fatality cases remain low. The average fine amount by OSHA in 2017 cases involving the death of a construction worker was just \$21,644. Maximum allowable OSHA fine amounts increased by 78 percent on August 1, 2016, the first increase in 26 years; but this increased allowable fine amount has not led to increases in *actual* fines against employers.

OSHA's funding cuts have resulted in fewer inspections and the issuance of fewer press releases, making the agency less and less effective. NYCOSH's review of OSHA's press releases in the past three years showed that the agency went from releasing 58 press releases in 2016 to just *nine* in 2018, an 84% decrease. NYCOSH also conducted an in-depth analysis of OSHA inspections in New York State since OSHA's founding and found a staggering decrease in inspections over the past twenty years—not surprising given the agency's mostly stagnant budget.

Contractors' OSHA violations coincide with construction worker fatalities, and violations do not prevent contractors from receiving government subsidies. On OSHA-inspected job sites where workers have died, employers had coinciding violations 100% of the time. NYCOSH analyzed OSHA-inspected construction fatality cases in New York State in 2017 and found that a staggering 100 percent of the construction worker fatalities coincided with OSHA violations. For example, if a worker died from a fatal fall, the employer was likely fined for a failure to provide training and a failure to implement fall protection systems (like a harness or guard rail). Despite these violations and coinciding fatalities, employers are not legally prevented from receiving subsidy dollars.

Non-union job sites are especially dangerous for workers. NYCOSH analyzed OSHA's 30 investigated construction fatality citations in calendar year 2017 and found that in New York State, 86.7 of workers who died on private worksites were non-union. In New York City, 92.9% of the 2017 construction workers who died on private worksites were non-union. In New York State, federal OSHA only inspects worker fatalities on private worksites.

Latino workers are more likely to die on the job. In the United States, Latino worker fatalities in all industries have increased by 10.5% in a 5-year period. Latinos also make up higher percentages of worker fatalities in New York State than they represent in the population. For example, an estimated 10% of New York State's workers are Latino, but in 2017, 17% of worker fatalities were of Latino workers.

Older workers are more likely to die in construction. New York State construction workers in older age groups are dying at higher rates than the demographic makeup of New York State construction workers. Workers aged 55-64 are most likely to die on the job, followed by workers aged 35-44.

RECOMMENDATIONS

REQUIRE AND FUND ADEQUATE SAFETY EDUCATION AND TRAINING

1. Require construction training and certification for New York State's construction workers.

Construction safety training programs that provide rigorous hours of training and combine on-the-job learning with technical instruction are essential to creating safer job sites. Just as New York City enacted the construction safety training law, Local Law 196, other municipalities and New York State should explore the creation of similar training requirements, along with funding mechanisms to ensure that low income workers are not excluded from accessing them.

EXTEND AND DEFEND PROTECTIVE LEGISLATION

2. Preserve New York's Scaffold Safety Law.

New York State's Labor Law §240 (commonly referred to as the Scaffold Safety Law) protects construction workers by giving fallen construction workers the right to sue their employer or the building site owner if they are injured or killed in falls from an elevation. Given that fall-fatalities are the top cause of death on construction sites and the preventability of such deaths, protecting this legislation is a necessity.

3. Pass Carlos' Law to increase penalties against criminal contractors.

For too long, workers' deaths on the job have been quickly dismissed as "unfortunate accidents," regardless of the role played by employers, contractors, and owners in contributing to those deaths. New York should re-envision the framework to increase penalties against corporate entities, from the current maximum amount of \$10,000, which is trivial for construction contractors. Criminal contractors should not be allowed to continue using their corporate structures to evade accountability and move ahead with business as usual.

EXPAND REGULATIONS, MONITORING & ENFORCEMENT

4. The New York State Department of Labor should create and maintain a registry of workplace fatalities.

Currently, there is no way to accurately make a timely determination of the number of workplace fatalities in New York State. Creating a registry of workplace fatalities will help ensure the timely tracking of information and recovery of such information by advocacy organizations, elected officials, and state and city agencies. Information to be reported would include the employee's name, age, race, occupation, cause and location of death, employer's name and address, and the personnel charged with making declarations of death and determining the cause and manner of death.

5. Expand criminal prosecutions of contractors statewide.

The Manhattan District Attorney has led the way on prosecuting criminal construction contractors and District Attorneys in the New York Metropolitan Area like the Brooklyn DA have also brought charges against bad actors. Across the state, district attorneys should exercise their power to hold criminal contractors accountable when the failure to protect workers rises to the level of a criminal offense. In addition, as the reporting of workplace crimes increase, District Attorney's offices should build up their staffing and capacity to prosecute these cases, so that there are not limitations based on numbers of workers or amount of money owed. Small bad actors must also be held accountable.

6. Use existing city power to suspend or revoke licenses and construction permits for criminal contractors.

New York City and other municipalities have broad power within its licensing and permitting processes to keep criminal contractors from operating unsafely and endangering workers and the public. In companies where the owners, managers, or corporations were convicted of felonies related to worker deaths, these companies—and successor companies controlled by the same management—must face consequences. Their applications for licensing to work on residential construction or permitting for commercial projects must be denied. City policies can hold employers accountable in cases of criminal conviction in a worker death so that construction employers face real consequences for their negligence.

7. Increase the role of New York State in protecting construction worker safety given OSHA's inadequacies.

The stagnant hiring and coinciding decreasing inspection numbers of OSHA have had real consequences for workers throughout New York State and all across the country. New York State must investigate how to proactively act to protect workers, including the exploration of a New York State OSHA plan, similar to Cal/OSHA, to create higher standards for the protection of New York's workforce.

8. Increase funding to the New York City Department of Buildings.

The NYC DOB has a critically important role in construction safety in New York City and has shown that they play a critical role in preventing workplace fatalities. This role has also expanded with Local Law 196. In order to be effective, the agency must be funded according to its additional responsibilities and so they can enforce new regulations within their mandate.

9. Mandate subsidy procurement reform and responsible contracting in New York State and New York City.

Some of the most egregious violators of health and safety standards and wage and hour laws continue to receive New York State and New York City funding (via HDC, HFA, HPD, and EDC) for their development projects. To ensure that low-road contractors are not subsidized by government dollars, New York City and State should pass subsidy procurement reform that disallows bad actors to receive public funding, and mandates that all public funds are tied to prevailing wages, training programs, and a local hiring program that works for the people who build this city. Further, the City and State should ensure that developers receiving subsidies do not hire subcontractors who have had egregious violations.

10. Protect Latino and immigrant workers proactively.

In New York State, Latino workers are more likely to die on the job than non-Latino workers and Latino and immigrant workers are more likely to be exploited. Immigrant workers are less likely to report violations out of fear of retaliation and this fear has become more and more justified as immigrant workers are targeted by federal immigration agencies simply because they are immigrants. However, proactive steps by New York State and New York City can ensure that Latino and immigrant construction workers are fairly protected by the law. Key steps would be:

New York State should grant drivers licenses to all regardless of immigration status, which would improve traffic safety for workers and drivers across the state, bring in millions in state revenue, and ensure that construction workers (and many others) are not detained simply for trying to reach their job sites.⁵

New York City should use a broad publicity campaign to raise awareness among all immigrant workers of the new training requirements in construction under Local Law 196, so that employers do not use this as an opportunity to further take advantage of immigrant workers by charging them for trainings.

FINDINGS

New York's construction industry is highly dangerous, with slight decreases in fatalities in New York City. High fatality numbers and rates remain in New York State.

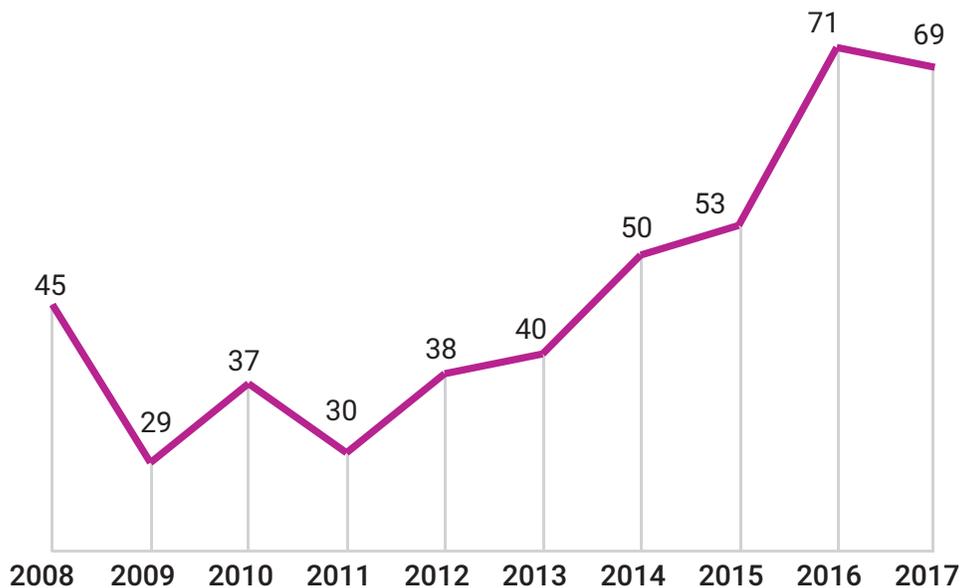
HIGH CONSTRUCTION FATALITY RATES REMAIN IN NEW YORK STATE.

According to the U.S. Bureau of Labor Statistics Census of Fatal Occupational Injuries, in the decade between 2008 and 2018, 462 workers died

in construction-related accidents in New York State. 69 construction workers were killed on the job in New York State in 2017, down slightly from a peak in 2016 of 71, but the number is still alarmingly high.⁶ On average, 46.2 construction workers die every year in New York State.



NYS Construction Fatalities from 2008 to 2017



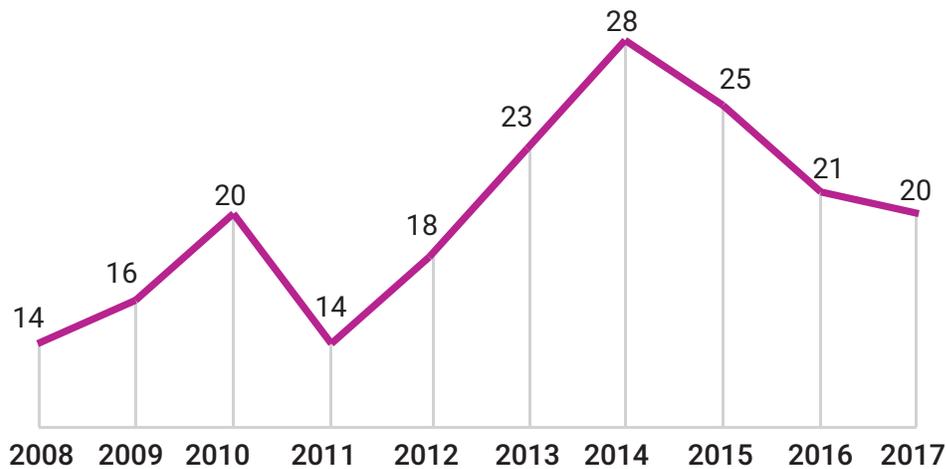
NEW YORK CITY CONSTRUCTION FATALITIES DROPPED BY 5 PERCENT FROM 2016 TO 2017, WITH FATALITIES TRENDING DOWNWARDS.

In New York City, 199 construction workers died in the past ten years, and 20 workers died in 2017 (BLS). The number of construction workers who die every year has vacillated over the past ten years, but has consistently decreased in the past four years in New York City, per BLS data.

On average, over the past ten years, 20.6 construction workers die every year in New York City. The lowest number of fatalities over a ten-year period in New York City was in 2011 at 14 and the highest in 2007 at 28.



NYC Construction Fatalities, 2008 to 2017



CONSTRUCTION WORKER FATALITIES CONTINUE TO MAKE UP A HIGHER PERCENTAGE OF OVERALL WORKER FATALITIES IN NEW YORK CITY THAN NEW YORK STATE OR THE UNITED STATES AS A WHOLE.

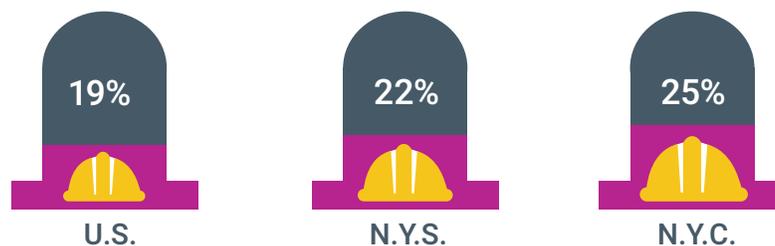
Construction is one of the most dangerous industries for workers in the United States. According to the Bureau of Labor Statistics North American Industry Classification System Data, the construction industry made up 965 fatalities out of 5,147 workers in 2017, or 19% of the country's worker fatalities, but construction workers compose just 4% of the nation's workforce.⁷

In New York State, the total number of workplace fatalities in all industries increased from 272 in 2016 to 313 in 2017. The rate of total fatalities in all industries also increased from 3.1 to 3.5.⁸

In New York City, the total number of workers in all industries who died also increased from 56 in 2016 to 87 in 2017, and the fatality rate in all industries increased from 1.5 to 2.3.⁹

Construction workers are even more likely to die on the job in New York State and City than in the United States at large. In 2017, construction deaths accounted for 22% of all worker deaths in New York State¹⁰ and 25% of all worker deaths in New York City, compared to 19% nationwide.¹¹ Important to note, nationally and in New York State, construction only makes up about four percent of all work.

Percent of Construction Worker Fatalities Among All Worker Fatalities in U.S., N.Y.S., and N.Y.C., 2017 BLS Data



IN NEW YORK STATE, THE FATALITY RATE CONTINUES TO SHOW ALARMING TRENDS.

Construction has experienced a significant boom in New York State. According to the New York State Department of Labor, construction jobs increased by 6.8% from October 2017 – October 2018.¹² The increasing numbers in construction jobs and construction fatalities showcase the great need to take action to decrease worker fatality numbers in the State.

The nationwide fatality rate in construction, according to the U.S. Bureau of Labor Statistics, is 3.5 times the overall rate of fatalities among all workers in all industries. In 2017, the New York State fatality rate for all workers was 3.5 and for New York State's construction workers was 12.2. Over the past five years,¹³ the rate of worker fatalities in New York State has been trending upwards.

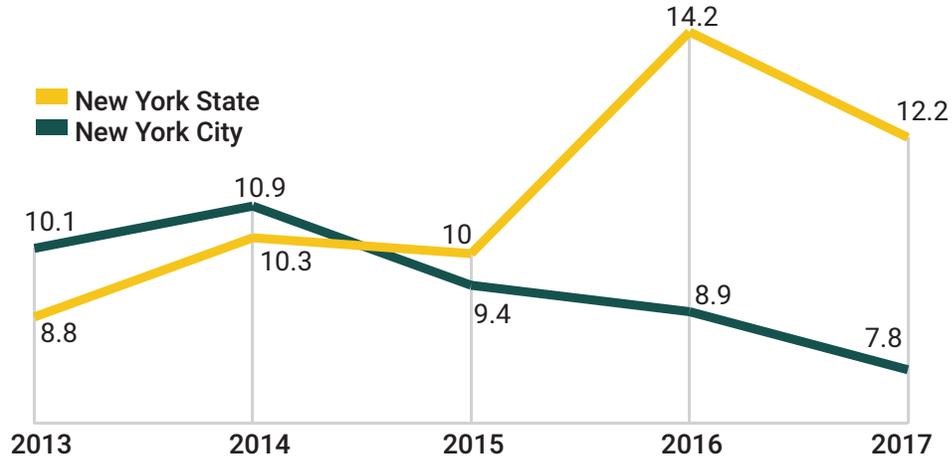
In New York City, the fatality rate in construction is 3.4 times the overall rate of fatalities in all industries. In 2017, the New York City rate of fatal injuries for all workers was 2.3, and the construction fatal injury rate was 7.8.¹⁴

IN 2017, NEW YORK STATE HAD A 52% HIGHER CONSTRUCTION FATALITY RATE THAN NEW YORK CITY.

NEW YORK STATE'S CONSTRUCTION FATALITY RATE HAS INCREASED BY 39% IN THE PAST FIVE YEARS.

Over the past five years, the New York City fatal occupational injury rate in construction decreased by 23%, while the New York State rate increased by 39% over the same period of time.

Construction Fatality Rates in NYS vs. NYC (per 100,000 workers, BLS)



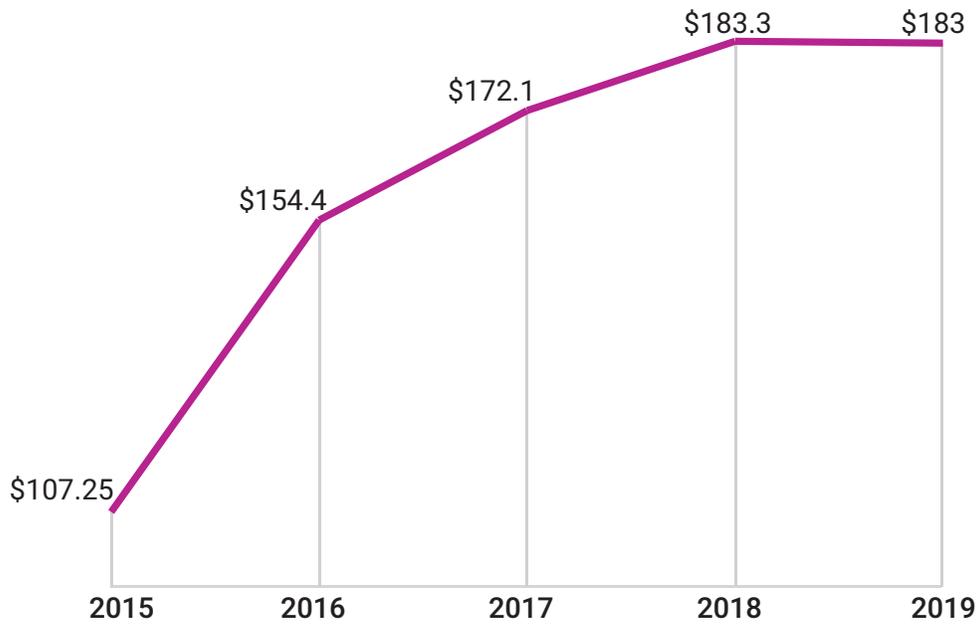
INCREASED RESOURCES TO NEW YORK CITY DEPARTMENT OF BUILDINGS

The New York City Department of Buildings (NYC DOB) has drastically increased its resources in the past several years as well as the number of staff conducting inspections. This trend increases the agency's effectiveness in reducing workplace fatalities in construction.



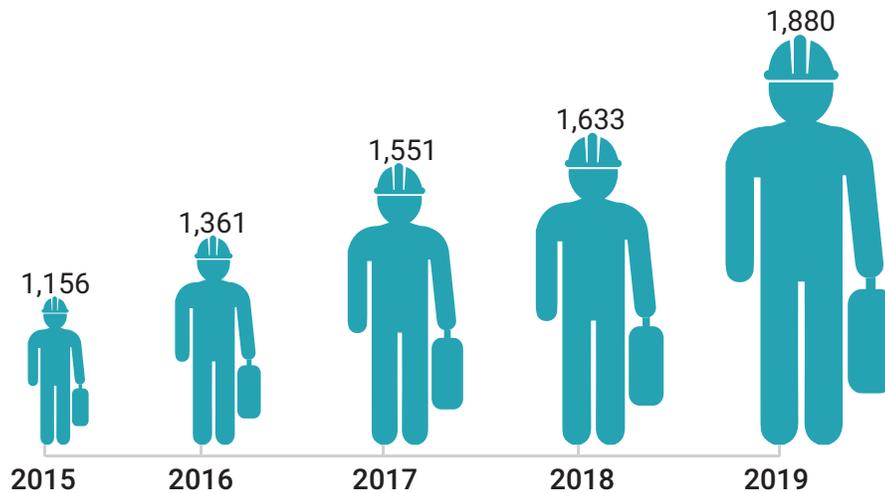
The Preliminary Budget for Fiscal 2019 included \$183 million for NYC DOB,¹⁵ which continues a five-year trend of increases in funding for the agency.

NYC Department of Building Executive Budgets (in Millions)



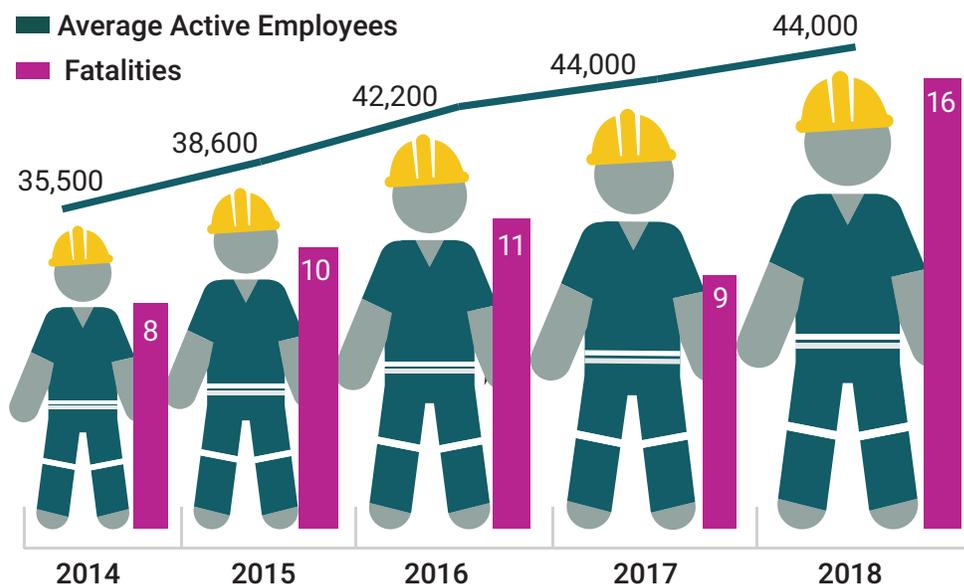
The staffing at NYC DOB continues to increase, allowing the agency to conduct more inspections as the construction boom in New York City sustains.

NYC Department of Buildings Agency Personnel



INCREASED CONSTRUCTION FATALITIES REPORTED BY THE DOB IN 2018

Construction-Related Fatalities and Average Construction Employment (NYC DOB)



In the 2018 Mayor's Management Report, the New York City Department of Buildings published data indicating an increase in construction fatalities between 2017 and 2018, as the chart above illustrates. This report and the increasing fatality figures therein have since gotten some press coverage, but these numbers do not paint a full picture of construction fatalities that is as complete as BLS data.¹⁶ Therefore, DOB's data on increasing fatalities in New York City is only one piece of the puzzle. Until BLS releases data for 2018, we will not know if fatalities in New York City have gone up or gone down, only that which NYC DOB has reported.

For example, BLS reports that:

In 2017, over 23,400 source documents helped identify and verify information on 5,147 fatal work injuries, an average of 4.6 source documents per fatal injury case.¹⁷

The BLS compiles data from, in order of amount: death certificates, coroner/medical examiner/autopsy, news media, OSHA, toxicology, State workers' compensation, police, other government and state follow-up.

While any increase is concerning, NYC DOB does not fully track all workplace fatalities, but rather only fatalities that endanger the public. Therefore, their data does not fully reflect the true numbers of construction

fatalities in New York City. Further, since 2017, the Department of Buildings has been subject to a new law that directs the agency to count OSHA fatalities as well as DOB fatalities; the agency currently lists OSHA's count of fatalities on its website, but does not reflect this data in the Mayor's Management Report or other reporting to City agencies.

We will not know if construction fatalities have indeed increased in New York City in 2018 until the BLS releases their 2018 data in December of 2019. For example, in 2017, BLS reported 20 construction worker deaths and NYC DOB reported only 9.

DEPARTMENT OF BUILDINGS DEVELOPS SYSTEM TO FULFILL REPORTING REQUIREMENTS OF NEW LAW.

In 2017, the New York City Council passed Local Law 78, which required the Department of Buildings to expand its reporting on fatalities and injuries for both construction workers and the general public. Where before the Department of Buildings had only been required to report on construction fatalities that endangered the public, Local Law 78 requires them to provide reporting on incidents. The Law states:

where construction work subject to permitting by the commissioner resulted in (i) a fatality to any individual, including a member of the general public or a construction worker, or (ii) an injury to any individual, including a member of the general public or a construction worker, that requires transport by emergency medical services or requires immediate emergency care at a hospital or offsite medical clinic, regardless of whether such incident involved a violation of this code or any other law or rule.

It also greatly expanded the categories of information that needed to be reported by DOB, from information about the general contractor or subcontractor that employed the worker to information about how long the worker had been employed and whether the site was union or non-union.

Based on these requirements, DOB developed new monthly reports which are on its website.¹⁸ While the new reports provided valuable additional information, it is not clear why they are separated from the previous reporting system rather than an expansion of them. For example, in November of 2018, the construction incident summary reports 41 injuries and 1 fatality (that of worker Over Paredes, in Brooklyn). However, the Local Law 78 Incident report for the same month reports 5 injuries and 1 fatality.

The intent of the legislation was to provide an accurate overall picture of the numbers of people injured and killed on New York City construction sites, so that the city could analyze and take action. The current system takes a step in the right direction, but still needs some improvement.

INCREASED PROSECUTIONS OF CRIMINAL CONSTRUCTION CONTRACTORS IN NEW YORK CITY HAVE RAISED AWARENESS ABOUT WORKPLACE CRIMES AS WELL AS DEMONSTRATING THE CONNECTION BETWEEN FATALITIES, WAGE THEFT, AND OTHER CRIMES.

Throughout 2018, the Manhattan District Attorney's office through the Construction Fraud Task Force, has prosecuted multiple cases related to wage theft, health and safety violations, and worker fatalities, including:

- April 5, 2018: City Metro Corp and two of its principals pleaded guilty to "scheme to Defraud in the First Degree" and agreed to pay \$95,000 in restitution to over two dozen construction workers at a hotel project in mid-town Manhattan.¹⁹
- May 16, 2018: Parkside Construction, its principals, and a payroll processing company Affinity Human Resources were charged with Insurance Fraud, Grand Larceny, and Scheme to Defraud, for a vast scheme that included the theft of more than \$1.7 million in wages from more than 500 construction workers, and workers compensation insurance fraud totaling approximately \$7.8 million.²⁰
- July 13, 2018: SSC High Rise, Inc. pleaded guilty to Manslaughter in the Second Degree for causing the death of construction worker Juan Chonillo. They also admitted to stealing more than \$500,000 in wages from more than 50 employees, and underreported payroll to make off with more than \$2 million more. They paid approximately \$842,000 in restitution and were fined \$10,000 in relation to these crimes, the maximum corporate penalty which can be assessed under current state law.²¹
- July 25, 2018: CRV Precast Construction LLC were charged with Insurance Fraud, Grand Larceny, and Scheme to Defraud for misclassifying workers, underpaying them, and falsifying information including information about construction worker Elizandro Ramos, who was killed on their job site.²²
- November 8, 2018: Western Waterproofing Company Inc. and Western Specialty Contractors cooperated with the District Attorney's investigation into a June incident where a mini-crane fell multiple stories and seriously injured two workers. The companies entered into a deferred prosecution agreement, agreeing to hire an independent monitor, increase safety training, and fund public service announcements in English and Spanish to educate workers about their rights to a safe workplace. Their Senior Branch Manager and Site Superintendent were charged with assault for "knowingly skirting safety protocols to speed up their project," resulting in devastating injuries for the workers.²³

These prosecutions have recovered restitution for hundreds of NY workers, exposed the strategies that unscrupulous contractors use to exploit their workers, and begun to hold these companies accountable for the deaths that occur on New York's luxury housing, hotels, and real estate development and construction sites.

Falls continue to be the top cause of construction fatalities in New York State and New York City.

IN BOTH NEW YORK STATE AND CITY, FATAL FALLS MAKE UP NEARLY 49% OF ALL CONSTRUCTION DEATHS.

In all of New York State over the past ten years, 187 workers died in falls. When broken down, this statistic tells us that falls accounted for 49% of all construction fatalities in 2017 and 48% on average over the past ten years. In New York City alone, over the past ten years, 78 workers died due to falls, which on average accounted for 55% of all construction deaths last year and 46% of all construction deaths on average over the past ten years.

Further, according to BLS, in the United States, fatal falls were "at their highest level in the 26-year history of the Census of Fatal Occupational Injuries (CFOI) accounting for 887 (17 percent) worker deaths."²⁴

Deaths due to falls are particularly egregious because of how likely they are to be preventable.

Jose Cruz, was a 59-year old Latino construction worker killed on the job on April 12, 2017 in a preventable accident. He was working 18-feet high atop an I-Beam while removing pieces of a steel deck when he fell.²⁵

Cruz was a laborer on the site of the recently-opened Opry City Stage, a Nashville-based music venue located in Times Square, Manhattan. A training manager for the hospitality group of the venue stated that "the Opry is synonymous with Southern hospitality."²⁶ Cruz worked for the general contractor on the site, Streamline USA LLC, the non-union contractor the venue hired to construct the project.

The general contractor had been fined a year before Cruz's fatality for serious violations on another non-union midtown construction site. The company was initially fined \$19,200 for four serious violations, which was later reduced to \$7,000 for one serious violation.²⁷

Cruz's death is a part of Streamline USA's pattern of flouting the law. His death was preventable. Ultimately, Streamline USA LLC

was cited for two violations—one serious and willful—totaling \$131,819. The serious violation cited was 1926.503a1, which states that “the employer shall provide a training program for each employee who might be exposed to fall hazards.”²⁸ The willful violation was 1926.501b1, which states that employees “shall be protected from falling by the use of guardrail systems, safety net systems, or personal fall arrest systems.”²⁹ Combined, these violations created an unsafe worksite that ultimately resulted in Cruz’s preventable death. As stated by the New York City Department of Buildings Commissioner Rick Chandler, Cruz’s death was “completely preventable” and “there should have been tie offs with his personal protection equipment, which he was wearing.”³⁰

While larger than usual, these fines are still small amounts for multi-million dollar companies. The larger consequences may come if Cruz’s family decides to sue. In this case, Cruz would be eligible to sue the employer or the property owner under the Scaffold Safety Law because his employer’s negligence caused him to die in a fatal fall. The data on fall fatalities and cases like Cruz’s showcases an overwhelming need for protections against fall hazards, including the Scaffold Safety Law. The Scaffold Safety Law simply requires that construction sites be built and maintained in a way that protects workers. Contractors and businesses are only liable for injuries or fatalities on the job if they put workers at risk of injury or death by violating critical health and safety regulations.

NATIONALLY, THE MOST COMMON VIOLATIONS ARE ON FALL PROTECTION IN CONSTRUCTION.

OSHA reported in 2017 that the most frequently cited standard in fiscal year 2017 (October 1, 2016, through September 30, 2017) was for fall protection in construction,³¹ a statistic that is consistent with prior years. This statistic also points to the need for additional consequences for employers who violate this standard, as it is the most common violation and also the most common cause of death among construction workers.

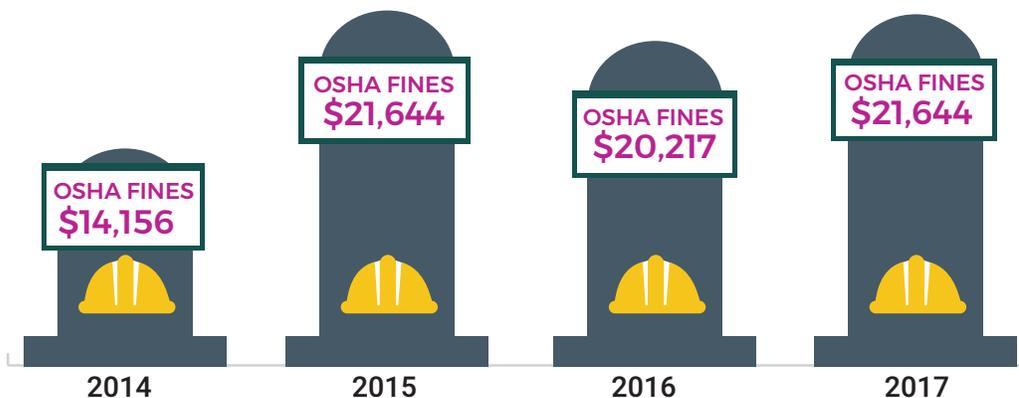
“FATAL FOUR” HAZARDS

Beyond fatal falls, the combined total of all “fatal four” hazards, including falls, electrocutions, struck by object, and caught in or between equipment or machinery cause an overwhelming percentage of fatalities in construction. NYCOSH analyzed data from the past ten years and found that 69% of all construction fatalities in New York City involve the fatal four, as do 85% of construction fatalities in New York State. These hazards demonstrate the need for a minimum of at least OSHA 10 trainings for all workers, which includes education on fatal four hazards as a mandatory component of its curriculum.

OSHA construction fines for fatality cases have remained low despite having an increased amount in fines they they can impose.

When OSHA increased the fine amounts that it is able to levy on August 1, 2016, it was the first time the agency had done so since 1990. OSHA's increased fine schedule gave the agency the ability to impose fines up to 78 percent higher. However, even with an increase in OSHA's *ability* to fine employers, the average fine amount in a construction fatality case in 2017 was just \$21,644. While this was a slight increase from 2016, the average fine amount dropped by \$52 from 2015 to 2017.

Average OSHA Fines for Construction Fatality Cases



In 2016, the top fine issued against employers included a fatality on October 11, 2016, which involved a fine of \$139,424 in Amsterdam, New York, after a 63-year-old man fell 25 feet to the ground when a porch roof collapsed.³² In 2017, the top fine issued was \$131,819 for the death of Jose Cruz, as mentioned above.³³

In 2017, another top fine was \$52,506, issued when an employee of Velu General Contracting Corporation fell on August 16. He fell from the roof approximately 15 feet to the porch and was killed from blunt force trauma to his head and arms.³⁴

In this case, Velu was charged with two willful violations and one serious violation. Velu received a willful violation for violating training standards (1926.503 a) by not providing a training program for each employee who might be exposed to fall hazards.³⁵ The second willful violation was a failure to provide fall protection (1926.501 b13), which states that:

Each employee engaged in residential construction activities 6 feet (1.8 m) or more above lower levels shall be protected by guardrail systems, safety net system, or personal fall arrest system...³⁶

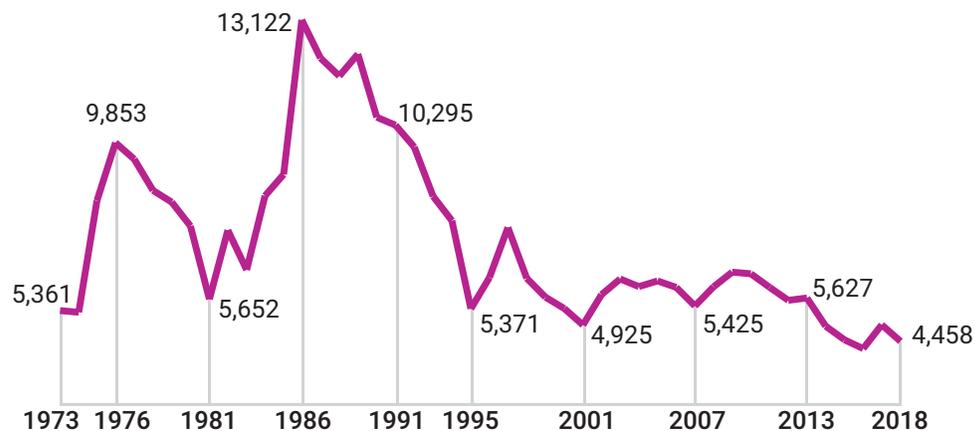
By neither providing the legally mandated training nor the legally mandated fall arrest systems, Velu General Contracting Corporation's negligence caused an employee to die on the job. The low fine of \$52,506 is inexplicable given that the company received two willful violations and an additional serious violation. The maximum amount OSHA could have fined the company is \$261,889, which is \$12,471 for the serious violation and \$124,709 for each willful violation.

Other 2017 construction fatality cases follow a similar pattern, where OSHA fails to utilize its full capacity to fine employers and hold them accountable, even when their actions caused a worker to die on the job.

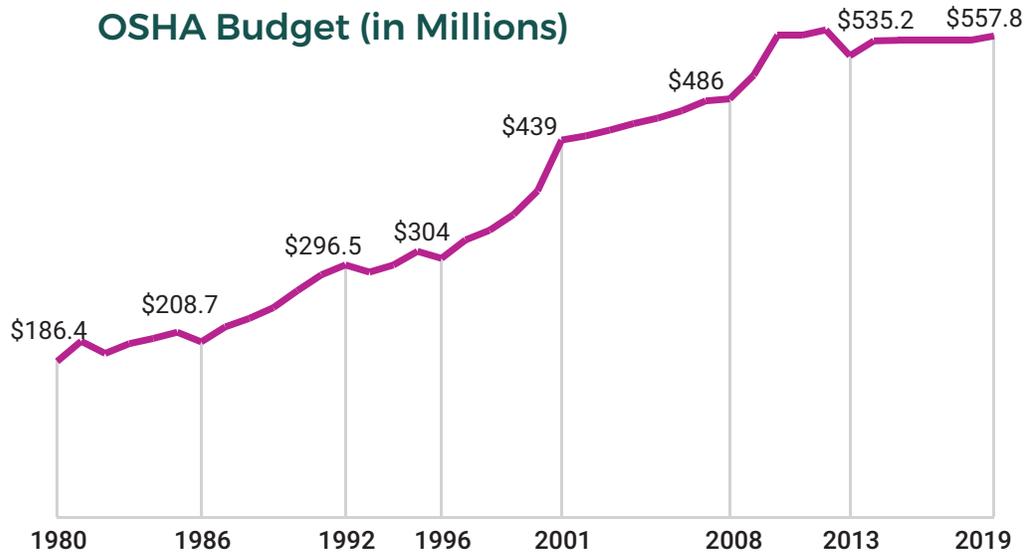
OSHA continues to reduce its number of inspections and its public presence, decreasing the agency's effectiveness.

NYCOSH conducted an in-depth analysis of OSHA inspections in New York State since OSHA's founding and found a staggering decrease in inspections over the past twenty years. When comparing the years of the highest total number of inspections in 1986 to this past year, 2018, there was a cut in the number of inspections in New York State. This decrease in inspections coincides with a substantial increase in the population and number of worksites over the same period of time.

OSHA Inspections in NYS



Simply put, inspections are effective, but are not being utilized. In one extensive study by the U.S. Department of Labor, firms that were inspected one or two times experienced a reduction in citations of 50 percent.³⁷ A decrease in inspections causes an increase in OSHA violations, meaning that more workers die on the job.



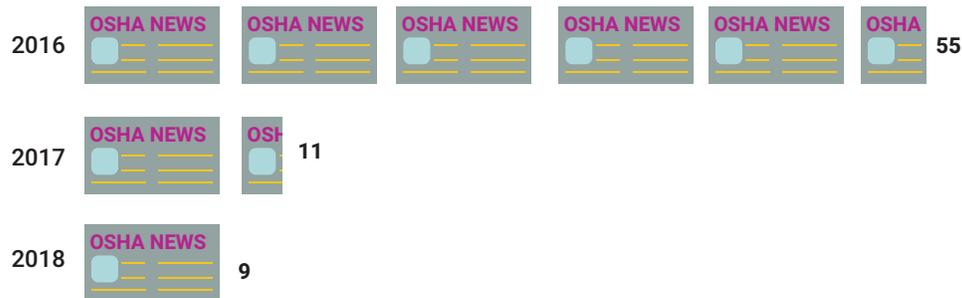
Despite the fact that studies have repeatedly shown that hazards decrease on worksites after OSHA inspections, OSHA’s budget continues to remain too low to meet the need of worksite inspections in New York. As the number of jobs continues to increase, so too does OSHA need to increase its budget. Simply adjusting for inflation, as these increases have, is inadequate, as employment numbers continue to rise.

The continuing stagnation of OSHA is devastating for states like New York that rely primarily on the agency for the safety of its workforce, and will force worker advocates to contemplate alternative ways to address workers’ safety and health.

OSHA CONTINUES TO REDUCE THE NUMBER OF PRESS RELEASES ISSUED ON EGREGIOUS VIOLATORS.

In addition to its underfunding, OSHA continues its trend of releasing less and less press releases each year. For example, in 2018, Region 2 issued just *nine* press releases, down from eleven in 2017 and 58 issued in 2016.

Press Releases Issued By OSHA



Press releases play the role of garnering negative media attention for employers whose wrongdoing leads to worker injuries and deaths, and serving as a warning to other employers who may be tempted to skirt legal requirements. To issue just *nine* press releases for all of Region 2 in 2018—when fifty-nine workers died on OSHA-inspected worksites in Region 2 that same year³⁸—is appalling and showcases OSHA’s continuing failure to recognize its role as an agency that is designed to protect workers. The agency must hold bad actors accountable especially when their recklessness causes workers to get injured on the job.

Contractors’ OSHA violations coincide with construction worker fatalities, and violations do not prevent them from receiving government subsidies.

ON OSHA-INSPECTED JOB SITES WHERE WORKERS HAVE DIED, EMPLOYERS HAD COINCIDING VIOLATIONS 100% OF THE TIME.

Employers regularly endanger their workforce by not following regulations and workers die as a result. NYCOSH analyzed OSHA-inspected construction fatality cases in New York State in 2017 and found that 100 percent of construction worker fatalities coincided with OSHA violations. BLS data indicates that there were 69 fatalities in New York State in 2017; OSHA inspected 30 of those fatality sites and out of the 25 sites where data was publicly available, safety violations were found. 2017 data shows what prior years have also shown, that deaths on the job are often preventable.

Percentage of Construction Fatality Cases with Coinciding OSHA Violations



Given these statistics and the 100% likelihood that safety citations follow construction fatalities, it is a reasonable extrapolation that in any construction fatality, the death was preventable.

To truly prevent these kinds of deaths on the job, employers need to believe that there are serious consequences to their misbehavior. As stated above, the average OSHA fine amount in a construction fatality case in 2017 was

just \$21,644. With such minor fines, employers will continue to cut corners on workers' safety, because it's easier and often cheaper than following applicable regulations, and simply considered "the cost of doing business."

CONTRACTORS ARE RECEIVING NEW YORK STATE AND NEW YORK CITY SUBSIDIES DESPITE EGREGIOUS HEALTH AND SAFETY VIOLATIONS.

Companies that violate the law and put workers' lives at risk are not legally prevented from receiving subsidy dollars. For example, if a worker dies in a fatal fall because they were not wearing a harness, the employer would likely be fined something like \$21,644 (the average fine for a construction fatality in New York State). The employer, despite these fines, would still be eligible to receive government subsidies for their development projects—regardless of their history of serious or willful violations.

Non-union job sites are especially dangerous for workers.

2017 DATA SHOWCASED RECORD PERCENTAGES OF FATALITIES ON NON-UNION JOB SITES.

NYCOSH analyzed OSHA's 30 construction fatality investigations in 2017 and found that in New York State, 86.7% of workers who died on private worksites were non-union. In New York City, 92.9% of the construction workers who died on private worksites were non-union.

Non-union contractors have little oversight outside of government regulatory agencies, and with OSHA's underfunding, worksites are not receiving the number of inspections necessary to ensure safety standards are being followed. Union job sites have shop stewards and a trained workforce that is more likely to recognize and report safety violations and have protection from their union against retaliation from their employer.

NYCOSH analyzed OSHA's 30 construction fatality investigations in 2017.



In New York State, **86.7%** of the construction workers who died on private worksites were non-union.



In New York City, **92.9%** of the construction workers who died on private worksites were non-union.

Latino workers are more likely to die on the job in New York State.

In the United States, Latino worker fatalities have been increasing over the past five years. In 2013, 817 Latino workers died on the job and in 2017, 903 Latino workers died. This represents a 10.5% increase in Latino worker deaths in a 5-year period.³⁹

Latinos also make up higher percentages of worker fatalities in New York State than they represent in the population. For example, an estimated 10% of New York State's workers are Latino, but in 2017, 17% of worker fatalities were of Latino workers.⁴⁰

NYCOSH reports have consistently shown that Latino and/or immigrant workers are repeatedly exploited by employers who willfully violate safety and health protections on the job. These immigrant workers are less likely to report violations out of fear of retaliation.

In a 2017 expose in *The Guardian*, employees from the U.S. Department of Labor indicated that the Trump Administration's immigration policies are resulting in less reports of wage and hour violations, which prior NYCOSH reports have shown are directly linked to safety and health.⁴¹

"They're not just refusing to talk to us. They're running away from us," said one employee, recounting stories of undocumented employees fleeing when DoL investigators arrive at a worksite. "It just shows you how fearful they are."

Even when staff clearly identify themselves as Wage and Hour representatives, "employees just run for the doors", said another DoL staffer. "This means that those employers who are working with these very vulnerable populations could feel even more empowered to exploit them."⁴²

Another expose in *The Boston Globe* interviewed a number of workers who indicated that, due to their undocumented status, they were afraid to report wage and hour and health and safety violations on the job.

[...] these workers, eager for a paycheck, are often paid below the prevailing wage and illegally, in cash. They are also the most likely to be subjected to unsafe work conditions, without insurance to cover medical bills or lost pay if they get hurt. And the unscrupulous contractors who employ them are too seldom caught and penalized.⁴³

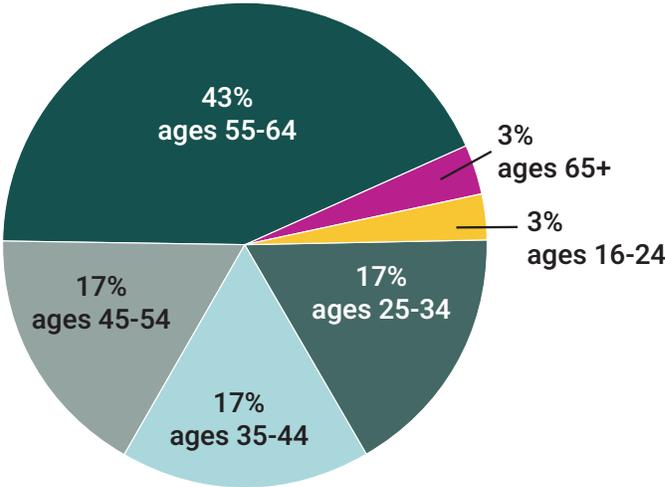
The culture of exploitation that immigrant workers experience—fueled by the Trump Administration's attacks on immigrants—is consistent and ultimately creates an environment in which immigrant workers are more likely to die on the job.

Older construction workers are dying at higher rates.

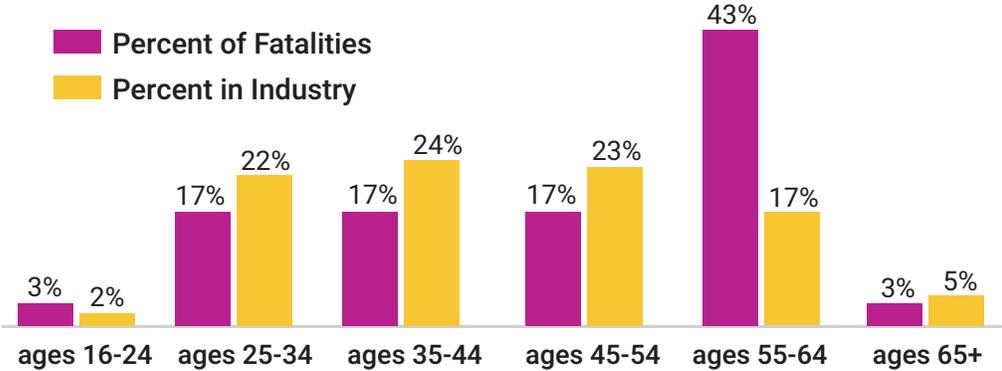
55-64 YEAR OLDS ARE DYING AT DISPROPORTIONATE RATES.

New York State construction workers in older age groups are dying at higher rates than the demographic makeup of New York State construction workers as a whole.⁴⁴ Workers aged 55-64 are most likely to die on the job (followed by workers aged 35-44) despite the fact that workers 55-64 make up one of the lowest percentages of workers in construction.

New York Construction Fatalities by Age, 2017



New York Construction Fatalities by Age vs. Percent in Industry, 2017



This data is indicative of a trend among all worker fatalities throughout the United States, with older workers dying at higher rates. 2017 BLS data showed that the number of older workers killed on the job, aged 65 and older, reached a new record.⁴⁵ Fifteen percent of workers killed in 2017 were over age 65. Twenty-five years ago, only eight percent of workers who died on the job were 65 and older.⁴⁶

CONCLUSION

CREATING SAFER CONSTRUCTION SITES IN NEW YORK IS

POSSIBLE. Evidence has proven time and time again that trainings, enforcement, reporting, and cultures of safety (which typically occur in unionized workplaces) prevent workers from getting injured and dying on the job. Of course, all of these preventative measures require adequate funding, but government needs to make the investment.

According to NIOSH's longitudinal study (1992–2002), the economic burden from occupational fatalities exceeded \$53 billion, an amount greater than the reportable gross domestic product for some states.⁴⁷ Total U.S. occupational fatalities and injuries cost a fortune in direct and indirect costs; 6 billion and 186 billion respectively.⁴⁸ For injuries and illnesses, the total was 250 billion—more than the cost of both cancer and diabetes.⁴⁹ Workers' compensation composes 25 percent of these costs,⁵⁰ and much of these costs are borne by New York State.

New York City's rate of construction fatalities is lower than elsewhere in the State, despite the tall buildings and dangerous work. Higher unionization rates (safety culture), training standards (Local Law 196), and the New York City Department of Buildings (enforcement) all lead to lower fatality numbers. New York State can similarly create safer job sites, but it will require a long-term investment to create safer jobs in the State.

NYCOSH's recommendations coincide with the findings in this report and, if implemented, would reduce construction worker fatalities in New York.

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