

NYCOSH



Deadly Skyline

**An Annual Report on Construction
Fatalities in New York State**

January 2017

New York Committee for Occupational Safety and Health
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IN MEMORIAM

Listed below are the names and ages of construction workers who died on the job in New York State in 2015 and 2016, along with the dates and locations of the fatal incidents. The list includes only those names that could be identified from press reports and data from the U.S. Occupational Safety and Health Administration, United Support and Memorial for Workplace Fatalities, and research from the New York Committee for Occupational Safety and Health. Many names are missing. According to the Bureau of Labor Statistics (BLS), 55 workers died within the construction industry in 2015 in New York; 2016 BLS data is yet to be released.

2016

Edgar Moroy-Morales, 34

January 20, Yaphank, NY

Konstantinos Potamousis, 62

February 4, New York, NY

Hector Duarte-Roque, 44

February 18, Long Island, NY

Manuel Sobral, 56

February 22, New York, NY

Jason Nichols, 42

March 1, Long Island, NY

Wilfredo Vasquez, 37

March 13, Niskayuna, NY

Alex Santizo, 21

April 1, Brooklyn, NY

Igor Begun, 54

April 15, Brooklyn, NY

Lorenzo Perechu

April 18, Queens, NY

Luis Mata, 32

April 21, New York, NY

Vitor Nobre, 55

May 31, East Hampton, NY

James Deragon, 47

June 17, Rensselaer, NY

Aaron Wellman, 40

August 26, Darien Center, NY

Bruno Travalja, 52

September 15, New York, NY

Jason C. Regatuso, 32

September 19, New York, NY

Wesley Waite

September 21, Craryville, NY

Jeffrey Langenfeld

September 29, Buffalo, NY

Paul Kenedy, 43

October 11, Brooklyn, NY

Michael Buffamante, 31

October 26, Brooklyn, NY

George Smith, age 47

November 22, Queens, NY

Elizandro Enriquez Ramos, 43

November 22, Queens, NY

Wilfredo Enriques, 59

December 9, Brooklyn, NY

Mahamoudon Marega, 30

December 23, New York, NY

2015

Edras Lopez, 46 January 6, Bronx, NY	David Campbell, 31 June 2, Rochester, NY
John Luna, 30 January 9, New York, NY	Mark Keehley, 54 June 24, Rochester, NY
Frank Dragotta, 61 January 21, New York, NY	Alton Louis July 8, Brooklyn, NY
Eric Willes, 42 March 17, Binghamton, NY	Adan Castaneda July 16, North Castle, NY
Peter Zepf, 52 February 24, Brooklyn, NY	Dondi Brothers, 48 July 20, North Castle, NY
Fredy Aguirre, 46 March 3, New York, NY	Harold Lamont Durham, 40 August 14, Staten Island, NY
Vidal Sanchez-Roman, 50 April 1, Brooklyn, NY	Angel Muñoz, 27 August 23, New York, NY
Carlos Moncayo, 22 April 6, New York, NY	Juan Cerezo, 30 September 1, New York, NY
John J. Trout, 46 April 21, Canandaigua, NY	Fernando Venegas, 19 September 3, Brooklyn, NY
Trevor Loftus, 40 April 24, New York, NY	Jorge Garcia September 29, Bronx, NY
Christian Ginesi, 25 May 25, New York, NY	Pedro Basilico, 26 October 29, New York, NY
Dominic Deluca, 25 May 13, Bronx, NY	Eugeniusz Klecha, 56 November 17, Staten Island, NY
Christopher Hamelinck May 26, Jamesville, NY	Marco Morocho, 38 November 30, Cornwall-on-Hudson, NY
Sean McCutcheon, 54 May 26, Guilderland Center, NY	Luciano Almonte December 8, Mount Vernon, NY
Sharon Biesecker, 50 May 29, Hammondsport, NY	Louis Alberto Pompoza Chicaiza, 33 December 24, New York, NY
Michael DeFio June 4, Syracuse, NY	

INTRODUCTION

When Carlos Moncayo, a 22-year-old Ecuadorian immigrant construction worker, had his life needlessly cut short in an unprotected excavation, the incident was not only foreseeable and preventable, but a criminal act on the part of his employer.

Moncayo is one of nearly 500 workers in New York's construction industry whose lives have been tragically cut short over the past decade. Many of these deaths were entirely preventable. The lives of construction workers who are building New York every day should never be sacrificed for the sake of higher profits.

In 2016, important steps were taken to improve conditions for construction workers. A construction safety task force, launched by Manhattan District Attorney Cyrus Vance in collaboration with NYCOSH and multiple agencies, unions, and community-based organizations has supported the use of existing criminal law to prosecute criminal contractors who needlessly endanger workers' lives. The historic conviction of Harco Construction, the company whose criminal failure to protect their workers caused Carlos Moncayo's death, was a result of the Manhattan District Attorney's diligent work on the case, as well as a heightened focus on improving construction safety in New York City.

The U.S. Occupational Safety and Health Administration took a significant step towards progress; after 25 years of keeping fines stagnant, as of August 1, 2016, the agency increased its penalties for employers who violate safety and health law. The increase, put into effect on August 1, 2016, will help deter contractors from breaking the law and has been an ongoing recommendation made in NYCOSH's annual reports on construction fatalities.

Still, much work remains. Construction workers, who spend their days building New York, must be protected to the fullest extent of the law, regardless of race, gender, or immigration status. District attorneys across New York State must follow the lead of the Manhattan District Attorney and use their existing power to prosecute criminal contractors. And when existing laws are inadequate, we must be bold and innovative to create new solutions—stronger regulations—that protect New York's most vulnerable workforce.

In this update of NYCOSH's annual construction fatality reports, NYCOSH finds alarming trends, including an uptick in worker fatalities in New York State and New York City, an increasing number of accidents in construction, an increase in deaths due to falls, and safety violations at 90 percent of construction fatality sites. NYCOSH also finds that wage and hour violators are more likely to be safety violators, and, as has been the case in previous reports, non-union construction sites are more dangerous. Not only are there more fatalities on non-union sites, but NYCOSH's report has found that non-union job sites have twice as many violations as their union counterparts.

Our research also finds that Latino workers are disproportionately impacted by unsafe working conditions. They are more likely than non-Latinos to die on the job due to cases of extreme employer recklessness and disregard for human life, and they are more likely to die from fatal falls. They are also more likely to be victims of wage theft, experiencing dual exploitation by their employers.

In response to the health and safety crisis facing New York's construction workers, NYCOSH has a series of recommendations. NYCOSH continues its call to protect the Scaffold Safety Law, which grants injured construction workers who fall on the job the right to sue an employer who puts their life in danger. NYCOSH is also calling for new legislation to increase penalties for companies that willingly violate the law and cause a worker fatality, and to revoke the licenses of criminal contractors who were convicted of felonies in the case of a worker death. Finally, NYCOSH recommends increased training for workers, like apprenticeship programs on large construction projects, OSHA 10s on all construction sites, and licensing for elevator construction workers.

In the past two years, thirty workers have died in New York City's construction sites; but tragically, many of these fatalities are uncounted by City and Federal agencies; and the names of many fallen workers go unknown.

New York's construction workers build New York every day. In the warmth, in the cold; when they're healthy, when they're sick; whether they're in a union or not. In the past ten years, nearly 500 of these workers have been killed while on the job. This report is dedicated to each and every one of those workers, who deserved better. All construction workers deserve a safe workplace, and we hope that this report can serve as a catalyst towards improving working conditions and preventing another senseless death on a New York construction site.

SUMMARY OF FINDINGS

- 1. New York’s construction industry is highly dangerous for workers, and workplace fatality rates are trending upward.** In the decade beginning in 2006 and ending in 2015, 464 construction workers died while on the job across New York State. New York State construction worker fatality rates have been trending upward.
- 2. Falls are the top cause of construction deaths in New York.** According to 2015 BLS data, 49 percent of deaths in New York State and 59 percent of deaths in New York City were caused by falls.
- 3. Over 2 in 3 OSHA construction site safety inspections find that employers have been violating the law, and penalties are small.** NYCOSH conducted an in-depth analysis of all construction site inspections in New York in 2014. Over 2 in 3 (68 percent) of site inspections found safety violations.
- 4. Employers that violate health and safety laws cause worker fatalities.** Almost all OSHA construction fatality site inspections find that employers had been violating health and safety law. Safety violations were found at 87 percent of fatality sites inspected by OSHA in 2014, and over 90 percent of fatality sites inspected by OSHA in 2015.
- 5. Non-union construction sites are especially dangerous for workers.** In 2014 and 2015, 80 percent and 74 percent, respectively, of construction fatality sites OSHA inspected were non-union. In addition, twice the number of violations were found at non-union compared to union construction sites in 2014.
- 6. Misclassification in the construction industry increases risk of workplace injury.** Misclassification of construction employees is a common practice in New York’s construction industry, and, according to OSHA, misclassified workers face a greater risk of workplace injury.
- 7. Latino construction workers face disproportionate danger of death due to falls and “willful” violations of health and safety laws.** 2015 OSHA data shows that 57 percent of the construction workers who died due to falls were Latino, although Latinos comprise 30 percent of the construction workforce. Willful violations—where the employer knew a hazardous condition exists, knew that it was a violation, and made no reasonable effort to correct it—were found at 33% of sites where Latinos died, while willful violations were found at 5 percent of sites where non-Latinos died.
- 8. Wage and hour violators are more likely to be safety and health violators.** In 2014, 79 percent of sites OSHA inspected with a history of wage theft were found to have safety violations, compared to 68 percent of all construction sites.

SUMMARY OF RECOMMENDATIONS

Require Adequate Education and Training

- 1. Require OSHA 10 or equivalent training for all New York City construction workers.** OSHA's 10-hour construction safety training program provides workers with training on the most common hazards construction workers face on the job. New York City currently requires this OSHA 10 training for all workers on buildings 10 stories or larger or with footprints greater than 100,000 square feet, but should require the training for workers on all construction projects.
- 2. Require apprenticeship programs and training for large construction projects.** Government-recognized apprenticeship programs provide rigorous training requirements of hundreds or thousands of hours; combine on-the-job learning with technical instruction; and offer industry-recognized certifications, which allow workers to progress in the industry.

Extend and Defend Protective Legislation

- 3. Preserve New York's Scaffold Safety Law.** New York State's Scaffold Safety Law protects construction workers by holding building site owners and employers fully liable for worker injuries and deaths resulting from unsafe conditions at elevated worksites.
- 4. Pass the Construction Insurance Transparency Act.** The Construction Insurance Transparency Act requires insurers providing coverage for liability under the Scaffold Safety Law to publicly disclose information about premium determinations and financial solvency.
- 5. Pass the Elevator Safety Act.** To ensure that elevator-related work is done safely, the New York State Elevator Safety Act requires that design, construction, operation, inspection, maintenance, alteration and repair of elevators be done by licensed workers.
- 6. Pass Criminal Contractors legislation.** The State should initiate new legislation to establish significant and effective penalties against contractors whose willful negligence led to a construction workers' death.

Expand Monitoring & Enforcement

- 7. The New York City Department of Buildings should comprehensively analyze all construction fatalities.** New York City should record all construction fatalities that occur, investigate these fatalities and work with OSHA and/or the Bureau of Labor Statistics to gather details on cause of death and safety issues at the fatality site to facilitate the development of effective health and safety policy. New York City should require companies filing for construction permits to submit OSHA violation histories.
- 8. Expand criminal prosecutions statewide.** 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.

- 9. Use existing city power to suspend or revoke licenses and construction permits for criminal contractors.** New York City should use its broad power over licensing and permitting to keep criminal contractors who were convicted of felonies that cause a worker death from operating unsafely and endangering workers and the public.
- 10. Continue to crack down on misclassification.** Misclassification in the construction industry is rampant and leaves workers more vulnerable to exploitation and workplace injury. New York's Joint Enforcement Task Force on Employee Misclassification must continue to shine a light on misclassification in the construction industry in New York.
- 11. Develop new enforcement strategies informed by the intersection between safety and wage violations.** Enforcement agencies need to recognize the intersection between health and safety violations and wage theft, and use this to inform their work.
- 12. Protect Latino and immigrant workers proactively.** Enforcement agencies should ensure that their enforcement strategies explicitly remedy inequities by targeting Latino and immigrant workers for outreach and education, making services accessible in multiple languages, protecting workers regardless of immigration status, and using proactive enforcement that does not rely on complaints.

1. New York's construction industry is highly dangerous for workers, and workplace fatality rates are trending upward.

In the decade between 2006 and 2016, 464 workers died in construction-related accidents in New York State.

New York's construction industry is highly dangerous for workers. According to the U.S. Bureau of Labor Statistics' Census of Fatal Occupational Injuries, between the start of 2006 and the end of 2015, 464 workers died in the construction industry. In 2015 alone, 55 construction workers were fatally injured in the state.¹

Employing approximately four percent of the state's workforce,² the construction industry sees one-fifth of workplace fatalities.³ Construction is the most dangerous industry in the country with the highest number of fatalities; and the second deadliest industry for workers in New York, after the agricultural industry (which includes agriculture, forestry, fishing, and hunting).⁴

New York's construction workers, in particular those who have not gone through rigorous training programs, regularly express a fear of getting injured or even killed on the job site.

In New York State, the fatal occupational injury rate in construction is 3.7 times the overall rate.

New York State's construction fatal occupational injury (FOI) rate of 10.0 per 100,000 full-time equivalent workers is almost four times the state's overall FOI rate.⁵ Unfortunately, contextualizing New York's FOI rate within the U.S. as a whole is difficult because, according to the BLS, FOI rates are not comparable across states nor between states and the national rate due to methodological differences in data-gathering across the locations.⁶

"I worked on many job sites where the employers never gave us personal protective equipment or training."

-Camilo, a construction worker from the Bronx at a NYCOSH training in 2016

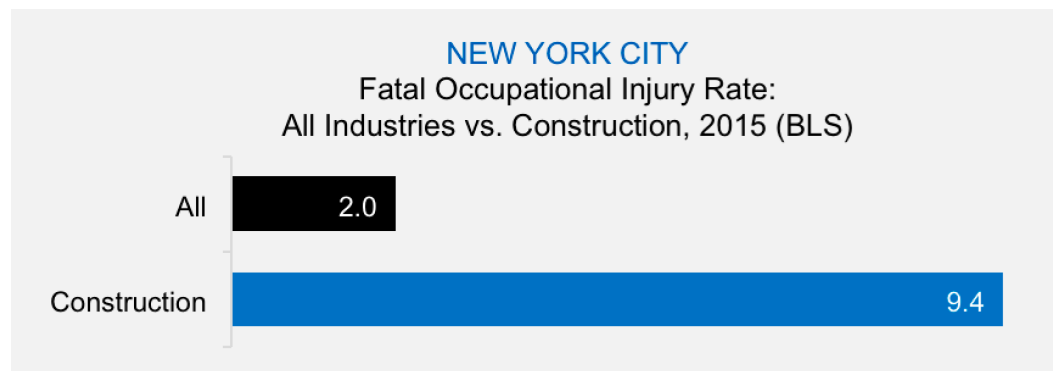


New York City has the highest fatal occupational injury rate in construction, at 4.7 times the overall rate.

In New York City, the construction sector sees more than one-third (34 percent) of workplace deaths,⁷ despite the fact that it employs approximately three percent of the total workforce.⁸ In Los Angeles and Chicago, where construction employs a similar proportion of the workforce, the industries see 32 percent and 24 percent of workplace deaths, respectively.⁹

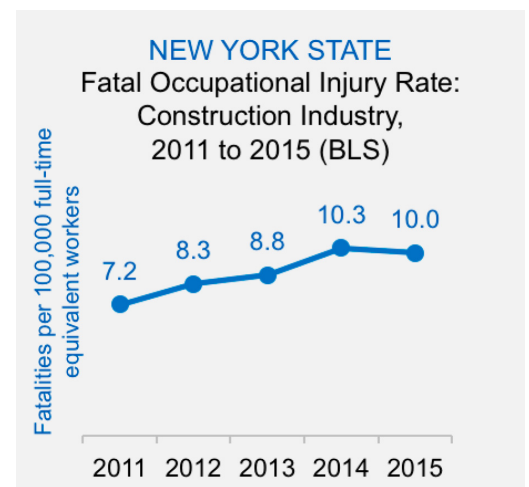
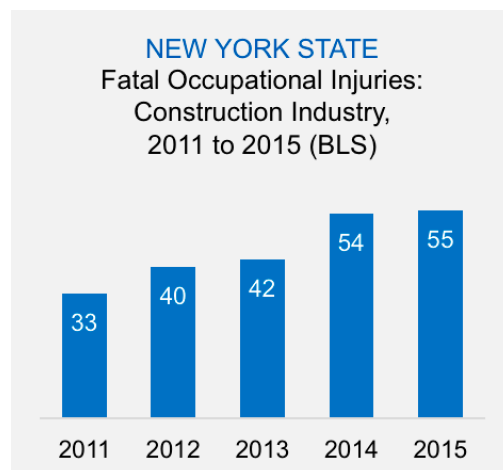
Regular news stories in 2016 have brought to light gruesome deaths of New York City’s construction workers. In December 2016, a 59-year-old construction worker, Wilfredo Enriques, fell two stories to his death at a Brooklyn construction site. Mr. Enriques was wearing a harness but was not properly tied off.¹⁰ The City buildings commissioner Rick Chandler commented after the worker’s death that the tragedy was “likely preventable.”¹¹

The New York State construction fatal injury rate has risen almost 40 percent between 2011 and 2015.



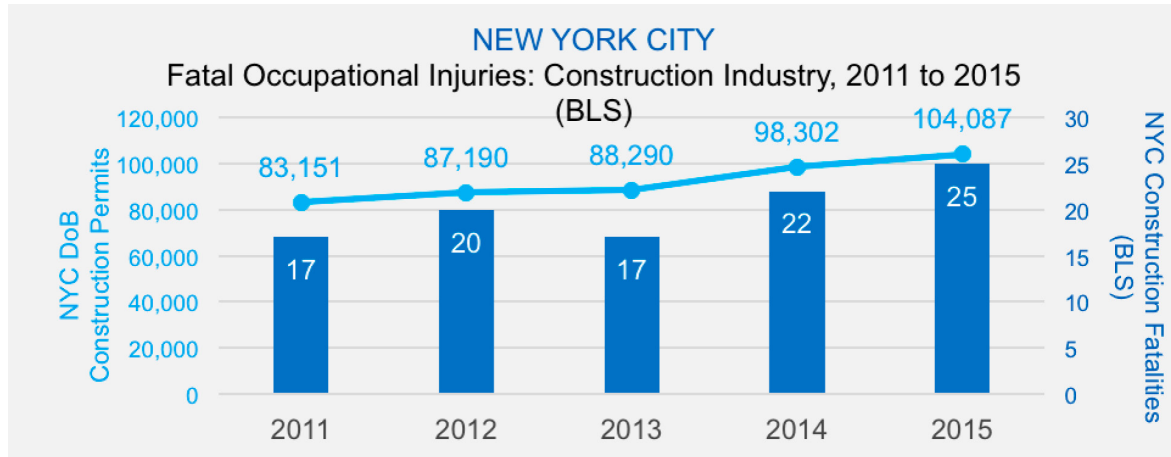
Fatal occupational injuries have been on the rise in New York State and New York City in the last five years.

Between 2011 and 2015, the number of fatal occupational injuries in New York State and New York City saw an increase. In New York State, the increase cannot be explained by an increase in construction activity alone,¹² because the construction fatal injury *rate* has been trending upward as well, rising almost 40 percent between 2011 and 2015. The fatal occupational injury rate for all industries in New York remained relatively constant during that same period, fluctuating between 2.1 and 2.8 per 100,000 full-time



equivalent workers.¹³ For construction workers, the rate increased over the past five years, unlike other industries; and unexplained by an increase in construction activity.

In New York City, fatal occupational injuries in the construction industry increased from 17 in 2011 to 25 in 2015, as construction boomed.¹⁴ In the past two calendar years, every two to three weeks, New York City families have mourned the loss of a construction worker, who likely died in a preventable accident.

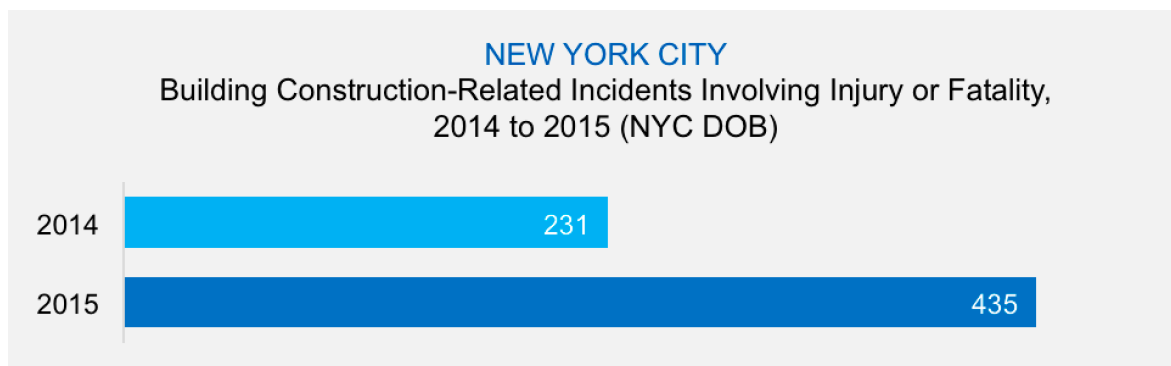


New York City does not accurately count construction fatalities.

The New York City Department of Buildings does not investigate and officially record construction deaths that do not threaten public safety, meaning that many construction fatalities go uncounted by the City agency. In 2015, the Department of Buildings investigated just 11 construction deaths, while the Occupational Safety and Health Administration (OSHA) investigated and reported 17 deaths.¹⁵

Between 2014 and 2015, building construction-related incidents involving injuries or fatalities almost doubled in New York City.

According to New York City Department of Buildings, construction-related incidents involving injuries or fatalities have risen in the last five years, skyrocketing between 2014 and 2015. There were 128 construction-related incidents in 2011, 176 in 2012, 186 in 2013, 231 in 2014, and 435 (an 88 percent increase over the previous year) in 2015.¹⁶

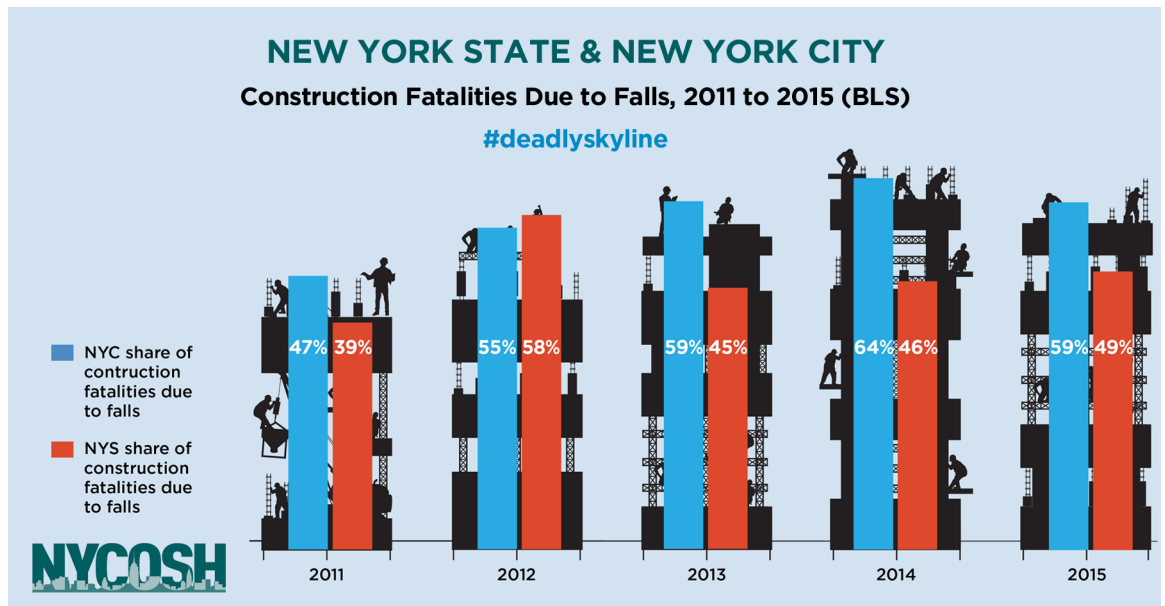
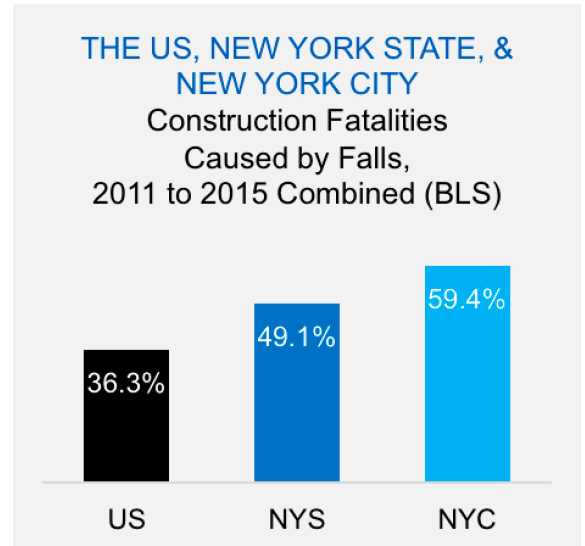


2. Falls are the top cause of construction-related deaths in New York.

Deaths due to falls are the top cause of construction-related deaths in New York State and New York City. The share of fatalities due to falls has been trending upward.

In New York State, about half (49.1 percent) of construction-related deaths in the five years comprising 2011 to 2015 were the result of falls.¹⁷ In New York City during that same period of time, about three in five (59.4 percent) of construction deaths were fall-related.¹⁸

Many fatal falls are preventable. OSHA regulations around the proper construction of scaffolding and the mandatory and proper use of personal protective equipment like harnesses on active construction sites are intended to prevent workers from falling to their death. However, the failure of construction employers to take mandated fall prevention measures results in preventable worker fatalities.



Five of 31 New York State construction deaths OSHA investigated in 2015 were elevator-related.

According to OSHA inspection data, five out of the 31 construction fatalities it investigated in 2015 were elevator-related; four occurred in Manhattan. Three of the deaths involved falls down elevator shafts, and two deaths were the result of workers being crushed by elevators.¹⁹

Elevator construction workers regularly describe dangerous working conditions and a fear for their life on the construction site. 25-year-old Christian Ginesi was an Air Force veteran who told a friend, “It’s not like the Air Force. It’s not safe out here,” referring to his job as an elevator construction worker.²⁰

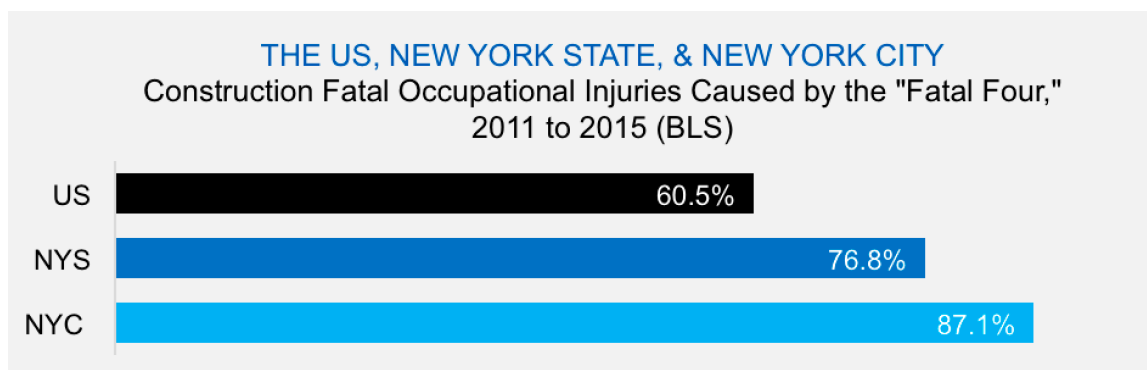
In 2015, Mr. Ginesi was installing an elevator door frame at a Manhattan construction site when the elevator he was in lost power and stalled five feet above the landing. When Mr. Ginesi attempted to jump from the elevator to the landing, he fell 25 stories to his death. An investigation by the Department of Buildings discovered that the company, G-Tech, was unlicensed to work in New York City and was powering the elevator with a jerry-rigged electrical system that failed and resulted in Mr. Ginesi’s death.²¹ G-Tech was hit with a series of fines. Mr. Ginesi’s death was preventable.

The “Fatal Four”—falls, electrocutions, struck by object, and caught-in/between equipment or machinery—cause almost all construction deaths in New York.

Nationally, the most common causes of fatal occupational injuries in the construction industry—dubbed the “Fatal Four” by OSHA—are falls, electrocutions, struck by object, and caught-in/between equipment or machinery. According to BLS data for the five years comprising 2011 to 2015, the Fatal Four were responsible for 76.8 percent of construction-related fatalities in New York State and 87.1 percent in New York City.²²

“I used to work for an elevator company doing a remodel. The elevator was on the second floor in an open elevator shaft. We told the boss, who was the owner of the company, that he had to secure the elevator so we could work safely underneath it, but he didn’t.”

—Jose Luis, a construction worker from Brooklyn said at a NYCOSH training in 2016.



3. Over 2 in 3 OSHA construction site safety inspections find that employers have been violating the law, and penalties are small.

The Occupational Safety and Health and Safety Administration is charged with enforcing workplace safety regulations established by the Occupational Safety and Health Act (1970). New York’s 13 OSHA offices conduct routine and complaint/referral-based inspections of worksites across the state. Each year, OSHA inspects two to three thousand construction worksites in New York.

Construction has boomed in New York State and industry fatalities have been increased, but the number of OSHA construction site inspections has declined.

The number of OSHA construction site inspections decreased between 2013 and 2015, from 1891 to 1585 respectively.²³ OSHA has just 66 inspectors in its New York State staff to investigate worksite safety across all industries.²⁴

In 2014, safety violations were found at more than two-thirds of all construction sites in New York.

NYCOSH conducted an in-depth analysis of the over two thousand construction site inspections conducted by OSHA in New York in 2014. Over 2 in 3 (68 percent) construction site inspections found that employers were violating OSHA safety standards. In cases where violations were found, the average fine was \$3,673.²⁵

The average fine amount will increase in coming years, as OSHA penalties increased by 78 percent on August 1, 2016, the first increase since 1990.²⁶ The higher fine amounts should serve as a stronger deterrent against violations.

Type of Violation	Maximum Penalty Prior to August 1, 2016	Current Maximum Penalty
Serious, Other-Than-Serious, Posting Requirements	\$7,000 per violation	\$12,471 per violation
Failure to Abate	\$7,000 per day beyond the abatement date	\$12,471 per day beyond the abatement date
Willful or Repeat	\$70,000 per violation	\$124,709 per violation

Low fines, combined with the difficulty of proving criminal negligence under the law, helps create an industry where fines and other penalties are not strong enough to deter employers from violating the law. This was exemplified plainly in the case of Carlos Moncayo.

On April 6, 2015, 22-year-old Carlos Moncayo left his family's home to go to his construction job, never to return. Carlos died that day from the injuries he sustained when an unshored trench caved in around him just moments after a safety inspector had declared the trench unsafe and declared to the foreman that no workers should go inside. Mr. Moncayo's death could have been prevented given well documented and repeated warnings of the dangerous excavation practices that were willfully ignored by the general contractor Harco Construction and their site supervisor Alfonso Prestia; as well as by subcontractor Sky Materials, and the company's foreman Wilmer Cueva.

The warnings on the non-union site went unheeded in the months, days, hours and even in the minutes leading to the tragedy. Both the New York City Building Code and OSHA regulations require excavations of more than five feet to be reinforced; warning of the imminent danger was issued by an inspector when the trench reached seven feet; the depth of the excavation had reached 14 feet when it collapsed and crushed Carlos to death. The site was a crime scene.

Harco Construction, Alfonso Prestia, Sky Materials, and Wilmer Cueva each played a willfully reckless role in the tragedy and were named as criminal defendants, indicted and charged in New York State Supreme Court with Manslaughter in the Second Degree, Criminally Negligent Homicide, and Reckless Endangerment in the Second Degree. The charges were brought by Manhattan District Attorney, Cyrus Vance and the cases were prosecuted by Assistant District Attorney Diana Florence.

In June of 2016, Harco Construction was convicted in a bench trial of Manslaughter in the Second Degree, a class C felony, 1 count; Criminally Negligent Homicide, a class E felony, 1 count; Reckless Endangerment in the Second Degree, a class A misdemeanor, 3 counts. The company was sentenced to conditional discharge and the court ordered that the company fund a public service announcement campaign focused on warning construction workers and the public about health and safety, particularly about trench hazards, or pay the legally mandated maximum \$10,000 fine if they failed to comply. The most the company could be fined based on state laws that govern company wrong-doing, was only \$10,000 partly because several charges were in the same category. Harco's attorney defiantly emphasized that the company was not guilty, would not comply and would rather just pay the minimal fine, which is all they did in the end. The judge on the Harco trial referred to the weak state laws that allow a corporation to get away with a nominal fine despite a manslaughter conviction—sending the message that companies can continue to act with impunity.

Following a deadlocked jury, Harco's site supervisor Alfonso Prestia got probation and community service for criminally negligent homicide in a plea deal. As reported by *Newsday*, in regard to Prestia's sentencing, Carlos Moncayo's family didn't want to undergo another trial.

While the Sky Materials trial was still pending as of January 2017, the company's foreman Wilmer Cueva was convicted by a New York State Supreme Court jury of Criminally Negligent Homicide and Reckless Endangerment and sentenced to 1-3 years in prison on December 15, 2016.

Until state law is changed to ensure all corporations and individuals involved are sufficiently punished for taking a life, those responsible for worker safety on job sites will likely not make safety a priority.



This is the trench where Carlos Moncayo was crushed to death.

The most commonly found violations related to failure by employers to take fall prevention measures.

The most commonly issued safety citations in 2014 related to measures meant to prevent falls. Over 46 percent of the almost 4,000 safety citations issued related to fall protection, scaffold safety, or stairway/ladder safety. Fatal falls were the top cause of construction fatalities in 2014, so these violations too often result in worker fatalities. Violations of training and hazard communication standards accounted for 14 percent of all violations.

4. Employers that violate health and safety laws cause worker fatalities.

Almost all OSHA construction fatality site inspections find that employers had been violating health and safety law. Safety violations were found at 87 percent of fatality sites inspected by OSHA in 2014, and over 90 percent of fatality sites inspected by OSHA in 2015.

According to BLS, there were 54 fatal injuries in the construction industry in New York State in 2014 and OSHA inspected 30 of those fatality sites. Safety violations were found at 26 out of 30 fatality sites; willful violations were found at one site; and repeat violations were found at one site.

BLS data indicates that there were 55 fatal occupational injuries in New York State in 2015; OSHA has inspected 31 of those fatality sites, and has open investigations at three more sites. Safety violations have been found at 28 out of 31 of fatality sites; willful violations were found at five sites; and repeat violations were found at two sites.

In other words, more than 87 percent of the time in 2014 and 90 percent of the time in 2015, construction worker deaths were preventable, and the employer was at fault. Employers regularly endanger their workforce by not following regulations and workers die as a result. Given these statistics, it is reasonable to suspect after any construction fatality, that the death was preventable.

In 2015, the average OSHA fatality fine increased to \$21,644; up from \$14,156 in 2014.

At construction fatality sites where safety violations were found in 2014, the average number of violations was 2.7. Penalties issued at fatality sites with violations ranged from \$0 to \$140,000, and the average penalty levied was \$14,156. At construction fatality sites where safety violations were found in 2015, the average number of

“My employer has not given me any kind of training on health and safety in the past two years. Employers I work for don’t care about the safety of workers.”

–Cesar, a construction worker from the Bronx said at a NYCOSH training in 2016.

Almost all OSHA inspections of construction fatality sites in New York State found safety violations.

- **87%** of fatality sites inspected by OSHA in 2014 and more than **90%** inspected in 2015, had safety violations.
- In both 2014 and 2015, safety violations were found at **100%** of construction sites with fall-related deaths.



violations was 3.1. Penalties issued at sites with violations ranged from \$0 to \$140,000, and the average penalty levied was \$21,644.

In both 2014 and 2015, safety violations were found at 100 percent of construction sites where fall-related deaths occurred.

Of the 22 fall-related deaths investigated by OSHA in 2014 and 2015, 100 percent occurred at sites where safety violations were found. In 2015, violations related to fall prevention were found at 13 out of the 14 sites where fall deaths occurred, and training-related violations were found at 7 of 14 of those sites. This data shows that workers who are eligible to sue under the Scaffold Safety Law—100 percent of the time in 2014 and 2015—were not at fault and therefore should be able to hold their employers accountable in a court of law.

5. Non-union construction sites are especially dangerous for workers.

Non-union construction sites see a disproportionate share of worker fatalities.

According to OSHA inspection data, in 2014 and 2015, New York State's non-union construction sites saw a disproportionate share of construction fatalities. In 2014 and 2015, 80 percent and 74 percent, respectively, of construction fatality sites OSHA inspected were non-union.²⁷

Twice the number of violations were found at non-union compared to union construction sites in 2014.

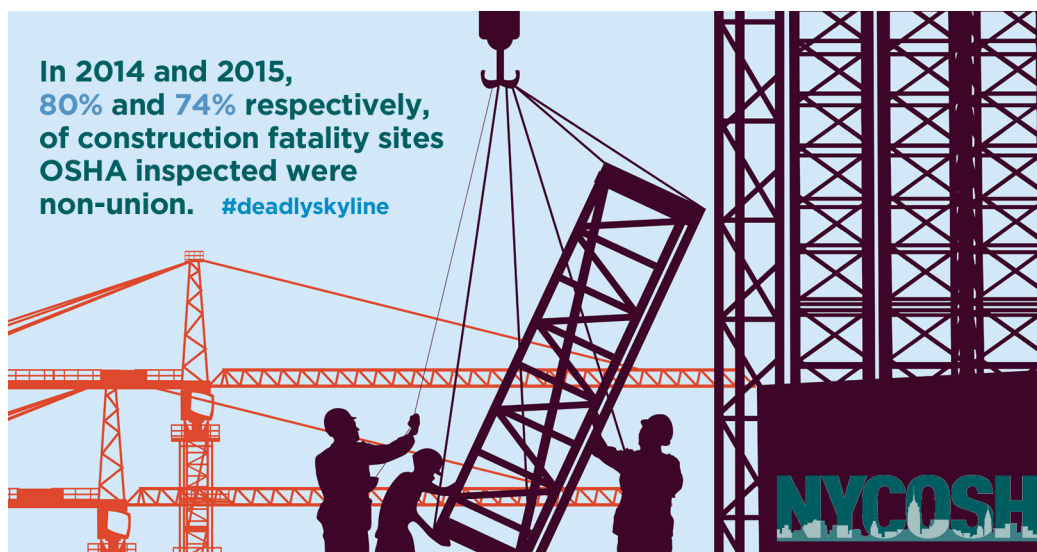
NYCOSH conducted an in-depth analysis of 2014 OSHA New York construction site inspection data and found, on average, more than twice the safety violations at non-union sites compared to union sites. OSHA inspections of non-union construction fatality sites in New York State in 2014 found cases of "willful" and repeat violations. There were no willful or repeat violations found at union sites.²⁸

Over 93 percent of companies on OSHA's "Severe Violators" list are non-union.

OSHA's Severe Violators Program "focuses on recalcitrant employers that endanger workers by committing willful, repeat or failure-to-abate violations." Non-union companies are over-represented on the Severe Violators list: 41 of the 44 New York-based construction companies on the list are non-union.²⁹

"I've worked in [non-union] construction for ten years, in carpentry and masonry. No employer has ever given me any kind of health and safety training."

-Camilo, a construction worker from the Bronx said at a NYCOSH training in 2016.



6. Misclassification in the construction industry increases risk of workplace injury.

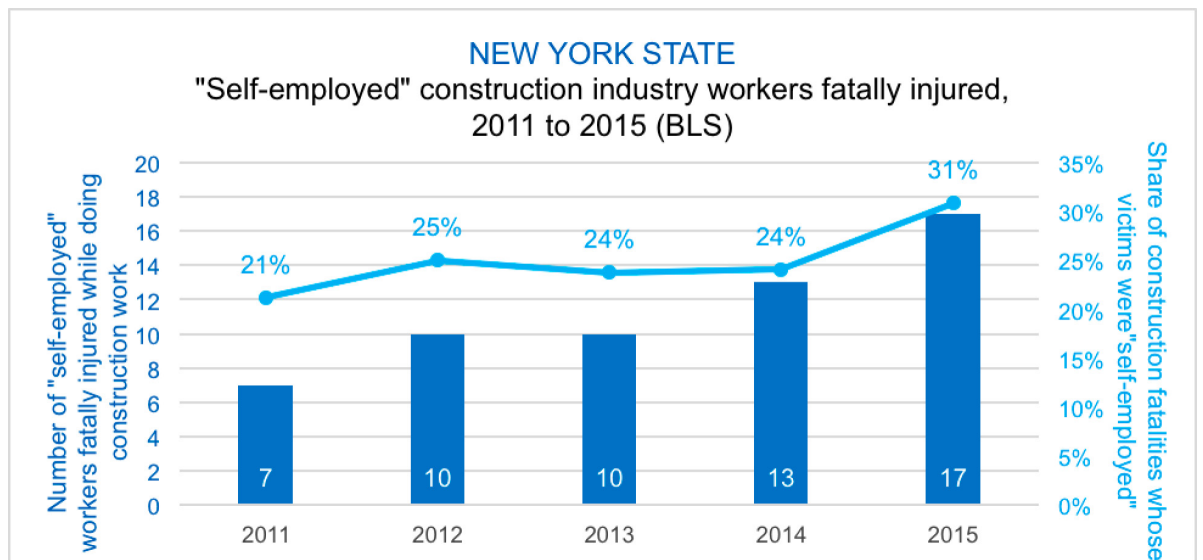
Misclassification of construction employees is a common practice in New York's construction industry, according to studies by the Fiscal Policy Institute and New York State's Joint Enforcement Task Force on Employee Misclassification.³⁰ Misclassification takes two forms: improper classification of employees as independent contractors and "off-the-books" employment of workers.³¹

In 2010, New York State passed the Construction Industry Fair Play Act, which has facilitated agency investigations of misclassification and enforcement of labor law. The legislation created a "presumption of employment" in the industry unless an employer can meet stipulations of a three-part test to prove independent contractor status. Agency sweeps of New York's construction industry in 2014 discovered \$2.7 million in unreported wages, \$104,000 in unpaid unemployment insurance premiums, and identified 230 misclassified workers.³²

Almost one-third of New York State construction industry fatalities were of "self-employed" workers in 2015.

Over the past five years, an increasing share of the workers who have been fatally injured in New York's construction industry were designated as "self-employed."

Between 2011 and 2015, the number of workers the BLS designates as "self-employed" who died within New York's construction industry rose from 7 to 17, which represents an increase from 21 percent to 31 percent of fatalities—almost one-third of construction industry fatalities were of "self-employed" workers in 2015.³³ Self-employed workers fall outside of OSHA's jurisdiction, so these worker fatalities are not investigated by the agency, and thus little is known about their cause and how they might have been prevented through better safety practices. Given high rates of misclassification in New York's construction industry, whether any of these "self-employed" workers who were fatally injured were employees misclassified as self-employed workers warrants investigation by the New York State Department of Labor.³⁴

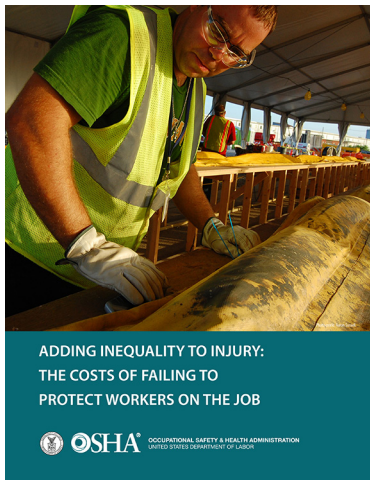


According to OSHA, misclassified workers face a greater risk of workplace injury.

According to the Occupational Safety and Health Administration, “in the construction industry, the proportion of the workforce misclassified as independent contractors is substantial.” OSHA explains how misclassification increases workers’ risk of injury;³⁵

Employee misclassification increases workers’ vulnerability to occupational injury as well as financial exploitation and discrimination. Employers with misclassified workers do not pay Social Security, Medicare, and unemployment insurance taxes, workers’ compensation insurance premiums, and are unlikely to pay a premium for overtime work; these financial savings for employers come at the cost of critical worker protections. Employers who misclassify employees impede workers’ access to the following:³⁶

- the right to a minimum wage, overtime pay, and paid rest breaks under the Fair Labor Standards Act (FLSA);
- the right to an unemployment benefit; the right to equal access to 401(k) and retirement benefits offered by employers under the Employee Retirement Income Security Act (ERISA);
- protection against discrimination on the basis of factors like age, race, gender, or disability, enforced by the Equal Employment Opportunity Commission (EEOC);
- the right to organize under the National Labor Relations Act (NLRA);
- the right to a safe and healthy workplace under Occupational Safety and Health (OSH) Act; and,
- the right to workers’ compensation in case of occupational injury.



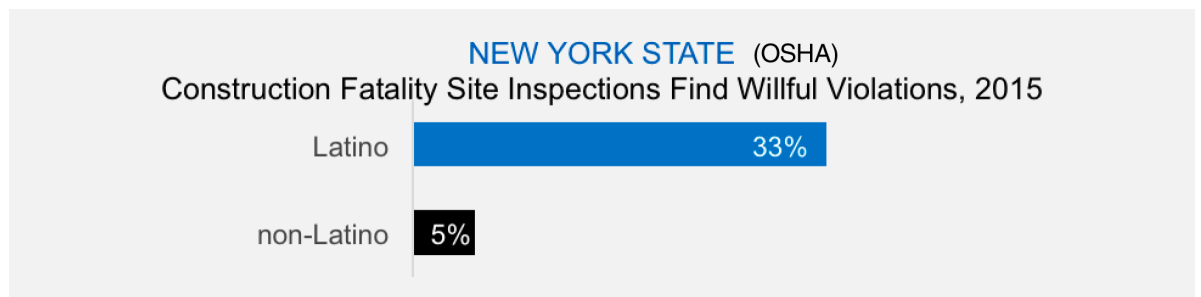
Misclassifying workers increases the likelihood of work injuries through two mechanisms. First, by misclassifying wage employees as independent contractors, employers do not have to worry about the OSHA requirement to provide a safe workplace, since the OSHA law does not cover the self-employed. Second,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

7. Latino construction workers face disproportionate danger of death due to falls and “willful” violations of health and safety laws.

In New York State construction sites where Latinos perished, employers were almost 7 times as likely to have committed “willful” violations of health and safety laws.



In 2015, “willful” violations were found at 33 percent of sites where Latinos died, while willful violations were found at 5 percent of sites where non-Latinos died. If the level of OSHA penalties levied for safety violations at construction fatality sites is considered a proxy for severity of violation, worksites where Latino workers were killed, were on the average, more unsafe than those where non-Latino workers died. The average OSHA penalty levied for safety violations at worksites where Latinos died was \$40,989, compared to \$15,873 at worksites where non-Latino construction workers died.³⁷



In April 2016, 27-year-old Luis Mata was working at a Greenwich Village construction site when a plank from scaffolding being dismantled fell on his head. He was wearing a hard hat, but the impact caused severe neck and back injuries that resulted in his death. The New York City Department of Buildings issued a violation for “failure to safeguard all persons and property during construction.” The worksite had a history of safety violations, including at least two related to façade safety,³⁸ and received a stop-work order from the Department of Buildings in the past related to scaffolding.

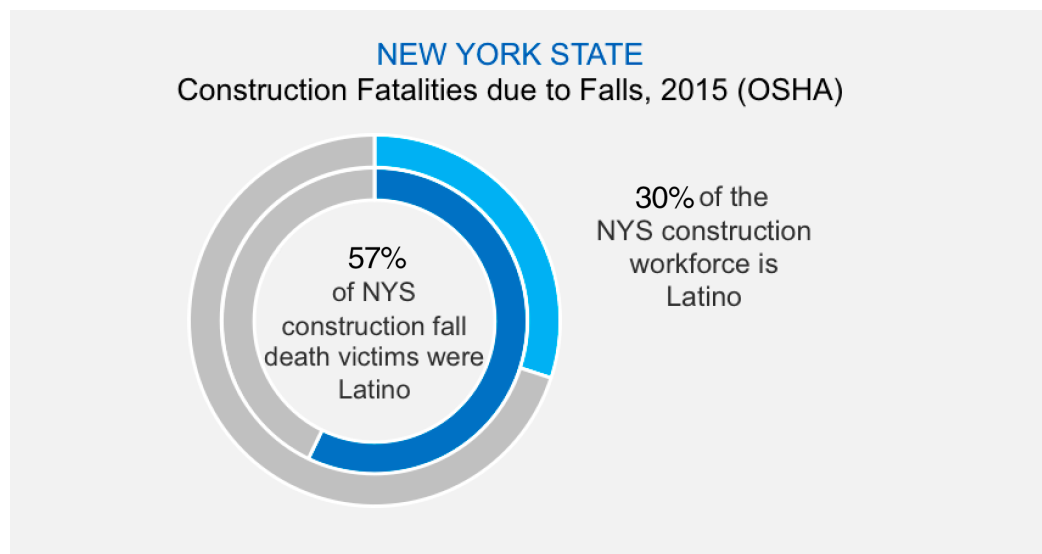
These kinds of fatalities—where an employer knew the risk that they were putting the workers in, but did not correct the problem—occur disproportionately for Latino construction workers, who often are the sole financial providers for their families. Mr. Mata’s family friend, Luis Perez, stated that Mr. Mata was “the only support” to his mother in Mexico. Mr. Mata was the victim of an exploitative contractor, and died in a preventable accident.³⁹

New York’s Latino construction workers are more likely than non-Latino construction workers to lose their lives due to workplace falls.

According to OSHA fatality site inspection reports, New York’s Latino construction workers are more likely than non-Latino construction workers to lose their lives due to workplace falls. 2015 OSHA fatality site inspection reports show that 57 percent of the construction workers who died due to falls were Latino, even though Latinos comprise 30 percent of the construction workforce.

“I have worked in dangerous conditions when replacing the roofing on a house, when I was working from very high. I didn’t take any action [to improve job safety] because I needed the job, and I would have gotten fired. If we didn’t do the work, even though it was dangerous, we would be fired.”

–Mauricio, a construction worker from Queens said at a NYCOSH training in 2016.

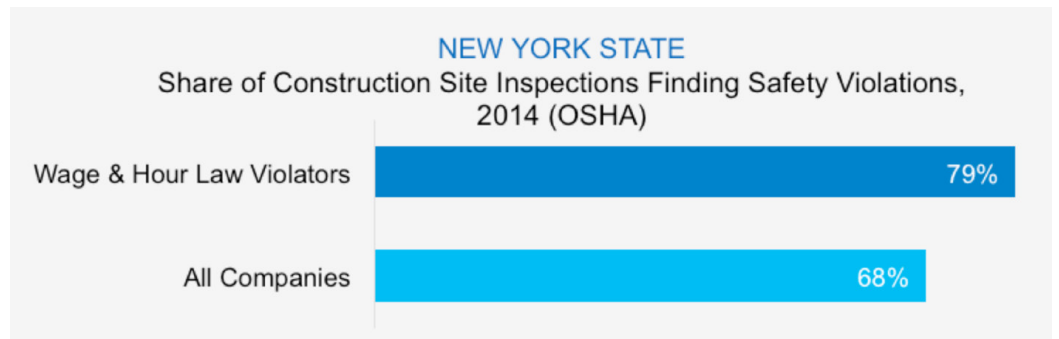


8. Wage and hour violators are more likely to be safety and health violators.

In 2014, 68 percent of OSHA construction site inspections in New York State found safety violations. In the same year, 42 construction companies with a history of wage and hour violations (they owed a total of \$762,776.85 in back wages) were inspected by OSHA, and 33 (79 percent) were found to have safety violations.⁴⁰



This data shows that wage and hour violations can serve as an indicator for health and safety violations and vice versa. Multiple agencies are responsible for enforcing worker safety inspections at any given workplace, including the U.S. Department of Labor Wage and Hour Division, OSHA, the New York State Department of Labor, New York City



Department of Buildings, New York State Workers' Compensation Board, New York State Division of Human Rights, and the New York City Department of Consumer Affairs. In other industries, agencies have been able to maximize their resources by collaborating in investigations; cross-training investigators; and sharing data to identify potential violations.

As many studies have shown over the past several years, in addition to having a disproportionate injury and fatality rate, as discussed above, Latinos are also more likely to have their wages stolen, especially immigrant Latinos. In a 2009 report by

the National Employment Law Project, Latinos were nearly six times more likely to be victims of minimum wage violations than white workers. Foreign-born Latinos had twice the rate of violations of U.S.-born Latinos. Therefore, Latinos, and particularly immigrant Latinos; are exploited doubly by employers, who provide them with unsafe working conditions and then rob their wages.⁴¹



Wage and hour violators in New York State are more likely to be safety violators. #deadlyskyline

79% of construction sites inspected with a history of wage theft were found to have OSHA violations.

NYCOSH

The infographic features a blue background with orange silhouettes of construction workers and cranes. The text is in white and orange. The NYCOSH logo is in the bottom right corner.

RECOMMENDATIONS

Require Adequate Safety Education and Training

1. Require OSHA 10 or equivalent training to all New York construction workers.

The Occupational Safety and Health Administration has designed a 10-hour construction safety training program around the most common hazards construction workers face on the job conducted by OSHA-authorized instructors. New York City currently requires this OSHA 10 training for all workers on “major buildings,” defined as buildings 10 stories or larger or with footprints greater than 100,000 square feet. New York City should expand the requirement to include all construction, regardless of size, target penalties at scofflaw employers, not workers, and provide adequate public funds to community organizations and workers centers that provide these trainings at low cost to make the trainings widely accessible.

2. Require apprenticeship programs and training for large construction projects.

Government-recognized apprenticeship programs provide rigorous training requirements of hundreds or thousands of hours; combine on-the-job learning with technical instruction; and offer industry-recognized certifications that allow workers to progress in the industry. There is a clear link between this extensive training and the representation provided by unionized worksites, which traditionally use an apprenticeship program, and a lower fatality rate for workers. New York City should ensure that major construction projects use apprenticeship programs so that working in construction can provide a pathway to a good job for more of New York’s low wage workers, and so that these workers can return home safely at the end of each day.

Extend and Defend Protective Legislation

3. 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 holding building site owners and employers fully liable for worker injuries and deaths resulting from unsafe conditions at elevated worksites. Given the high rate of fall-related deaths in New York’s construction industry, and the high rate of safety violations related to fall prevention, preserving the Scaffold Safety Law is critical to protect New York’s construction workers.

4. Pass the Construction Insurance Transparency Act.

The Construction Insurance Transparency Act (S03392-A/A04718-A) requires insurers providing coverage for liability under the Scaffold Safety Law to publicly disclose “pertinent facts related to their premium determinations and financial solvency.” According to the legislation, “The determination of premiums for [construction] liability insurance policy in this state has, unfortunately, gone on too long in obscurity, with even those who bear the cost of premiums unable to learn why prices are set as they are.”⁴²

5. Pass the Elevator Safety Act.

In 2015, five out of 31 construction fatalities in New York City were elevator-related. To ensure that elevator-related work is done safely, the New York State Elevator Safety Act (S01945/A01787) “requires the licensing of persons engaged in the design, construction, operation, inspection, maintenance, alteration and repair of elevators.”

The legislation has been passed in the New York State Assembly, but has not made it to the Senate floor.⁴³

6. Pass Criminal Contractors legislation.

The preposterously low penalties given to Harco Construction despite its conviction for manslaughter, criminally negligent homicide, and reckless endangerment, for the death of Carlos Moncayo highlight the need to establish significant and effective penalties that actually spur employers to protect their workers on the job. 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 their death. New York should re-envision the framework to increase penalties against corporate entities, so that criminal contractors cannot continue using their corporate structures to evade accountability and continue business as usual.

Expand Monitoring & Enforcement

7. The New York City Department of Buildings should comprehensively analyze all construction fatalities.

Currently, the New York City Department of Buildings investigates and records on its official count only those construction worker deaths involving a threat to public safety, leaving OSHA to investigate and report on all deaths of construction employees (the deaths of self-employed workers are not investigated by OSHA) in the city. New York City should record all construction fatalities that occur, and either investigate these fatalities or work with OSHA and/or the Bureau of Labor statistics to gather details on cause of death and safety issues at the fatality site to facilitate the development of effective health and safety policy. New York City should require companies filing for construction permits to submit OSHA violation histories.⁴⁴

8. Expand criminal prosecutions statewide.

The Manhattan District Attorney has led the way on prosecuting criminal construction contractors; and the Brooklyn District Attorney followed suit. 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.

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

Although OSHA has jurisdiction over workplace safety standards, New York City has broad power within its licensing and permitting processes to keep criminal contractors from operating unsafely and endangering workers and the public. Employers like Harco Construction and Formica Construction, where the owners, managers, or corporations were convicted of felonies that cause a worker death should face consequences in their applications for licensing to work on residential construction or permitting for commercial projects. City policies must hold employers accountable in cases of criminal conviction in a worker death - to do otherwise sends a message to companies and workers that construction employers can break the law with impunity.

10. Continue to crack down on misclassification.

Misclassification in the construction industry is rampant and leaves workers more vulnerable to exploitation and workplace injury. The latest report issued by New York's

Joint Enforcement Task Force on Employee Misclassification (JETF), in 2015, identified 230 misclassified workers in New York's construction industry, and revealed \$2.7 million in unreported construction worker wages, and \$104,000 in unpaid unemployment insurance premiums by construction employers.⁴⁵ The Task Force must continue to shine a light on misclassification in the construction industry in New York, as well as other industries that seek to evade worker protections laws by using a strategy of worker misclassification.

11. Develop new enforcement strategies informed by the intersection between safety and wage violations.

Enforcement agencies need to recognize the intersection between health and safety violations and wage theft, and use this to inform their work. Health and safety complaints can trigger wage and hour inspections, and vice versa; investigators can be cross-trained for greater efficiency in enforcement; data can be shared and analyzed to help target enforcement efforts. Through its Nail Salon Task Force, New York State has already demonstrated that this is possible, implementing cross-training for investigators to review compliance with wage and hour, workers compensation, and appearance enhancement laws. Considering the massive scope of wage and health and safety violations, the lack of resources for enforcement, and the ease of data sharing through technology, continued compartmentalization at federal, state, and local levels does not serve the workers who are struggling against exploitation; who are disproportionately immigrants and/or Latinos.

12. Protect Latino and immigrant workers proactively.

NYCOSH reports have consistently shown that Latino and/or immigrant workers are repeatedly exploited by employers who willfully violate safety and health regulations on the job. Enforcement agencies should ensure that their enforcement strategies explicitly remedy inequities by targeting Latino and immigrant workers for outreach and education, making services accessible in multiple languages, protecting workers regardless of immigration status, and using proactive enforcement that does not rely on complaints. No one group should be unfairly left outside the protection of the law; no worker should die because of his or her race, language, national origin, or immigration status.

CONCLUSION

Increasing construction fatalities in both New York City and across the State in the past ten years is cause for concern and alarm. In the past ten years, New Yorkers have witnessed the deaths of 464 workers; with data suggesting that in the past two years, between 87-90 percent of these deaths are preventable. NYCOSH has compiled a list of recommendations consistent with our research findings, which show that construction is dangerous, particularly for non-union workers; and that education and training, as well as increased enforcement and penalties for violators are effective deterrents to worker fatalities.

For enforcement to be effective, all workers must feel comfortable reporting unsafe working conditions and labor violations. Federal, state, and local agencies must proactively protect Latino and immigrant workers regardless of their immigration status, because not doing so endangers both the safety of the individual and the safety of the workforce as a whole. Failure to protect the most marginalized sectors of the workforce will have a catastrophic effect on all construction workers *and* New Yorkers, as reporting safety violations is critical to preventing workplace accidents that can cause worker and pedestrian injuries and fatalities.

ENDNOTES

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Publication was supported by a grant from the New York State Department of Labor, Contract #C150482. The content is solely the responsibility of the authors and does not necessarily represent the official views of the New York State Department of Labor.



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