

DEADLY SKYLINE



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

Report Author and Principal Researcher

Charlene Obernauer, M.A.
Executive Director, NYCOSH

Editor

Lara Maldjian, M.P.H.
Associate Director, NYCOSH

Report Designer

Government Content / The Viney Group, LLC

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).

CONTENTS

Introduction	1
Summary of Findings	5
Recommendations	7
Findings	15
1. New York's construction industry remains highly dangerous, with slight increases in fatalities in New York City	15
2. Falls continue to be the top cause of construction fatalities in New York State and New York City.	19
3. Non-union job sites are especially dangerous for workers	24
4. Latino workers are more likely to die on the job in New York State.	25
5. Older construction workers are dying at higher rates.	26
6. OSHA construction fines for fatality increases have modestly increased.	
7. OSHA continues to reduce its inspections and public presence, decreasing the agency's effectiveness.	27
8. Contractors' OSHA violations coincide with construction worker fatalities, and violations do not prevent them from receiving government subsidies.	29
Conclusion	31

INTRODUCTION

Construction is one of the most dangerous industries in the country, and each day workers face a broad range of safety and health risks. No one work site is the same, and no matter how many years of experience workers may have on the job, they can expect a new set of safety obstacles with each new job site that they enter.

Stories of fallen construction workers consistently populate New York press outlets, amplifying the need for New York State to proactively develop and maintain protections for construction workers. In “Deadly Skyline,” the New York Committee for Occupational Safety and Health (NYCOSH) highlights fatality trends in the construction industry and makes recommendations on how New York State and New York City can make worksites safer for construction workers.

Key 2018 findings include a decrease in fatalities in New York State and a slight increase in fatalities in New York City. The fatality rates in New York State and New York City reached similar levels, at 10.5 and 10.0 per 100,000, respectively. Non-union job sites continue to be especially dangerous for workers, with 86% of worker fatalities occurring on non-union sites in New York State and 83% in New York City.

NYCOSH found that contractors’ OSHA violations coincide with construction worker fatalities, highlighting that many fatalities are indeed preventable.

NYCOSH’s key recommendations include requiring and funding adequate safety education and training; extending and defending protective legislation

to hold employers accountable with legislation such as the New York Scaffold Safety Law and Carlos' Law; and expanding regulations, monitoring, and enforcement.

Methodology

NYCOSH develops the Deadly Skyline report using data reported by: the Bureau of Labor Statistics; the New York City Department of Buildings; the Occupational Safety and Health Administration (OSHA); and several media reports. The most complete information comes from the Bureau of Labor Statistics, which issued worker fatality data for the 2018 calendar year in December of 2019.

NYCOSH is grateful to all of the workers who have joined us in various safety, health, and empowerment trainings over the past year. We dedicate this report to New York's construction workers.

SUMMARY OF FINDINGS

New York State’s construction industry remained highly dangerous for workers in 2018, but fatality numbers decreased from prior years. The number of construction workers who died in New York State decreased 14.7% between 2017 and 2018, with 69 deaths in 2017 and 58 deaths in 2018.

In contrast, New York City’s construction fatality numbers increased in 2018. 20 construction workers died in 2017, compared to 22 in 2018—a 10% increase.

In 2018, New York City and New York State fatality rates were similar. New York City’s rate rose from 7.8 per 100,000 in 2017 to 10.0 in 2018, and, New York State’s rate fell from 12.2 per 100,000 to 10.5, bringing rates across NYC and NYS closer together.

Fall fatalities continued to be the number one cause of construction fatalities in both New York State and New York City. Over the past ten years in New York State, 48% of construction fatalities were due to falls. In New York City alone, fall fatalities accounted for 64% of all construction deaths in 2018.

Non-union job sites are especially dangerous for workers. NYCOSH analyzed 23 OSHA-investigated construction fatality citations in 2017 and found that in New York State, 86% of workers who died on private worksites were non-union. In New York City, nearly 83% 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 were more likely to die on the job in 2018. In the United States,

Latino worker fatalities in all industries have increased by 17.6% in a 6-year period. Latinos also make up a disproportionately high percentage of worker fatalities in New York; an estimated 10% of New York State’s workers are Latino, but in 2018, 19% 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. In 2018, workers aged 55-64 were most likely to die on the job, followed by workers aged 35-44.

OSHA construction fines for fatality cases increased, but remain low.

The average fine issued by OSHA increased from \$21,592 in 2017 to \$25,178 in 2018. The highest fine issued in 2018 was \$224,620.

Increased prosecutions of criminal construction contractors in New York City raised awareness about workplace crimes and demonstrated the connection between fatalities, wage theft, and other crimes.

In the past several years, 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’s funding cuts resulted in low inspection numbers.

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 21 in 2019. NYCOSH also conducted an 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, but violations do not prevent contractors from receiving government subsidies.

NYCOSH analyzed OSHA-inspected construction fatality cases in New York State in 2017 and found that on job sites where

workers have died, employers had coinciding OSHA violations 100% of the time. For example, if a worker died from a fatal fall, the employer was then 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.

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 need to create 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 and their families the right to sue an employer or the building site owner if they are injured or killed in falls from an elevation. Fall-fatalities are the top cause of death on construction sites and are preventable; 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 increase penalties against corporate entities. The current maximum amount is \$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 make a timely and accurate 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 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. 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 affected 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 their 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 federal OSHA's inadequacies.

The stagnant hiring and coinciding decreasing inspection numbers of OSHA has 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 and preventing workplace fatalities in New York City. This role has 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 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 increasingly 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.

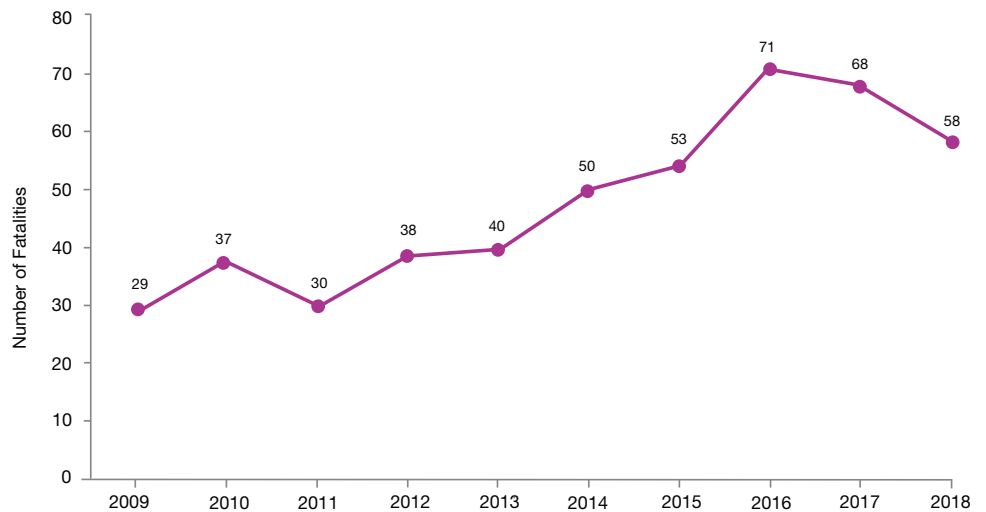
FINDINGS

1. New York’s construction industry remains highly dangerous, with slight increases in fatalities in New York City.

Construction fatality numbers decreased slightly in New York State.

The number of construction workers who died in New York State decreased 14.7% between 2017 and 2018, with 69 deaths in 2017 and 58 deaths in 2018. New York State’s construction industry employs approximately 414,000 workers¹ and remains highly dangerous; 417 workers died in construction-related accidents between 2009 and 2018. Over the past ten years, an average of 42 workers died each year in New York State.

Figure 1
New York State Construction Fatalities (2009-2018)

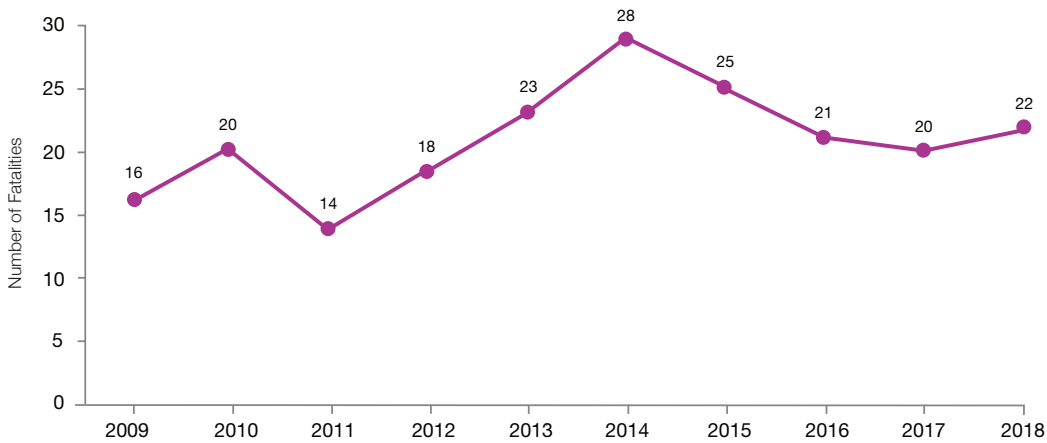


Source: U.S. Bureau of Labor Statistics Census of Fatal Occupational Injuries, 2019.

Construction fatalities increased in New York City.

In New York City, the number of construction workers who died increased 10% between 2017 and 2018, from 20 to 22. Over the past ten years, 20 construction workers died on average each year in New York City, with a total of 207 construction worker fatalities. The lowest number of fatalities over a ten-year period in New York City was in 2011, with 14 fatalities; the highest was in 2014, with 28. The total number of workers who died across all industries decreased from 87 in 2017 to 72 in 2018.

Figure 2
New York City Construction Fatalities (2009-2018)



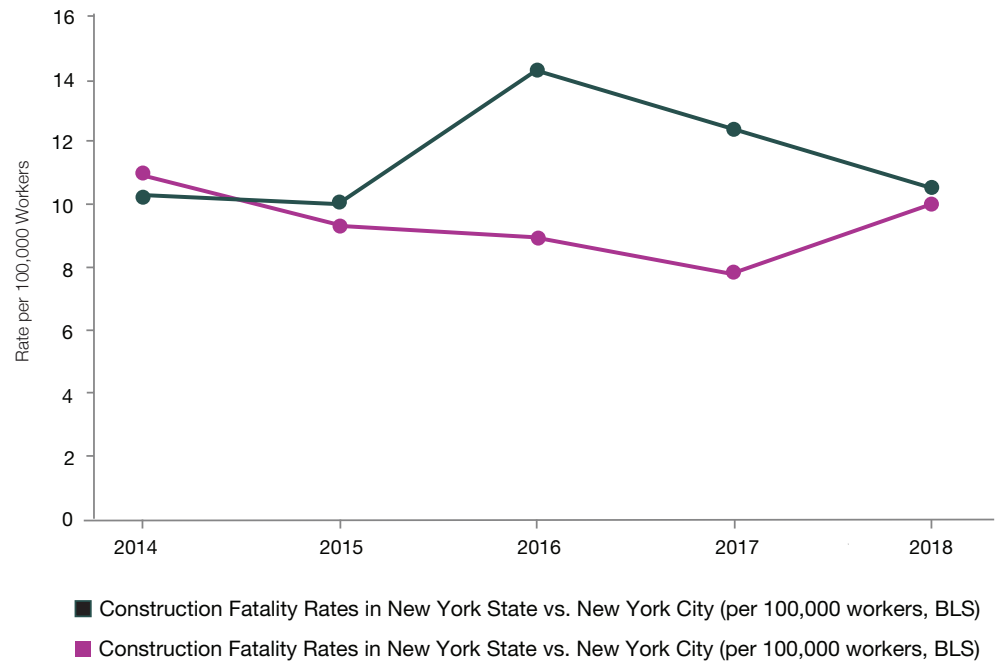
Source: U.S. Bureau of Labor Statistics Census of Fatal Occupational Injuries, 2008-19.

New York State's construction fatality rate decreased while New York City's rate increased, bringing both rates closer together.

New York City's rate rose from 7.8 per 100,000 in 2017 to 10.0 in 2018, and, New York State's rate fell from 12.2 per 100,000 to 10.5, closing the gap between NYC and NYS construction fatalities.

Figure 3

Construction Fatalities Rates in NYS vs NYC (2014-2018)



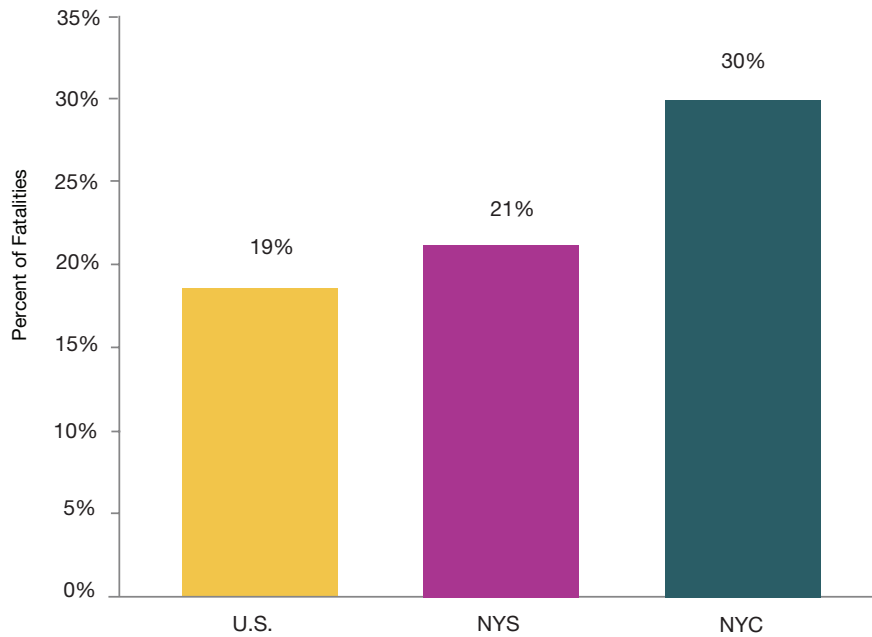
Source: U.S. Bureau of Labor Statistics Census of Fatal Occupational injuries, 2013-19.

Among all work-related fatalities across New York City, New York State, and the United States as a whole, NYC has the highest proportion of construction-related worker fatalities.

In 2018, construction deaths accounted for 30% of all worker deaths in New York City and 21% of all worker deaths in New York State², compared to 19% nationwide.³

Figure 4

Percent of Construction Worker Fatalities Among All Worker Fatalities in U.S., N.Y.S., and N.Y.C., 2018



Source: U.S. Bureau of Labor Statistics Census of Fatal Occupational Injuries, 2019.

Construction is one of the most dangerous industries for workers in the United States, with the construction industry accounting for 1,003 out of 5,250 worker fatalities in 2018 (19%) despite construction workers making up just 4% of the nation’s workforce. The nationwide fatality rate in construction is 3.4 times the overall rate of fatalities among all workers in all industries.

In New York City and New York State, the disproportionate number of fatalities among construction workers as compared to overall workers remains true. In 2018, the New York State fatality rate for all workers was 3.1 per 100,000, and the rate for construction workers was 10.5 per 100,000 workers. In New York City, the 2018 fatality rate in construction is 5 times the overall rate of fatalities in all industries (2.0 per 100,000 for all workers⁴ vs. 10.0 per 100,000 for construction workers⁵).

The need to create safe construction jobs is urgent.

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

In New York State and City, fatal falls make up 40% and 64% of all construction deaths, respectively.

The number of construction workers who died in New York State decreased 14.7% between 2017 and 2018, with 69 deaths in 2017 and 58 deaths in 2018. New York State's construction industry employs approximately 414,000 workers and remains highly dangerous; 417 workers died in construction-related accidents between 2009 and 2018. Over the past ten years, an average of 42 workers died each year in New York State.

In the past ten years, 222 workers died from falls in New York State; on average, deaths from falls accounted for 48% of worker deaths in construction per year. In 2018, 40% of all construction fatalities were due to falls.

In New York City, 78 workers died due to falls over the past ten years. On average, falls accounted for 46% of all construction deaths. In 2018, 64% of all construction fatalities were due to falls. Deaths due to falls are particularly egregious because of how likely they are to be preventable.

Nationally, the most common violations are on fall protection in construction.

On February 14, 2018, a 62-year old construction worker was working from a scaffold to repair a roof drainage system. The employee was applying water proofing when he attempted to leave the scaffold, fell to the ground and was killed.

The contractor was fined with three serious violations after the fatality, including 1926.451 G01 VII, which requires that workers "shall be protected by the use of personal fall arrest systems or guardrail systems..."⁶ A failure to provide a fall arrest/guardrail system is a basic requirement for construction safety and this common violation shows just how preventable these workplace fatalities can be.

This example shows 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.

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, ⁷ a statistic that is consistent with prior years. This statistic 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

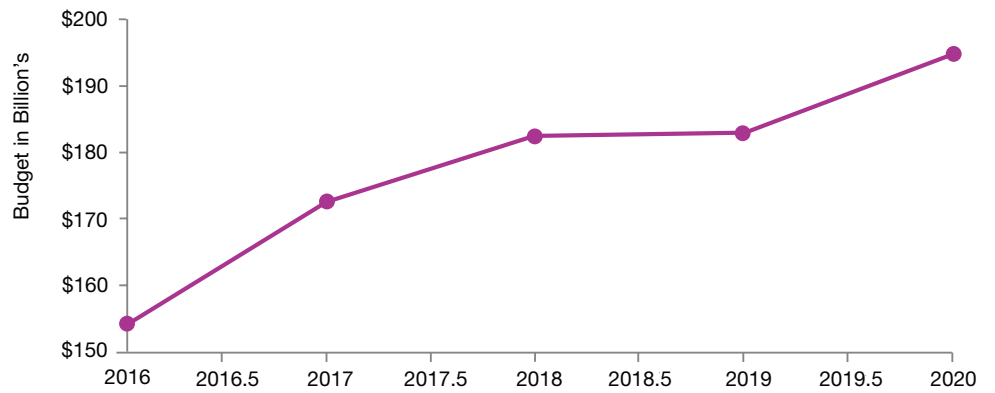
Beyond fatal falls, the combined total of all “fatal four” hazards, including falls, electrocutions, struck by object, and caught in or between equipment or machinery cause an overwhelming percentage of fatalities in construction. NYCOSH analyzed data from the past ten years and found that 69% of all 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.

Increased resources to New York City Department of Buildings

The New York City Department of Buildings (NYC DOB) has drastically increased its budget 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 \$193.8 million for NYC DOB,⁸ which continues a trend of increases in funding for the agency.

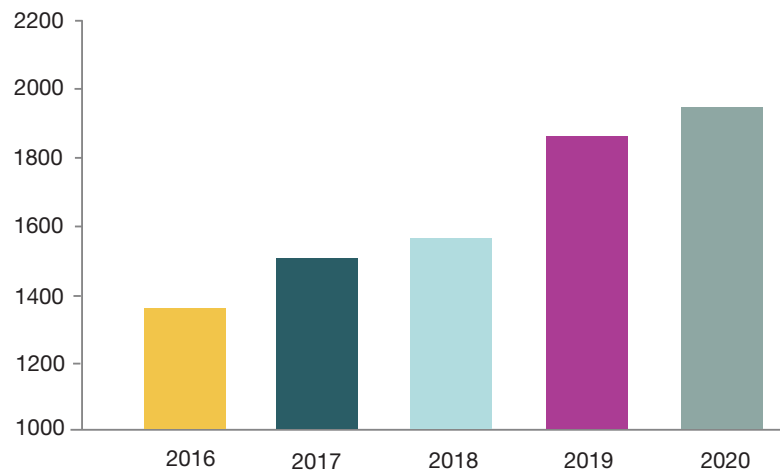
Figure 5
NYC Department of Buildings Budgets



Source: New York City Department of Buildings, 2019

The staffing at NYC DOB continues to increase, allowing the agency to conduct more inspections as the construction boom in New York City sustains, and to enforce additional laws that the DOB oversees, such as Local Law 196.

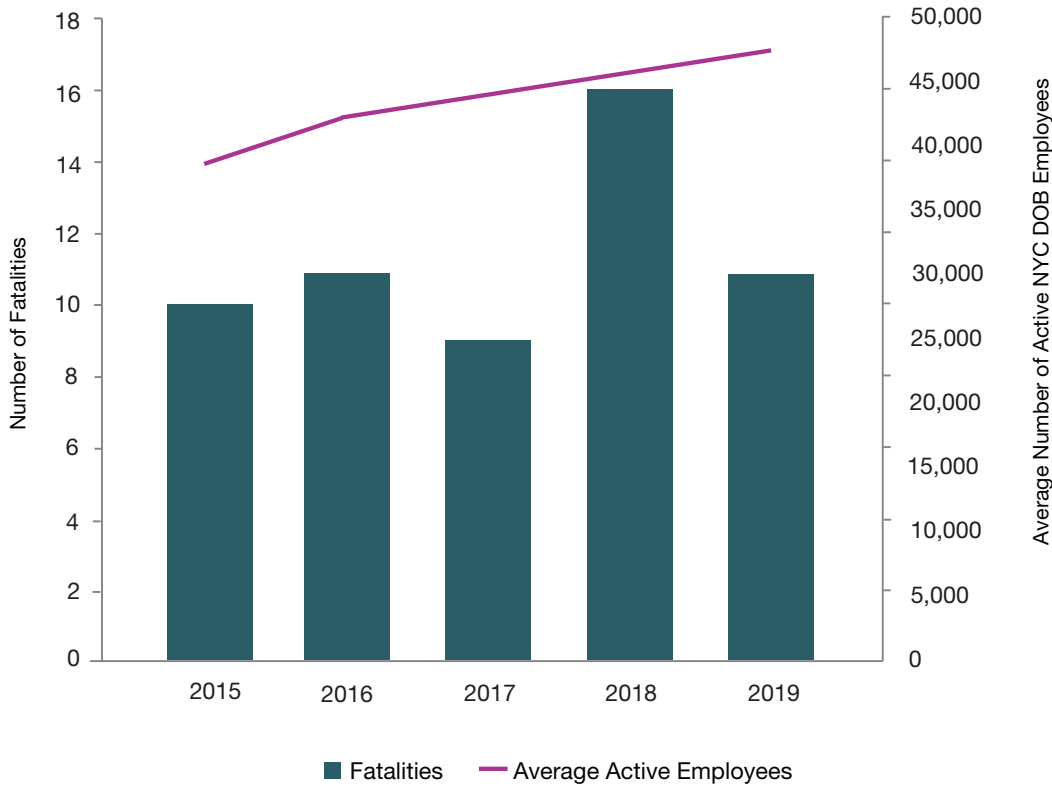
Figure 6
NYC Department of Buildings Agency Personnel by Fiscal Year



Source: New York City Department of Buildings, 2019

Figure 7

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



Source: New York City Department of Buildings, 2019

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 2019, 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:

- **August 13, 2019 – The Manhattan District Attorney's Office prosecuted the biggest wage theft case in the NY State History.** AGL Industries and its owner, Dominic Lofaso were indicted and pled guilty to Grand Larceny in Second Degree. The company and owner

were sentenced to pay \$6.25 million in restitution to 500 workers, which in addition to wage restitution for lack of payment of wages and overtime also included \$260,855 in contributions due to the state's Unemployment Insurance fund.⁹

- **September 5, 2019 – The Task Force announced that indictment of un-licensed labor broker and insurance company for a million dollar fraud** The Task Force indictment of unlicensed labor broker Salvador Almonte, Jr., 38, and insurance broker Steven Asvazadourian, 40, for an extensive insurance fraud scheme in which they underreported the size of Almonte's companies and lied to insurance carriers about the work being performed by his employees in order to evade more than \$1 million in insurance premiums, leaving more than a hundred construction workers underinsured.¹⁰ The defendants are charged in a seven-count New York State Supreme Court indictment with Insurance Fraud in the First Degree, Scheme to Defraud in the First Degree, Criminal Possession of a Forged Instrument in the Second Degree, Offering a False Instrument for Filing in the First Degree, and Fraudulent Practices in violation of Workers' Compensation Law § 114(3).[1]

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 2019, 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:

- **August 13, 2019 – The Manhattan District Attorney's Office prosecuted the biggest wage theft case in the NY State History.** AGL Industries and its owner, Dominic Lofaso were indicted and pled guilty to Grand Larceny in Second Degree. The company and owner were sentenced to pay \$6.25 million in restitution to 500 workers, which in addition to wage restitution for lack of payment of wages and overtime also included \$260,855 in contributions due to the state's Unemployment Insurance fund.⁹

- **September 5, 2019 – The Task Force announced that indictment of unlicensed labor broker and insurance company for a million dollar fraud** The Task Force indictment of unlicensed labor broker Salvador Almonte, Jr., 38, and insurance broker Steven Asvazadourian, 40, for an extensive insurance fraud scheme in which they underreported the size of Almonte’s companies and lied to insurance carriers about the work being performed by his employees in order to evade more than \$1 million in insurance premiums, leaving more than a hundred construction workers underinsured.¹⁰ The defendants are charged in a seven-count New York State Supreme Court indictment with Insurance Fraud in the First Degree, Scheme to Defraud in the First Degree, Criminal Possession of a Forged Instrument in the Second Degree, Offering a False Instrument for Filing in the First Degree, and Fraudulent Practices in violation of Workers’ Compensation Law § 114(3).[1]

These prosecutions have recovered restitution for hundreds of NY workers and exposed the strategies that unscrupulous contractors use to exploit their workers.

3. Non-union job sites are especially dangerous for workers.

2018 data showcased high percentages of fatalities on non-union job sites.

NYCOSH analyzed OSHA’s 36 construction fatality investigations in 2018 and found that in New York State, 86% of workers who died on private worksites were non-union. In the 23 OSHA-investigated sites in New York City, 83% of the construction workers who died 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 are more likely to recognize and report safety violations and have protection from their union against retaliation from their employer.

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

2018 data showcased high percentages of fatalities on non-union job sites.

In the United States, Latino worker fatalities in all industries have increased by 17.6% in a 6-year period. In 2013, 817 Latino workers died on the job and in 2018, 961 Latino workers died. Latinos also make up a disproportionately high percentage of worker fatalities in New York; an estimated 10% of New York State's workers are Latino, but in 2018, 19% of worker fatalities were of Latino workers.¹¹ According to the BLS:

Hispanic or Latino workers experienced 961 fatalities in 2018, a 6% increase from 2017. Sixty-seven percent of fatally-injured Hispanic or Latino workers were born outside of the United States.¹²

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, especially given that workers have been famously retaliated against.

In 2019, the Hard Rock Hotel in New Orleans collapsed, killing three workers. Delmer Joel Ramirez Palma was an undocumented worker on the job site who “tried to warn supervisors of construction safety concerns but was ordered to ignore the issues.”¹³ During the collapse, Ramirez Palma “had to scramble to stay alive while metal and debris rained down.”¹⁴

After the incident, Ramirez Palma spoke to local press and investigators. Two days later, he was on a fishing trip when he was deported.¹⁵ Such actions by Immigration Customs and Enforcement make all worksites less safe, as immigrant workers are less likely to speak up about unsafe and unhealthy working conditions as a result.

5. Older construction workers are dying at higher rates.

55-64 year olds are dying at disproportionate rates.

Workers aged 55-64 are most likely to die on the job, despite the fact that workers 55-64 make up one of the lowest percentages of workers in construction.

Figure 8
New York Construction Fatalities by Age, 2018

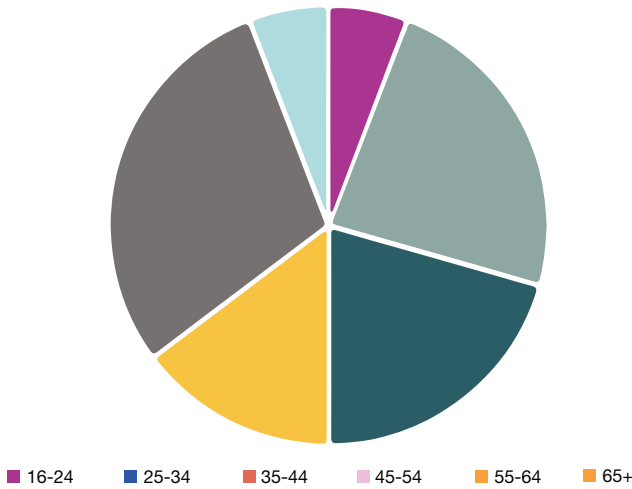
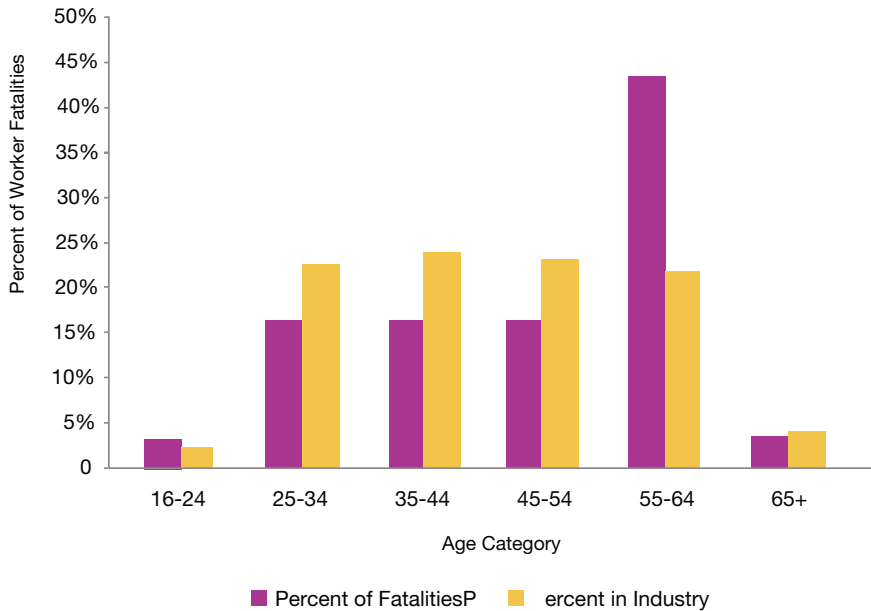


Figure 9
Percentate of Worker Fatalities and Percent of Workers in Construction Industry, 2018



Source: U.S. Bureau of Labor Statistics Census of Fatal Occupational injuries, 2019.

This data is indicative of a trend among all worker fatalities throughout the United States, with older workers dying at disproportionately higher rates. 2018 BLS data showed that the number of older workers killed on the job, aged 65 and older, was double the all-worker number.¹⁶

6. OSHA construction fines for fatality increases have modestly increased.

OSHA increased the fine amounts that it is able to levy on August 1, 2016—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% higher than prior to 1990. This increase has led to an increase in the fine amounts that OSHA levies against employers.

The average fine issued in 2018 was \$25,178, a 16.6% increase from the average fine in 2017. In 2018, the top fine issued in New York State was against Northridge Construction Corporation, located in East Patchogue, Long Island.¹⁷ The employer was fined for two willful citations and two serious citations in the amount of \$224,620. The willful violations were for not providing the workers with fall protection. Per OSHA:

1926.501(a)(2)¹⁸

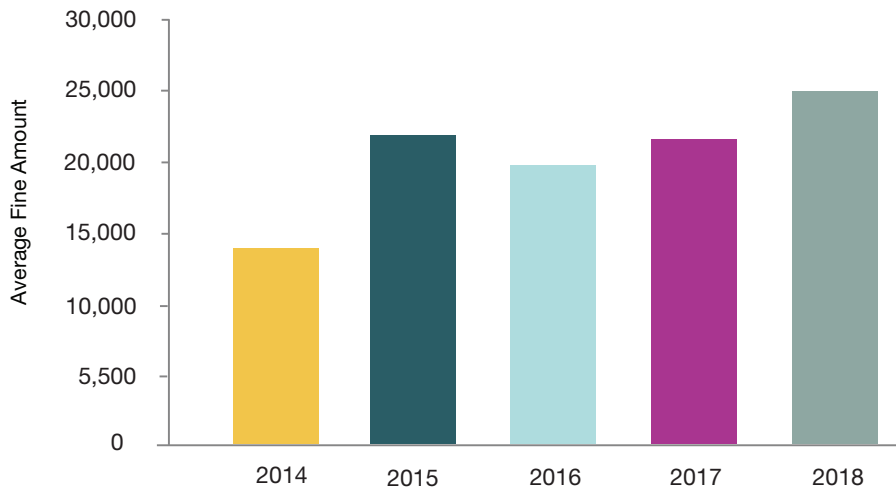
The employer shall determine if the walking/working surfaces on which its employees are to work have the strength and structural integrity to support employees safely. Employees shall be allowed to work on those surfaces only when the surfaces have the requisite strength and structural integrity.

1926.501(b)(1)¹⁹

“Unprotected sides and edges.” Each employee on a walking/working surface (horizontal and vertical surface) with an unprotected side or edge which is 6 feet (1.8 m) or more above a lower level shall be protected from falling by the use of guardrail systems, safety net systems, or personal fall arrest systems.

Figure 10

Average OSHA Fines for Construction Fatality Cases, 2014-2018



Source: OSHA Fatality data, 2014-2018.

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.²⁰ In 2017, the top fine issued was \$131,819 for the death of Jose Cruz.²¹ The top 2018 fine was nearly \$100,000 more than the top fine of 2017.

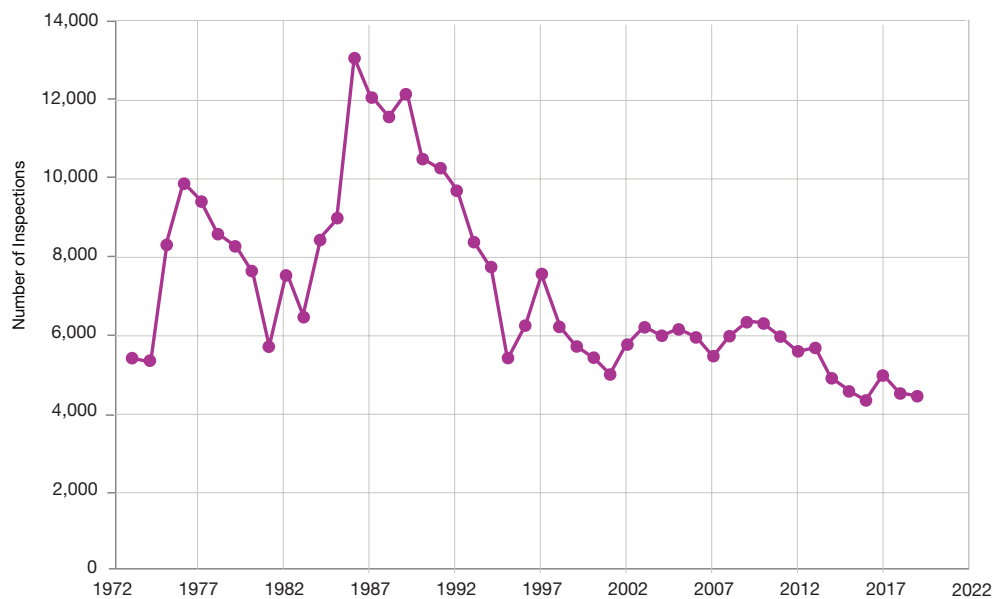
In 2018, another top fine was issued against Wsc Group LLC due to a foundation wall collapse that led a 47-year-old worker to be buried alive by dirt and debris. The company was charged for 2 serious and 1 willful violation, totaling \$63,647.²²

The willful violation was for standard 19260652 C, or a failure to design support systems, shield systems, or other protective systems such as shoring in trenches.²³

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

NYCOSH conducted an analysis of OSHA inspections in New York State since OSHA's founding and found a staggering decrease in the number of yearly inspections between 1986 and 2019. This decrease in inspections coincides with a substantial increase in population and number of worksites over the same period of time.

Figure 11

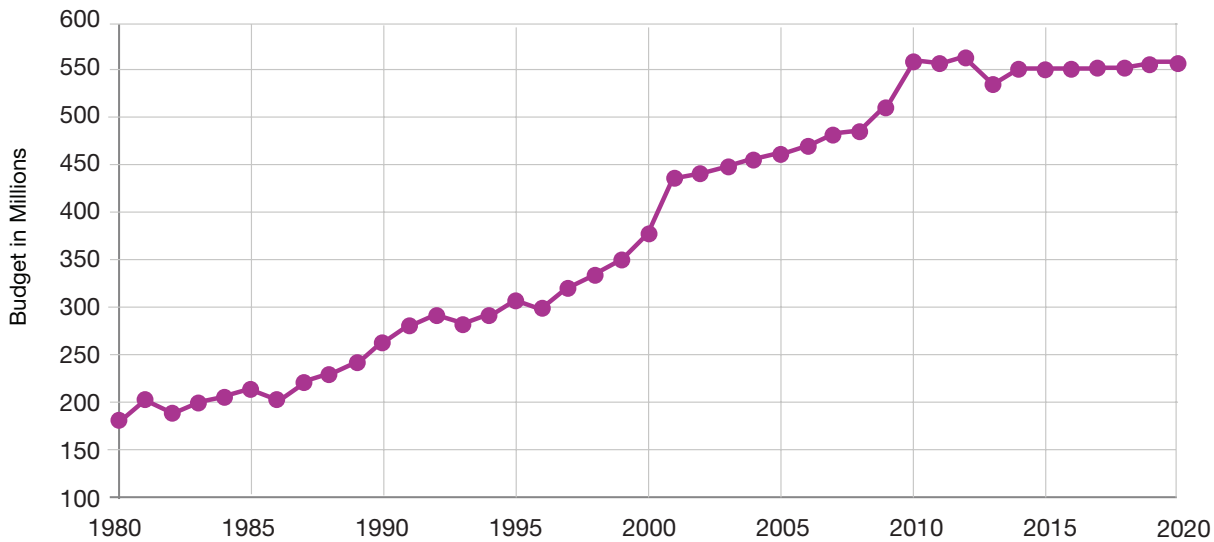


Source: Department of Labor, Occupational Safety and Health Administration.

Simply put, inspections are effective, but are not being utilized. In one study by the U.S. Department of Labor, firms that were inspected one or two times experienced a reduction in citations of 50 percent.²⁴ A decrease in inspections causes an increase in OSHA violations, ultimately leading more workers to die on the job.

Figure 11

OSHA Budget (in Millions)



Source: Department of Labor, Occupational Safety and Health Administration.

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 has devastating effects on states like New York that rely primarily on the agency for the safety of its workforce. Worker advocates must 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 issues lower numbers of press releases during the Trump Administration than it did in the Obama Administration. OSHA issued 21 press releases in 2019--up from 2018's 9 releases—but down from 58 in 2016.

Press releases play the role of garnering negative media attention for employers whose wrongdoings lead to worker injuries and deaths, and serve 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 year²⁵—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 employers accountable, especially when their recklessness causes workers to get injured on the job.

8. 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, causing workers to die as a result. NYCOSH analyzed OSHA-inspected construction fatality cases in New York State in 2018 and found that 100 percent of construction worker fatalities coincided with OSHA violations. BLS data indicates that there were 58 fatalities in New York State in 2018, and out of the 25 sites where BLS data was publicly available, safety violations were found. 2018 data mirrors what prior years have also shown—that deaths on the job are often preventable.

Given these statistics and the 100% likelihood that safety citations follow construction fatalities, it is likely that worker deaths were 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 2018 was just \$25,178. 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 approximately \$25,178 (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.

Conclusion

Creating safer construction sites in New York is possible. Adequate trainings, enforcement, reporting, and cultures of safety (which typically occur in unionized workplaces) are proven methods in preventing workers from getting injured and dying on the job. All effective preventative measures require adequate funding, and government needs to make the investment.

Total U.S. occupational fatalities and injuries cost a fortune in direct and indirect costs; \$6 billion and \$186 billion respectively.²⁶ For injuries and illnesses, the total was 250 billion—more than the cost of both cancer and diabetes combined.²⁷ Workers' compensation composes 25 percent of these costs,²⁸ and much of these costs are borne by New York State.

Despite an increase in 2018, New York City's rate of construction fatalities is lower than other cities 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) could contribute 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.

CONCLUSION

Creating safer construction sites in New York is possible. Adequate trainings, enforcement, reporting, and cultures of safety (which typically occur in unionized workplaces) are proven methods in preventing workers from getting injured and dying on the job. All effective preventative measures require adequate funding, and government needs to make the investment.

Total U.S. occupational fatalities and injuries cost a fortune in direct and indirect costs; \$6 billion and \$186 billion respectively.²⁶ For injuries and illnesses, the total was 250 billion—more than the cost of both cancer and diabetes combined.²⁷ Workers' compensation composes 25 percent of these costs,²⁸ and much of these costs are borne by New York State.

Despite an increase in 2018, New York City's rate of construction fatalities is lower than other cities 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) could contribute 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.

ENDNOTES

1. New York State Department of Labor, Current Employment Statistics, 2019, <https://www.labor.ny.gov/stats/lscsmaj.shtm>.
2. "Fatal Occupational Injuries in New York (Including N.Y.C)." U.S. Bureau of Labor Statistics, <https://www.bls.gov/iif/oshwc/cfoi/tgs/2018/iiffw69.htm>.
3. "Fatal Occupational Injuries in New York City." U.S. Bureau of Labor Statistics, www.bls.gov/iif/oshwc/cfoi/tgs/2017/iiffw68.htm.
4. "Fatal Occupational Injury Rates by State of Incident and Industry, 2019." U.S. Bureau of Labor Statistics, U.S. Bureau of Labor Statistics, <https://www.bls.gov/news.release/pdf/cfoi.pdf.3> "Fatal Occupational Injuries in New York City." U.S. Bureau of Labor Statistics, www.bls.gov/iif/oshwc/cfoi/tgs/2017/iiffw68.htm.
5. "Fatal Occupational Injury Rates by State of Incident and Industry, 2016." U.S. Bureau of Labor Statistics, U.S. Bureau of Labor Statistics, www.bls.gov/iif/oshwc/cfoi/staterate2016.htm.
6. "Standard Number." Occupational Safety and Health Administration, U.S. Department of Labor, <https://www.osha.gov/laws-regs/regulations/standardnumber/1926/1926.451>.
7. "Commonly Used Statistics." Occupational Safety and Health Administration, U.S. Department of Labor, <https://www.osha.gov/oshstats/commonstats.html>.
8. "Report of the Finance Division on the Fiscal 2020 Preliminary Plan and the Fiscal 2019 Preliminary Mayor's Management Report for the Department of Buildings." New York City Council, The City of New York, 22 Mar. 2019, <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2019/03/810-DOB-2020.pdf>.
9. "Governor Cuomo Announces \$6 Million in Stolen Wages Recovered for Welders and Iron Workers Following Joint Investigations With NYS DOL and Manhattan DA." Manhattan DA, 13 Aug. 2019, <https://www.manhattanda.org/governor-cuomo-announces-6-million-in-stolen-wages-recovered-for-welders-and-iron-workers-following-joint-investigations-with-nys-dol-and-manhattan-da/>.
10. "D.A. Vance, NYC DOI Commissioner, NYS Inspector General Announce Indictment of Unlicensed Labor Broker for Million-Dollar Insurance Fraud." Manhattan DA, 5 Sept. 2019, <https://www.manhattanda.org/d-a-vance-nyc-doi-commissioner-nys-inspector-general-announce-indictment-of-unlicensed-labor-broker-for-million-dollar-insurance-fraud/>.
11. 2018 U.S. Bureau of Labor Statistics, "Fatal Occupational Injuries in New York (Including N.Y.C)"
12. "Fatal Occupational Injury Rates by State of Incident and Industry, 2019." U.S. Bureau of Labor Statistics, U.S. Bureau of Labor Statistics, <https://www.bls.gov/news.release/pdf/cfoi.pdf>.
13. "Hard Rock Hotel Collapse Reminds New Orleans of Undocumented Workers' Plight." The Guardian, 8 Dec. 2019, <https://www.theguardian.com/us-news/2019/dec/08/hard-rock-hotel-collapse-new-orleans-undocumented-workers-katrina>.
14. "Witness in Hard Rock Hotel Collapse is Deported." The New York Times, 29 Nov. 2019, <https://www.nytimes.com/2019/11/29/us/hard-rock-hotel-worker-immigration.html>.
15. *Ibid*
16. "Fatal occupational injuries by worker characteristics and event or exposure, all United States, 2018." U.S. Bureau of Labor Statistics. U.S. Department of Labor, <https://www.bls.gov/news.release/pdf/cfoi.pdf>.
17. "Accident Search Results." Occupational Safety and Health Administration. U.S. Department of Labor, https://www.osha.gov/pls/imis/accidentsearch.accident_detail?id=111730.015.
18. "Accident Search Results." Occupational Safety and Health Administration. U.S. Department of Labor, <https://www.osha.gov/laws-regs/regulations/standardnumber/1926/1926.501>.
19. <https://www.osha.gov/laws-regs/regulations/standardnumber/1926/1926.501>
20. Monforton, Celeste. "More 'severe violators' identified by OSHA." The Pump Handle, 17 Apr. 2017, <http://www.thepumphandle.org/2017/04/17/more-severe-violators-designated-by-osh/#.WlOPv66nHcs>.
21. "Accident Report Detail: 94756.015 Employee Falls From Elevated Surface And Is Killed." Occupational Safety and Health Administration, U.S. Department of Labor, https://www.osha.gov/pls/imis/accidentsearch.accident_detail?id=94756.015
22. "Accident Search Results." Occupational Safety and Health Administration. U.S. Department of Labor, https://www.osha.gov/pls/imis/accidentsearch.accident_detail?id=109128.015.
23. "Accident Search Results." Occupational Safety and Health Administration. U.S. Department of Labor, <https://www.osha.gov/laws-regs/regulations/standardnumber/1926/1926.652>.
24. Gray, W., & Jones, C. "Are OSHA health inspections effective? A longitudinal study in the manufacturing sector." Review of Economics and Statistics, 73(3), 504–508, 1991, https://clear.dol.gov/sites/default/files/OSHAGray1991_1.pdf.
25. "Accident Search Results." Occupational Safety and Health Administration. U.S. Department of Labor, https://www.osha.gov/pls/imis/AccidentSearch.search?p_logger=1&acc_description=&acc_Abstract=&acc_keyword=&Fatal=fatal&sic=&naics=&Office=0200000&officetype=All&end-month=01&endday=01&endyear=2018&startmonth=12&startday=31&startyear=2018&InspNr=.
26. Leigh, Paul J., Mariann Fahs, Phillip J. Landrigan, and Steven B. Markowitz. Costs of Occupational Injuries and Illnesses. University Of Michigan P, 2000.
27. *Ibid*
28. *Ibid*



Deadly Skyline: 2019 Annual Report on Construction Fatalities in New York State

February 2020