

DEADLY SKYLINE



AN ANNUAL REPORT ON
CONSTRUCTION FATALITIES
IN NEW YORK STATE

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Report Author and Principal Researcher:

Charlene Obernauer, M.A.
Executive Director, NYCOSH

Edited by Lara Maldjian, M.P.H.

Associate Director, NYCOSH

Report Designer:

Margarita Aguilar

About the New York Committee for Occupational Safety and Health (NYCOSH): NYCOSH is a membership organization of workers, unions, community-based organizations, workers' rights activists, and health and safety professionals. NYCOSH uses training, education, and advocacy to improve health and safety conditions in our workplaces, our communities, and our environment. Founded in 1979 on the principle that workplace injuries, illnesses and deaths are preventable, NYCOSH works to extend and defend every person's right to a safe and healthy workplace.

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

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INTRODUCTION

Construction is one of the most dangerous industries in the country, with workers risking their lives every day to build New York. In this year's "Deadly Skyline" report, 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.

This year's "Deadly Skyline" report is based on 2020 data, the most recent data available by the United States Department of Labor's Bureau of Labor Statistics (DOL BLS). This report covers the first year of the COVID-19 pandemic in New York State. Due to COVID, fewer workers were employed on job sites during New York State's shut down, resulting in fewer workplace fatalities. Readers should make special note of the fatality rate in New York State, as opposed to the number of fatalities, in order to get a better sense of construction site safety in New York.

Further, this report centers around construction fatalities, but does not calculate the many construction worker lives that have been lost due to on-the-job exposure to COVID or lives lost to other occupational illnesses. While this topic is of the utmost importance, workplace illness data is not currently accurately recorded, and therefore cannot be the focus of this report.

TRACKING CONSTRUCTION WORKER FATALITIES

NYCOSH has been advocating for timely and accurate tracking of construction worker fatalities since this report was first published in 2014. At the end of 2020, a bill sponsored by Senator Jessica Ramos in the Senate (S8828) and Assemblywoman Carmen De La Rosa (A5965A) was signed into law. The legislation requires that employers submit key information to the New York State Department of Labor when a construction worker dies on the job. This information will then be made available to the public via a searchable database. Although the bill is now law, it has not yet been implemented, therefore the data will not be included in this report. The data should be made available for 2022.

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 numerous media reports.

NYCOSH is grateful to all the workers who have joined us in various safety, health, and empowerment trainings over the past year. From New York's construction workers, who risk their lives every day to build New York, to all of New York's essential workers who have been saving lives throughout the COVID-19 pandemic. We dedicate this report to you.

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SUMMARY OF FINDINGS*

New York State and New York City have a higher fatality rate than the national average.

Construction deaths accounted for 22 percent of all worker deaths in New York City and 24 percent of all worker deaths in New York State, compared to 21 percent nationwide.

New York State's construction industry remained highly dangerous for workers in 2020, but fatality numbers decreased.

The number of construction workers who died in New York State decreased 25% between 2019 and 2020, with 55 deaths in 2019 and 41 deaths in 2020.

New York City's construction fatality numbers fell after three years in consistent increases.

13 construction workers died in 2020, compared to 24 in 2019—a 46% decrease.

The construction fatality rate in New York City fell for the first time in three years—New York State's rate increased.

New York City's rate decreased from 11.6 per 100,000 in 2019 to 7 in 2020, a startling 40% decrease. New York State's rate increased from 10.2 per 100,000 in 2019 to 11.1 per 100,000 in 2020—a 9% increase.

Non-union job sites remained especially dangerous for workers. NYCOSH analyzed OSHA's 29 construction fatality investigations in 2020 and found that in New York State, 79% of workers who died on private worksites were non-union. In the 7 OSHA-investigated sites in New York City, 100% of the construction workers who died were non-union.

Latino workers were more likely to die on the job in NYS in 2020. Latinos 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 2020, 18% of worker fatalities were of Latino workers.

OSHA construction fines for fatality cases increased for the 5th year in a row. The average fine amount in 2020 was \$44,779, up 39% from \$32,719 in 2019. In 2020, the top fine issued in New York State was against Everest Scaffolding Inc. in the amount of \$300,370.

OSHA conducted the lowest number of inspections in the agency's history. OSHA conducted just 2,080 inspections in 2020, a 53% decrease from 2019's 4,455 inspections.

OSHA issued fewer press releases in 2021. NYCOSH's review of OSHA's press releases in the past five years showed that the agency went from releasing 58 press releases in 2016 to just 15 in 2021.

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 2020 and found that on job sites where workers have died, employers had coinciding OSHA violations 97% of the time. For example, if a worker died from a fatal fall, the employer was also 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 fatalities, employers are not legally prevented from receiving subsidy dollars.

** These numbers must be analyzed with caution. The COVID-19 pandemic decreased the number of construction workers employed in the industry. Therefore, decreases in the number of fatalities does not mean that the construction industry was safer for workers.*

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 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. This legislation is essential to protecting workers' safety and health on the job.

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. For the past several years, the legislation has been introduced in both the NYS Senate and NYS Assembly; while the bill passed the Assembly in 2020, it did not pass the Senate. NYCOSH continues to advocate for this legislation.

Expand Regulations, Monitoring & Enforcement

4. Expand criminal prosecutions of contractors statewide.

Former Manhattan District Attorney Cyrus Vance Jr. has historically 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.

5. 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.

6. Double OSHA's budget.

The stagnant hiring and coinciding decreasing inspection numbers by OSHA has had real consequences for workers throughout New York State and all across the country. The agency

has been underfunded throughout Democratic and Republican Administrations. NYCOSH is no longer advocating for small increases to OSHA's budget, and instead is advocating for OSHA to *double its budget* in 2022.

7. OSHA must issue a permanent infectious disease standard for all workers, including its own.

Historically low inspection numbers in 2020 are a tragedy for private workers in New York State. Because the agency failed to issue an infectious disease standard or other protection for its workers, agency staff were unable to conduct the necessary number of inspections to protect New York's workers. The agency must proactively protect its staff so that they can do their job in protecting New York's private sector workers.

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. Construction fatality rates are increasing in New York City, and NYC DOB needs increased funding to do its job. 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

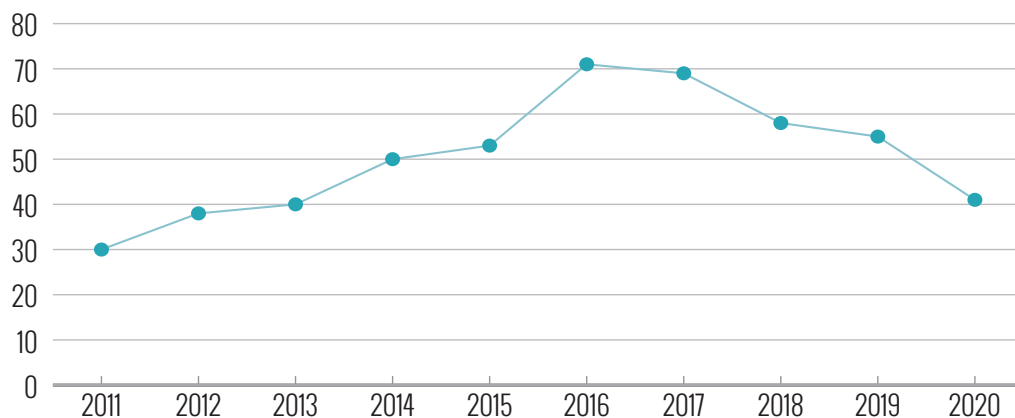
1. New York's construction industry remains highly dangerous, but fatality numbers decreased in both New York City and New York State.

Construction fatality numbers decreased in New York State.

The number of construction workers who died in New York State decreased 25% between 2019 and 2020, with 55 deaths in 2019 and 41 deaths in 2020.

New York State's construction industry employs approximately 362,200 workers¹ and remains highly dangerous; 351 workers died in New York State construction-related accidents between 2011 and 2020. Over the past ten years, an average of 50.5 workers died each year in New York State. The lowest number of fatalities over a ten-year period in New York State was in 2011, with 30 fatalities; the highest was in 2016, with 71. This is the fifth year of a decline in fatalities in construction in New York State.

Fatalities in Construction in NYS from 2011 to 2020

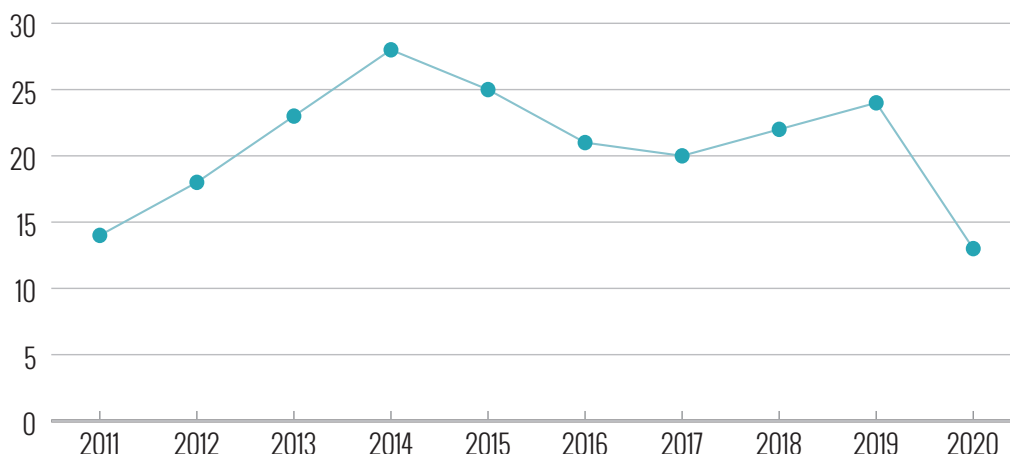


Source: U.S. Bureau of Labor Statistics Census of Fatal Occupational injuries, 2020.

Construction fatalities decreased in New York City.

New York City's construction fatality numbers fell after three years of consistent increases. 24 construction workers died in 2019, compared to 13 in 2020—a 46% decrease.

Fatalities in Construction in NYC from 2011 to 2020



Source: U.S. Bureau of Labor Statistics Census of Fatal Occupational injuries, 2010-20.

¹ New York State Department of Labor, Current Employment Statistics, 2020, <https://statistics.labor.ny.gov/cesemp.asp>.

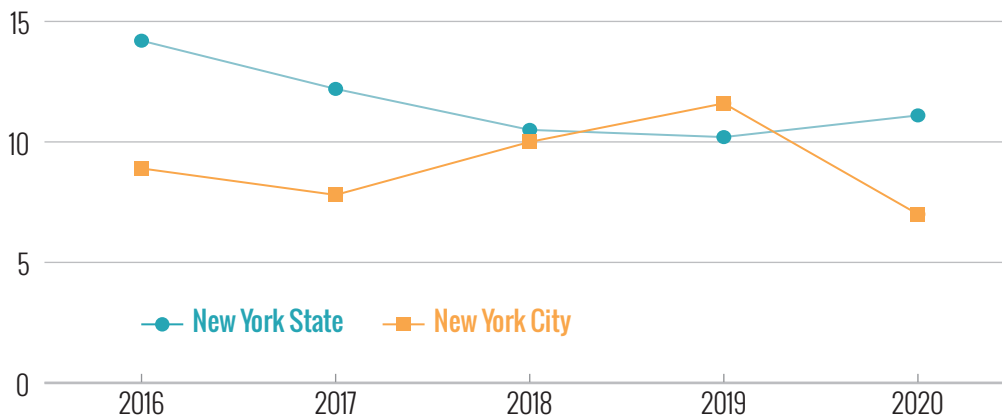
Over the past ten years, 20 construction workers died on average each year in New York City, with a total of 208 construction worker fatalities. The lowest number of fatalities over a ten-year period in New York City was this year, with 13 fatalities; the highest was in 2014, with 28.

New York State's construction fatality rate increased while New York City's rate decreased.

New York State's rate increased from 10.2 per 100,000 to 11.1, a 9% increase. The increase is slight and will need to be monitored closely as we make recommendations for increasing construction safety.

New York City's rate decreased from 11.6 per 100,000 in 2019 to 7 in 2020, a startling 40% decrease. This data may suggest that New York City's steps to reduce injuries and fatalities in New York City are making an impact, or that the decrease in the number of workers in the field also led to a decrease in rates. More, long-term data is needed to observe a trend.

Construction Fatality Rates in New York State vs. New York City
(per 100,000 workers, BLS)



Source: U.S. Bureau of Labor Statistics Census of Fatal Occupational injuries, 2016-2020.

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

In 2020, construction deaths accounted for 22% of all worker deaths in New York City² and 24% of all worker deaths in New York State³, compared to 21% nationwide.⁴

Percent of Construction Worker Fatalities Among All Worker Fatalities in U.S., N.Y.S., and N.Y.C., 2020 BLS Data



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

² "Fatal Occupational Injuries in New York City." U.S. Bureau of Labor Statistics, <https://www.bls.gov/iif/oshwc/cfoi/tgs/2020/iiffw68.htm>

³ "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>.

⁴ "Fatal Occupational Injuries in New York City." U.S. Bureau of Labor Statistics, <https://www.bls.gov/news.release/pdf/cfoi.pdf>.

Construction is one of the most dangerous industries for workers in the United States, with the construction industry accounting for 1,088 out of 4,764 worker fatalities in 2020 (19%) despite construction workers making up just 4% of the nation's workforce.

In New York City and New York State, the disproportionate number of fatalities among construction workers as compared to overall workers remains true. In 2020, the New York State fatality rate for all workers was 2.9 per 100,000, and the rate for construction workers was 11.1 per 100,000 workers. In New York City, the 2020 fatality rate is 1.9 per 100,000 for all workers⁵ vs. 7.0 per 100,000 for construction workers⁶).

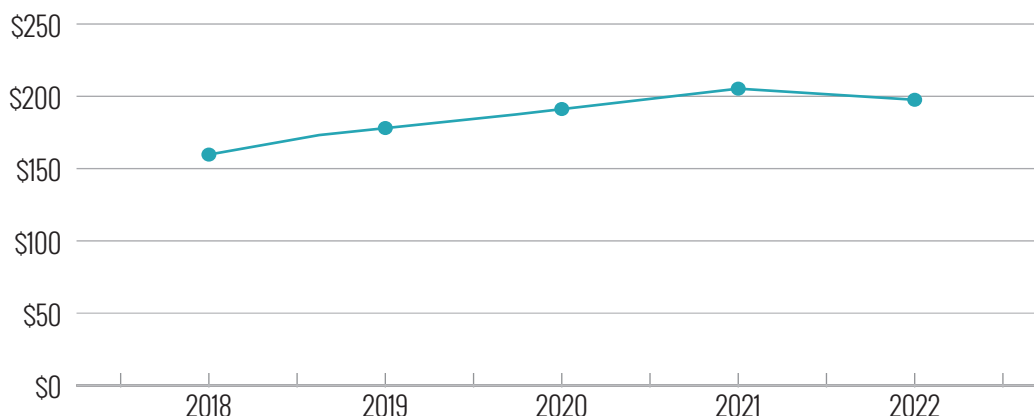
2. New York City Department of Buildings is well-resourced to do its job.

Increased resources to New York City Department of Buildings.

The New York City Department of Buildings (NYC DOB) has consistently 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 Budget for Fiscal Year 2022 included \$197.6 million for NYC DOB,⁷ which continues high funding amounts for the agency.

NYC Department of Building Executive Budgets (in Millions)



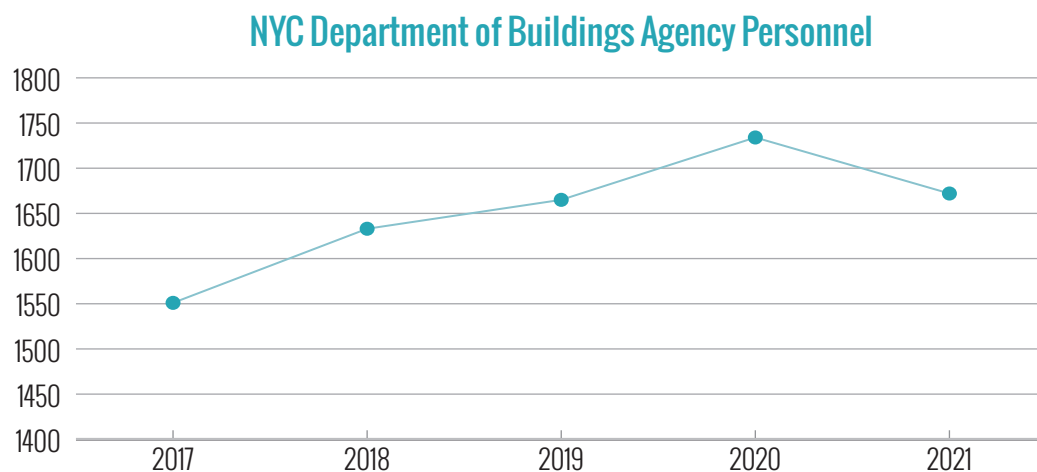
Source: New York City Department of Buildings, 2019

5 "Fatal Occupational Injury Rates by State of Incident and Industry, 2020." U.S. Bureau of Labor Statistics, U.S. Bureau of Labor Statistics, <https://www.bls.gov/iif/oshwc/cfoi/staterate2020.htm>.

6 *Ibid.*

7 "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>.

The staffing at NYC DOB remains high, 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.



Source: New York City Department of Buildings, 2020

As the fatality rate in New York City decreases, we can point to the increase in funding and staffing at the Department of Buildings as a potential reason for fewer fatalities.

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

2020 data showcased high percentages of fatalities on non-union job sites.

NYCOSH analyzed OSHA's 29 construction fatality investigations in 2020 and found that in New York State, 79% of workers who died on private worksites were non-union. In the 7 OSHA-investigated sites in New York City, 100% 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.

Latinos 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 2020, 18% of worker fatalities were Latino workers.

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 notoriously retaliated against.

5. OSHA construction fines for fatalities have increased.

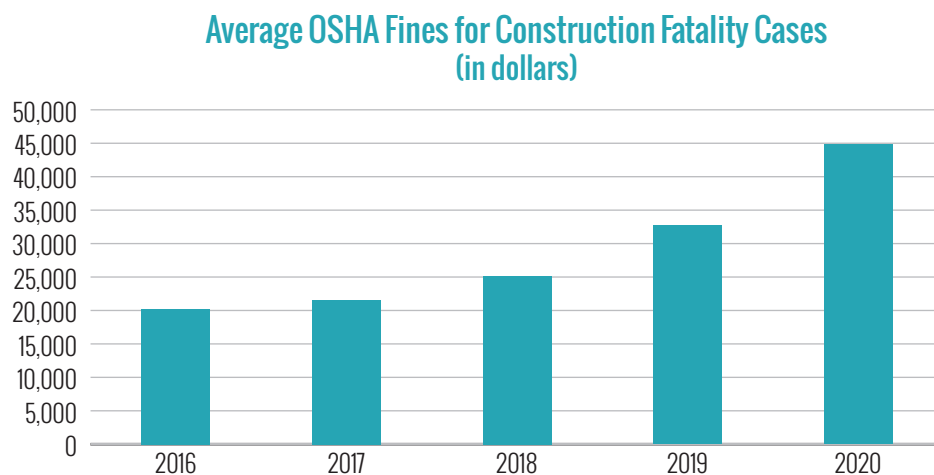
OSHA increased the fine amounts that it can levy on August 1, 2016—the first time the agency had done so since 1990. OSHA's increased fine schedule gave the agency the ability to impose fines up to 78% higher than prior to 1990. This increase has led to an increase in the fine amounts that OSHA levies against employers.

In 2020, the top fine issued in New York State was against Everest Scaffolding Inc. in the amount of \$300,370.

OSHA wrote about the incident, indicating that a worker and a foreman were installing a supported scaffold when the worker fell 48 feet to the concrete pavement.⁸ The worker was killed.

Everest Scaffolding, based in Brooklyn, was cited with two serious and two willful citations. The employer did not have a competent person determining the safety of fall protection for the workers, and did not provide adequate trainings for its workforce. Further, the fall protection systems provided were inadequate and were not inspected prior to each wear.⁹ In other words, the employer did not have a qualified person supervising the build of the scaffold, the workers were untrained, and the employer provided inadequate harnesses that weren't checked to ensure their ability to properly function. It was a disaster waiting to happen, and the worker paid the ultimate price.

The average fine amount in 2020 was \$44,779, up 39% from \$32,719 in 2019. This increase is a step in the right direction, though fines should continue to increase if they are to be effective in creating safer jobs.



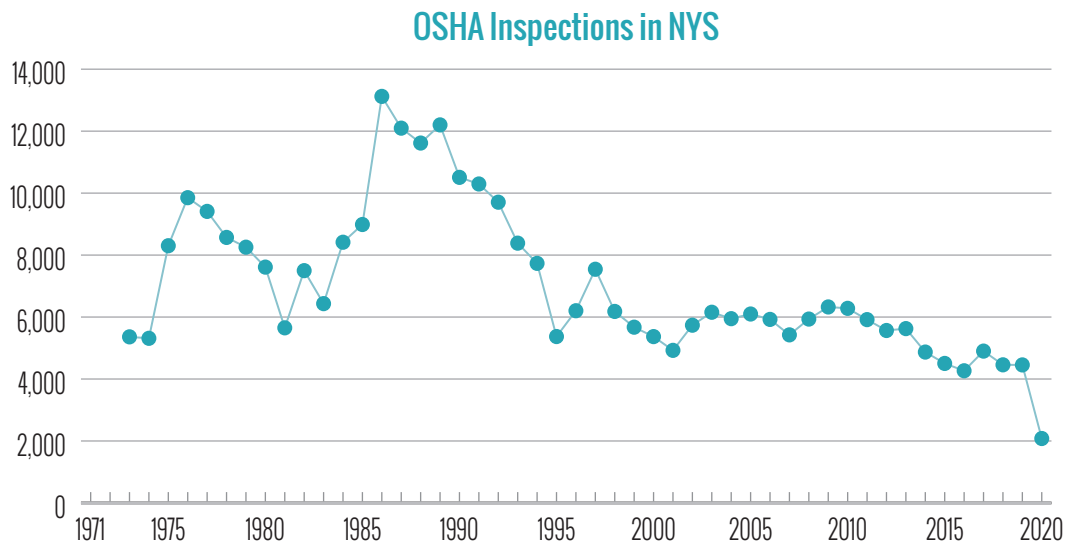
Source: OSHA Fatality data, 2016-2020.

⁸ https://www.osha.gov/pls/imis/accidentsearch.accident_detail?id=131063.015

⁹ *Ibid.*

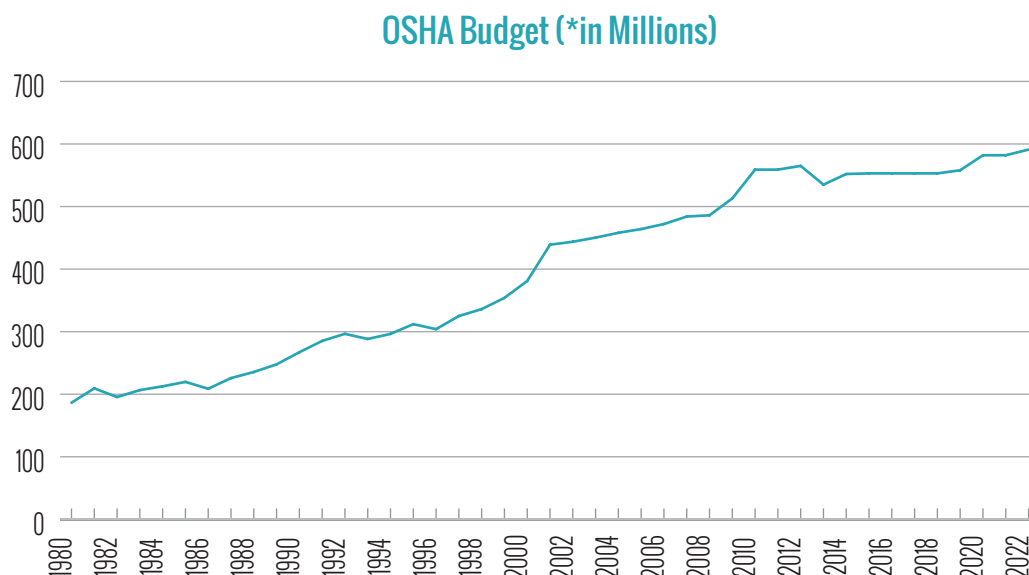
6. OSHA conducted the lowest number of inspections in the agency's history in 2020.

OSHA conducted just 2,080 inspections in 2020, a 53% decrease from 2019's 4,455 inspections. The potential suspension of in-person work for OSHA staff due to COVID-19 is understandable, however, more should have been done to protect the United States workforce. For example, OSHA could have issued an Emergency Temporary Standard on COVID-19 for all industries.



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

Inspections are effective, but are not being properly amplified. 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.¹⁰ A decrease in inspections causes an increase in OSHA violations, ultimately leading more workers to die on the job.



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

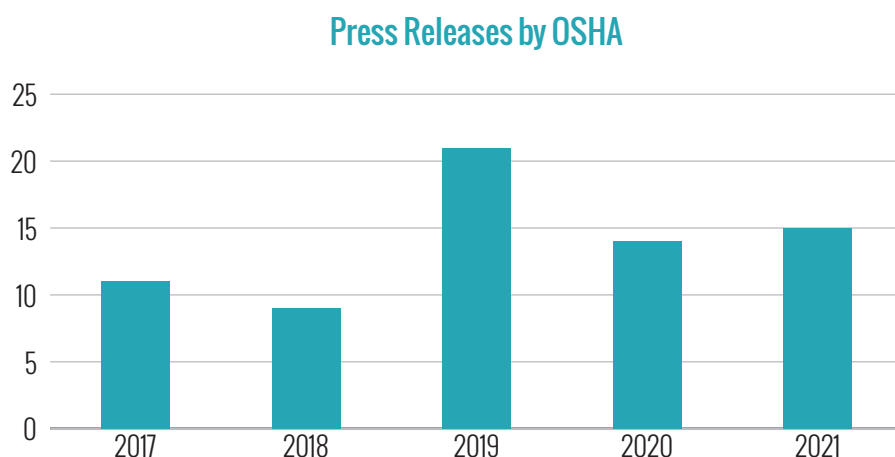
OSHA continued to receive a modest increase in funding between 2019 and 2020.

¹⁰ 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.

OSHA continues to reduce the number of press releases issued on egregious violators.

OSHA issued fewer press releases in 2021. NYCOSH's review of OSHA's press releases in the past five years showed that the agency went from releasing 58 press releases in 2016 to just 15 in 2021.

OSHA Region 2 issued 15 press releases in 2021. The agency has issued similarly low press releases throughout both the Biden and Trump Administration. During the Obama Administration, however, the Agency issued 58 press releases in 2016.



Source: The
Occupational Safety and
Health Administration

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. The agency must hold bad employers accountable, especially when their recklessness causes workers to get injured on the job.

7. Employers' 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 97% 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 2020 and found that 97 percent of construction worker fatalities coincided with OSHA violations. 2020 data mirrors what prior years have also shown—that deaths on the job are often preventable.

Given these statistics and the 97% likelihood that safety citations follow construction fatalities, it is likely that worker deaths were preventable.

Contractors are receiving New York State and New York City subsidies despite egregious health and safety violations.

Companies that violate the law and put workers' lives at risk are not legally prevented from receiving subsidy dollars. For example, if a worker dies in a fatal fall because they were not wearing a harness, the employer would likely be fined approximately \$33,000 (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

Safety is the responsibility of every employer, whether they hire one worker, three workers, or hundreds of thousands. For employers to take their responsibilities seriously, there must be adequate laws protecting workers and adequate numbers of inspectors enforcing those laws. Without enforcement, laws have no impact.

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.

Given that OSHA is the main agency responsible for safety and health for all workers, the agency's funding needs to be doubled, and the agency must do more to protect its staff if they are to do their job and inspect workplaces. Workers will die if there are not adequate inspections and enforcement, and there were nearly half the number of inspections in New York State in 2020, compared to 2019. OSHA simply must do more.

The city and state, alongside the federal government, must work together proactively to protect New York's workers from exploitative employers and unsafe working conditions. We urge policy makers to take our recommendations into consideration and to take workers' health and safety seriously.

