

# Death on the Job: *The Toll of Neglect*

**A NATIONAL AND  
STATE-BY-STATE PROFILE OF  
WORKER SAFETY AND HEALTH  
IN THE UNITED STATES**

14th Edition

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**AFL-CIO**

*Every day in the United States, 15 workers die from occupational injuries. Every year, nearly 6,000 workers are killed on the job. Most of these deaths go largely unnoticed but for the minimal coverage provided by local press. Listed below is a small fraction of reports from a two-week period in April 2005.\**

### **Worker Crushed By Plane-Pushing Vehicle At Indy Airport**

INDIANAPOLIS—A man working at the Indianapolis International Airport was crushed to death on the tarmac Tuesday morning by a vehicle that pushes airplanes backward, an airport representative said. The man, whose name wasn't immediately released, was an employee of GSRX, an Ohio-based maintenance contractor operating at the airport for US Airways, Indianapolis television station WRTV reported.

### **Employee trapped in machine dies**

ELK GROVE VILLAGE, Ill.—A Schaumburg man died of injuries he received when he was trapped in a punch-press machine at an Elk Grove Village industrial metal manufacturer, police said Tuesday. **William Naras**, 48, of the 300 block of South Cedar Crest Drive, was pinned against the machine by an I-beam or metal arm about 4 p.m. Monday, said Cmdr. Lynn Atkinson.

### **Trucker killed in I-5 crash**

ARTOIS, Calif.—A truck driver from Spokane, Wash., was killed Thursday night after his tractor-trailer drifted off the shoulder of northbound Interstate 5, then slammed into an overpass pillar at County Road 28. The California Highway Patrol identified the victim as **Robert S. Banning**, 47.

### **OSHA checks into grain terminal death**

CORPUS CHRISTI, Texas—The U.S. Occupational Safety and Health Administration is investigating the death of a 53-year-old man late Wednesday at Interstate Grain Port Terminal on Up River Road, officials said. Lt. Mike Lowrance of the Nueces County Sheriff's Department's Criminal Investigation Division said Thursday that **Jose Luis Gutierrez** was employed at the terminal and that his job was cleaning the area where grain is moved by a conveyor belt. Lowrance said Gutierrez had been in the room about 90 minutes when co-workers noticed he was missing. He was found just after 9 p.m. after being entangled in the conveyor belt, officials said.

### **Mine accident kills trona worker**

GREEN RIVER, Wyo.—For the second time in just over a year, a Green River trona miner has been crushed to death by a piece of equipment while working underground at the OCI Wyoming LP Big Island Mine and Refinery. **Terry Bigler** of Green River died from massive chest trauma in the accident, which occurred about 3:30 p.m. Monday. Officials said Bigler died after being struck by a forklift while working in the mine's underground maintenance shop. Bigler, 47, was

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\* From *Confined Space*, a blog providing news and commentary on workplace health and safety, unions and politics. Every two weeks the author catalogues workplace fatalities reported in the press in a column called the Weekly Toll. See <http://spewingforth.blogspot.com/>.

pronounced dead in the emergency room at Memorial Hospital in Rock Springs about an hour later, Sweetwater County Coroner Dale Majhanovich said.

## OVERVIEW OF WORKERS' SAFETY AND HEALTH

This edition of “Death on the Job: The Toll of Neglect” marks the 14th year the AFL-CIO has produced a report on the state of safety and health protections for America’s workers. The report includes state-by-state profiles of workers’ safety and health and features state and national information on workplace fatalities, injuries, illnesses, the number and frequency of workplace inspections, penalties and public-employee coverage under the Occupational Safety and Health Act (OSH Act).

This report uses government statistics from the Bureau of Labor Statistics (BLS)<sup>1</sup>, which are based in large measure on employer reports of injury and illness. It is important to recognize that while these statistics are relied upon and cited widely, numerous studies have shown the data underestimate the actual numbers of occupational injuries and illnesses in the United States. A January 2004 article in the *Journal of Occupational and Environmental Medicine* shows the BLS estimates missed as many as 69 percent of all injuries.

Overall reported rates and numbers of workplace injuries, illnesses and fatalities have fallen slightly or stagnated, but certain groups of workers, including Hispanic and foreign-born workers, face greater risk of injury and death. The dollar amounts of both federal and state OSHA penalties are woefully inadequate.

There continues to be no substantial regulatory activity by the Bush administration at the Occupational Safety and Health Administration (OSHA) or the Mine Safety and Health Administration (MSHA). Important standards close to completion at the end of the Clinton administration—including a standard on employer payment for personal protective equipment—have been withdrawn or delayed repeatedly by the Bush administration. Overall, dozens of OSHA and MSHA standards have been pulled from the administration’s regulatory agenda. Budget cuts in job safety agency programs proposed by the administration will, if enacted, reduce the already inadequate resources devoted to workers’ safety and health.

According to Liberty Mutual, the nation’s largest workers’ compensation insurance company, the direct cost of occupational injury and illness is \$1 billion per week. The annual cost of these injuries is between \$198.4 billion and \$297.6 billion in direct and indirect costs—and these are conservative estimates.

At a time when challenges, problems and costs are mounting, the nation’s commitment to protecting workers from job injuries, illnesses and death has faltered, while a high priority is put on protecting employers from meaningful regulations and enforcement.

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<sup>1</sup> Beginning with the 2003 reference year, both the Census of Fatal Occupational Injuries (CFOI) and the Survey of Occupational Injuries and Illnesses began using the 2002 North American Industry Classification System (NAICS) for industries and the Standard Occupation Classification system (SOC) for occupations. Prior to 2003, the surveys used the Standard Industrial Classification (SIC) system and the Bureau of the Census occupational classification system. The substantial differences between these systems result in breaks in series for industry and occupational data. Therefore this report makes no comparisons between the 2003 industry and occupation categories and the results from previous years.

## **JOB FATALITIES, INJURIES AND ILLNESSES**

More than 306,706 workers now can say their lives have been saved since the passage of the OSH Act in 1970. Unfortunately, too many workers remain at risk. On average, 15 workers were fatally injured and more than 12,000 workers were injured or made ill each day of 2003. These statistics do not include deaths from occupational diseases, which claim the lives of an estimated 50,000 to 60,000 workers each year.

### **Job Fatalities**

According to the BLS, there were 5,559 workplace deaths due to traumatic injuries in 2003, a slight increase from the number of deaths in 2002, when 5,534<sup>2</sup> workplace deaths were reported. Wyoming led the country with the highest fatality rate (13.9 per 100,000); the lowest state fatality rate (1.5 per 100,000) was reported in Delaware.

Although fatalities resulting from transportation incidents decreased for the fifth consecutive year, transportation incidents, in particular highway crashes, continue to be the leading cause of workplace deaths, responsible for 2,357 or 42 percent of all fatalities in 2003. Highway crashes continue to account for one-fourth of the fatal work injury total (1,350). Fatal injuries involving homicides, fires and explosions and being struck by objects increased in 2003.

The construction sector had the largest number of fatal work injuries (1,126) in 2003, followed by transportation and warehousing (805) and agriculture, forestry, fishing and hunting (707). Industry sectors with the highest fatality rates were agriculture, forestry, fishing and hunting (31.2 per 100,000), mining (26.9 per 100,000) and transportation and warehousing (17.5 per 100,000).

Transportation and material moving occupations had the highest number of fatalities with 1,388, followed by construction and extraction occupations with 1,033 fatal injuries. The occupations at greatest risk of work-related fatalities, based on the number of fatalities per 100,000 employed, were logging workers (131.6/100,000), fishers and related fishing occupations (115/100,000) and aircraft pilots and flight engineers (97.4/100,000).

The number of workplace homicides increased for the first time since 2000. Workplace suicides also were higher in 2003. Fatalities caused by falls declined in 2003. The number of electrocutions was lower, representing a 15 percent decline from the 2002 total. Fatal work injuries resulting from fires and explosions were up 20 percent from 2002.

Fatal injuries to Hispanic or Latino workers decreased for the second year in a row, although Hispanic workers continue to record the highest rate of fatal injuries among the racial/ethnic groups reported. While fatal injuries to foreign-born Hispanic workers declined for the first time, fatalities of native-born Hispanics rose in 2003. African American workers experienced a 10 percent increase in fatalities, from 491 in 2002 to 542 in 2003. Other racial/ethnic groups experiencing an increase in fatalities in 2003 included white, non-Hispanic

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<sup>2</sup> Since the original BLS news release in September 2003, an additional 10 job-related fatalities were identified, bringing the total job-related fatality count for 2002 to 5,534 from the 5,524 reported in the 2004 edition of "Death on the Job."

workers and Asian, native Hawaiian and Pacific Islander workers.

Twenty-four states saw an increase in the number of fatalities between 2002 and 2003. States that saw an increase in the number of foreign-born worker fatalities in 2003 include Colorado, Florida, Georgia, Illinois, Maryland, Michigan, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia and Wisconsin.

Mexico was the country of origin for 40 percent of the fatally injured foreign-born workers. Nearly 60 percent of the fatally injured foreign-born workers were of Hispanic ethnicity. Fourteen percent were of Asian, native Hawaiian or Pacific Islander ethnicity.

Thirty percent of the fatal injuries to foreign-born workers resulted from transportation incidents and assaults and homicides accounted for nearly 30 percent. Contact with objects and equipment and falls each accounted for about 15 percent of the fatal injuries to foreign-born workers. The construction and trade, transportation and utilities industries each accounted for about 30 percent of the fatal injuries to foreign-born workers. The retail trade and transportation and warehousing industries accounted for 12 percent and 14 percent, respectively, of the fatal injuries to foreign-born workers.

The number of Hispanic workers fatally injured by contact with objects and equipment increased for the second year in a row (79 in 2001, 106 in 2002 and 186 in 2003). There also was an increase in the number of Hispanic worker fatalities in fires and explosions, from 13 in 2002 to 28 in 2003. The highest number of Hispanic worker fatalities occurred in the construction and extraction occupations, most notably among construction trades workers and in particular construction laborers. The industry with the largest number of Hispanic worker deaths in 2003 was construction, accounting for 260, or one-third of all Hispanic worker fatalities. The transportation and warehousing industry accounted for 10 percent of all Hispanic worker fatalities, as did the administrative and waste services industry.

### **Job Injuries and Illnesses**

In 2003, 4.4 million injuries and illnesses were reported in private-sector workplaces, a slight decrease from 4.7 million in 2002. An additional 585,300 injuries and illnesses occurred among state and local employees in the 30 states and territories in which these data are collected. The national injury and illness rate (private-sector only) in 2003 was 5.0 per 100 workers. Manufacturing accounted for 22 percent of the nonfatal workplace injuries and illnesses in 2003. The education and health services industry accounted for 17 percent, with 95 percent of the injuries and illnesses in that sector coming from health care and social assistance. Retail trade accounted for 14 percent of all private-sector injuries and illnesses in 2003.

Nearly 20 percent of all cases of injuries and illnesses involving days away from work, job transfer or restriction were in the manufacturing industry, followed by retail trade (14 percent) and construction (12 percent).

### *Time of Injury*

In December 2004, BLS released data for 2002 on the time of lost-workday injuries and illnesses. This was possible because of a recent change in the record-keeping standards. The data revealed that about half of the injuries and illnesses occurred during the first four hours a person is on the job. More than one-third occurred between the fourth and eighth hours on the job. The remaining injuries and illnesses were distributed across long shifts. While the majority of injuries and illnesses happened during day-shift hours, timing patterns tended to reflect the nature of each occupation. For instance, cooks experienced half of their injuries Friday through Sunday. Nursing aides, orderlies and attendants experienced 21 percent of their injuries and illnesses between midnight and 8 a.m. Cases were fairly evenly distributed from Monday through Friday, though certain occupations experienced a greater proportion of injuries on specific days.

The 2003 time of injury data is incorporated into the BLS Characteristics release. In 2003, one-third of the cases occurred in the first four hours a person was on the job. Thirty percent of all injuries and illnesses with days away from work occurred between 8:00 a.m. and noon. An additional 23 percent of the cases occurred between noon and 4:00 p.m. Again, cases were fairly evenly distributed Monday through Friday. This pattern held true across all major industry sectors except leisure and hospitality, in which injuries and illnesses were distributed evenly from Monday to Saturday, with 12 percent of incidents occurring on Sunday.

### *Musculoskeletal Disorders*

BLS reported that 435,180 musculoskeletal disorder (MSD) cases resulted in days away from work in 2003. MSDs continue to account for one-third of all injuries and illnesses involving days away from work and remain the biggest category of injury and illness.

The occupations reporting the highest number of MSDs involving days away from work in 2003 were nursing aides, orderlies and attendants (33,710); laborers and freight, stock, and material movers, hand (33,090); and truck drivers, heavy and tractor-trailer (20,590). The median number of days away from work for all injuries and illnesses is eight (up from seven days in 2002), compared with 10 (up from nine days in 2002) for MSDs. According to BLS, the median number of days away from work is the key measure of the severity of an injury. More than one-quarter of all injury and illness cases resulted in 31 or more days away from work in 2003.

It is important to recognize that the numbers and rates of MSDs reported by BLS represent only a part of the total MSD problem. These figures do not include injuries suffered by public-sector workers or postal workers, nor do they reflect the underreporting of MSDs by employers. Based on studies and experience, OSHA has estimated that MSDs are understated by at least a factor of two—that is, for every MSD reported there is another work-related MSD that is not recorded or reported.<sup>3</sup>

Moreover, the BLS MSD data are limited to cases involving one or more days away from work, the cases for which BLS collects detailed reports. Similar detailed reports are not collected for injuries and illnesses that do not involve lost work time or those that result in job transfer or

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<sup>3</sup> 64 F.R. 65981 and 65 F.R. 68758.

restriction but not in time lost from work. Based on the percentage of days away from work cases involving MSDs (33 percent) in 2003, there were an estimated 325,380 MSDs that resulted in restricted activity or job transfer, 760,560 MSD cases that resulted in days away from work, restricted activity or job transfer, 680,889 MSDs that did not result in lost time and a total of 1,440,516 MSDs reported by private-sector employers.

### *Reported Cases Understate Problem*

While government statistics show that occupational injury and illness are declining, numerous studies have shown that government counts of occupational injury and illness are underestimated by as much as 69 percent.<sup>4</sup> For a variety of reasons, BLS data underestimates the extent of workplace injuries and illnesses in the United States. First, the data exclude many categories of workers (self-employed individuals; farms with fewer than 11 employees; employers regulated by other federal safety and health laws; federal, state and local government agencies; and private household workers). This results in the exclusion of more than 1 in 5 workers from the BLS Annual Survey. In addition to the built-in exclusions, which BLS is candid about, there also is underreporting for other reasons. There are a number of factors—mostly economic:

- Workers' compensation systems create incentives for employers to underreport by increasing costs for companies that show an increase in injuries.
- Firms seeking government contracts may fear being denied a contract if their injury rate is too high.
- OSHA's reliance on injury rates in targeting inspections and measuring performance creates a clear incentive for employers not to record injuries.

There also are many reasons why workers may not report an injury or illness to their employer:

- Economic incentives can also influence workers. Employer-implemented programs that offer prizes for individuals or departments for going a certain number of days without an injury discourage workers from reporting, either because they want the prize or because of peer pressure from co-workers who want the prize.
- Employees do not want to be labeled as accident-prone.
- Employers implement programs that discipline workers when they report an injury, discouraging workers from reporting.
- Workers who apply for workers' compensation often are looked upon as slackers; many others don't know how to use the workers' compensation system.
- Foreign-born workers, whether in the country legally or not, face additional barriers to reporting. They may not know how or to whom to report the injury. They may fear being fired or harassed or being reported to the Bureau of Citizenship and Immigration Services.

Underreporting of workplace injuries and illnesses is not a new phenomenon. Numerous government-driven and independent studies have documented the problem of underreporting and

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4 Leigh, J. Paul, Ph.D., James P. Marcin, M.D., M.P.H., and Ted R. Miller, Ph.D., "An Estimate of the U.S. Government's Undercount of Nonfatal Occupational Injuries," *Journal of Occupational and Environmental Medicine*, Vol. 46, No. 1, January 2004.

made recommendations to correct it, yet little mention ever is made of underreporting when the BLS statistics are released. And little has been done to address underreporting.

Year after year, all of these factors known to contribute to significant underreporting are ignored as the statistics are rattled off and administration officials take credit for policies that drove the numbers down. Yet it is these same policymakers who are responsible for ensuring a clear and accurate picture of injury and illness in our nation's workplaces.

We must not allow inaccurate data to drive safety and health efforts. Only with an accurate picture of the nature of occupational safety and health problems may employers and policymakers work to reduce the occupational safety and health hazards that cause workplace injury, illness and death. Until policymakers require an accurate picture, occupational injuries will continue and there will be no clear strategy to address workplace hazards.

## **JOB SAFETY ENFORCEMENT AND COVERAGE**

When it comes to job safety enforcement and coverage, it is clear that OSHA lacks sufficient resources to protect workers adequately. A combination of too few OSHA inspectors and low penalties makes the threat of an OSHA inspection hollow for too many employers. More than 8 million workers still are without OSHA coverage.

Every year some 5,000 workers die on the job and thousands more die from illnesses caused by occupational exposures. Many of these deaths are determined by state and federal OSHA investigations to be due to employers' reckless disregard for worker safety. But, as documented in a December 2003 series by *The New York Times*, prosecutions of recklessly negligent employers are extremely rare. Of the 170,000 workplace deaths since 1982, only 16 convictions involving jail time have resulted—although 1,242 cases involving work deaths were determined by OSHA to involve “willful” violations by employers (violations in which the employer knew that workers' lives were being put at risk).

Killing a worker is considered a misdemeanor under the OSH Act, with a maximum sentence of six months in jail. Even for willful violations, fines typically are less than \$25,000. *The New York Times*' analysis of OSHA data revealed that “companies whose willful acts kill workers face lighter sanctions than those who deliberately break environmental or financial laws.”<sup>5</sup> In June 2003, Sen. Jon Corzine (D-N.J.) introduced the Wrongful Death Accountability Act to try to remedy the situation. The bill sought to make the killing of a worker a felony, raising both the fines and the amount of jail time employers would face for the willful death of a worker. No action was taken on the legislation during the 108th Congress and Corzine has not reintroduced the legislation in the 109th Congress. A September 2003 report by the Labor Department's Office of the Inspector General concerning immigrant worker fatalities recommended OSHA evaluate the effectiveness of increasing the criminal charges under Section 17(e) of the OSH Act from a misdemeanor to a felony.<sup>6</sup> To date, no such evaluation has been

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5 “When Workers Die: U.S. Rarely Seeks Charges for Deaths in Workplace,” *The New York Times*, David Barstow, Dec. 22, 2003.

6 DOL, Office of Inspector General, “Evaluation of OSHA's Handling of Immigrant Fatalities in the Workplace,” Report No. 21-03-023-10-001, Sept. 30, 2003.

forthcoming from the agency.

Penalties for significant violations of the law remain low. In fiscal year (FY) 2004, serious violations of the OSH Act carried an average penalty of only \$873 (\$872 for federal OSHA, \$873 for state OSHA plans). A violation is considered “serious” if it poses a substantial probability of death or serious physical harm to workers. In FY 2004, Oregon continued to have the lowest average penalty for serious violations at \$306, while California continued to have the highest average penalty at \$5,278 per serious violation.

OSHA’s resources remain inadequate to meet the challenge of ensuring safe working conditions for America’s workers. In FY 2005, there are at most<sup>7</sup> 2,138 federal and state OSHA inspectors responsible for enforcing the law at approximately 8 million workplaces. In FY 2004, the 861 federal OSHA inspectors conducted 39,246 inspections (638 fewer than in FY 2003), and the inspectors in state OSHA agencies combined conducted 58,675 inspections (1,819 fewer than in FY 2003).

The number of employees covered by federal OSHA inspections decreased from 1.6 million in FY 2003 to 1.5 million in FY 2004. Between FY 1999 and FY 2004, the number of employees covered by federal OSHA inspections decreased by 17 percent. The average number of hours spent per inspection also decreased between FY 1999 and FY 2004, from 22 hours to 18.7 hours per safety inspection and from 40 hours to 35.6 hours per health inspection (though that is an increase from FY 2003). The number of citations for willful violations decreased from 607 in FY 1999 to 446 in FY 2004 (though that is an increase of 55 from FY 2003). The average penalty per repeat violation and per willful violation both decreased in FY 2004 from the FY 2003 level, while the average penalty per serious violation rose slightly from FY 2003.

In March 2003, OSHA announced an enhanced enforcement program to focus on persistent violators. However, the policy relies primarily on enhanced oversight by OSHA or consultants. There are no provisions for enhanced penalties as part of the program.

At its current staffing and inspection levels, it would take federal OSHA 108 years to inspect each workplace under its jurisdiction just once. In three states (Georgia, Louisiana and Florida), it would take more than 150 years for OSHA to pay a single visit to each workplace. In 19 states, it would take between 100 and 149 years to visit each workplace once. Inspection frequency is better in states with OSHA-approved plans, yet still far from satisfactory. In these states, it would now take the state OSHAs a combined 65 years to inspect each worksite under state jurisdiction once, compared with once every 62 years in FY 2003.

The current OSHA law still does not cover 8.5 million state and local government employees. Although these public employees encounter the same hazards as private-sector workers, in 26 states and the District of Columbia they are not provided with protection under the OSH Act.

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<sup>7</sup> This reflects the number of federal inspectors plus the number of inspectors reflected in the FY 2004 state plan grant applications.

Similarly, millions who work in the transportation and agriculture industries and at Department of Energy contract facilities lack full protection under the OSH Act. These workers theoretically are covered by other laws, which in practice have failed to provide equivalent protection. The void in protection is particularly serious for flight attendants. The Federal Aviation Administration (FAA) has claimed legal jurisdiction for airline cabin crews but has refused to issue necessary workplace safety rules. Efforts by the FAA and OSHA initiated in 2000 to resolve this situation have been jettisoned by the Bush administration, which instead has announced a program limited to voluntary activities that will be overseen by the FAA.

Voluntary programs are expanding at OSHA. Rather than develop a regulatory program, under the Bush administration the agency relies heavily on voluntary guidance and outreach to the business community. In particular, OSHA expanded its program of “alliances.” These alliances emphasize outreach, education and the promotion of safety and health. They have no set criteria and are less structured than OSHA’s other voluntary programs (such as consultation and partnerships). Many of the alliances are between OSHA and employer groups and have excluded unions from participation.

## **REGULATORY ACTION**

Rule making at OSHA and MSHA has virtually ground to a halt under the Bush administration. In December 2004, the administration published its latest semiannual regulatory agenda, which sets forth its regulatory priorities and plans for the coming year. To date, the administration has withdrawn 24 pending OSHA actions from its regulatory agenda, leaving few major initiatives on the regulatory schedule.

OSHA still has taken no action on the Employer Payment for Personal Protective Equipment standard, which has been through the rule-making process and is ready for final action. This rule would require employers to pay for the safety equipment that must be provided by employers under OSHA standards. In April 2003 the United Food and Commercial Workers, eight other union organizations and the Congressional Hispanic Caucus petitioned for OSHA to issue the final standard. In December 2003 the regulatory agenda relegated the standard to long-term action. The December 2004 regulatory agenda classified the Employer Payment for Personal Protective Equipment standard in the final rule stage for action slated in March 2005. However, to date, OSHA has taken no further action on the standard and when acting OSHA Administrator Jonathan L. Snare testified before the House Appropriations subcommittee on labor, health and human services, education and related agencies on April 7, 2005, he said he could not give “a specific time, whether it’s several months or several years down the road.”<sup>8</sup>

The one major regulation on which OSHA is working, Hexavalent Chromium, is the result of a lawsuit brought against the agency by Public Citizen and PACE International Union (now USW). Under the court ruling, which ordered the agency to expedite the Hexavalent Chromium rule making, a final standard is required to be issued by Jan. 18, 2006.

There are five economically significant regulations still on the regulatory agenda:

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<sup>8</sup> “California Congresswoman Presses Official To Finalize Protective Equipment Standard,” BNA, *Daily Labor Report*, No. 68, April 11, 2005.

Hexavalent Chromium (mandated by court order); Crystalline Silica (in the pre-rule stage); Confined Spaces in Construction (proposed rule stage); Beryllium (pre-rule stage); and Hearing Conservation for Construction Workers (long-term action with the next action undetermined). There is no commitment from OSHA to propose the rules that are in the pre-rule or long-term action stages. The Bush administration is the only one since OSHA was created that did not issue a major safety and health regulation during a four-year term in office.

Similarly, at MSHA, 17 standards to improve safety and health for miners have been withdrawn since President Bush took office, including the Air Quality, Chemical Substances and Respiratory standards.

The United Mine Workers of America filed a lawsuit challenging the Labor Department's withdrawal of the air quality standard. The standard would have protected coal miners from exposure to hundreds of airborne substances. The U.S. Court of Appeals for the District of Columbia Circuit ruled that the Department of Labor acted "arbitrarily and capriciously" when it stopped the rule-making process and that it must proceed with the rule or provide an adequate explanation for its withdrawal. The agency then provided the court with further explanation, which was unfortunately accepted by the judge. There will be no rule to protect coal miners from airborne substances.

For the most part at MSHA, those standards that have been proposed during the Bush administration favor industry by moving to roll back existing protections. There are no pending standards to protect miners from the hazards of their job.

## **Regulatory Reform**

Meanwhile, an anti-regulatory Congress keeps creating more hurdles to the already burdensome process of protecting the public through regulation. Pending and expected anti-regulatory proposals threaten to chip away at a variety of hard-fought public protections while safeguarding industry interests. Examples of anti-regulatory measures being considered include preventing agencies from issuing new regulations unless they can show that monetized benefits exceed industry estimates of the costs to implement the regulations and blocking economically significant regulations from being implemented until Congress votes to approve them.<sup>9</sup>

## **THE JOB SAFETY BUDGET**

President George W. Bush's proposed FY 2006 budget for worker safety and health programs reflects the administration's policies toward worker protection—it includes priorities and policies that favor employers over workers and voluntary compliance over enforcement. Overall funding levels proposed for OSHA, MSHA and the National Institute for Occupational Safety and Health (NIOSH) are insufficient to maintain current program activities of these agencies. For FY 2006, the Bush administration has proposed \$467 million for OSHA, \$280 million for MSHA and \$286 million for NIOSH.

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<sup>9</sup> For a complete list of anti-regulatory measures likely to surface during the 109th Congress, see the OMB Watch website, [www.ombwatch.org](http://www.ombwatch.org).

At OSHA, the president proposes to eliminate all funding for worker safety training programs (\$10 million appropriated by Congress in FY 2005) but seeks increases for employer assistance programs. Taking into account inflation, this year's proposed budget freezes OSHA's and MSHA's enforcement programs.

The administration's FY 2006 MSHA budget proposes \$280 million in funding, compared with \$279.2 million appropriated in FY 2005. Adjusting for inflation, the FY 2006 proposed MSHA budget represents a \$4.9 million cut in real dollars over FY 2005 appropriations. The administration has proposed a cut in MSHA's program for standards development (from \$2.3 million in FY 2005 to \$2.0 million in FY 2006) and cuts in program evaluation and program administration. Like at its sister agency OSHA, no new major mine safety and health rules are planned at MSHA. Instead, many important safety and health rules have been blocked or withdrawn. Funding requested for enforcement covers inflationary increases in these programs.

For FY 2006, the Bush administration has proposed a \$286 million budget for NIOSH—\$199 million for program activity and \$87 million to fund the National Occupational Research Agenda (NORA). This funding request is similar to the level of funds appropriated for NIOSH in FY 2005 (\$285.4 million), but adjusted for inflation represents a \$5.1 million cut in real-dollar terms.

For the second consecutive year, the president's proposed budget contained cuts to first-responders programs for firefighters, emergency medical personnel, police and others. Fortunately, the Senate voted March 17, 2005, to add \$565 million in first-responder grants for states and localities to Bush's proposed FY 2006 budget. The amendment passed 63–37.

By any measure, the level of federal resources being devoted to job safety and health protection is inadequate, particularly given the size and cost of the job safety and health problem. OSHA's current budget (FY 2005) of \$464 million amounts to only \$4.33 per worker in the private sector.

### *Cost of Occupational Injuries and Death*

The cost of occupational injuries and death in the United States is staggering. In November 2004, Liberty Mutual Insurance, the nation's largest workers' compensation insurance company, released a report (2004 Liberty Mutual Workplace Safety Index) on the leading causes and costs of compensable work injuries and illnesses based on 2002 data. The report revealed workplace injuries cost U.S. employers nearly \$1 billion per week in direct costs alone (medical and lost wage payments). Based on calculations used in its previous Safety Index, the Liberty Mutual data indicate businesses pay between \$198.4 billion and \$297.6 billion annually in direct and indirect (overtime, training and lost productivity) costs on workers' compensation losses. These figures are derived using disabling incidents (those resulting in an employee missing six or more days away from work). These cases represent only the most serious injuries; relying only on these cases significantly underestimates the overall cost of injuries and illnesses. Even so, these costs exceed previous estimates by the National Safety Council and researchers, which projected the total cost of workplace injuries, illnesses and

fatalities at \$156.2 billion in 2003 and \$155.6 billion<sup>10</sup>, respectively.

NIOSH developed a cost model that estimates the cost of fatal workplace injuries between 1992 and 2001 at \$48.7 billion. The model takes into account medical costs, the present value of future earnings from the year of death until the worker would have reached age 67 and the value of home production lost.

## **KEY SAFETY AND HEALTH CHALLENGES FOR 2005**

The first term of the Bush administration proved very difficult for workers and worker advocates; the second term will prove just as challenging. The administration has demonstrated clearly that it has no commitment to addressing the major safety and health problems faced by America's workers. It prefers instead to focus on employers' desires for less regulation and more voluntary programs. In just one term, the Bush administration has repealed the ergonomics standard and gone back on its promise to seriously address the issue. After two one-year stays, it revoked provisions of the new OSHA record-keeping rule to prevent ergonomic injuries from being identified on the log of injuries and illnesses. Significant regulatory action at OSHA and MSHA has virtually ground to a halt. The budgets proposed by President Bush continue to cut funding for worker safety training programs while increasing funding for voluntary compliance and employer assistance programs.

Meanwhile, major safety and health problems remain and the toll of workplace injuries, illnesses and fatalities remains high. For some groups of workers, particularly Hispanic and foreign-born workers, the problems are especially bad, with workplace fatality and injury rates higher than for those of the workforce as a whole.

Outlined below are some of the key safety and health challenges that must be addressed.

### **Hispanic and Foreign-Born Worker Fatalities and Injuries**

Over the past two decades, the number of Hispanic and immigrant workers in the United States has increased significantly. The 2000 Census reported 35 million Hispanics living in the United States, comprising 12.5 percent of the U.S. population. More than 21 million are of working age. In 2003, immigrants made up 14 percent of the U.S. workforce. Immigrants account for nearly 50 percent of the net increase in the labor force during the second half of the 1990s.

The increased representation of Hispanics and immigrants in the U.S. workforce has been accompanied by an increase in work-related fatalities and injuries among these groups. But this rise in fatalities and injuries has been disproportionate, with fatalities and injuries increasing at alarming rates.

Since 1992, when these data first were collected in the BLS Census of Fatal Occupational Injuries (CFOI), the number of fatalities among Hispanic workers has increased by 48 percent, from 533 fatalities in 1992 to 791 in 2003. This, however, is a decline from the 840 Hispanic

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10 Leigh, J. Paul, et. al., *Costs of Occupational Injuries and Illnesses*, The University of Michigan Press, 2000.

workers who were injured fatally at work in 2002. At the same time, the overall number of workplace fatalities dropped from 6,217 in 1992 to 5,559 in 2003. The states with the highest number of Hispanic worker fatalities are Texas, California and Florida (in that order).

According to work done by CFOI and published in a 2003 National Research Council report, "Safety Is Seguridad," Hispanic men have the greatest overall relative risk of fatal occupational injury of any gender or race/ethnicity group. While Hispanic men have a relative risk 22 percent higher than the relative risk for all men, Hispanic women have a relative risk comparable to the relative risks faced by white women. Relative risk is particularly high for Hispanic men in the mining and construction industries. In 2000, Hispanic construction workers made up less than 16 percent of the construction workforce, but they suffered 23.5 percent of the fatalities. In 2000, Hispanic construction workers were nearly twice as likely to be killed by occupational injuries as their non-Hispanic counterparts.<sup>11</sup>

BLS data also show increases in the number of injury and illness cases with days away from work suffered by Hispanic workers. Of the total injury and illness cases with days away from work, the percentage of injuries and illnesses among Hispanic workers has increased from 9.4 percent in 1995 to 12.3 percent in 2003. This percentage decreased slightly from 2002 to 2003. It should be noted that while it is mandatory to report the race of a worker when there is a fatality, it is not mandatory to record the race of an injured worker on the OSHA 300 logs or related injury reports.

Fatalities among foreign-born workers (the CFOI does not use the term immigrant, but rather foreign-born) have followed a similar disturbing trend, increasing from 635 in 1992 to 889 in 2003. California, Texas and Florida had the greatest number of foreign-born worker fatalities in 2003. Of the foreign-born workers who were fatally injured at work in 2003, 58 percent were Hispanic or Latino, 20 percent were white, 14 percent were Asian, native Hawaiian or Pacific Islander and 5 percent were black or African American. Of the foreign-born workers who were injured fatally at work in 2003, 40 percent were from Mexico. Nearly one-third of the foreign-born fatalities resulted from transportation incidents, more than one-quarter resulted from assaults and violent acts, 17 percent were a result of contact with objects and equipment and 15 percent resulted from falls.

In February 2002, OSHA announced an initiative to address the increased safety and health risks of immigrant and Hispanic workers. But at the same time, the administration has proposed terminating funding for worker training and outreach programs, many of which are targeted to these high-risk workers. Research by The Associated Press reporter Justin Pritchard found safety experts inside and outside OSHA who say the agency's outreach efforts are well intentioned but beset by limited funding and a lack of Spanish-speaking staffers. According to OSHA, there are 121 federal compliance safety and health officers (OSHA inspectors) out of a total of 861 who speak Spanish.<sup>12</sup>

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11 Xiuwen Dong, M.S., and James W. Platner, Ph.D., "Occupational Fatalities of Hispanic Construction Workers From 1992 to 2000," *American Journal of Industrial Medicine*, Vol. 45, No. 1 (2004), pp. 45-54.

12 Conversation with Al Belsky, OSHA Office of Public Affairs, March 4, 2005.

## **Ergonomics**

Ergonomic injuries still are the biggest job-safety hazard faced by workers. In 2003, musculoskeletal disorders accounted for one-third of all workplace injuries.

The administration's promised "comprehensive plan" to address ergonomic hazards has turned out to be a sham. Four years after killing the ergonomics standard, the administration has issued just three final ergonomics guidelines—for the nursing home industry, retail grocery stores and poultry processing. OSHA has issued a total of 17 general duty clause citations since January 2001. OSHA has formed several alliances with businesses that exclude unions and held six meetings with the National Advisory Committee of Ergonomics, whose mission is to identify research gaps.

As long as the Bush administration is in office, it is clear no new OSHA ergonomics standard will be issued and nothing else will be done to address seriously the biggest job-safety hazard workers face.

## **Pending Legislation in the 109th Congress**

Representative Charles Norwood (R-Ga.), chair of the workforce protections subcommittee of the House Committee on Education and the Workforce Protections, has introduced four bills—H.R. 739, H.R. 740, H.R. 741 and H.R. 742—that threaten workplace health and safety. These bills are touted as commonsense fixes that alleviate some regulatory burdens without sacrificing any safety and health protections. However, this is a dangerous package of measures—a grab bag of political favors for business—that threaten worker safety. All four bills were approved by the House Education and Workforce Protections Committee on April 13, 2005.

Identical measures were passed by the House of Representatives in the 108th Congress but died in the Senate. This year the new chair of the Senate Committee on Health, Education, Labor and Pensions subcommittee on employment and workplace safety, Sen. Johnny Isakson (R-Ga.), has committed to trying to advance similar measures in the Senate.

Contrary to claims that the proposed amendments to the Occupational Safety and Health Act are limited measures to address business concerns, a number of the provisions are far-reaching and seriously will undermine and weaken enforcement of the job safety law. With more than 12,800 workers killed or injured each day on the job, Congress should be strengthening, not weakening, safety and health protections.<sup>13</sup>

## **Other Issues**

In addition to the current political challenges to worker safety and health protections, many other issues remain. Biohazards, emergency response, security and surveillance of workers cleaning up the World Trade Center site are just a few issues raised after Sept. 11, 2001. OSHA is not addressing any of these issues aggressively and certainly not in a way that ensures worker protection.

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<sup>13</sup> For a detailed summary of the bills, go to [www.aflcio.org/yourjobeconomy/safety](http://www.aflcio.org/yourjobeconomy/safety) or call the AFL-CIO Safety and Health Department at 202-637-5367.

Long hours of work and the way work is organized are emerging as major safety and health issues affecting workers across many industries and occupations. The International Labor Organization (ILO) reports that hours worked annually in the United States have been increasing steadily over the past couple of decades. Workers in the United States now work more hours than workers in most of Western Europe and Japan. According to the Bureau of Labor Statistics, more than one-quarter of workers in the mining, manufacturing and wholesale trade industries work more than 40 hours per week. Many workers are forced to work the overtime hours under threat of reprisal if they refuse.

Evidence that long hours of work cause injuries and illnesses is growing. Working more than eight hours in a day or 40 hours in a week can result in an increase in work-related injuries, and the risk appears to be higher for the evening and night shifts compared with the day shift. Excessive overtime also is associated with increased risk of experiencing heart attacks, increased blood pressure, unhealthy weight gain, increased alcohol use and smoking and deterioration in job performance.

The ways in which work is performed and is being restructured also are emerging as a potential safety and health hazard for workers. Work organization includes such elements as the pace of work, number of people performing the job (staffing levels), hours and days on the job, amount and length of rest breaks, workload, layout of the work and skills of those workers on the job. New forms of work organization can increase exposure to physical hazards and elevate the level of psychological stress. Work organization changes, such as machine-paced work, inadequate work-rest cycles, time pressures and repetitive work are associated with musculoskeletal disorders, increases in blood pressure and risks of cardiovascular mortality.

In the health care industry, organizational changes associated with a shortage of nurses, resulting in long hours of work and high patient-to-nurse hospital staffing ratios, have been linked to increases in needle injuries and near misses, nurse burnout and elevated surgical patient mortality. In response to these adverse consequences, 11 states have passed legislation placing limits on the amount of mandatory overtime nurses or health care workers can be forced to work (California, Connecticut, Maine, Maryland, Minnesota, New Jersey, Oregon, Texas, Washington and West Virginia). California was the first state to establish nurse-to-patient hospital staffing ratios, although GOP Gov. Arnold Schwarzenegger is attempting to delay implementation. New Jersey and New York passed bills in 2005 requiring hospitals to report on their staffing levels and make the information available to the public.

The move toward behavior-based safety programs, incentive programs and injury discipline programs presents another major challenge. These programs attempt to shift the responsibility for injuries and job safety to workers instead of focusing on workplace hazards. The 2001 OSHA record-keeping standard included language that prohibits employers from discriminating against an employee for reporting a work-related fatality, injury or illness. This language also protects employees who file a safety and health complaint, ask for safety and health records or otherwise exercise any rights afforded by the OSH Act. In 2002, the national OSHA office issued a memo to its regional administrators and whistleblower staff reiterating this point and making it clear that reporting an injury or illness is protected activity.

## WORKERS' COMPENSATION

Workers' compensation—America's first tort reform—was enacted almost a century ago to give injured workers and their families immediate relief from injury, disease or death on the job. In return, business got immediate relief from costly lawsuits—their workers were barred from suing them. Workers' compensation became the “exclusive remedy” and businesses were required to purchase workers' compensation insurance.

In the years since the workers' compensation system was created, lack of federal oversight or regulation and rate increases demanded by insurers have caused the cost of workers' compensation to skyrocket. The result has been constant pressure to cut benefits to injured workers. Workers' compensation benefits are at historic lows. The workers' compensation system is broken. It does not provide workers with the medical care they need nor with the wage replacement they once were promised.

Workers, their families, businesses and federal and state governments together are paying anywhere from \$7.6 billion to \$23.1 billion each year for occupational diseases that should be covered by workers' compensation insurance. This cost is a result both of workers' compensation insurers denying claims and workers failing to file them in the first place.<sup>14</sup> The total paid for workers' compensation medical care in 2002 was \$33.6 billion, according to the National Academy of Social Insurance. If insurers paid the true cost of occupational disease, it is estimated that figure would grow by 23 percent to 69 percent.

Workers' compensation insurers are more concerned with making profits than with providing medical care for workers and returning them to work. Insurers continue to operate with unregulated rate schemes and an ability to cut costs however they choose, leaving injured workers struggling in a system stacked against them.

### State Workers' Compensation Activity

Led by the American Insurance Association and the Chamber of Commerce, businesses from Hawaii to Alaska, New York and Maryland continued to demand cuts in workers' compensation coverage and benefits in 2004–2005. For the most part, they succeeded, although state AFL-CIO leaders put up a fight in virtually every battleground state, scoring a major victory in Oregon.

Insurance companies largely were successful in convincing state legislatures in 2004 and 2005 to enact more restrictions on medical care and disability benefits. Together with state chambers of commerce, they argued that businesses would relocate to states with lower rates and benefits unless benefits were cut. They also targeted attorneys in **Tennessee** and **Missouri**, where state courts long have determined workers' compensation awards, winning reductions in attorney's fees and substituting an administrative system for judicial discretion. At the same

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<sup>14</sup> Leigh J.P., Robbins J.A., “Occupational Disease and Workers' Compensation: Coverage, Costs and Consequences,” *Millbank Quarterly*, 82:4, 680–721.

time, they successfully resisted any attempts to regulate rates, although California did require a study of workers' compensation insurance rates that will be completed in 2006.

**California** Gov. Schwarzenegger made workers' compensation a major campaign issue in his successful 2003 recall campaign against former Democratic Gov. Gray Davis. Even before he arrived in Sacramento, he set to work with the Chamber of Commerce and insurance companies, demanding a sweeping overhaul of medical care and disability determinations.

California's experience demonstrates the power of the insurance industry, which benefited most from the compromise legislation that was reached in California. Savings from containing medical costs were not passed on to businesses. Under the legislation, insurers get to keep all of the savings.

Union members will be able to name their current doctor as their treating doctor should they suffer an injury on the job. Union members must pre-designate their doctors immediately by completing a form and returning it to their employers.

As soon as Schwarzenegger signed SB 899 into law, insurers began restricting the American College of Occupational and Environmental Medicine (ACOEM) guidelines, denying care for any procedure that was not clearly spelled out. The result was a raft of litigation. Insurers began writing workers' compensation policies in California and rates began to decline, although not as much as the 29 percent decrease the California Insurance Department recommended.

In **Maryland**, union and claimants' lawyers defeated every insurance company-proposed restriction in 2004, but by 2005, insurers had persuaded the state's workers' compensation commission to bypass the legislature and promulgate its own, largely insurance industry-drafted regulations for medical care restrictions.

Business climate concerns led Republican governors in **Alaska, Hawaii, Oklahoma** and **Missouri** to demand benefit cuts in 2005. Despite the absence of a single study documenting that workers' compensation rates are a major factor in CEOs' plant relocation decisions, anecdotal evidence played a major role in shaping the debate in each state.

**Missouri** adopted a more restrictive definition of accidental injury, favored by the insurance industry, requiring injured workers to verify, with time and place, how they were injured. The state also narrowed the definition of a compensable injury, making it one in which the accident was the "prevailing factor" in causing the injury rather than just "a factor." Insurers tied these cuts to new requirements for vocational testing and rehabilitation to help workers return to work.

The **New York** State AFL-CIO convinced the state Insurance Department to reject insurers' demand for a 29 percent rate increase, arguing that the rate proposal did not include insurers' substantial savings from the state's permissive workers' compensation settlement law. Attorney General Eliot Spitzer's ongoing investigations into insurance company accounting fraud and broker kickbacks supported unions' claims that insurers were gouging workers'

compensation to enhance their earnings. Republican Gov. George Pataki, however, refused to approve an increase in New York's \$400 weekly death and permanent disability benefit, siding with insurers and businesses that insisted that any increase be accompanied by eligibility restrictions. Benefits in New York have not been increased since 1994, forcing many injured workers into poverty.

In **Oregon**, unions and businesses worked together to defeat a multimillion-dollar initiative by Liberty Mutual to eliminate the state workers' compensation insurance fund. The successful argument was the need to have a publicly accountable insurer of last resort free from the legal constraints of shareholders.

**Texas**, where workers' compensation is voluntary and injured workers often are pressed to resolve the cases they do file in "pick-up truck settlements," began dismantling its workers' compensation commission in 2005. The Insurance Department was slated to take over medical care regulation in a new managed care system, restricting employee choice, and a new workers' compensation department would be created, led by a commissioner appointed by the governor.

**Washington** continued to grapple with businesses seeking to eliminate benefits and even wipe out the state's single-payer workers' compensation insurance fund. Insurers supported the campaign and unions demonstrated that businesses had diverted insurance premiums improperly to their lobbying campaign to cut benefits and privatize the state insurance fund. That battle continues as of this writing.

Finally, **West Virginia** workers' compensation, one of five single-payer systems in the nation (called "monopolistic" by insurance companies), was slashed and privatized in 2004 and 2005. Crushing debt inherited from bankrupt coal companies, inadequate payments from self-insured businesses and a benefit structure designed to compensate for the state's weak economy left unions and their diminishing Democratic allies with a difficult defense. The state now begins a transition to a privatized system.

## **Asbestos Compensation**

The history of asbestos is one of the most shameful in the annals of the American workplace. Long after manufacturers, their insurance companies and the federal government knew asbestos was a deadly poison, millions of workers were exposed to it. As a result, hundreds of thousands of workers have or will develop serious disease, which in many cases is fatal.

For decades, the victims of asbestos poisoning have sought compensation for the terrible wrongs done to them and their families. With the help of their unions, many asbestos victims have received compensation through the legal system from asbestos manufacturers.

Given the extent of asbestos-related disease, liability has exceeded the assets of many asbestos manufacturers. This has led to an increased number of bankruptcies and an expansion in the numbers and kinds of firms being sued, in an attempt to recover some compensation for diseased workers. But for too many workers, compensation is too late and far too little.

The increase in asbestos disease claims, bankruptcies by asbestos manufacturers and employers has led to renewed attempts to enact federal asbestos compensation legislation. For

years, the industry pushed for legislation to severely limit the number of claims that could go forward by establishing restrictive medical criteria that would bar most workers with asbestos-related disease from being compensated. Now some employers and insurers are supporting the establishment of a no-fault, administrative system for compensating asbestos-related disease that would be paid for through a trust fund—funded by manufacturers, employers and insurers.

In the 108th Congress, efforts were undertaken to reach a broad consensus on legislation to establish a federal asbestos trust fund to compensate victims of asbestos-related diseases. But business defendants, insurers and Republican senators refused to address the important issues of adequate funding and fair compensation for victims. As a result, the bill (S. 2290), introduced by Sen. William Frist (R-Tenn.) and supported by industry groups, did not receive sufficient support to be considered by the Senate.

There have been renewed efforts to craft legislation, and on April 22, 2005, a new bill, the Fairness in Asbestos Injury Resolution Act of 2005 (S. 852) was introduced by Sens. Arlen Specter (R-Pa.) and Patrick Leahy (D-Vt.) with bipartisan support. While it includes some significant improvements over earlier proposals, S. 852 eliminates coverage for thousands of asbestos-lung cancer victims (those with significant asbestos exposure but no underlying “markers” of nonmalignant asbestos disease), leaves most victims with no redress while the fund is getting started and fails to ensure that deserving victims will be treated fairly and receive compensation on a timely basis. The AFL-CIO opposed S. 852 as introduced, but is continuing to work to obtain improvements to address the deficiencies in the bill with the desired goal being legislation that provides fair compensation to asbestos disease victims.

## **WHAT NEEDS TO BE DONE**

Very simply, workers need more job safety and health protection. The Bush administration’s lack of regulation and increased attention to employer assistance and voluntary compliance comes at the expense of worker safety and health. The OSH Act needs to be strengthened to make it easier to issue safety and health standards and to make the penalties for violating the law tougher. Workers need to be given a real voice in the workplace and real rights to participate in safety and health as part of a comprehensive safety program to identify and correct hazards. Coverage should be extended to the millions of workers who fall outside the Act’s protection.

A standard still is needed to protect workers from ergonomic hazards and crippling repetitive strain injuries and back injuries, which continue to represent the most significant job-safety problem in the nation. OSHA needs to keep up with new hazards that face workers as workplaces and the nature of work change. Hazardous conditions in the service sector and in retail trade need greater attention. OSHA and MSHA need additional funding to develop and enforce standards and to expand worker safety and health training. Similarly, additional funds are needed for NIOSH to support enhanced research on safety and health problems.

Workers’ compensation laws need to be reformed to expand coverage and eligibility, to increase benefit levels and to permit workers their choice of physician. Insurance reform is sorely needed.

Only with these real reforms and improvements in law will the promise of a safe job for all of America's workers finally be fulfilled.