

# DEADLY SKYLINE

An Annual Report on Construction  
Fatalities in New York State

January 2018



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An Annual Report on Construction Fatalities  
in New York State

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**About the New York Committee for Occupational Safety and Health (NYCOSH):**

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

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# INTRODUCTION

**Over the past year in New York City**, countless hearings, protests, and marches highlighted an epidemic of construction fatalities. As new buildings were constructed and new skylines established, construction workers lost their lives on the job. These construction workers went to work in the morning with the simple purpose of earning a living and providing for their families, without knowing they would never see their loved ones again.

The tragic loss of lives of construction workers made safety advocates determined to chart a different pathway for New York City. The stories were heartbreaking. Young men met harrowing deaths, like Alex Santizo who fell to his death when a platform he was standing on collapsed in Brooklyn.<sup>1</sup> He was 21 years old. Older workers like Bruno Travalja, 52, met the same fate when he fell 47 stories to his death because his harness was not tied off.<sup>2</sup> Wilfredo Enriquez, 59, died for the same reason.<sup>3</sup> These workers' deaths were, as construction fatalities almost always are, unnecessary and preventable.

Construction workers and their families, safety advocates, workers' centers, and union leaders, tenaciously fought to pave a different way for New York City's construction workers. Together, at the release of NYCOSH's 2017 "Deadly Skyline" report, we launched a historic campaign in 2017 to mandate training on construction sites. After a policy battle between supporters and the opposition, the Construction Safety Bill 1447 passed and became Local Law 196 in October of 2017. The legislation, outlined in detail in this report, requires 40-hour training for construction workers on projects of ten stories and above, to be increased based on recommendations of a Task Force chaired by the New York City Department of Buildings Commissioner. The new law represents a significant victory for NYCOSH, the building trades unions, and advocates who have continually called for increased training to provide safer workplaces.

However, while this battle for construction safety in New York City was ongoing, dozens of construction employers caused workers' deaths on the job due to their negligence and failure to adhere to basic safety and health regulations. This report highlights some of these gruesome and heartbreaking worker deaths and the coinciding employer negligence, and demonstrates the need for increased penalties for employers who cut corners on safety. We have come so far, but we have so far to go.

In this update of NYCOSH's annual construction report, we find record-high fatality numbers for construction workers in New York State in the past year, and a slight dip in fatalities in New York City. Fatalities on non-union private construction sites were also at record highs in both New York State and City. Falls continue to be the top cause

1 Sommerfeldt, Chris, and Thomas Tracy. "Family of Worker Killed at Brooklyn Job Site Mourns Loss." *NY Daily News*, NEW YORK DAILY NEWS, 2 Apr. 2016, [www.nydailynews.com/new-york/brooklyn/family-worker-killed-brooklyn-job-site-mourns-loss-article-1.2586484](http://www.nydailynews.com/new-york/brooklyn/family-worker-killed-brooklyn-job-site-mourns-loss-article-1.2586484).

2 "Owner of Glass Installation Company Dies After Falling 47 Stories in Midtown." *Spectrum News NY1*, NY1, 16 Sept. 2016, [www.ny1.com/nyc/all-boroughs/news/2016/09/15/construction-worker-dies-after-falling-42-stories-in-midtown.html](http://www.ny1.com/nyc/all-boroughs/news/2016/09/15/construction-worker-dies-after-falling-42-stories-in-midtown.html).

3 Hogan, Gwynne, and Aidan Gardiner. "Worker Dies in 2-Story Fall at Domino Sugar Factory Building Site: NYPD." *DNAinfo New York*, DNAinfo New York, 9 Dec. 2016, [www.dnainfo.com/new-york/20161209/williamsburg/worker-fall-domino-sugar-factory-325-kent-ave-fdny](http://www.dnainfo.com/new-york/20161209/williamsburg/worker-fall-domino-sugar-factory-325-kent-ave-fdny).

of death for construction workers in New York State and City, and fatal four hazards accounted for record high percentages of fatalities in New York State, and high numbers in New York City. NYCOSH's report utilizes the most recent data available from Bureau of Labor Statistics (BLS), which audits 2016 fatalities, and coinciding 2016 data from the Occupational Safety and Health Administration (OSHA).

Workers outside of New York City, where there is no Department of Buildings (NYC DOB) or equivalent to create safer worksites, face severe consequences due to the decimation of the Occupational Safety and Health Administration (OSHA). The NYC DOB has investigated dramatically increasing numbers of inspections involving injuries and fatalities — nearly doubling their inspections — while OSHA has had a stunning decrease. As construction worker fatalities in New York State climb, OSHA's systematic underfunding is becoming a catastrophe for New York's workers. Local and state governments must act now to initiate proactive policies to protect workers, and develop creative interventions via public health approaches.

In addition, OSHA construction fines for fatality cases have remained low, despite the agency's recent ability to issue high fine amounts. The fines that OSHA is able to levy increased by 78 percent on August 1, 2016, the first increase since 1990. However, the average fatality fine amount in construction still decreased by 7% between 2015 and 2016. OSHA's failure to issue higher fines in fatality cases, despite their new ability to do so, raises questions about the willingness of the agency to effectively deter unsafe job sites.

Three key methods have proven effective in preventing workers from dying on the job: training, regulatory enforcement, and reporting — and these methods' effectiveness is amplified when the public is engaged via campaigns and media reporting. New York City Local Law 196, expanding mandated trainings, puts us on the right track, as do policies like New York State's Scaffold Safety Law and the increased prosecution of criminal construction contractors. However, OSHA is becoming less effective as their funding diminishes and their enforcement tools are weakened, creating a greater need for local and statewide protections.

New York State must go even further and look towards implementing serious penalties against contractors who knowingly violate the law to truly create an effective deterrent to contractors who cut corners on workers' health and safety. OSHA's average fines in construction fatality cases, at \$20,000 are ineffective, but current fine structures for criminally negligent homicide max out at just \$10,000. At least OSHA has the *ability* to issue multiple fines for different violations, but the most egregious violators — those whose negligence was so severe that they are prosecuted for the worst crime under the law — can only be charged a maximum fine of \$10,000 by local prosecutors! Legislation like Carlos' Law, to increase penalties against contractors whose criminal negligence causes workers to die on the job, becomes more and more important as increasing numbers of workers die in New York State and as OSHA fails to meet its mission of protecting workers.

NYCOSH's report recognizes the essential role that construction unions play in creating safer worksites in New York State. Nearly 95% of private construction workers in New York State died on non-union jobs in 2016, showcasing the efficacy of unions in utilizing a trained workforce that understands safety violations and

makes reports when companies try to cut corners and put workers' lives in jeopardy. Construction unions also have higher density in New York City, which helps account for the lower rate of fatalities compared to New York State.

Finally, as immigration raids are terrorizing immigrant communities throughout the country and workplaces become a common target, immigrant rights' organizations and workers' centers remain more important than ever. Workers are afraid they will be deported for just showing up to work, and the fear of organizing into unions or reporting workplace violations is even more pronounced. In construction, where Latino and immigrant workers are repeatedly exploited by employers who treat workers like they are disposable, the ability to report violations is a key component to safe job sites.

NYCOSH is beyond grateful for all of the support we received in the past year as we fought alongside our allies in the construction trades, workers' centers, and New York City Council and we hope that you will join us as we continue the struggle to create safe and healthy jobs.

This report is dedicated to all New York construction workers who build our City and State, for all who are working, for those who struggle to find steady jobs, and for all workers who were needlessly killed.

# SUMMARY OF FINDINGS

## **New York State's construction industry is highly dangerous for workers, with alarming increases in fatalities and the rate of fatalities in New York State.**

A record-breaking 71 construction workers were killed on the job in New York State in 2016. Over the past five years, the New York State fatal occupational injury rate in construction increased by 29.5%. Increases in the fatality number are not attributable to an increase in the amount of construction projects in the State.

## **New York City construction fatalities dropped by 19 percent from 2015 to 2016, with the fatality rate trending downwards.**

In New York City, 21 workers died in 2016, down from 25. Over the past five years, the New York City fatal occupational injury rate in construction decreased by 21.3%. Increases in the number of construction projects in New York City do not account for the decreasing number of fatalities.

## **In 2016, New York State had a 60% higher construction fatality rate than New York City, where local enforcement strategies have been having an effect.**

Over the past five years, the New York City fatal occupational injury rate in construction decreased by 21.3%, while the New York State rate increased by 29.5% over the same period of time. Local enforcement mechanisms in New York City have proven effective in decreasing fatalities.

**Non-union job sites are especially dangerous for workers.** NYCOSH analyzed OSHA's 36 investigated construction fatality citations in 2016 and found that in New York State, 94.7% of workers who died on private worksites were non-union. In New York City, 93.8% of construction workers who died on private worksites in 2016 were non-union.

## **Falls, which are largely preventable, continue to be the top cause of construction fatalities in New York State and New York City.**

In all of New York State in the past ten years, 218 workers died in falls, which account for 48% of all construction fatalities. In New York City alone, over the past ten years, 101 workers died due to falls, which on average accounted for 46% of all construction deaths.

## **The most common causes of construction deaths are the "fatal four" hazards, which include falls, electrocutions, struck by object, and caught in/between equipment or machinery.**

NYCOSH analyzed data from the past ten years and found that 69% of all fatalities in New York City involve the fatal four, and 85% of worker fatalities in New York State.

**Enforcement agencies are drastically underfunded.** NYCOSH conducted an in-depth analysis of OSHA inspections in New York State since OSHA's founding and found a staggering decrease in inspections over the past twenty years. When comparing the years of the highest total number of inspections in 1986 to this

past year, 2017, there was a 62.6 percent cut in the number of inspections in New York State.

**OSHA construction fines for fatality cases remain low.** Average OSHA fines in construction fatality cases decreased by 7%, to \$20,217. This decrease occurred despite the fact that OSHA increased the fines it is able to levy against employers by 78 percent on August 1, 2016, the first increase since 1990. This report shows that OSHA is not applying its increased ability to fine higher amounts in construction fatality cases in New York State.

# RECOMMENDATIONS

## Require and Fund Adequate Safety Education and Training

**1. Require construction training and certification for New York State's construction workers.** Municipalities and New York State need to create rigorous training requirements for construction workers. New York City passed a myriad of construction safety legislation in 2017, including the Construction Safety Bill 1447, which requires a minimum of 40 hours of safety training for construction workers. New York City has also required the OSHA 10-hour construction safety training program, which educates workers around the most common hazards construction workers face on the job, since 2007. Given the record-breaking numbers of construction fatalities in the State compared to a decrease in fatalities in New York City, New York State must act now to protect construction workers.

**2. Establish funding streams for construction safety training programs in New York City.** As the requirements for construction safety trainings increase, so too must the funding to provide such training, especially to ensure that low-wage immigrant workers have the opportunity to access them. In New York City, the passage of Construction Safety Bill 1447 came with a commitment to provide funding for training; this training fund must be codified in the New York City Budget and administered through the creation of a Request for Proposals process. Secured funding will ensure that trusted community-based organizations and safety and health experts are able to provide training to the workers who need it the most.

**3. Increase certifications and licensing in dangerous construction industries.** New York must also require licensing for elevator construction workers, such as proposed in the New York State Elevator Safety Act (S01945/A01787) given the high levels of risk faced by this population. Construction safety licensing programs that mandate rigorous hours of training and combine on-the-job learning with technical instruction are essential to creating safer job sites.

## Extend and Defend Protective Legislation

**4. Preserve New York's Scaffold Safety Law.** New York State's Labor Law §240 (commonly referred to as the Scaffold Safety Law) protects construction workers by holding building site owners and employers fully liable for worker injuries and deaths caused by falls from an elevation. Given that fall-fatalities are the top cause of death on construction sites and the preventability of such deaths, this legislation must be defended.

**5. Pass Carlos' Law to ensure corporate responsibility for worker fatalities.** For too long, workers' deaths on the job have been quickly dismissed as "unfortunate accidents," regardless of the role played by employers, contractors, and owners in contributing to their death. New York should re-envision the framework to increase penalties against corporate entities, so that criminal contractors cannot continue

using their corporate structures to evade accountability and continue business as usual. Carlos' Law (S04075-A/A03049B), named after construction worker Carlos Moncayo, will create real penalties for bad actors who willfully break the law and cause a worker to die on the job.

## Expand Monitoring & Enforcement

**6. Expand criminal prosecutions around egregious health and safety cases statewide.** The Manhattan District Attorney (DA) has led the way on prosecuting criminal construction contractors, and the Brooklyn DA has also brought significant charges against bad actors in the construction industry. Across the state, DAs must exercise their power to hold criminal contractors accountable when the failure to protect workers rises to the level of a criminal offense.

**7. 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 that cause a worker to die, 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 should hold employers accountable in cases of criminal conviction in a worker death or injury so that construction employers face real consequences for their negligence.

**8. End the starvation of the Occupational Safety and Health Administration and increase the agency's reporting on egregious violators of the law.** The stagnant budget and decreasing OSHA inspection numbers have real consequences for workers throughout New York State and all across the country. The cataclysmic drop in inspections shows how OSHA's underfunding starves the agency of the ability to fulfill its basic purpose. OSHA must be funded adequately so the agency can properly carry out its mission. OSHA's underfunding, combined with the Trump Administration's propensity for slashing regulations and protecting employers who break the law, creates dark times for the agency tasked with protecting workers.

**9. Increase funding to the New York City Department of Buildings.** The NYC DOB has a critically important role in construction safety in New York City, and this role has expanded with the implementation of Local Law 196 and legislation mandating that the agency report on all construction fatalities that occur in New York City. In order to be effective, the agency must be funded and so that they can enforce new regulations within their mandate. While the agency has grown in the past several years, DOB needs continued budgetary enhancements as its responsibilities increase — and so that it can continue its effective work of creating safer construction sites in New York City. DOB's work would also be more effective if it publicized egregious violators of the law via press releases, as OSHA did frequently during the Obama

Administration and increased resources could allow the agency to do so.

**10. Develop enforcement strategies that are informed by the intersection between safety and wage violations.** NYCOSH's 2016 analysis on the intersection between health and safety violations and wage theft showed that health and safety complaints should trigger wage and hour inspections, and vice versa. Since the release of our 2017 report, Governor Cuomo, in partnership with DAs across the state, recently announced the Wage Theft Initiative to crack down on wage theft in construction, where, the Governor's press release states "workers are more likely to be taken advantage of via wage theft or unsafe working conditions."<sup>4</sup> This acknowledgement of the relationship between safety and health violations and wage theft, which NYCOSH uncovered in our 2016 report, is important as more DAs are tasked with implementing cross-enforcement strategies. Investigators should be cross-trained for greater efficiency in enforcement and data can be shared and analyzed to help target enforcement efforts.

**11. Protect Latino and immigrant workers proactively.** Immigration raids are terrorizing immigrant communities throughout the country, and New York is no exception. Increased workplace raids create valid concerns among undocumented workers that they will be deported just for showing up to work. In the construction industry, NYCOSH reports have consistently shown that Latino and/or immigrant workers are repeatedly exploited by employers who willfully violate safety and health regulations on the job and cause workers to die. Immigrant workers are less likely to report violations out of fear of retaliation and this fear has become more and more pronounced given the anti-immigrant sentiment and actions taken by the Trump Administration. The Federal government must stop its attack on immigrant workers and take action to legalize undocumented workers in this country so that agencies tasked with protecting workers' safety and health can do their job.

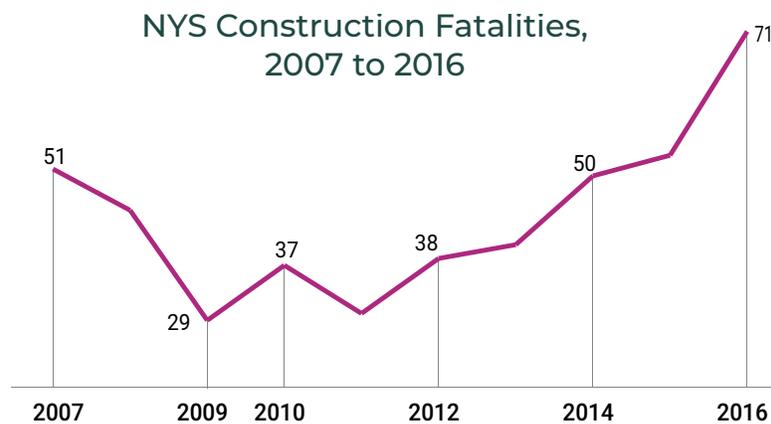
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<sup>4</sup> "Governor Cuomo, Attorney General Schneiderman Partner with Prosecutors to Crackdown on Wage Theft in the Construction Industry." *New York State Department of Labor*, 4 Dec. 2017, [www.labor.ny.gov/pressreleases/2017/december-04-2017.shtm](http://www.labor.ny.gov/pressreleases/2017/december-04-2017.shtm).

## 1. New York's construction industry is highly dangerous, with slight decreases in fatalities in New York City but alarming increases in New York State.

New York State construction fatalities rose to a ten-year high in 2016.

According to the U.S. Bureau of Labor Statistics Census of Fatal Occupational injuries, in the decade between 2007 and 2017, 444 workers died in construction-related accidents in New York State. A record-breaking 71 construction workers were killed on the job in New York State in 2016. In the past twenty-five years, the New York State construction fatality figure only reached 71 workers once before, in 2002. On average, 44.4 construction workers die every year in New York State.



New York City construction fatalities dropped from 25 to 21 from 2015 to 2016, with fatalities trending downwards.

In New York City, 226 construction workers died in the past ten years, and 21 workers died in 2016 (BLS). The number of construction worker who die every year has vacillated over the past ten years, decreasing by 29% from 2007 to 2016 and increasing by 33% from 2011 to 2016. On average, over the past ten years, 20.6 construction workers die every year in New York City. The lowest number of fatalities over a ten-year period in New York City was in 2011 at 14 and highest in 2007 at 27.



## **Construction workers are more likely to die on the job in New York State and City than in the United States at large.**

Construction is the most dangerous industry for workers in the United States. According to the Bureau of Labor Statistics North American Industry Classification System Data, the construction industry made up 991 fatalities out of 5,190 workers in 2016, or 19% of the country's worker fatalities, but construction composes just 4% of the nation's workforce.<sup>5</sup>

In New York State, the total number of workers in all industries who died in 2016 totaled 272, an increase from 236. In addition, the rate of total fatalities in all industries increased from 2.7 to 3.1. In New York City, the total number of workers in all industries who died dropped from 74 in 2015 to 56 in 2016, and the fatality rate in all industries decreased from 2.0 to 1.5.<sup>6</sup> New York State has the thirteenth-lowest overall occupational fatality rate and New York City has the second-lowest overall occupational fatality rate in the country.

In New York State, construction deaths accounted for 26% of all worker deaths and 37.5% of all worker deaths in New York City.<sup>7</sup> In other words, if a worker dies on the job in New York City, 37.5% of the time, they are a construction worker and in New York State, they are a construction worker 26% of the time. Important to note, nationally and in New York State, construction only makes up about four percent of all work, so the high likelihood of worker fatalities in the industry showcases how dangerous the work truly is.

## **In New York State, the fatality rate in construction has skyrocketed in the past five years, far beyond the increase in construction jobs.**

Construction has experienced a significant boom in New York State, but this does not account for the increase in fatalities, as the rate has also increased. The construction rate is generated by comparing the number of construction jobs overall with the number of construction fatalities. If more construction workers die when there is a similar percentage increase in the number of jobs, the rate of construction worker fatalities would remain the same. In New York State, the rate of construction fatalities has significantly increased.

In New York, the fatality rate among construction workers was 4.6 times the rate of fatalities among all workers in 2016. The rate for all New York workers was 3.1 and for New York State's construction workers, 14.2. Over the past five years,<sup>8</sup> the rate of New York construction worker fatalities increased by 41.5% and in the past year alone, by 29.5%.

New York State's increase in the rate of construction fatalities has placed it among the top ten states with the highest construction fatality rate. States with higher construction fatality rates include Alabama, Arkansas, Mississippi, Montana,

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5 "National Census of Fatal Occupational Injuries in 2016." *Www.bls.gov*, Bureau of Labor Statistics, 19 Dec. 2017, [www.bls.gov/news.release/pdf/cfoi.pdf](http://www.bls.gov/news.release/pdf/cfoi.pdf).

6 *Ibid.*

7 "Fatal Occupational Injuries in New York City." *U.S. Bureau of Labor Statistics*, U.S. Bureau of Labor Statistics, [www.bls.gov/iif/oshwc/cfoi/tgs/2016/iiffw68.htm](http://www.bls.gov/iif/oshwc/cfoi/tgs/2016/iiffw68.htm).

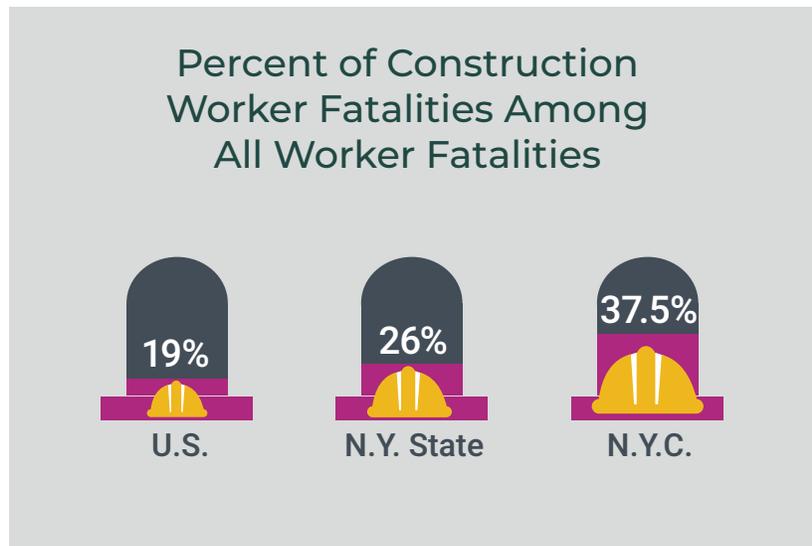
8 "Fatal occupational injuries by selected worker characteristics and selected industry, New York State and New York City, all ownerships, 2006 – 2016." *U.S. Bureau of Labor Statistics*, [https://www.bls.gov/iif/state\\_archive.htm#NY](https://www.bls.gov/iif/state_archive.htm#NY).

New Mexico, Oklahoma, South Dakota, Tennessee, and West Virginia.<sup>9</sup> Compared to the State's national rating for its overall fatality rate, where New York State is the thirteenth safest state, New York's high fatality rate is concerning and presents a tremendous opportunity for improvement.

According to the New York State Department of Labor, construction jobs in the state increased by 2.1% from October 2016 – October 2017.<sup>10</sup> The increase in construction jobs and disproportionate increase in construction fatalities requires strong action to protect workers.

In New York City, the fatality rate in construction is 5.9 times the overall rate of fatalities in all industries. In 2016, the New York City rate of fatal injuries for all workers was 1.5, and the construction fatal injury rate was 8.9.<sup>11</sup> For all industries, New York City had the second lowest fatality rate in the country in 2016, but was tied in thirteenth place with North Carolina among the 52 analyzed (all 50 states, plus New York City and the District of Columbia) with the lowest fatality rates.<sup>12</sup> In other words, while New York City's fatality rate in construction has dropped, there is still room for New York City's construction industry to become even safer, as twelve other U.S. states have proven.

According to the New York State Department of Labor, construction jobs increased by 6.8% in New York City from October 2016 – October 2017.<sup>13</sup> This significant increase means that an increase in inspections and other enforcement must take place to ensure that fatality numbers do not increase.



9 "Fatal Occupational Injury Rates by State of Incident and Industry, 2016." *U.S. Bureau of Labor Statistics*, [www.bls.gov/iif/oshwc/foi/staterate2016.htm](http://www.bls.gov/iif/oshwc/foi/staterate2016.htm).

10 New York State Department of Labor, Current Employment Statistics, 2017 data. <https://www.labor.ny.gov/stats/lscsmaj.shtm>.

11 *Ibid.*

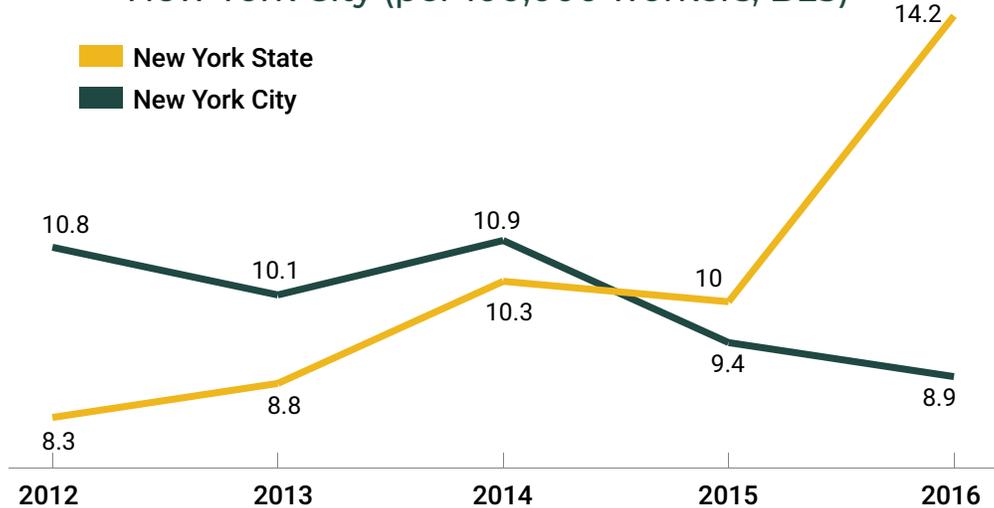
12 *Ibid.*

13 New York State Department of Labor, Current Employment Statistics, 2017 data. <https://www.labor.ny.gov/stats/lscsmaj.shtm>.

## In 2016, New York State had a 60% higher construction fatality rate than New York City.

Over the past five years, the New York City fatal occupational injury rate in construction decreased by 21.3%, while the New York State rate increased by 29.5% over the same period of time. The New York City rate decreased by 5.6% from 2015 to 2016.

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



## 2. Local enforcement effectively decreases worker fatalities.

### New York City enforcement, such as increased resources to NYC DOB, contribute to lower fatality rates in New York City.

The New York City Department of Buildings has drastically increased its resources in the past several years and in doing so has increased the number of inspections conducted and resources allocated to creating safer construction sites in New York City.

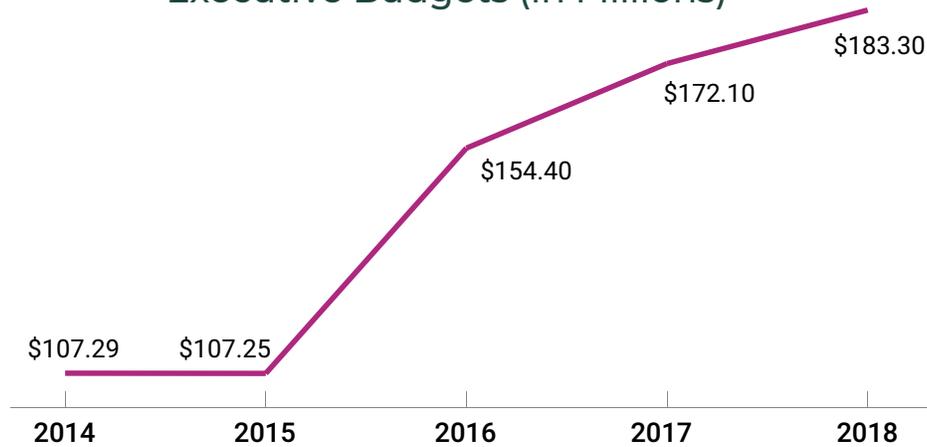
The Fiscal 2018 Executive Budget for the NYC DOB funded the agency at \$183.3 million, an increase from its \$172.1 million budget in 2017,<sup>14</sup> \$154.4 in 2016,<sup>15</sup> \$107.25

<sup>14</sup> "Report to the Committee on Finance and the Committee on Housing and Buildings on the Fiscal 2018 Executive Budget for Department of Buildings." *New York City Council*, 11 May 2017, [council.nyc.gov/budget/wp-content/uploads/sites/54/2017/03/810-DOB-exec.pdf](http://council.nyc.gov/budget/wp-content/uploads/sites/54/2017/03/810-DOB-exec.pdf).

<sup>15</sup> "Report to the Committee on Finance and the Committee on Housing and Buildings on the Fiscal 2018 Executive Budget for Department of Buildings." *New York City Council*, 11 May 2017, [council.nyc.gov/budget/wp-content/uploads/sites/54/2016/05/810-DOB.pdf](http://council.nyc.gov/budget/wp-content/uploads/sites/54/2016/05/810-DOB.pdf).

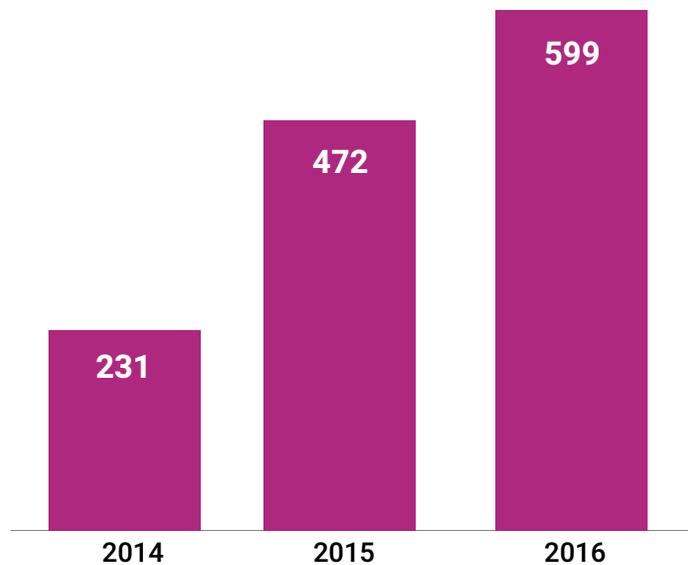
in 2015 and \$107.29 in 2014.<sup>16</sup> The agency employs 1,664 positions. As the agency's budget increased, increased funding goes towards employing more inspectors and thus inspections conducted. Increasing inspections is essential to reduce the number of injuries and fatalities on the job.

### NYC Department of Building Executive Budgets (in Millions)



According to New York City Department of Buildings database, in the past three years, building construction-related incidents involving injuries or fatalities more than doubled. 231 construction-related incidents occurred in 2014, 472 in 2015, and 599 in 2016.<sup>17</sup>

### Building Construction-Related Incidents Involving Injury or Fatality

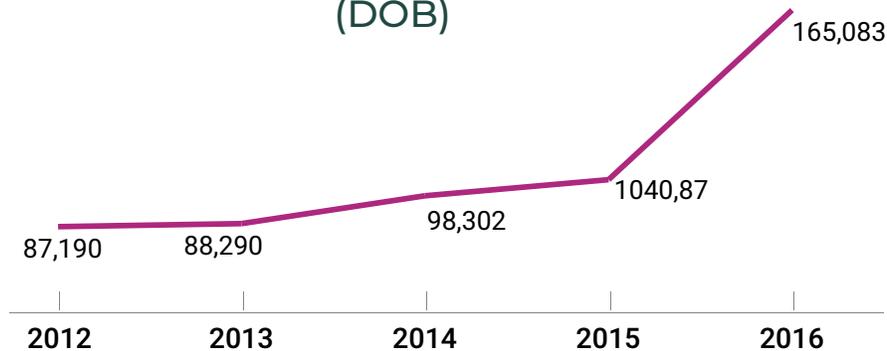


<sup>16</sup> "Report on the Fiscal Year 2015 Executive Budget for the Department of Buildings." *New York City Council*, New York City Council, 21 May 2014, [council.nyc.gov/budget/wp-content/uploads/sites/54/2014/07/fy2015-dob.pdf](http://council.nyc.gov/budget/wp-content/uploads/sites/54/2014/07/fy2015-dob.pdf).

<sup>17</sup> "Construction Related Accident Reports." *Buildings - Construction Related Accident Reports*, New York City Buildings, [www1.nyc.gov/site/buildings/about/construction-related-accident-reports.page](http://www1.nyc.gov/site/buildings/about/construction-related-accident-reports.page).

This increase in construction-related incidents could also be attributed to increased funding for the NYC DOB and an increased ability to regulate unsafe construction sites. In addition, the DOB receives increased funding and investigates more construction-related incidents as the number of construction permits increase and more construction takes place in New York City.

### NYC Construction Permits 2012–2016 (DOB)



The DOB has a new mandate to track OSHA worker fatalities in New York City, but the data on fatalities is still not comprehensive. In our 2016 report, NYCOSH highlighted that many City officials were citing the incomplete DOB construction fatality figure – which includes construction worker fatalities that threaten public safety – as the official number for deaths in construction, when the actual number of construction fatalities was much higher. Transparency legislation passed in the New York City Council in 2017 now requires the DOB to include links to data from OSHA to present a more accurate picture of construction fatalities. However, even OSHA data is not a full count of fatalities; OSHA only inspects job sites in the private – not public – sector and does not investigate fatalities of “self-employed” workers. The full count of worker fatalities in key industries is not available until the BLS releases their data, which is delayed by one year. For example, this report relies on the most recent BLS data, released in late December 2017, which covers fatalities from 2016.

The DOB has increased its accessibility to the public in the past year with its open-source data filters on their website and should continue to expand its accessible reporting on safety violations, to increase public awareness on job safety. DOB has regular access to incident reports on its database and interactive reports on permitting,<sup>18</sup> which set new standards for the industry. However, expanding the “Construction Dashboard” to include safety and health issues in construction would have a tremendous impact. In addition, highlighting egregious violators through press releases and other public reporting would further deter bad actors from cutting corners on safety.

<sup>18</sup> “New York City Construction Dashboard.” *NYC Construction Dashboard*, New York City Buildings, [www1.nyc.gov/assets/buildings/html/dob-development-report.html](http://www1.nyc.gov/assets/buildings/html/dob-development-report.html).

## Public prosecutions of criminal contractors in New York City have added to a decrease in construction fatalities.

New York City District Attorneys, following the leadership of the Manhattan District Attorney's construction safety task force, have been more aggressively targeting construction companies that put workers' lives at risk. The construction safety task force utilized existing criminal law to prosecute criminal contractors who needlessly endanger workers' lives. The historic conviction of Harco Construction and Sky Materials — the companies whose criminal failure to protect their workers caused Ecuadorian immigrant Carlos Moncayo's death — was a result of the Manhattan District Attorney's diligent work on the case.

Brooklyn District Attorney Eric Gonzalez has similarly prosecuted construction contractors who needlessly put workers' lives at risk, causing workers to die on the job. D.A. Gonzalez indicted the owner of RSBY NY Builders Inc. and Park Ave Builders Inc. on manslaughter and other charges after a wall collapsed at an excavation site, killing 18-year old construction worker Fernando Vanegaz and injuring two others.<sup>19</sup> Vanegaz was crushed by a retaining wall that his foreman commanded him to construct despite the work not being approved, and despite the workers' protestations. The company also did not have workers' compensation insurance, and attempted to register the workers immediately following Vanegaz's death — showing that they were in willful violation of the law. Interviewed about her son by *The New York Times*, the mother of the fallen worker described Vanegaz as a "happy kid who liked to dance and really wanted to work."<sup>20</sup> The case is ongoing as of the release of this report.

The strong work of the prosecution in the case of Vanegaz and Moncayo's deaths, as well as other worker fatality cases in New York City,<sup>21</sup> have shown construction companies that they will be tried and treated as criminals if they skirt the law on safety. This represents a threat to employers, mostly because of the public relations involved in being targeted and found guilty of criminal negligence, and helps make some employers take workplace safety more seriously. More District Attorneys need to follow suit and prosecute companies who willfully violate safety and health laws, causing workers to die on the job.

## Existing criminal law does not go far enough.

Despite enforcement improvements made by prosecutors, existing law does not go far enough in penalizing criminally negligent contractors. Current law allows for preposterously low penalties, including corporate fines that max out at \$10,000 for criminally negligent homicide — which is what Harco Construction paid after being convicted of manslaughter, criminally negligent homicide, and reckless endangerment in the death of Carlos Moncayo. In addition, Harco Construction

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<sup>19</sup> "Construction Company Owner Indicted for Manslaughter." *District Attorney Kings County*, District Attorney Kings County, 10 May 2017, [www.brooklynnda.org/2017/05/10/construction-company-owner-indicted-for-manslaughter/](http://www.brooklynnda.org/2017/05/10/construction-company-owner-indicted-for-manslaughter/).

<sup>20</sup> Mueller, Benjamin and Jamerson, Joshua. "Worker Who Died in Wall Collapse Warned of Problems at Construction Site." *New York Times*. 5 Sept. 2015, <https://www.nytimes.com/2015/09/05/nyregion/man-killed-in-brooklyn-wall-collapse-had-warned-of-problems.html>

<sup>21</sup> Saul, Emily. "Boss Charged with Manslaughter for Worker Death" *NY Post*. 6 Jun. 2016, <https://nypost.com/2016/06/06/construction-boss-charged-with-manslaughter-for-worker-death/>

continued to work unimpeded, on other job sites in New York City, despite having been criminally charged and eventually convicted.

“For companies like Harco Construction, \$10,000 is monopoly money,” stated DA Vance after Harco was charged in Carlos Moncayo’s death.<sup>22</sup>

New York State needs to establish significant and effective penalties that actually spur employers to protect their workers on the job. These construction workers’ deaths are often dismissed as “unfortunate accidents,” regardless of the role played by employers, contractors, and owners in contributing to their death, but these deaths are so often preventable. Until state law changes to ensure all corporations and individuals involved are sufficiently punished for taking or endangering workers’ lives, those responsible for worker safety on job sites will likely not make safety a priority. Strengthening penalties against employers is essential to deterring employer misconduct and decreasing the number of construction fatalities statewide.

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

**In both New York State and City, fatal falls make up nearly half of all construction deaths.**

In all of New York State in the past ten years, 218 workers died in falls, which account for 48% of all construction fatalities. In New York City alone, over the past ten years, 101 workers died due to falls, or 46% of all construction deaths. Deaths due to falls are particularly egregious because they are almost always preventable.

The data on fall fatalities has showcased an overwhelming need for protections against fall hazards, including the Scaffold Safety Law. The Scaffold Safety Law simply requires that construction sites be built and maintained in a way that protects workers. Contractors and businesses are only liable when there’s an injury or fatality on the job if they put workers at risk of injury or death by violating critical health and safety regulations.

Injured workers have continuously spoken up about the need for the Scaffold Safety Law. In a December 1, 2017 editorial in *AM New York* supporting the Scaffold Safety Law, former construction worker and beneficiary of a Scaffold Law settlement, Marc Proferes, is quoted on how he was forced to climb a broken ladder, despite knowing it was unsafe. “I said ‘We’re gonna get killed,’” Proferes stated.<sup>23</sup> Proferes’ story shows that even though he told the employer that climbing the broken ladder could cause him to be killed, the employer forced him to climb it anyway, and he was seriously injured as a result. To this day, Proferes is out of work and remains in pain because of his employer’s callous disregard for worker safety. But Proferes was

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<sup>22</sup> Riley, John. “Contractor Fined \$10,000 in Cave-In Death of Carlos Moncayo.” 20, Dec. 2016. <https://www.newsday.com/news/new-york/contractor-fined-10-000-in-cave-in-death-of-carlos-moncayo-1.12783179>

<sup>23</sup> Featherstone, Liz. “Don’t Weaken New York’s Scaffolding Law.” 1, Dec. 2017. <https://www.amny.com/opinion/columnists/liza-featherstone/don-t-weaken-new-york-s-scaffolding-law-1.15274025>

luckier than many others, who don't live to tell their tales, and who don't know to seek legal representation when they are injured. The Scaffold Safety Law allowed Proferes to take action against his employer, who had no regards for his life on the job.

Workers are forced to work on unsafe construction sites constantly, which is why NYCOSH data has consistently found that in fall fatalities, 90% of the time, there are coinciding OSHA violations.<sup>24</sup> In other words, 90% of the time, workers like Proferes are put in unsafe conditions because of their employer's negligence.

While the Scaffold Safety Law has been under attack in the New York State Legislature for decades, in a highly unusual move, Congressman John Faso has proposed a bill, H.R. 3808, at the federal level, which would require state courts to disregard local law regarding accountability for an elevation-related injury and impose a weaker safety standard of accountability. The legislation targets New York's Scaffold Safety Law, forbidding application of absolute liability to owners or contractors for gravity-related injuries if any federal financial assistance is used for the project. Under HR 3808, the federal government would force New York to remove the protections of the Scaffold Safety Law if a project receives federal funds.

Beyond fatal falls, all "fatal four" hazards, including falls, electrocutions, struck by object, and caught in/between equipment or machinery cause the vast majority of fatality percentages in construction. NYCOSH analyzed data from the past ten years and found that 69% of all fatalities in New York City involve the fatal four and 85% of workers in New York State.

These hazards demonstrate the need for OSHA 10 trainings for all workers, which includes education on fatal four hazards as a mandatory component of its curriculum. That New York City has lower fatal four fatality violations than New York State is likely not a coincidence, but a result of mandatory OSHA 10 training on large construction projects, which is a relatively new regulation in effect since 2007. In addition, increasing funding for OSHA 10 trainings, so that community-based organizations that have the most interaction with at-risk workers are funded, is essential.

#### **4. OSHA construction fines for fatality cases have remained low, despite the agency's ability to issue higher fine amounts.**

The fines that OSHA is able to levy increased by 78 percent on August 1, 2016, the first increase since 1990. The increase in OSHA's fines came after years of advocacy by various workers' safety activists and organizations like NYCOSH, and many professionals within OSHA itself.

However, OSHA's *ability* to levy increase fines did not actually raise the average New York State construction fatality fine amount in 2016, which dropped 7% to \$20,217.

The Center for Progressive Reform analyzed fine amounts in its report, "OSHA's Discount on Danger", released during the Obama Administration. The report called on OSHA to increase the fine amounts the agency is able to levy – which they have since

24 Obernauer, Charlene. "Deadly Skyline: 2017 New York State Construction Fatalities Report." 10, Jan. 2017. [http://nycosh.org/wp-content/uploads/2017/01/DeadlySkyline2017\\_NYS-ConstructionFatalitiesReport\\_final\\_NYCOSH\\_May.pdf](http://nycosh.org/wp-content/uploads/2017/01/DeadlySkyline2017_NYS-ConstructionFatalitiesReport_final_NYCOSH_May.pdf)



done — and to stop routinely discounting and settling for low fines in specific cases. In addition, the report calls on the issuance of “national guidelines” that would discourage the informal settling of cases that have had “egregious safety failures”.<sup>25</sup> Such recommendations must be implemented if OSHA’s fines are to be an effective deterrent to workplace safety and health violations.

The top fine issued against employers in 2016 included a fatality on October 11, 2016, which involved a fine of \$139,424

in Amsterdam, New York, after a 63-year-old man fell 25 feet to the ground when a porch roof collapsed.<sup>26</sup>

Another relatively high fine was issued in a crane collapse, where two workers were killed while working for a company with a history of violations, Cranes Express.<sup>27</sup> The fine of \$64,517 was levied against the company for six serious violations, including three violations for improperly rigging equipment for material handling, two fall protection violations, and one for improper ladder use. As stated in *AMNews*:

Crane operator George Smith, 47 of Brooklyn, was lifting a 6,500-pound beam four stories up about 12:20 p.m. when it became disengaged from the crane and fatally struck 43-year-old Alessandro Ramos, of Queens, police said.

This company did not follow applicable safety protections, and two workers died as a result.

Other cases showed that employers whose negligence caused a worker to die on the job were met only with one serious violation instead of more serious fines. For example, when Luis Mata was working on luxury Manhattan high rise called Printing House West Village, a plank from a scaffold fell through safety netting “like paper”, hitting Mata on the head and killing him, even though he was wearing a hard hat.<sup>28</sup> The company, LRN Enterprises Corporation, received only one serious violation and was fined just \$12,471 by OSHA. The violations seemed to warrant a higher fine. According to the *New York Daily News*, the New York City Department of Buildings:

<sup>25</sup> “OSHA’s Discount on Danger.” *Center for Progressive Reform*. Jun., 2016. <http://progressivereform.org/OSHADiscountPaper.cfm>

<sup>26</sup> Monforton, Celeste. “More ‘Severe Violators’ Designated by OSHA.” *PumpHandle*. 17. Apr. 2017. <http://www.thepumphandle.org/2017/04/17/more-severe-violators-designated-by-osh/#.WIOPv66nHcs>

<sup>27</sup> Cook, Lauren. “Crane Accident in Briarwood Queens Leaves 2 Dead.” *AMNY*. 22. Nov. 2016.

<https://www.amny.com/news/crane-accident-in-briarwood-queens-leaves-2-dead-fdny-says-1.12653841>

<sup>28</sup> Parascandola, Rocco. “Worker Fatally Struck By Scaffold Plank Heading Home.” *NY Daily News*. 22. Apr. 2016. <http://www.nydailynews.com/new-york/worker-fatally-struck-scaffold-plank-heading-home-day-article-1.2611438>

Issued a violation for “failure to safeguard all persons and property during construction” and issued a stop work order on Thursday night. Inspectors also learned that the building’s scaffolding permit had expired in October, officials said. The building has several open violations, including at least two for facade safety problems, city records show. A complaint filed a day before Mata’s death alleged the building had “no permit in place for roofing, asbestos, exterior repairs and scaffolding.”

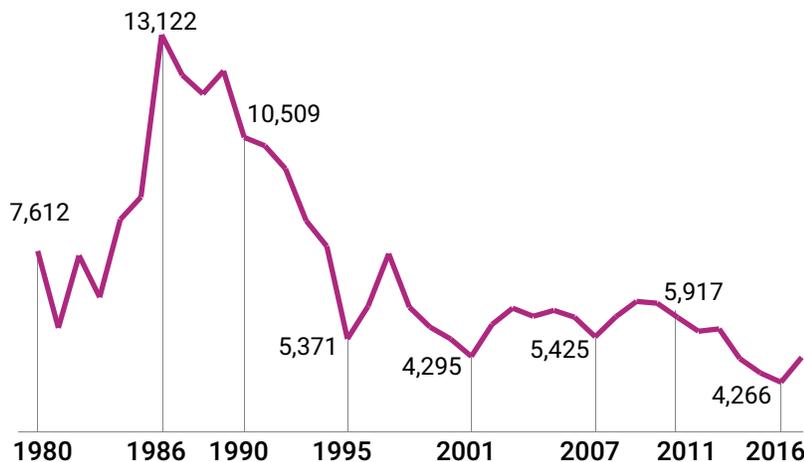
Printing House West Village, who hired the contractor to whom OSHA issued a \$12,471 fine in Luis Mata’s death, advertises itself as a “revolution in industrial luxury”, where one four bedroom condo is being sold, as of the release of this report, for almost \$11 million.<sup>29</sup> The company describes their apartments as a “truly expansive was of living”, where:

Floor-to-ceiling windows fill the homes with natural light, and the living and dining areas can be fully opened to the mews, allowing for fresh garden air in warm weather and views of seasonal foliage in the colder months.

These \$11 million elite apartments — and many other luxury buildings across New York City — are built by contractors who prioritize the beauty of their buildings over the safety of their workers. Their buildings bring in massive profits, but the companies do not implement required safety standards for their construction workers, because a paltry \$12,471 fine, to billion-dollar companies, is just a rounding error.

## 5. OSHA is drastically underfunded and is unable to meet its founding mission to protect workers’ safety and health.

OSHA Inspections in NYS

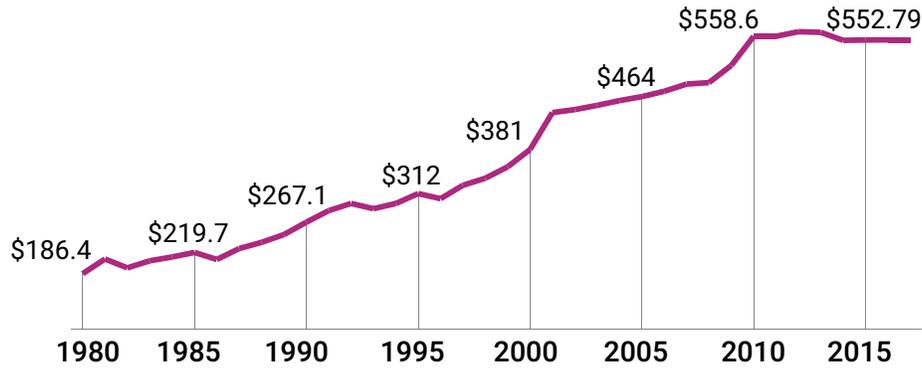


<sup>29</sup> “A Revolution in Industrialized Luxury.” *The Printing House* 22. Jan. 2018.. <https://printinghousewestvillage.com/availability/>

NYCOSH conducted an in-depth analysis of OSHA inspections in New York State since the agency's founding and found a staggering decrease in inspections over the past twenty years. When comparing the years of the highest total number of inspections in 1986 to this past year, 2017, there was a 62.6% cut in the number of inspections in New York State. This decrease in inspections coincides with a substantial increase in the population and number of worksites over the same period of time.

Studies have repeatedly shown that hazards decrease on worksites after OSHA inspections. In one extensive study by the U.S. Department of Labor, companies that were inspected once or twice experienced a reduction in citations of 50 percent.<sup>30</sup> Simply put, a decrease in inspections causes a decrease in OSHA fines for violators, which causes the number of worker injuries and deaths on the job to rise.

### OSHA Budget (in Millions)



OSHA's budget has remained stagnant since 2010, despite increases in costs of operations, and rising costs from inflation. Increases in employment numbers also cause a greater need for enforcement.

OSHA has also instituted hiring freezes across the country, preventing the agency from replacing staff who leave. A January 2018 report from *NBC News* highlighted that OSHA has had a four percent decrease in their enforcement staff and less than 1,000 inspectors across the country in just one year since President Trump came into office.<sup>31</sup>

According to the AFL-CIO's Report, *Death on the Job*, OSHA's staffing level falls far below international standards for effective labor protection: "The current level of federal and state OSHA inspectors provides one inspector for every 76,402 workers. This compares with the benchmark of one labor inspector for every 10,000 workers recommended by the International Labor Organization for industrialized countries."<sup>32</sup>

Deep cuts to OSHA were proposed in the 2018 budget, including a 21% reduction in the Department of Labor's overall budget and the elimination of worker safety

30 Gray, W., & Jones, C. "Are OSHA Health Inspections Effective?" 1991. [https://clear.dol.gov/sites/default/files/OSHA-Gray1991\\_1.pdf](https://clear.dol.gov/sites/default/files/OSHA-Gray1991_1.pdf)

31 Khimm, Suzy. "Number of Workplace Inspectors Decline Under Trump." *NBC News*. 8 Jan. 2018. <https://www.nbcnews.com/politics/white-house/exclusive-number-osa-workplace-safety-inspectors-declines-under-trump-n834806>

32 "Death on the Job." *AFL-CIO*. Apr. 2017. [https://aflcio.org/sites/default/files/2017-04/2017Death-on-the-Job\\_0.pdf](https://aflcio.org/sites/default/files/2017-04/2017Death-on-the-Job_0.pdf)

training programs. A December 31, 2017 article in the *Washington Post* suggested that proposed cuts to federal agencies will only deepen:

The White House is now warning agencies to brace for even deeper cuts in the 2019 budget it will announce early next year, part of an effort to lower the federal deficit to pay for the new tax law, according to officials briefed on the budgets for their agencies.<sup>33</sup>

Further cuts to OSHA would be devastating for states that rely primarily on the agency for the safety of its workforce, including New York.

### **OSHA has significantly reduced press releases on egregious violators.**

In addition to its underfunding, OSHA is issuing significantly less press releases in 2017 than it has in prior years, which prevents public awareness about occupational safety and health violations and the companies who have no regard for their workers' health. For example, in 2017, Region 2 of agency issued just eleven press releases, an 81% cut from the 58 issued in 2016. Cutting back press releases is, of course, a deliberate strategy to decrease consequences for businesses who violate occupational safety and health law.

An anonymous former OSHA official was interviewed for the *Industrial Safety & Hygiene News* and stated:

Having worked with employers for well over 30 years while at OSHA I always felt, (especially when the penalties were so low) that what really got an employer's attention and what was successful in making change was the media attention. When other employers saw bad press against an employer in their community, I felt it spurred them on to look at what they had in place and make some changes.<sup>34</sup>

OSHA's hesitancy to issue press releases against employers who were issued violations showcases an unwillingness among the agency's leadership to go after bad actors whose recklessness cause workers to get injured on the job. Combined with OSHA's starved resources, OSHA's effectiveness as a regulatory agency is being severely dismantled. This raises questions as to the future of workers' safety and health in the United States.

<sup>33</sup> "How the Trump Era is Changing the Federal Bureaucracy." *Washington Post*. 30. Dec. 2017. [https://www.washingtonpost.com/politics/how-the-trump-era-is-changing-the-federal-bureaucracy/2017/12/30/8d5149c6-daa7-11e7-b859-fb0995360725\\_story.html?utm\\_term=.ebd2314bfc39](https://www.washingtonpost.com/politics/how-the-trump-era-is-changing-the-federal-bureaucracy/2017/12/30/8d5149c6-daa7-11e7-b859-fb0995360725_story.html?utm_term=.ebd2314bfc39)

<sup>34</sup> "The OSHA Blaming and Shaming Game." *Industrial Safety and Hygiene News*. 1 Aug. 2017. <https://www.ishn.com/articles/106974-the-osa-blaming-and-shaming-game>

## 6. Employers endanger their workforce, by disregarding regulations, and workers die as a result.

Safety violations were found at **82 percent of OSHA-inspected construction fatality sites** in 2016.



NYCOSH analyzed OSHA-inspected construction fatality cases in New York State in 2016 and found that 82% of construction worker fatalities coincided with OSHA violations, meaning that workers died on the job through no fault of their own. BLS data indicates that there were 71 fatalities in New York State in 2016 and OSHA inspected 38 of those fatality sites. 2016 data

shows what prior years have also shown, that deaths on the job are often preventable, and the employer was at fault.

Employers regularly endanger their workforce by disregarding regulations and workers die as a result. Given these statistics, it is reasonable to suspect after any construction fatality, the death was preventable.

To truly prevent these kinds of deaths on the job, employers need to know that there are serious consequences to their negligence. Without such consequences, employers will continue to cut corners on workers' safety, because it is easier and often cheaper than following applicable regulations.

## 7. Non-union job sites are especially dangerous for workers.

### 2016 data showcased record percentages of fatalities on non-union job sites.

NYCOSH analyzed OSHA's 38 construction fatality investigations in 2016 and found that in New York State, 94.7% of workers who died on private worksites were non-union. In New York City, 93.8% of the 2016 construction workers who died on private worksites were non-union.

Non-union contractors have little oversight outside of government regulatory agencies, and with OSHA's underfunding, worksites are not receiving the number of inspections necessary to ensure safety standards are being followed. Union job sites have shop stewards and a trained workforce that is more likely to recognize and report safety violations and have protection from their union against retaliation from their employer. As stated by Gary Labarbera, the President of the Building and Construction Trades Council of Greater New York:

It is indisputable that a well-trained worker is a safe worker. Unionized construction workers must pass rigorous training programs under New York State Department of Labor (DOL) oversight and their on-the-job safety record clearly demonstrates the life-saving benefits of proper training [...] Bluntly put, non-union workers — who often lack adequate training — are vastly more likely to be killed on the job.<sup>35</sup>

## 8. Vulnerable workers are killed at higher rates, including Latinos and older workers.

In the past five years, the United States has seen a 15% increase in Latinos who have died on the job, from 748 workers in 2012 to 879 workers in 2016.<sup>36</sup> New York State has seen a 17.5% increase in the same period from 39 Latino workers who died on the job in 2012<sup>37</sup> to 46.2% in 2016.<sup>38</sup>

In the construction industry, NYCOSH reports have consistently shown that Latino and/or immigrant workers are repeatedly exploited by employers who willfully violate safety and health regulations on the job and disproportionately die as a result. In an in-depth analysis of construction fines in 2015, NYCOSH showed that Latinos were 84 percent more likely than non-Latinos to die at job sites with egregious “willful” OSHA violations. NYCOSH also found that Latinos made up 57% of the falls in 2015, but only make up 30% of the construction industry.

### Attacks on immigrant workers are making all workers less safe.

Previous NYCOSH reports have consistently shown that Latino and/or immigrant workers are a significant part of the construction workforce, and are repeatedly exploited by employers who willfully violate safety and health protections on the job. Immigrant workers may be less likely to report violations out of fear of retaliation.

In an article examining the criminalization of immigration, referred to as “crimmigration”, Cornell University examines this effect on workers in a 2014 article, “Laborers or Criminals? The Impact of Crimmigration on Labor Standards Enforcement.”

Crimmigration [...] fosters employer incentives to reduce workers’ collective action efforts and potential complaints about wages, health and safety, and employment discrimination through immigration enforcement threats.<sup>39</sup>

35 Labarbera, Gary. “NYC Has the Power to Protect Workers from Construction Accidents by Mandating Better Training.” *NY Daily News*. 1. Feb. 2017. <http://www.nydailynews.com/new-york/nyc-power-protect-workers-construction-accidents-article-1.2961067>

36 “Fatal Work Injuries to Hispanic or Latino Workers.” *Bureau of Labor Statistics*. 2016 data. <https://www.bls.gov/charts/census-of-fatal-occupational-injuries/fatal-work-injuries-to-hispanic-or-latino-workers.htm>

37 *Ibid.*

38 *Ibid.*

39 Griffith, Kati. “Laborers or Criminals? The Impact of Crimmigration on Labor Standards Enforcement.” *Cornell*. 2014. <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=2059&context=articles>

Unfortunately, this fear has become more pronounced in the past year, given the anti-immigrant sentiment and actions taken by the Trump administration. The administration’s decisions to end Deferred Action for Childhood Arrivals (DACA) and Temporary Protected Status (TPS), while increasing raids and worksite enforcement effectively criminalizes thousands of workers in the construction industry.<sup>40</sup> It will devastate the families of these thousands of workers as well. As these workers lose status and become undocumented, they are more vulnerable to exploitation and less likely to be able to stand up and report employer abuse, much less unionize. This downward spiral creates a crisis for all workers.

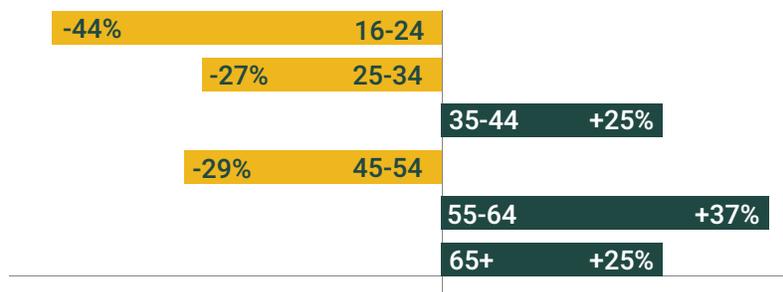
The trade-offs are clear. While the administration seeks to hire a private sector consultant to bring on nearly 26,000 new Immigration Customs and Enforcement employees in the next several years,<sup>41</sup> the number of OSHA inspectors has been reduced to only 1,000 for the whole country,<sup>42</sup> and the proposed Budget cuts would reduce the U.S. Department of Labor Budget by 21%.<sup>43</sup> The attacks on immigrant workers are making all workers less safe.

In New York City, rather than being pitted against each other, local leaders in construction unions and workers’ centers are building an alternative way forward. Immigrant day laborers gave testimony together with long time union workers to advocate to the City Council for training legislation to save workers lives. By focusing on their common interest in safety on the job, they showed that the interests of U.S. born workers and immigrant workers are no different, and that joining together, regardless of immigration status, can make all workers safer.

### 55-64 year olds are dying at disproportionate rates.

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

### Percent of Fatalities vs. Demographic Makeup in Industry by Age Group



40 Slowey, Kim. “DACA Expiration, TPS Elimination Threaten 100K Construction Jobs.” 24 Jan. 2018. [www.construction-dive.com/news/daca-expiration-tps-elimination-threaten-100k-construction-jobs/515255/](http://www.construction-dive.com/news/daca-expiration-tps-elimination-threaten-100k-construction-jobs/515255/)

41 Katz, Eric. “Trump Administration Seeks Outside Help to Hire 26,000 New Immigration Agents.” *Government Executive*. 17 Dec. 2017. [www.govexec.com/pay-benefits/2017/12/trump-administration-seeks-outside-help-hire-26000-new-immigration-agents/144657/](http://www.govexec.com/pay-benefits/2017/12/trump-administration-seeks-outside-help-hire-26000-new-immigration-agents/144657/)

42 *Ibid*

43 *Ibid*

44 “Labor Force Statistics from the Current Population Survey.” *U.S. Bureau of Labor Statistics*, U.S. Bureau of Labor Statistics, <https://www.bls.gov/cps/cpsaat18b.htm>

The older worker fatality rate is higher than for younger workers, as a recent analysis by *Associated Press* has shown. The reasons for this higher fatality rate vary, but older workers are certainly more likely to become seriously injured or die when younger workers may not have been as seriously injured in the same incident.

Getting old — and the physical changes associated with it — “could potentially make a workplace injury into a much more serious injury or a potentially fatal injury,” said Ken Scott, an epidemiologist with the Denver Public Health Department. Gerontologists say those changes include gradually worsening vision and hearing impairment, reduced response time, balance issues and chronic medical or muscle or bone problems such as arthritis.

Comparatively, young workers in construction died on the job at significantly lower percentages than their demographic make-up in the industry, as did workers aged 25-34.

## CONCLUSION

Strong-willed government leaders, policy makers, and the advocates and workers who hold them accountable have made and continue to make an immense difference in workers' lives on construction sites all over New York State. NYCOSH has seen many of its report recommendations become laws, create new government initiatives, and change policies of agencies and prosecutors all across New York State. In this annual update of our report, we encourage our government to take our recommendations, meet with union leaders and construction safety advocates, and work with us to create safe and healthy construction jobs for all New Yorkers.

An increase in the number and rate of construction fatalities in New York State must be reduced through the implementation of sensible legislation and policy changes, such as Carlos' Law, and the increased prosecution of criminal contractors in towns all over the State. However, New York State's construction workers have seen the consequences of an underfunded and anti-regulation Federal government in action – when fewer resources are dedicated to workers' health and safety, more workers will die. In addition, for enforcement to be effective, all workers must feel comfortable reporting unsafe working conditions and labor violations. Low reporting endangers the safety of the individual and the safety of the workforce as a whole.

NYCOSH's recommendations remain consistent with our research findings and we are confident that, if implemented, would drastically reduce injuries and fatalities for New York State's brave construction workers.

# CONSTRUCTION SAFETY TRAINING LOCAL LAW 196

**THE CONSTRUCTION SAFETY TRAINING LOCAL LAW 196** known as Intro 1447 was enacted by New York City on October 16, 2017. It establishes new site safety training requirements and penalties for violations, develops a site safety training provider and card system, creates a timeline for phasing in the additional training requirements, sets up a stakeholder task force and equal access program, and also creates a yearly reporting program to monitor the implementation of the law.

## Site Safety Training Requirements and Penalties

**Training requirements.** All construction workers employed at a major building site (10 stories and above, or greater than 100,000 square feet in area), starting on March 1, 2018, must have received either 1) an OSHA 10, 2) an OSHA-30, or 3) a 100-hour construction training program. Additional Site Safety Training requirements will be phased in over time, as described in detail below.

**No permits.** No permits for construction or demolition work for which training is required under this law shall be issued/ renewed until the applicant has certified its workers have completed the required training.

**Reduction in fees.** If employers, permit holders, or building owners, can show that they have paid for training for one or more workers (unless it was due to a violation of the training requirements), they can have the fines that they are charged for building code violations reduced, according to a system yet to be established.

**Civil Penalties.** The minimum civil penalty for failing to ensure a worker is trained according to the new requirements is \$5000. This can be reduced to \$2500, if it is a first violation. The penalty for failing to keep the required log documenting the trainings is \$2500. These penalties are applied separately depending on how many workers have not been trained. For example, if there are 10 workers on a site who have not been trained, the penalties for the owner or permit holder may be \$50,000.

**Workers who have not completed the training requirements will not be penalized.** The owner, permit holder, and/or whoever engaged the workers will be issued these violations.

**Repeat violations.** If there are found to be repeated violations of these training requirements, there will be unannounced inspections at that site, or at that employer's other worksites, until they are found to be in compliance at least on 2 separate visits. In addition, a second or subsequent violation of training requirements will be classified as an immediately hazardous violation of the building code and penalties can be up to \$25,000 per violation.

## Access and Monitoring

**Equal access.** The Department of Buildings, or a mayor-designated agency, shall by March 1, 2018 develop a program to provide access to training for construction workers who do not have equal access.

**Task Force.** A task force will be developed to determine additional training needs. The task force shall consist of 14 members, chaired by the DOB commissioner and also representing labor, minority/women owned business enterprises engaged in construction work, and day laborers. By no later than March 1, 2018, such task force shall provide the commissioner with recommendations on additional construction safety hazards, including: fall protection, personal protective equipment and many other areas.

**Reporting.** The buildings commissioner will be required to report yearly on the number of training providers, the number of workers certified to have been trained, and the numbers of violations issued.

## Site Safety Training providers

**Site Safety Training Providers.** In order to be accepted by the department of buildings as a Site Safety Training provider, a person must show that they are authorized to conduct trainings for OSHA 10 and OSHA 30 training courses, or that they conduct 100-hour training programs. The department can also establish alternative requirements by rule.

**Language access.** SST providers must show that they have a language access plan that complies with requirements established by an agency designated by the mayor, or that they are able to offer trainings in a language that workers will understand, or have interpreters who have health and safety experience.

**Auditing of Site Safety Training providers.** The department will conduct periodic audits of SST providers in order to ensure the integrity of the training system.

## Phased implementation of new training requirements

**By March 1, 2018,** all permit holders and/or owners must show that workers have at least an OSHA 10, OSHA 30, or 100 hours of training.

**By December 1, 2018** (this date can be delayed, up until June 1, 2019), all permit holders or owners must show that workers have either an SST card, a limited SST card, or a temporary SST card.

**By May 1, 2019** (this date can be delayed, to as late as September 1, 2020), all permit holders or owners must show that workers have either an SST card or a temporary SST card.

## New Site Safety Training (SST) cards

**SST card** – Issued by an SST provider to show that worker has completed: 1) an OSHA 10 plus 30-45 additional training hours; 2) an OSHA 30 plus 10-25 additional training hours; or 3) a 100-hour training.

**Limited SST card** – Issued by an SST provider before full compliance date, to show that worker has completed: 1) an OSHA 10 plus 20 additional training hours; 2) an OSHA 30, or 3) a 100-hour training.

**Temporary SST card** – Issued by SST provider for new entrants to workforce, for workers who have completed an OSHA 10 training. Expires within 6 months, to allow time for additional training needed.



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