



It's No Accident

Examining New York's Workplace Deaths and the Construction Industry

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IN MEMORIAM

FOLLOWING ARE THE NAMES of construction workers who died from occupational injuries in New York in 2013. The cities and towns are where the workers were fatally injured.

Ahmad Luqman, 46, Construction Worker, Elmont, December 28

Scott Winkler, 50, Construction Worker, Maybrook, December 10

Timothy Lang, 53, Construction Worker, Maybrook, December 2

Kyle M. Browne, 23, Construction Worker, Pulaski, November 18

Jaime Sillart, 56, Construction Worker, Manhattan, November 15

Igor Kalocay, 45, Construction Worker, Hudson, October 29

Omar Barahona, 61, Fork Lift Repairer, College Point, Queens, October 3

Steven Giacobello, 45, Town Sanitation Worker, Oyster Bay, September 23

Richard C. Whitney, 58, Steamfitter, Canastota, September 11

Douglas Wightman, 79, Oil Rig Worker, Andover, August 28

Christopher Premo, 34, Construction Worker, Wyantskill, July 29

Abbas Behnambakhish, 55, Construction Engineer, Manhattan, July 5

William Schaefer, 52, Construction Worker, Corning, June 17

John Halstead, Jr., 44, Construction Worker, Oswego, June 11

Juan De La Cruz, 30, Construction Worker, Brooklyn, May 21



Margarito Hernandez-Moreno, 36, Construction Worker, Brooklyn May 3

Gary T. Feeney, 24, Construction Worker, Ballston Spa, April 13

Ebrima Jallow, 48, Construction Laborer, Manhattan, March 20

Gary M. Hillyard, 51, Forklift Operator-Manufacturing, February 1

Ricardo Gonzalez, 45, Construction Worker, Queens, January 24

Zhanbin Li, 56, Construction Worker, Port Jefferson, January 22

Ying Cao, 39, Construction Worker, Port Jefferson, January 22

Paul Schisler, 54, Construction Engineer, Bronx, January 15

This list was generated from information provided by the U.S. Occupational Safety and Health Administration, United Support and Memorial for Workplace Families, and original research by the New York Committee for Occupational Safety and Health. Workers who died of occupational disease are not shown because there is no database of their names. However, studies have shown that for every worker who dies from an acute work-related injury, ten more die from occupational disease.

**No one in any
occupation should
fear they are
placing their lives
at risk when they
go to work.**

INTRODUCTION

ALL NEW YORKERS HAVE THE RIGHT to work at safe and healthy jobs. This comprehensive review of recent construction fatalities finds that, unfortunately, for too many New Yorkers, going to work means taking risks with their lives and their health. It finds that many deaths in construction could have and should have been prevented had the employer followed health and safety requirements and prioritized workers' safety over the bottom line.

This report includes an overview of all 196 occupational fatalities in 2012, the most recent year for which the U.S. Bureau of Labor Statistics has issued data on the industry employing workers who died, were employed, the events that led to worker deaths, the age and race of the workers who died, and whether the workers were self-employed or worked for wages or salaries.¹ This is followed by a close look at the construction industry, which accounted for the largest single share of worker deaths in New York in 2012. Names, ages and narratives of construction deaths in 2013 are included.

Two key issues probed in this report are whether many of these deaths could have been prevented had the employer made the worksite safer and OSHA's record in enforcing its health and safety regulations. American workers rely on OSHA to ensure their safety on the job, and while OSHA works tirelessly to protect the rights of working people, OSHA has long been hamstrung by minuscule penalties that fail to deter safety violations and safety corner-cutting by employers and by an inspector force that is a small fraction of the size needed to adequately monitor workplaces.

Emerging threats to construction worker safety are examined, including legislation proposed in Albany that would severely weaken New York's Scaffold Law, which for decades has helped make construction safer in New York than most states.

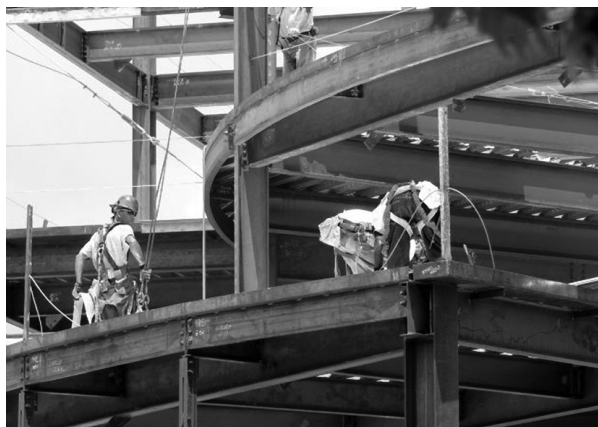
This report does not widely address occupational illnesses and nonfatal injuries. It does, however, discuss the urgent need to strengthen the rules limiting workers' exposure to crystalline silica. Workers who die of occupational disease are not counted in fatality numbers.

No one in any occupation should fear that they are placing their lives at risk when they go to work. No one should be afraid of speaking out about unsafe working conditions. New Yorkers deserve a safe place to go to work, and this report urges local, statewide and federal elected officials to put all workers' health and safety first and to enact policies that protect working families.

As of the writing of this report in April 2014, two construction workers died in New York City in the past month alone. This report is dedicated to them and to all workers who have died on the job.

SUMMARY OF FINDINGS

- **Construction was the deadliest industry, and half of the fatalities were of immigrant workers.** The report shows that construction was not only the deadliest economic sector, accounting for 4 percent of total employment and 19 percent of all deaths, but that the majority of workers who died in construction were immigrants. Nineteen of the construction workers who died on the job in New York – one-half of all construction worker occupational deaths – were not born in the United States.
- **Many construction deaths and nonfatal injuries could have been prevented had proper safety precautions been taken.** NYCOSH reviewed the results of all construction industry enforcement inspections in New York State in 2010, 2011 and 2012. There was at least one violation of an OSHA safety standard in 66 percent of the inspections. The high prevalence of U.S. Occupational Safety and Health Administration safety violations in construction indicates that many injuries and deaths were preventable.
- **Looking at all industries, many of those who died were older workers.** People 55 years and older accounted for 35 percent (69 workers) of occupational fatalities in all sectors in 2012. Twenty percent (40 workers) were 65 or older, an increase from 4 percent in 2000 and 6 percent in 1992. In construction, 37 percent (14) of those who died were 55-years-old or older and 18 percent (seven) were 65 or older.
- **Self-employed workers died disproportionately.** In 2012, approximately 7 percent of New York workers were self-employed but self-employed workers accounted for 28 percent of the 196 workplace fatalities, an increase from 20 percent in 2000 and 18 percent in 1992. Twenty-four percent (9) of the 38 construction workers who died on the job in 2012 were self-employed, an increase from five (9 percent) of 53 deaths in 2000 and three (6 percent) of 49 deaths in 1992.
- **OSHA fines are much too small to incentivize employers to make workplaces safe.** Nationally, the AFL-CIO reports that the average total penalty per fatality investigation in 2012 was only \$12,767. NYCOSH's review found that total penalties typically assessed in OSHA investigations of construction fatalities in New York State that occurred in 2013 were similarly modest.
- **There currently are only 71 OSHA health and safety inspectors in New York State, a small fraction of the number required to adequately enforce worksite safety standards.** This number is the lowest it has been in at least five years. With this level of staffing, it has been estimated that it would take OSHA 103 years to inspect all New York worksites once.



SUMMARY OF RECOMMENDATIONS

NEW YORK STATE RECOMMENDATIONS

- *Protect New York's Scaffold Safety Law.* Construction work in New York State is made safer by this law, which holds employers accountable when they cut corners on the safety of people working at heights and put workers lives at risk. Jaime Sillart was working on a scaffold when he fell to his death and was the victim of a preventable accident.
- *Pass the New York State Elevator/Escalator Safety Bill* to protect elevator and escalator workers.
- *Ensure that the Public Employees Safety and Health Bureau (PESH) and the Occupational Safety and Health Administration (OSHA) work together* on construction and other public works project where both have jurisdiction and a mandate to enforce standards.
- *Increase the number of PESH inspectors and the State Plan Budget for PESH.*

FEDERAL RECOMMENDATIONS

- *Enact the Protecting America's Workers Act (PAWA).* Among its important provisions, the PAWA would enact urgently needed increases in civil and criminal penalties for violation of the OSH Act, increase whistleblower protections so workers will not fear retaliation for reporting unsafe working conditions, and improve OSHA reporting, inspection and enforcement.
- *Implement Department of Labor pilot projects targeting specific industries where high percentages of immigrants work, including construction.* The department's Wage and Hour Division and the state workers' compensation system would be involved.
- *Increase the number of OSHA staff members who are qualified interpreters and who are fluent in the most common languages spoken by Limited English Proficiency workers.*
- *Adopt the long-delayed OSHA standard for silica, including a decrease in the level of silica exposure permitted.*
- *Substantially increase OSHA's budget and the number of inspectors and inspections.*

OVERVIEW OF NEW YORK WORKPLACE DEATHS

EMPLOYEE MISCLASSIFICATION

The misclassification of employees as independent contractors is very common in the construction industry. When an employee is listed as “self-employed”, they’re often denied access to critical benefits and protections, like family and medical leave, overtime, and employment insurance. Employee misclassification also generates substantial losses to New York State’s workers’ compensation system and unemployment insurance, as well as federal Social Security and Medicare funds. As the number of “self-employed” workers continues to increase, an increasing percentage of the workforce is at risk of being exploited.

WHAT WAS THE DEADLIEST INDUSTRY IN 2012?

In 2012, construction accounted for less than 4 percent of total employment in New York State, but with 38 construction deaths, or 19 percent of the 196 occupational fatalities reported by the U.S. Bureau of Labor Statistics, it was the state’s deadliest economic sector that year.

Transportation, with 23 workplace fatalities, was the second most deadly sector. Professional and business services, with 20 deaths, ranked third. Retail trade, with 18 deaths, ranked fourth. Agriculture and forestry, with 16 fatalities, ranked fifth. There were 13 occupational fatalities in public administration, ranking it sixth. With 12 fatalities, the educational and health services sector had the seventh most workplace fatalities.

WHO DIED ON THE JOB IN 2012?

- ***Slightly more than one-third of occupational fatalities were people of color, and construction was the deadliest industry for Latinos.***
 - Thirty-nine (20 percent) of all fatalities were Latino, 17 (nine percent) were non-Latino Black/African American, and 12 (6 percent) were Asian. 126 were non-Hispanic, white.
 - Fifteen of the 39 Latino workers died while working in construction, making construction the deadliest industry for Latinos.
- ***One-third (64) of all of the 196 workers who died were immigrants. Immigrant workers died disproportionately in construction.***
 - Nineteen (30 percent) of the immigrant workers who died worked in construction. Immigrant workers comprised half of construction deaths in 2012.
 - Approximately 21 percent of New York State’s population aged 18 and older are immigrants.²
- ***The workplace fatality rate was much higher for self-employed workers than for wage and salary workers.*** In 2012, the 54 self-employed workers accounted for 28 percent of workplace fatalities in New York, compared to approximately 7 percent of all New York workers who were self-employed. Of the 54 self-employed workers who died, ten worked in construction. OSHA has no authority to monitor the safety of self-employed workers.
- ***The share of workers who died on the job who were self-employed increased to 28 percent in 2012 from 20 percent in 2000 and 18 percent in 1992.*** This increase echoes the increase in the percentage of workers who are self-employed. According to one analysis, from 2001 to 2012 the number of self-employed New Yorkers increased 13 percent.³ During this period all employment in the state increased by 4 percent.
- ***Many of those who died were older workers.*** Thirty-five percent (69 workers) were 55 years old or older. Twenty percent (40 workers) were 65 or older, an increase from 4 percent in 2000 and 6 percent in 1992. Seven of the workers older than 65 who died were employed in construction.

- **Seventy-five (38 percent) of the deaths occurred in New York City**, slightly less than the city's 42 percent share of the state population. The workplace fatality rate may have been higher outside of New York City because of the hazardous nature of agricultural/forestry work and landscaping services. Twenty (53 percent) of construction fatalities occurred in New York City.

HOW DID CONSTRUCTION WORKERS DIE IN 2012?

- **Trips, slips and falls accounted for nearly one-quarter of all occupational fatalities.**

Nearly half – 22 of 47 – of these deaths were in construction, an industry in which workers are typically on ladders, scaffolds, platforms and roofs. There also were significant numbers of slip, trip and fall deaths in other industries which require a lot of physical activity, including buildings and grounds cleaning and maintenance, agriculture and transportation.

Eleven of the fatal falls were from ladders, eleven from roofs, five from scaffolds or staging, and others were through skylights, covered holes at construction sites and from collapsing structures.

Falls need not be from a high elevation to be fatal. Seven workers died in falls on the same level and five died in falls of less than six feet.

- **Transportation incidents accounted for 31 percent of the fatalities.** Twelve of the 61 transportation incident fatalities occurred in the transportation sector, mostly in trucking and urban mass transit. A significant portion of the transportation incidents occurred in waste collection, street and highway paving, grounds keeping, and construction work – activities that expose workers to a significant risk of being struck by passing motorists or a work vehicle.
- **Contact with objects or equipment caused 16 percent of workplace deaths.** These 32 deaths occurred in a variety of industries and occupations, including ten in agriculture and forestry, five in construction, and four among grounds maintenance workers. “Contact” meant the worker was caught in or compressed by equipment, struck by a powered non-transport vehicle, or struck by a falling object such as construction debris or a tool.



A CLOSER LOOK AT WORKPLACE DEATHS IN CONSTRUCTION

The high prevalence of OSHA safety violations in construction indicates that many construction injuries could have been prevented had proper safety precautions been taken.

THIS SECTION EXAMINES WORKER SAFETY in construction. The statistical analysis in this section is of occupational fatalities that occurred during 2012, the most recent year for which the U.S. Bureau of Labor Statistics has released breakdowns of deaths by industry, causal event and information on those who died. The descriptions of the circumstances of individual fatalities in deaths come from OSHA reports and press accounts.

Construction work often takes place outdoors and at heights, and utilizes potentially dangerous equipment like scaffolds, cranes and power tools. Such dangers are reflected in the construction industry's high fatality rate nationally,⁴ the fourth-highest among economic sectors.⁵

A contractor's failure to provide safety harnesses for work on a scaffold, a foreman's order to use a ladder missing its required safety legs or an employer's failure to adequately train its workers can result in a fall and serious injury or death. In 2012, two of the nation's ten most hazardous occupations – roofer and structural iron and steel worker – were in construction.⁶ So it was not unexpected that falls to a lower level accounted for 22 of the 38 workplace deaths in New York. Other significant construction site hazards in 2012 include electrocution, transportation incidents, and contact with objects or equipment, each with five deaths.

Construction workers increasingly are self-employed, as contractors try to avoid paying for benefits and workers' compensation insurance by hiring supposedly independent contractors.⁷ Nine (24 percent) of the 38 construction workers who died in New York in 2012 were self-employed, an increase from five (9 percent) of 53 deaths in 2000 and three (six percent) of 49 deaths in 1992.

Construction is often seen as an industry for younger workers able to withstand the physical demands of the job. However, 14 of the 38 New York construction workers who died in 2012 were age 55 or older and seven were 65 or older. Many older workers have to put off retirement in order to make ends meet.

MANY CONSTRUCTION SITES ARE NEEDLESSLY HAZARDOUS.

MOST OSHA CONSTRUCTION INSPECTIONS RESULT IN CITATIONS FOR SAFETY VIOLATIONS.

NYCOSH reviewed the OSHA database for all construction industry enforcement inspections in New York State between January 1, 2010 and December 31, 2012. Two thirds of all OSHA inspections found at least one violation of a OSHA standard. The overwhelming majority of these were "serious" violations. OSHA defines a "serious" violation as one which "could cause an accident that would most likely result in death or serious harm, unless the employer did not or could not have known about it." (In the majority of fatality investigations "serious" as opposed to "willful" violations are cited, even if the employer's ignorant violations of OSHA standards led to a workers' death). The high prevalence of OSHA safety violations in construction indicates that many construction injuries could have been prevented had proper safety precautions been taken.

The NYCOSH survey also found that fall prevention standards were violated in most of the inspections with violations. The high injury and fatality rates from falls-from-an-elevation are one consequence of the widespread failure to observe these requirements.

Another frequently violated OSHA safety standard requires construction workers to be provided with safety training. For too many workers, lack of required safety training makes construction work even more hazardous than necessary. A report by the public interest advocacy group Public Citizen, *The Price of Inaction, The Cost of Unsafe Construction in New York City*,⁸ found that 72 percent of the 20 construction fatalities in New York City in 2011 and 2012 occurred at job sites where workers did not participate in state-approved training and apprenticeship programs.

FAILURE TO OBSERVE SAFETY RULES SOMETIMES LEADS TO TRAGEDY.

The possibility that contractor failure to observe OSHA safety standards will end in tragedy is all too real. This was documented in a study issued by NYCOSH in 2013 that reviewed all OSHA investigations of construction accidents in which a worker fell and died in New York between 2004 and 2010. It was found that at least one OSHA fall prevention standard had been violated in nearly 80 percent of the fatal falls. All of these were “serious” and “gravity 10” violations, the most severe gravity score. In 60 percent of the fatal falls there were at least two such violations and there were at least three such violations in 34 percent of the deaths.⁹



An attachment to the NYCOSH report quoted OSHA investigators’ official summaries of how fatalities occurred. Representative findings: a work platform slipped from its support bracket, an edge was not protected by a guardrail, an anchor for a fall protection pulled out of the concrete, a floor suddenly collapsed, an unprotected skylight, no required barriers around an open elevator shaft, a scaffold broke into two pieces, and a plank gave way.

OSHA NEWS RELEASES SHOW CONSTRUCTION EMPLOYERS RISKING TRAGEDY.

OSHA issues a news release when the total proposed penalties against an employer are especially large. This typically occurs in when a willful or repeat violation is cited. Penalties for willful and repeat violations are much higher than for other violations.

To illustrate the kinds of safety shortcuts that endanger workers, Appendix B quotes from news releases issued in 2013. Inadequate fall protection was the most frequently cited danger. One of the releases quoted OSHA’s Buffalo area director. “Unfortunately, our inspectors all too often encounter job sites where fall protection is inadequate or absent, exposing workers to the number one killer in construction work.” These quotes are from three releases:

- “Missing cross bracing and planks; no safe means for workers to access the scaffold; lack of fall protection for the employees working on the scaffold; scaffold not restrained against tipping; lack of protective helmets; and no protection to prevent objects from falling onto workers from the scaffold.”
- Failure “to provide and ensure the use of fall protection, such as guardrails or personal fall-arrest systems, for workers on the scaffold; the scaffold lacked a safe means of access, causing workers to climb its cross-bracing to reach their work platforms; the work platforms were not fully planked; and the scaffold was not tied off to restrain it from tipping...”
- “... Employees exposed to falls of 15 to 30 feet while working at the unprotected edges of the building’s roof.”

WHAT ARE WILLFUL AND REPEAT VIOLATIONS?

OSHA defines a willful violation as one committed with intentional, knowing or voluntary disregard for the law's requirements or with plain indifference to worker safety and health. A repeat violation exists when an employer previously has been cited for the same or a similar violation of a standard, regulation, rule or order within the last five years.

Willful violations are cited infrequently—only 424 were cited nationwide in 2012. Repeat violations are also unusual. Because OSHA's inspectorial force is spread so thin, most worksites are never or are rarely inspected, making a repeat violation unlikely.

Excavation cave-ins are another common hazard. One release reported that at one site:

“Workers were “in a seven-foot deep vertical-walled excavation that lacked protection to prevent wall cave-ins, and a ladder every 25 feet to facilitate a swift and safe exit from the excavation. Moreover, eight inches of water accumulated in the excavation's bottom, increasing the likelihood of a collapse.”

An area director was quoted about the enormous danger, “An unprotected excavation can turn into a grave in seconds, crushing and burying workers beneath tons of soil before they have an opportunity to react or escape. These workers were fortunate – not lucky, because workplace safety must never be dependent on luck – that they were not injured or killed.”

DEATHS IN 2013 ILLUSTRATED THE WIDE ARRAY OF SERIOUS CONSTRUCTION WORKSITE DANGERS.

The following narratives are drawn from the brief fatality narrations issued by OSHA, research by the worker safety advocacy group United Support and Memorial for Workplace, and media research by NYCOSH.

Maybrook, Orange County, December 2. Formwork collapsed during a concrete pour and killed 53-year old Timothy Lang. 50-year-old Scott Winkler died eight days later. They were working on an aqueduct for carrying water during emergencies when the retaining wall formwork collapsed.

Manhattan, November 15. Construction worker Jaime Sillart, 56, fell about 70 feet from an unprotected area on a New York University building at 19 University Place, according to news reports. The New York City Department of Buildings issued violations against the employer because Sillart did not have the proper training certification to work on a support scaffold and for lack of a guardrail system or fall protection, loose planks on the scaffold and hoist equipment in disrepair. The media quoted Sillart's younger sister as saying, “He was the best brother, friend and father that anyone could have” and reported that Sillart lived with and cared for his aging mother.¹⁰

Canastota, Madison County, September 14. 58-year-old steamfitter Richard C. “Rick” Whitney, Jr. was welding a pipe in a gas methane dome at the Canastota Waste Water Treatment Plant on September 11th when there was an explosion. Three days later he died in a Boston hospital from 3rd degree burns over most of his body. A second worker, Richard Sterling, was hospitalized for burns to the face and arms and released.

An OSHA news release on Whitney's death quoted the agency's area director: “This tragedy could have been prevented had basic safety precautions been implemented.” It reported that the employers “failed to ensure safeguards and to train workers on the hazards associated with methane gas and confined spaces. Workers were not provided with a meter to measure the presence of combustible gas. The confined space also lacked adequate ventilation and a retrieval system for swift exits in an emergency.” One of the employers was also cited “for ladder misuse and for using electrical equipment that had not been rated safe in a hazardous atmosphere.”

Bronx, January 15. According to news reports, 54-year old Paul Schisler of Bridgewater, New Jersey was inspecting the city's High Bridge restoration project around 10:10 a.m. when he fell 140 feet off the span. He died at Lincoln Hospital. *The Daily News* quoted a co-worker, “He was a very nice man, a very smart man. I'm really bothered about this – for a working man to lose his life. How do you tell a mother and kids their father isn't coming home?”¹¹

MOST CONSTRUCTION FATALITIES AND SERIOUS NONFATAL INJURIES ARE PREVENTABLE.

Construction need not be nearly as hazardous as it is. Serious injuries and fatalities would be reduced dramatically if all contractors observed OSHA safety standards. According to OSHA, fatal falls *are* preventable.

There are many additional measures that can achieve enormous reductions in construction site fatalities. Several of these were described in a report issued in 2013 by McGraw Hill Construction, *Safety Management in the Construction Industry*.¹² Among construction practices described as “highly effective” in improving worker safety are regular project safety audits with foremen/workers; effective, site-specific training programs; analyzing potential site safety hazards in preconstruction; and conducting thorough near-miss and incident investigations. Leading safety expert Nigel Ellis of Ellis Fall Safety Solutions recommends a number of fall prevention practices which he says would eliminate most falls, including relying on guardrails instead of body harnesses to prevent serious injury from roof falls and using walk-through ladder extensions.



IMMIGRANT CONSTRUCTION WORKERS DIED DISPROPORTIONATELY

IN 2012, 19 OF THE CONSTRUCTION WORKERS who died on the job in New York – one-half of all construction worker occupational deaths – were immigrants. Eight of these 19 individuals worked for foundation-structure-building exterior contractors, four for masonry contractors, and four for roofing contractors. For the nation as a whole, 24 percent of construction occupational fatalities were immigrants, or less than half the New York percentage.

As noted earlier, 15 of the 38 construction workers who died in 2012 were Latino. The following narratives of five deaths in 2013 show, however, that workers come from many different places – these workers were born in China and Iran, as well as Latin America. In four of these five fatalities, OSHA cited the employer for safety violations; the descriptions below illustrate the kinds of safety lapses that are all too common at construction sites where immigrant workers labor.

- Manhattan (Governors Island), July 5. Abbas Behnam-Bakhsh, 55, was crushed by a sewer pipe he was helping unload from a truck when a harness holding up the pipe snapped, according to media accounts. He was a father of three and just yards from his son, who was also working at the site, when the tragedy occurred. The *Daily News* reported that Behnam-Bakhsh was not supposed to be unloading the pipe, “but because the other workers were busy at a nearby pier, the Iranian-born engineer decided to do it himself.” A neighbor was quoted describing Behnam-Bakhsh “as a gentle, considerate man.”¹³
- North Salem, Westchester County, August 17. Brazil-born Claudeninei Martins, 34, was painting the auditorium at the Westchester Exceptional Children’s School when he fell from a 30-foot ladder and died from blunt force injuries to his head and multiple skeletal fractures. Two serious, high-gravity violations were cited: violating the requirement for ladders to be used only on stable and level surfaces unless secured to prevent accidental displacement and the requirement to provide training in using ladders. In an informal conference, penalties were reduced from a total of \$14,000 to \$7,000.¹⁴
- Port Jefferson, Suffolk County, January 26. Zhanbin Li was struck by a falling metal awning and fell from a ladder as he was removing it from a Port Jefferson building. The employer was cited for two serious violations and assessed penalties totaling \$5,600.
- Astoria, Queens, January 24. Ricardo Gonzalez, 45, died after falling 15 feet onto a metal floor joist and concrete foundation. A New York City Department of Buildings official told the media that Gonzalez was working on a new four-story, mixed-use building. The employer was cited for five serious violations. An \$11,600 penalty was reduced to \$10,440 in an informal settlement. Cited violations included requirements for personal fall arrest systems and covers on guardrails to protect employees on a walking/working system from falling through holes, training requirements, and ladder requirements.
- Manhattan, March 20. A construction laborer, 48 year-old Ebrima Jallow, was carrying windows down a stairwell at a renovation project at 106 West 137th Street when he fell on the stairs striking his head. His employer was cited for three violations; the penalty was reduced from \$6,800 to \$5,500 in an informal settlement. One cited violation was of the standard requiring employees working near wall openings to be protected from falling by use of a guardrail system, a safety net system or a personal fall arrest system.

NYCOSH’s review of construction inspections in New York discussed earlier found that smaller construction firms and projects were more likely to be cited for violations than the large firms that construct major high-rises and public projects. Smaller firms are also more likely to employ immigrant and nonunion workers.

EMERGING THREATS TO CONSTRUCTION WORKER SAFETY

ATTACKS ON NEW YORK'S SCAFFOLD LAW



As shown above, falls from an elevation are the greatest safety hazard for construction workers. New York's Labor Law §240, popularly known as the "Scaffold Law," recognizes that a special need therefore exists to protect construction workers from death or serious injury in height-related accidents. It does this by requiring owners and contractors to provide safe and appropriate equipment, such as ladders, scaffolds and personal fall arrest systems, for working at heights. The Scaffold Law recognizes that owners and contractors, not workers, control construction site safety by holding *owners and contractors* liable if their failure to provide such equipment causes a worker's injury or death.

The Scaffold Law has been effective in making construction safer. Sadly, construction work in most states is even less safe than in New York; from 2000 to 2011 New York's construction injury rate, as reported by the U.S. Bureau of Labor Statistics, was sixth-lowest among states. The so-called Scaffold Law "reform" legislation being promoted in Albany by the insurance and construction industries would eliminate the key owner and contractor safety incentive of the law that protects construction workers.

To try to build their case for so-called "reform," Scaffold Law opponents have disseminated a great deal of misinformation about the law. One of the most common misstatements is that it allows for virtually no legal defense to a claim brought by an injured worker. In fact, owners or contractors cannot be held liable if they provided the equipment the law requires for safe work at elevated heights. To receive compensation, injured workers must prove that their own behavior was not the cause of their injury and that the owner or contractor violated the Scaffold Law's safe equipment requirement.

GROWING USE OF NONUNION CONTRACTORS

Construction unions help ensure that workers will not face retaliation when they tell their bosses about a poorly secured scaffold, a rickety ladder, or a missing guardrail around an open stairwell. They ensure that their members receive training and they operate apprenticeship programs. It is therefore not surprising that the vast majority of construction fatalities in New York in recent years were at nonunion sites. In 2012, 72 percent of construction fatalities were at nonunion construction sites. In the NYCOSH study that reviewed OSHA's investigation of all fatal construction falls between 2004 and 2010 in New York, OSHA reported that 79 percent of the fatalities occurred at nonunion sites. NYCOSH concluded, "Union representation is crucial for construction workers to effectively press their employers to run safe worksites, including providing necessary safety equipment."¹⁵

Construction union membership in New York has declined sharply, from 49.7 percent of workers in 1983 to 25.9 percent in 2013. Because union construction is safer construction, the impact of the expansion of nonunion construction on worker safety is a growing concern.

In 2012, *Crain's New York Business* reported that nonunion Flintlock Construction Services "is making deep inroads into the Manhattan market, which has long been dominated by union firms."¹⁶ The president of the Building Trades Employers' Association was quoted, "To us, Flintlock's ability to win work is a poster child for how much more we need to accomplish in reducing costs to be competitive." Flintlock Construction Services was

included in the April 2014 quarterly update of employers in the OSHA Severe Violator Enforcement Program and an OSHA news release on Flintlock Construction Services, issued in September 2013, reported on four proposed willful citations and proposed penalties of \$233,200.¹⁷ According to the release:

“The sizable fines proposed reflect both the severity of these hazards and that Flintlock was aware of, and failed to correct, the hazards.... Flintlock failed to provide and ensure the use of fall protection, such as guardrails or personal fall-arrest systems, for workers on the scaffold; the scaffold lacked a safe means of access, causing workers to climb its cross-bracing to reach their work platforms; the work platforms were not fully planked; and the scaffold was not tied off to restrain it from tipping.”

SILICA

Small crystalline silica particles are a serious health hazard for many workers. These particles are created when workers chip, saw, grind or sand silica-containing materials such as concrete, rock, masonry and tile. Construction workers and workers in certain manufacturing industries are especially at risk of inhaling silica particles. Workers using sand products, such as in hydraulic fracturing, are also exposed to silica.

Silica particles, which can penetrate deep into the lungs, increase the risk of silicosis, cancer and pulmonary tuberculosis. Silica exposure has been linked to autoimmune disorders, kidney disease and tuberculosis. It can aggravate bronchitis.

OSHA’s current permissible silica exposure levels have not been updated since 1971. Since then, new scientific evidence has established that crystalline silica inhalation is much more harmful than previously thought. For example, crystalline silica has been recognized as a human carcinogen.

Last September, OSHA proposed new, lower allowable levels of silica exposure at the workplace. The proposed rule also covers how to measure silica exposure, ways to reduce exposures, and provides for medical exams for workers with high silica exposures and related worker training. OSHA estimates that the proposed rule would ultimately save 700 lives and prevent 1,600 new cases of silicosis per year.

Industry’s opposition to the proposed rule has been vehement and effective. New silica rulemaking was initiated in 1997 but work on a new silica standard stalled. In 2003, it was revived, but stalled again. Public hearings were finally held in April 2014 on the proposed rule. Further delays in adopting it would allow thousands of New Yorkers to continue to be exposed to these dangerous particles.



Enactment of legislation to protect temp workers from exploitation by employment agencies and temp agencies is critical.

TEMPORARY WORKER PROTECTIONS URGENTLY NEEDED

Temporary workers are particularly vulnerable to injuries and fatalities on the job. They usually do not have the same level of training as wage and salary workers, and employers often hire them to avoid their responsibilities as employers. Given recent high profile temporary worker workplace fatalities and the growing numbers of temporary workers, in April 2013 OSHA launched an initiative to improve fatality reporting by designating a new reporting code for temporary workers. In launching the initiative, Dr. David Michaels, Assistant Secretary of Labor for Occupational Safety and Health, stated:

On Workers' Memorial Day, we mourn the loss of the thousands of workers who die each year on the job from preventable hazards. Many of those killed and injured are temporary workers who often perform the most dangerous jobs have limited English proficiency and are not receiving the training and protective measures required. Workers must be safe, whether they've been on the job for one day or for 25 years. (OSHA news release, 4/29/13)

OSHA is also working to increase enforcement, outreach and training to protect temporary workers.

While OSHA's work has been important, more needs to be done. In a 2012 report co-authored by New Immigrants for Community Empowerment (NICE) and the Community Development Project of the Urban Justice Center, *Dreams and Schemes in Queens New York: Immigrant Struggles to Find Work and Obtain Status in the Face of Consumer Fraud*, NICE members documented the extent of the fraudulent, predatory and substandard practices utilized by employment agencies or work referral agencies for temporary workers. Key findings included deceptive advertising practices and absence of contracts, disclosures and refunds for workers who utilize employment agencies. Enactment of legislation to protect temporary workers from exploitation by employment agencies and temp agencies is critical as the temporary workers sector continues to grow and is ripe for more worker exploitation.

ELEVATOR/ESCALATOR WORKERS

Elevator workers and those exposed to elevator hoist ways are at particular risk to injury and/or death on the job, particularly because they are often not properly trained and work in extremely dangerous conditions. To ensure that elevator workers are safe on the job, labor advocates have proposed legislation to ensure that all work be set up by a licensed elevator mechanic. The New York State Elevator Escalator Safety Bill has been passed in the NYS Assembly, but has not yet been put on the floor on the Senate.

THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION: STYMIED BY UNDERSTAFFING, WEAK PENALTIES

OSHA HAS BEEN EFFECTIVE IN PREVENTING MANY WORKPLACE FATALITIES.

To be sure, in its 44 years, the OSH Act has made a huge difference in worker safety. But a hardworking staff dedicated to worker safety has increasingly been unable to overcome the obstacles to effective OSHA enforcement that Congress has erected: allowable civil penalties that are much smaller than needed to deter bad safety practices, criminal penalties so weak they are not taken seriously, a budget sufficient to employ only a fraction of the number of inspectors required to adequately inspect the nation's workplaces, and weak whistleblower protections. The result has been that far too many employers are undeterred from taking safety shortcuts and endangering their workers.

PENALTIES ARE TOO SMALL TO DETER UNSAFE PRACTICES.

Proposed penalties of tens of thousands and in a few instances several hundred thousand dollars announced in the OSHA news releases excerpted in Appendix B are many times greater than the penalties most employers face when inspectors cite violations. These penalties are higher because willful or repeat violations were cited or there were extraordinary numbers of "serious" violations.¹⁸ They are excerpted to illustrate the very serious dangers workers in these establishments face.

The vast majority of citations are for "serious" violations. The maximum penalty for a serious violation is only \$7,000. (As noted earlier these are violations that pose a substantial probability of death or "serious physical harm.") However, even when OSHA proposes the maximum penalty for a serious violation the final penalty is typically reduced



OSHA criminal penalties are substantially weaker than criminal penalties for violating virtually all other federal safety and environmental laws.

through a formal or informal conference or by an administrative law judge. Thus, according to the 2013 edition of AFL-CIO's 2013 *Death on the Job* report, the average penalty in New York in 2012 was only \$2,164, the average total penalty per fatality investigation was just \$12,767, and the median penalty in a fatality investigation was only \$4,200.¹⁹

Even when a willful violation is cited in a fatality investigation, the maximum penalty is only \$70,000 and it could be as low as \$5,000. Of course, it is impossible to put a dollars and cents price on a worker's life. But the wrong message is sent when a worker dies and the total penalties for safety violations found in the fatality investigation are only a few thousand dollars. It is not surprising, given such small penalties, that employers tend to view them as a small cost of doing business and that they offer little incentive to observe OSHA safety rules.

The only time since enactment of the OSH Act in 1970 that Congress raised penalties was in 1990, and even then the maximum penalties were still far too low to deter employers from taking safety shortcuts. In 2010, OSHA achieved some modest effective increases by measures such as increasing from three to five years the time period for repeat violations and increasing penalties by 10 percent if the employer had been cited for a high-gravity serious, willful or repeat violation within the previous five years. In 2012, however, the Assistant Secretary of Labor for Occupational Safety and Health said the average fine per violation "is still quite low" and "[t]hey are still far lower than most regulatory agencies." OSHA can achieve only incremental increases in penalties through policy actions; congressional action is needed for penalties that will be taken seriously.

The possibility of criminal prosecution is also not an incentive to operate safely. Criminal penalties available under OSHA are a mere misdemeanor with at most a six-month sentence and only when a willful violation kills a worker or where there were false statements in required reporting. OSHA criminal penalties are substantially weaker than criminal penalties for violating virtually all other federal safety and environmental laws. Prosecutions are extremely rare.

THERE ARE FAR TOO FEW SAFETY AND HEALTH INSPECTORS.

Currently, only 71 OSHA health and safety inspectors are assigned to New York State. There were 76 in 2009, 82 in 2011 and 76 in 2013.²⁰ According to the AFL-CIO's 2013 *Death on the Job* report, with its current staffing it would take OSHA 103 years to inspect all New York worksites once.

Construction, which accounted for nearly one-in-five fatalities in New York in 2012, is especially in need of additional inspections, particularly given the recent construction surge. In October 2013, the *New York City Building Congress Construction Outlook 2013-2015* reported, "New York City construction spending and employment are poised for a return to the boom times of the mid-2000s."²¹ In September 2013, the *Buffalo News* reported, "It's becoming a good time to be a construction worker in western New York again," and quoted construction executives, "This is by far the busiest I've ever seen our area."²² OSHA has implemented Local Emphasis Programs in New York heavy highway and bridge construction and maintenance, gut rehabilitation and demolition, fall hazards, and local construction worksite targeting. It would take more inspectors and a sustained effort for these LEPs to have a significant long-term impact on safety.

THE PUBLIC EMPLOYEE SAFETY AND HEALTH BUREAU

The Public Employee Safety and Health Bureau (PESH), created in 1980, enforces safety and health standards spelled out under OSHA (with the exception of the recordkeeping rule) and several state standards for public sector employees. There are over 2 million public sector employees in New York State, which includes state, county, town, village governments, public authorities, school districts and fire departments. PESH responds to deaths related to occupational safety and health, accidents that send public employees to the hospital, and complaints from public employees or their representatives.

While PESH and OSHA are two separate and distinct agencies, the two must work together where both have jurisdiction and a mandate to enforce standards. PESH, like OSHA, is underfunded and has an inadequate number of inspectors across the state.

RECOMMENDATIONS AND CONCLUSION

NO ONE SHOULD FEAR that by going to work they are putting their life in danger. This report shows, however, that for too many New Yorkers – particularly construction workers – death on the job is a real possibility. To address employer safety lapses that make work needlessly dangerous, Congress must ensure that OSHA has the resources and legal authority to do its job effectively. To ensure that workers are protected the moment they set foot on the job, workers need to continue to organize for a safe and healthful workplace. New York is a long way away from “vision zero” on workplace fatalities.

As this report notes, it is estimated that ten times as many workers die from occupational disease as are reported by the government as occupational fatalities. So it is also critical to put in place measures to protect workers from occupational health hazards that can lead to death and disability. Given the intense opposition from industry that the Obama administration has faced in sufficiently funding worker safety and adopting needed workplace safety regulations, state and local government measures to protect workers from workplace health hazards are needed more than ever.

New York needs more living wage jobs, but New York also needs safe jobs. Implementing the following recommendations will help to ensure that workers can be more confident on their jobs, knowing that their lives are being protected and valued.

FEDERAL RECOMMENDATIONS

- *Enact the Protecting America's Workers Act, H.R. 1648.* The PAWA enacts urgently needed increases in civil penalties, including a minimum \$50,000 penalty where a willful violation causes a worker's death. It allows for felony, rather than just misdemeanor, charges when repeated and willful OSHA violations result in a worker's death or serious injury. It requires abatement of serious, willful and repeat violations during the period citations are being contested, rather than waiting until the end of an often lengthy proceeding. The PAWA makes permanent OSHA's current policy of having workers and their families meet with investigators. It requires employers to inform workers of their OSHA rights.

The Obama administration established a Whistleblower Advisory Committee of labor, employers and the public, and expanded whistleblower enforcement actions. But the anti-retaliation provisions of the OSH Act, which have not been updated since OSHA was established in 1970, have major shortcomings. The PAWA addresses these so that no worker will have to fear retaliation for reporting an unsafe workplace.

- *Substantially increase OSHA's budget and the number of inspectors and inspections.* The Obama administration has tried to allocate OSHA's limited resources as effectively as possible. For example, in 2010 OSHA implemented a Severe Violators Enforcement Program to focus enforcement on what the agency calls “recalcitrant” and “indifferent” employers. But such measures can make only a limited difference without sufficient staff to implement them effectively.
- *Implement measures proposed by the National Council for Occupational Safety and Health to better protect immigrant workers, including:*
 - Department of Labor pilot projects targeting specific industries where high percentages of immigrants work. The department's Wage and Hour Division and state workers' compensation system would be involved.



- Increased number of OSHA staff members who can serve as qualified interpreters and who are fluent in the most common languages spoken by Limited English Proficiency workers.
- Removing the OSHA directive instructing inspectors to ask workers for identification.
- Posting inspection notices and workers' rights – in languages spoken by the workforce – throughout the facility upon initiating an OSHA inspection. In addition, OSHA should require employers to post citation notices in the language spoken by the workers at the site.
- *Adopt the long-delayed OSHA silica rule.* It decreases the level of crystalline silica exposure permitted and would also cover how the amount of silica workers are exposed to is measured, measures for reducing exposures, medical exams for workers with high silica exposures, and related worker training. Construction workers are especially at risk of inhaling silica particles.

NEW YORK STATE RECOMMENDATIONS

- *Preserve New York's Scaffold Law.* It is of enormous importance to construction worker safety that the Scaffold Law remains on the statute books. The changes in the law that are proposed in legislation introduced in the New York State Legislature would very substantially weaken this important worker safety measure.

The proposed changes would effectively shift responsibility for construction site safety from owners and contractors to workers. It would allow an owner or contractor to easily blame a worker for a height-related injury even if the failure of the owner or contractor to provide a safe workplace, as the Scaffold Law requires, caused the accident. The proposed changes would dismantle what has been an effect safety incentive and lead to more safety corner-cutting and injuries.

- *Enact the New York State Elevator Escalator Safety Act.* To ensure that elevator workers are safe on the job, labor advocates have proposed legislation to ensure that all work be set up by a licensed elevator mechanic. The New York State Elevator Escalator Safety Act has been passed in the NYS Assembly, but has not yet made it to the Senate floor.
- Ensure that the Public Employees Safety and Health Bureau (PESH) and the Occupational Safety and Health Administration (OSHA) work together on construction and other public works project where both have jurisdiction and a mandate to enforce standards.
- Increase the number of PESH inspectors and the State Plan Budget for PESH. Like OSHA, PESH is understaffed and underfunded. By increasing PESH's budget and number of inspectors, 2 million of New York's public sector workers will be better protected on the job.

ENDNOTES

- 1 Source for all data on 2012 fatalities in this report: U.S. Bureau of Labor Statistics Fatal Injuries Profiles, preliminary data. This data includes self-employed workers, owners of unincorporated businesses and farms, paid and unpaid family workers, and may include some owners of incorporated businesses or members of partnerships. It includes all fatal work injuries, whether the decedent was working in a job covered by OSHA or other federal or state agencies. Therefore, it is more inclusive than the fatalities reported and investigated by OSHA. The OSHA fatalities list is the basis for the “In Memoriam” list in this report.
- 2 U.S. Census Bureau, 2008-2012 American Community Survey.
- 3 Joshua Wright, “Characteristics of the Self-Employed,” Economic Modeling Specialists International, July 18, 2012.
- 4 The most recent state fatality rates by industry posted by the Bureau of Labor Statistics are for 2011. The US rate for the construction industry was 9.1 deaths per 100,000 full-time equivalent workers. New York’s rate was 7.2 deaths per full-time equivalent workers.
- 5 In 2012, the four highest US occupational fatality rates (deaths per 100,000 full-time workers) were in construction (9.5), transportation/ warehousing (13.3), natural resources and mining (21.2) and agriculture/ fishing/forestry (21.5).
- 6 Structural steel worker: 26.9 deaths per 100,000 workers.
- 7 In March 2014, a Manhattan grand jury report recommended measures to combat Workers’ Compensation fraud in the construction industry. The recommendations were based on an investigation by the District Attorney’s Office on the extent and cost of construction industry Workers’ Compensation fraud. The report termed “egregious” the practice of employers misclassifying a worker, who is required to be insured under the system, as an independent contractor. The report estimated that worker misclassifications cost the City and the State approximately \$500 million a year.
- 8 Public Citizen, *The Price of Inaction, The Cost of Unsafe Construction in New York City*, November 14, 2013.
- 9 New York Committee for Occupational Safety and Health, *NY Scaffold Law Still Needed to Protect Construction Workers from Falls*, 2013.
- 10 Gustavo Solis, “Family Mourns Man Who Died in Scaffolding Fall at NYU Building,” DNAinfo, November 17, 2013.
- 11 Barry Paddock, Joe Kemp, “Worker dies after fall from Bronx bridge,” *New York Daily News*, January 15, 2013.
- 12 McGraw Hill Construction, *Smart Market Report, Safety Management in the Construction Industry – Identifying Risks and Reducing Accidents to Improve Site Productivity and ROI*, 2013.
- 13 Priscilla Ortiz, “Hardhat horror: construction worker, 55, crushed to death in front of his son after steel pipe falls from forklift on Governors Island,” *Daily News*, July 5, 2013.
- 14 The case is still reported as open, which means that violations can be added or deleted.
- 15 NYCOSH, op. cit.
- 16 Daniel Massey, “Flintlock: The Outsiders – How the Weiss brothers built NY’s dominant nonunion contractor,” *Crain’s New York Business*, July 15, 2012. *Crain’s* reported the firm has contracts to erect or alter nine buildings that rise 20 stories or taller, mostly in Midtown, including a 27-story hotel under construction at Lexington Avenue and East 45th Street, a 37-story hotel on West 42nd Street and a 22-story Courtyard by Marriott on West 30th Street.
- 17 OSHA opened this case on March 21, 2012. OSHA’s website reports that the case is open, the fines and penalties were contested in October 2013, and that they are currently “Under Contest.” A violation was cited at a different site on May 22, 2013; the case has not been closed, according to the website.
- 18 The penalties for willful or repeat violations are greater than for other violations. However, willful and repeat violations are cited infrequently. In FY 2012, the 2013 *Death on the Job* report by the AFL-CIO reported that in FY 2012 federal OSHA issued only 424 willful violations nationwide. There were only 219 cases having total penalties of greater than \$100,000. AFL-CIO, *Death on the Job: A Toll of Neglect – A National and State-by-State Profile of Worker Safety and Health in the US*, 22nd Edition, April 2013.
- 19 Ibid.
- 20 Source: OSHA in response to a Freedom of Information Act request. The response does not include the Avenal, New Jersey area office, which covers Staten Island.
- 21 Accessed at <http://www.buildingcongress.com/press/2013-10-17.html>
- 22 Jonathan Epstein, “‘A very good time’ for construction workers in Western New York,” *Buffalo News*, September 1, 2013.

APPENDIX A: 2013 CONSTRUCTION DEATHS

Date Of Fatality	Employer	Description of Incident
12/14	Accurate Elevator Fire Door Corp	Margarito Hernandez-Moreno, 36, was struck and killed by a brick in Manhattan.
12/4	Fm Ring Associates	Jaroslav Mychajluk, 67, was killed in fall down elevator shaft in Manhattan.
12/2	Halmar International	53-year-old Timothy Lang of Saugerties was crushed and killed by formwork that collapsed during concrete pour in Maybrook. 50 year-old Scott Winkler of Monroe was injured and died on December 10th.
11/18	Mtl Design Inc	23 year-old Kyle M. Brown was killed in Pulaski after being knocked off a roof by a wind gust.
11/15	DP Consulting Corp, BDB Masonry	Jaime Sillart, 56, died in a fall from a scaffold in Manhattan.
11/5	Creative Christmas, Inc.	Henry Estaban Sakinas Cerrato, 36, was installing lights when he fell from the basket of an aerial boom-lift that was struck by a trailer in Manhattan.
10/29	Mark Construction Group	Carpenter Igor Kalocay, 45, died after falling through a wall opening in Croton-on-Hudson.
10/3	Omar Barahona	Omar Barahona, 61, was performing maintenance on a forklift when it slipped from supports and he was crushed in College Point, Queens.
9/11	Joy Process Mechanical	Richard C. Whitney, Jr. 58, steamfitter, was welding inside a tank connected to a sewage treatment facility in Canastota when there was an explosion. He had 3rd degree burns over most of his body and died in hospital burn center in Boston.
8/29	William J. Morse Jr. Llc	William Morse, Jr., 23, was struck and killed by a falling tree during tree-cutting operations in Stephentown.
8/28	Wightman Oil Company	79-year old Douglas Wightman was killed when oil rigging equipment fell on him in Andover. Workers were servicing a well when pulleys and cables on its mast snapped and fell onto Wightman.
8/17	Golden Touch Painting	Painter Claudinei Martins, 34, died after falling from a 30-foot ladder in North Salem.
8/5	MJL Crushing	56-year-old Willard Moser of Deer River was killed on the job when he was struck in the head in Lowville. He was trying to free an excavator that was stuck in a piece of machinery when it came loose, striking him in the head.
7/31	Zaloumis Contracting Services	Valentine Campbell, 39, a telephone line repairer, was killed when his extension ladder was struck by a passing vehicle in Scarsdale.
6/17	JMG Construction Corporation	William Schaefer, 52, was electrocuted while working on a power transmission pole in Corning.
6/11	Gerald Shepard	John Halstead, Jr., 44, was struck by and pinned underneath a collapsed building during demolition in Oswego.
6/4	Tommy Burton	A worker was found dead under tongue of trailer in Staten Island.
5/21	Geraldo Ramirez	Juan de la Cruz, 30, fell from third floor and died in Brooklyn doing residential construction.
5/3	Gilt Groupe	A worker died after falling four stories to the bottom of an elevator shaft in Brooklyn.
4/21	John McAree	A worker in residential remodeling fell from a scaffold in Rockaway Park.
4/13	Feeney Brothers Excavation Llc	Gary T. Feeney, 24 years old, was holding a guide rope while an excavator was being used to lift and unload a heavy pipe from a flatbed tractor-trailer in Ballston Spa. He was struck by a falling load while unloading 40-foot-lengths of pipe from a flatbed trailer.
4/18	Cathay Pacific Airways Ltd.	Man Wa Lee, 49, was struck and killed by a cargo transporter during loading operations at JFK Airport.
3/22	S. McClain Stone Company	An employee was struck and killed by a forklift in Vestal. Additional information is not available.
3/20	Inventive Builders	Ebrima Jallow, 48, working as a laborer, was carrying windows down a stairwell in Manhattan when he fell on stairs striking his head.
1/26	AAA Amazing Construction Corp	Zhanbin Li, 56, fell from a ladder as he was struck by a falling metal awning in Port Jefferson on January 22. He died on January 26. Yijing Cao, 39, also died.
1/24	Abacus Building Innovations	Ricardo Gonzalez, 45, died after falling 15 feet onto a metal floor joist and concrete foundation at 45-11 Broadway, Astoria.
1/15	Schiavone Construction	54-year-old Paul Schisler died after falling from the High Bridge in the Bronx during an inspection.

APPENDIX B: EXCERPTS FROM 2013 OSHA NEWS RELEASES

(Press release date shown)

CONSTRUCTION

(Proposed penalties of more than \$70,000)

- December 3. “Painting & Decorating Inc., a Ronkonkoma painting and stucco contractor with a long history of fall protection and scaffold safety violations, now faces an additional \$460,350 in fines from the U.S. Department of Labor’s Occupational Safety and Health Administration following an inspection of a work site at 1900 Northern Blvd. in Manhasset....” “In this case, workers were exposed to falls of more than 26 feet.... Fines proposed reflect the ongoing failure and refusal by this employer to provide basic safeguards for its employees.” The OSHA area director was quoted: “Workers have repeatedly been exposed to deadly or disabling falls and crushing injuries.” “The recurring hazards include not having the scaffold self inspected for defects by a competent person during scaffold erection and before workers began to work on the scaffold. An inspection would have identified hazards such as missing cross bracing and planks; no safe means for workers to access the scaffold; lack of fall protection for the employees working on the scaffold; scaffold not restrained against tipping; lack of protective helmets; and no protection to prevent objects from falling onto workers from the scaffold.” The case is open.
- September 24. Penalties of \$249,920 were proposed for Flintlock Construction Services LLC. “Flintlock was cited for seven violations of OSHA’s fall protection and scaffolding standards that involved workers exposed to potentially fatal falls of up to 26 feet while they were on scaffolding....” “The sizable fines proposed reflect both the severity of these hazards and that Flintlock was aware of, and failed to correct, the hazards.... Specifically, Flintlock failed to provide and ensure the use of fall protection, such as guardrails or personal fall arrest systems, for workers on the scaffold; the scaffold lacked a safe means of access, causing workers to climb its cross bracing to reach their work platforms; the work platforms were not fully planked; and the scaffold was not tied off to restrain it from tipping. These conditions resulted in the issuance of four willful citations, with \$233,200 in fines to Flintlock.” The OSHA area director was quoted, “These employees were one trip, slip or misstep away from a deadly or disabling fall.” Citations also included “failing to provide training on the hazards associated with erecting scaffolds; failing to have a competent person determine the feasibility of providing fall protection for workers erecting and dismantling the scaffolding; a scaffold walkway that was too narrow; and inadequate anchorage for the fall protection system.” The violations are under contest.
- January 14. A.M. Stern was “assessed \$159,250 in proposed fines for alleged willful, repeat and serious violations of workplace safety standards while workers installed a roof on O’Connor Road in Fairport.... On two occasions during the investigation, OSHA inspectors observed Stern employees exposed to falls of 15 to 30 feet while working at the unprotected edges of the building’s roof. The designated safety monitor on site was not positioned close enough to employees working in unprotected sections, so that he could warn them about the fall hazards. As a result, OSHA issued A.M. Stern one willful citation with a \$70,000 fine for the lack of fall protection and one repeat citation, also with a \$70,000 fine, for the improperly located safety monitor.... A similar violation was issued in August 2008 at a Geneseo worksite.”

The contractor was also issued five serious citations, carrying \$19,250 in fines, for not providing medical evaluations and training for employees required to wear respirators, allowing an untrained employee to operate a forklift, not providing employees with information and training on hazardous chemicals, and for the safety monitor's failure to warn employees of fall hazards. Violations are under contest..

- May 23. Accadia Site Contracting Inc. was cited for alleged willful and serious excavation safety violations found at a water main site at Lewiston Road and McKinley Avenue in Niagara Falls. "The Depew based contractor faces a total of \$84,000 in proposed fines.... OSHA found "workers in a 7 foot deep vertical walled excavation that lacked protection to prevent wall cave ins, and a ladder every 25 feet to facilitate a swift and safe exit from the excavation. Moreover, 8 inches of water accumulated in the excavation's bottom, increasing the likelihood of a collapse."

The OSHA area director stated, "An unprotected excavation can turn into a grave in seconds, crushing and burying workers beneath tons of soil before they have an opportunity to react or escape. These workers were fortunate – not lucky, because workplace safety must never be dependent on luck – that they were not injured or killed." Violations are under contest.

ABOUT NYCOSH

The New York Committee for Occupational Safety and Health (NYCOSH) is a membership organization of workers, unions, community-based organizations, and workers' rights activists. NYCOSH uses training, education, advocacy, and organizing to improve health and safety conditions in our workplaces, our communities, and our environment. Founded 35 years ago 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 and community.

