

# The Year in U.S. Occupational Health & Safety

Fall 2013 – Summer 2014

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September 1, 2014

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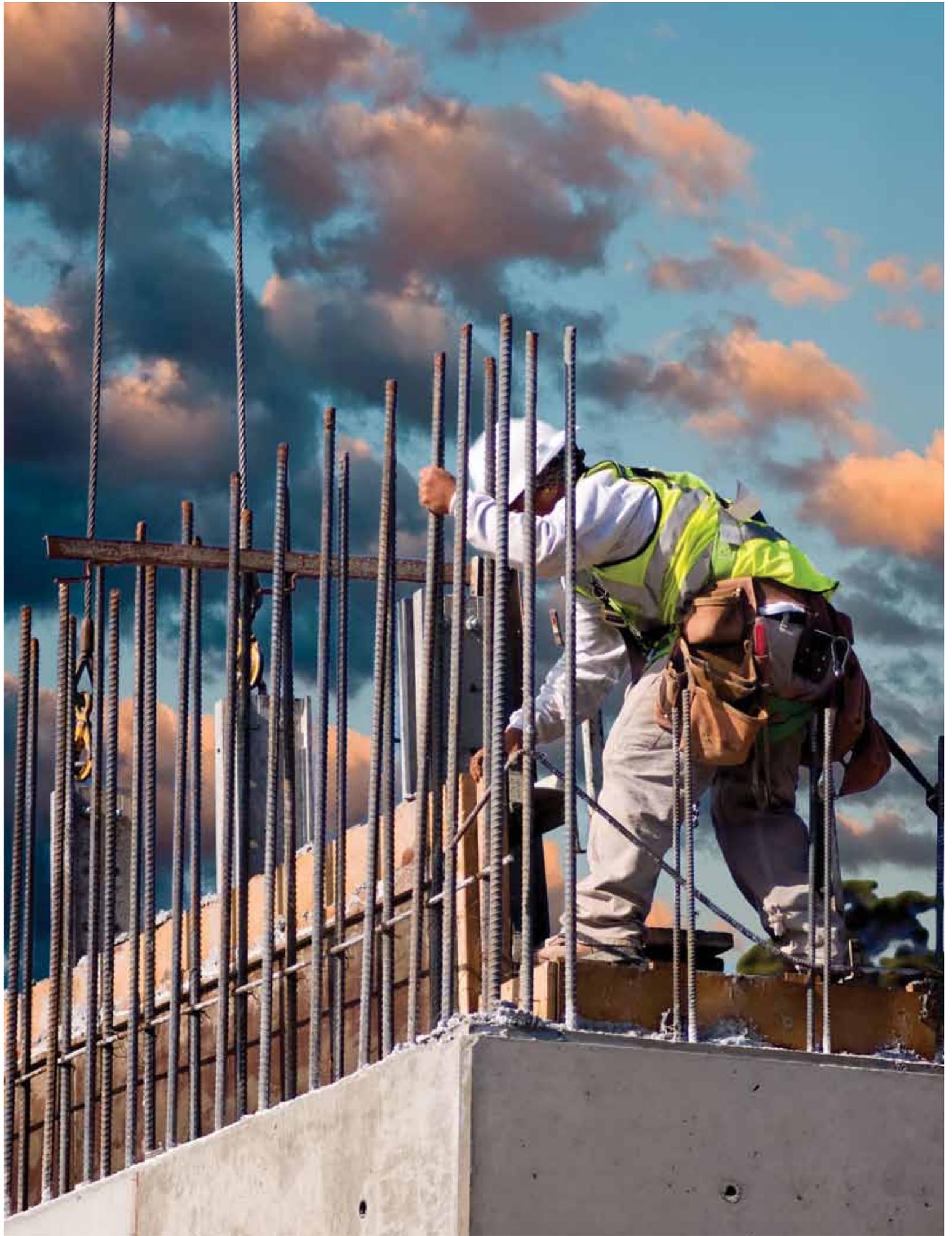
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The authors thank Anthony Robbins, MD, MPA for editorial assistance.

This report was produced with funding from the Public Welfare Foundation, but the views expressed in it are those of the authors alone.

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# Introduction and Overview

In this report we capture some of the noteworthy happenings in occupational health and safety during the past year (August 2013 through July 2014) in the United States. We want it to be a resource for activists, regulators, researchers, and anyone else who values safe and healthy workplaces. Much as the AFL-CIO's annual *Death on the Job* report focuses attention on workplace injury and illness statistics each spring, this report documents successes, challenges, and areas ripe for improvement in occupational health and safety. This is the third annual edition of *The Year in U.S. Occupational Health & Safety*; the first two are available at <http://bit.ly/1n6yZb1>.

Our report is not exhaustive. To keep it to a manageable length, we made some tough decisions about which activities and projects to include or omit. Blog posts published on the public health blog The Pump Handle (<http://scienceblogs.com/thepumphandle/>) during the week of Labor Day 2014 will invite readers to add their own stories about important worker health and safety happenings from the past year. Our report covers the following areas:

**The Federal Government:** The 16-day “government shutdown” in October 2013 demonstrated how dysfunctional the US Congress has become. Advocates have little hope for new federal laws to address the appalling annual toll of worker deaths, illnesses, and injuries. The Occupational Safety and Health Administration (OSHA) and Mine Safety and Health Administration (MSHA) both took important steps to better protect workers from lung diseases caused by respirable dust, but they also saw important proposals delayed by the White House's Office of Information and Regulatory Affairs (OIRA). The USDA continued to move forward with a proposed regulation to “modernize” poultry slaughter despite its grave consequences for poultry workers. Sustained opposition to USDA's plan earned modest concessions for poultry worker safety.

Bright spots at the national level over the past year included increased attention from OSHA to hazards facing temporary workers, an MSHA crackdown on mines with the worst safety records, and a multi-agency effort to reduce the safety risks in the production and storage of hazardous chemicals. In addition, a Center for Public Integrity reporter won a Pulitzer Prize for his series addressing black-lung disease benefits. It was a well-deserved honor

and helped draw public attention to occupational illness – a topic that gets too little public attention.

**State and Local Activities:** Several state and local governments have passed worker-friendly laws on issues where federal action has stalled. Two New Jersey cities – Newark and Jersey City – passed laws requiring employers to let workers earn paid sick time, while New York City and the District of Columbia strengthened their existing paid-sick-days laws. Several states and cities adopted minimum-wage increases. Minnesota lawmakers packaged nine bills together into the Women's Economic Security Act, which aims to “break down barriers to economic progress facing women – and all Minnesotans.”

New state laws also address specific groups of workers who currently face high injury and illness rates or are vulnerable to a range of abuses. California and Massachusetts adopted new bills of rights for domestic workers, while Texas and Maryland took steps to safeguard healthcare workers from on-the-job violence.

**New Research on Worker Health and Safety:** Several studies published over the past year have advanced knowledge of the hazards faced by particular groups of workers: individuals who responded to the 2001 World Trade Center attacks, Latino workers, healthcare workers, and farmworkers. New research is also helping identify promising approaches for improving workplace health and safety. Studies over the past year include comparisons of different safety trainings for agricultural workers on pesticides and for healthcare workers on needlestick injuries, as well as investigations into the effectiveness of using



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promotoras to deliver health and safety training to Latino farmworkers and of incorporating assertiveness training into fall-prevention classes for construction workers.

Publications from nonprofit organizations shed light on the costs of failing to adopt policies to safeguard workers' wellbeing. They calculate the long-term tolls when lawmakers cut the budgets of worker health and safety agencies and fail to consider safety records when awarding contracts. New resources also include

guides for achieving occupational health and safety improvements at the state and local levels, where legislators are less gridlocked than their federal counterparts.

For every city or state that succeeded in passing a law to improve workers' lives, several more were mounting campaigns inspired by recent victories. In the coming year, we can expect to see even more workers and advocates standing up to demand safe and healthy working conditions and livable wages.

# The Federal Government and Occupational Health and Safety

At the federal level, advocates faced both progress and setbacks this year on the worker health and safety front. Both OSHA and MSHA took important steps to better protect workers from illnesses caused by exposure to respirable dust. MSHA issued a final rule to reduce miners' exposure to coal dust, and OSHA proposed a regulation on crystalline silica. Both agencies, however, also deserted regulatory initiatives previously identified as top priorities. OSHA's planned rule creating an injury and illness prevention program (I2P2) requirement and MSHA's plan for a silica regulation were removed from the Labor Department's regulatory agenda. They now reside in regulatory limbo, labeled for "long-term action."

Budget battles between House Republicans and the Obama Administration came to a head and resulted in a 16-day government "shutdown." Ninety percent of federal OSHA employees were furloughed. A skeleton crew at each OSHA area office remained in place to respond to fatalities and imminent danger situations. Only three of the Chemical Safety Board's 40 staff members were on duty during the shutdown.



In the following section we highlight some of the most noteworthy federal activities on occupational health and safety topics in the past year.

## Better Rules to Protect Miners from Black Lung Disease

Coal miners and their families gathered in Morgantown, West Virginia on April 22, 2014 to hear Labor Secretary Tom Perez announce new regulations to better protect them from black lung disease. Many had tears in their eyes.

The rule changes the procedures for monitoring respirable coal dust concentrations. New continuous read-out sampling devices will give coal miners real-time data about their exposure to dust. Citations for exceeding the permissible exposure limit (PEL) will no longer be based on the average of five samples, but can be issued based on any single sample that exceeds the PEL. Air monitoring results will only be considered valid if production levels are at least 80 percent of what is typical at the mine. The rule reduces the PEL from 2.0 mg/m<sup>3</sup>



Labor Secretary Tom Perez listens to Gary Hairston describe living with black lung disease.

US Department of Labor

to 1.5 mg/m<sup>3</sup> over a full shift, whether a miner works an 8-hour, 10-hour, or longer shift.

The PEL adopted by MSHA, however, does not go as far as what the agency initially proposed in October 2010. That proposal was based on a 1995 NIOSH recommendation for a 1.0 mg/m<sup>3</sup> PEL. MSHA's final rule incorporated a 1.5 mg/m<sup>3</sup> PEL even though the agency's analysis indicated the more protective 1.0 mg/m<sup>3</sup> PEL was feasible for coal mine operators. The National Mining Association, the Alabama Coal Association, Murray Energy, and others have filed lawsuits in the US Court of Appeals to challenge the new MSHA rule.

## OSHA Proposes New Silica Rule

"The dust'd roll down the walls like rain, like a water fall," said Tommy Todd, 62. "If I'd known it was hurting me, you know, killing me—Shoot!—I'd have done things a lot different." Todd worked as a bricklayer for 40 years. He was forced to retire early because he developed silica-related lung disease. Tommy Todd, joined by more than 200 others, testified in March and April 2014 at OSHA's 13 days of public hearings on its proposed rule to protect silica-exposed workers. The agency has proposed to reduce the permissible exposure limit (PEL) for respirable silica to 50 ug/m<sup>3</sup> from the current PEL of 100 ug/m<sup>3</sup> for general industry and 250 ug/m<sup>3</sup> for construction. The rule would



Translator Susanna Duncan works with New Labor's Norlan Trejo, Jonass Mendoza, and Marien Casillas-Pabellon to ensure their testimony to OSHA isn't lost in translation.



Former foundry worker Juan Ruiz of Racine, WI, listens to a question posed to him at the OSHA public hearing.

also require employers to offer medical examinations and provide training to workers who are exposed to silica dust.

Representatives of worker centers and COSH groups testified at the public hearings. Some testified in Spanish – a first in the history of OSHA rulemaking. Juan Ruiz of Racine, Wisconsin, and father-son duo Allen and Jim Schulz of WisCOSH testified about dusty work in foundries. New Labor's Norlan Trejo and Jonass Mendoza emphasized the health and safety challenges for day laborers and the silica hazards they face in the ongoing clean-up from Superstorm Sandy. Santos Almendarez from the Fe y Justicia Worker Center in Houston described his experience working for a company that made granite kitchen countertops. The cutting tools were not equipped with devices to eliminate or control the dust. Almendarez had tried to protect himself by wearing dust masks, although he knew they were not adequate. He explained:

"Debería existir alguna ley que proteja a los trabajadores que corren este tipo de riesgos ya que los riesgos son a largo plazo, y quién va a responder por los daños que pudiera yo sufrir en unos futuros años?" (Translation: "I think that a regulation to protect workers from silica should exist because the symptoms appear after a long time. Who will be responsible in the future for any injury or harm that I will suffer?")

Testimony from the public hearings will complement tens of thousands of pages of written comments on the proposal submitted to OSHA. The comment period on the proposed silica regulation began in September 2013 and extended for 137 days. Individuals who testified at the public hearing had until mid-August 2014 to submit additional materials for the rulemaking record.

## Improving Protections for Temp Workers

In August 2013, the National Council for Occupational Safety and Health, the National Staffing Workers Alliance, and the OHS Section of the American Public Health Association presented policy recommendations to OSHA concerning temp workers. They suggested, for example, that OSHA articulate in its Field Operations Manual the respective and joint responsibilities of host employers and temporary staffing agencies, and that OSHA make enhancements to inspection practices at worksites where temp workers are assigned. The agency took steps that addressed some of the recommendations. OSHA modified its data management system, for example, to allow inspectors to record information about temp workers and staffing agencies in the electronic inspection record.

In March 2014, OSHA issued an information bulletin explaining to staffing agencies and to host employers their responsibilities for recording injuries and illnesses suffered by temp workers. OSHA also signed an alliance agreement in May 2014 with the American Staffing Agency (ASA). ASA and OSHA will cooperate to provide information to temp workers about their rights, and to educate staffing firms and their clients on their responsibilities under the OSH Act. In addition, OSHA has been profiling enforcement cases at worksites with temp workers in news releases. California Cereal Products in Macon, GA; Maplewood Beverage Packers in Maplewood, NJ; and Dixie Tank in Jacksonville, FL have been mentioned by name.

## Leadership Failures at the Chemical Safety Board

Turmoil at the Chemical Safety Board (CSB) became more pronounced and public when Dr. Beth Rosenberg resigned her board seat in May 2014. Several weeks later, Rosenberg was called to testify before the House Committee on Oversight & Government Reform (Chairman Darrell Issa (R-CA)) and comment on her tenure at the CSB. "Those whose opinions differed from those of senior leadership or the Chair were marginalized and vilified," she said. "Disagreement is seen as disloyalty ... criticism is not welcome, and staff fear retaliation." Her five-year term was set to expire in 2017.

Rosenberg's remarks reinforced the findings of a report "Whistleblower reprisals and management failures at the US Chemical Safety Board," which was released at the hearing. Oversight staff, plus staff of the Committee on Science, Space, and Technology prepared the report. It accused CSB chair Rafael Moure-Eraso and senior officials Richard Loeb and Daniel Horowitz of creating a hostile and retaliatory work environment that led experienced staff to resign and created a backlog of incomplete investigations. The Committee's report was based on interviews with current and former CSB employees, emails, and other documents.

Rosenberg was joined at the hearing by fellow board members Mark Griffon and the CSB chair. Some of the CSB's problems, Griffon



The Chemical Safety Board's Mark Griffon, Beth Rosenberg, Richard Loeb, and Rafael Moure-Eraso discuss recommendations related to the explosion at NDK Crystal.

indicated, could have been averted had he and Rosenberg been consulted. He expressed frustration with maneuvers by the CSB chair to limit board members' involvement in agency decision-making. Chairman Moure-Eraso defended the agency's performance by offering a list of its accomplishments and reminding the Committee that CSB's \$11 million budget is tiny by federal-agency standards.

Testimony from the EPA's Inspector General (IG) focused on the CSB's failure to respond appropriately to an outstanding Office of Inspector General (OIG) request for documents. The message sent by the CSB, the IG asserted, is that CSB leadership is "above the law." Ranking Member of the Committee Henry Waxman (D-CA) did not attend the hearing. In a letter, he described his recent efforts to improve the CSB's governance and address staff morale issues, but he avoided criticizing the agency.

With Rosenberg's resignation, three of the CSB's five board positions are vacant. President Obama nominated New Jersey Work Environment Council's Richard Engler and HazMat response expert Manuel Ehrlich, Jr. for the CSB, but their nominations remain stalled. In a June 2014 letter to Senate Minority Leader Mitch McConnell, Senator Tom Coburn (R-OK) said it would be inappropriate to move forward with filling the board seats until the CSB provides the EPA OIG with all of the records it requested. He placed a hold on their nominations.

In July 2014, six House Republicans sent a letter to the White House. They wrote, "Chairman Moure-Eraso's leadership is making it difficult for the agency to fulfill its mission. Immediate change in CSB leadership is necessary to allow this besieged agency to heal and regain focus on its public safety mission."

## Farewells

Congressman George Miller announced in January 2014 that he would not seek reelection and would retire from office in December 2014. The California Democrat was just 29 years old when he was first elected to Congress in 1974. Miller has sponsored a long list

of legislation to improve worker health and safety; most recently the Protecting America's Workers Act, the Robert C. Byrd Mine Safety Protection Act, the Offshore Oil and Gas Worker Whistleblower Protection Act, and the Worker Protection Against Combustible Dust Explosions and Fires Act. From 2007 – 2010, he served as chairman of the House Education and Labor Committee. Upon announcing his upcoming retirement, Miller commented on his tenure in office: "Wealthy and powerful special interests have always had plenty of friends in Washington. I came to Congress to stand up for the rest of us."

Like Miller, Congressman Henry Waxman (D-CA) announced in January 2014 that he would be retiring at the end of his 2014 term. Waxman is credited with authoring some of the most important public-health laws in the US, including the Clean Air Act of 1990, the State Children's Health Insurance Program of 1997, and the Affordable Care Act of 2010.

Also retiring at the end of 2014 is US Senator Tom Harkin. The Iowa Democrat served most recently as the chair of the Committee on Health, Education, Labor and Pensions, and of the appropriations subcommittee for the Departments of Labor, Health and Human Services, and Education. When debate focused on matters of worker health and safety, Harkin often reflected on his father's experiences as a coal miner.



Congressman George Miller talks with Betty Harrah in his Washington, DC office. Harrah's brother Steve was killed at the Upper Big Branch coal mine.

Bryan Vana, American Friends Service Committee

Harkin, Miller, and Waxman were all members of the large freshman class of lawmakers called the “Watergate babies.” They were first elected to Congress in 1974 in the wake of President Richard Nixon’s resignation. Following their retirement, only two “Watergate babies,” Senator Patrick Leahy of Vermont and Representative Rick Nolan of Minnesota, will remain in Congress.

## OSHA

### Protecting workers from electrical hazards

OSHA issued a final rule in April 2014 to improve protections for workers engaged in construction or maintenance at power plants or on power lines. The rule requires better coordination between host employers and contractors; fall protection for workers climbing or changing position on electrical poles and towers; and hazard training for tree trimmers clearing electrical lines. The rule will take full effect in April 2015. The Utility Line Clearance Coalition, Edison Electric Institute, and Tree Care Industry Association have filed legal challenges to the rule with the US Court of Appeals.

### Cell tower workers

Ten years ago, having a cell phone was a novelty. Today in the US, most people older than 15 years old have one. Cell phone users’ frustration with “dropped calls” means wireless carriers want more and better hardware on towers to improve service. Repairs and enhancements to the towers often involve a tangled web of firms, from the owner of the tower and cell carrier to a general contractor and subcontractors.

In November 2013, following a string of deaths and serious injuries, OSHA gave new instructions to its field staff with respect to cell tower workers. If compliance officers (CSHOs) became aware of cell tower work in their area, they were directed to inspect the site. CSHOs were



also instructed to obtain the relevant contracting agreements and information on the tower owner, wireless carrier, and other parties in the contracting chain. OSHA also established a special code for its information management system to track inspections of communications towers. Another spate of fatalities occurred in early 2014. It compelled OSHA to send a letter to 98 employers in the communications tower industry. OSHA reminded the employers of the hazards for crews working at heights and put them on notice that the agency will consider classifying fall protection violations as willful.

### Sea World: Support for OSHA’s general duty clause

Animal trainer Dawn Brancheau, 40, was fatally injured by an orca whale at Sea World in Orlando, Florida in February 2010. OSHA issued citations for three violations, including a willful violation of the general duty clause (GDC). To abate the hazard, OSHA proposed that the company take steps to keep the animal trainers a safe distance from the orcas or set up barriers. Sea World contested the citations, and the challenge was ultimately heard before the US Court of Appeals for the DC Circuit. Attorney Eugene Scalia, son of US Supreme Court justice Antonin Scalia, represented Sea World. The crux of their company’s argument was that no feasible means existed to reduce

the hazard, a key requirement for a GDC violation. The company had in fact already taken steps to separate the orcas from the trainers. In a 2-1 ruling issued in April 2014, the judges upheld OSHA's citations. Sea World announced in August 2014 it would not appeal the court's decision.

## Improving injury reporting

In November 2013, OSHA proposed a new regulation to require certain employers to submit injury and illness records to the agency. Each quarter, employers with more than 250 employees would be required to submit electronically to OSHA their injury and illness logs. The regulation would only apply to employers already required to keep these records. Firms with 20 or more employees in certain high-hazard industries would be required to submit annually a summary of their injury and illness records. OSHA noted that many large employers already maintain these records electronically. One key objection to the proposal was OSHA's announcement that the data would be posted online and available for public viewing. The agency took comments on the proposal until March 2014. After receiving comments that aspects of the proposal might discourage employers from recording injuries, OSHA reopened the record until mid-October to take additional public comment.

## Severe Violators

OSHA continues to add employers to its list of "severe violators." As of April 2014, about 350 employers appear on the list. About 60 percent of the firms have 10 or fewer employees, and nearly 70 percent are in the construction industry. OSHA established the program in June 2010 to target employers who receive multiple willful, repeat, or failure-to-abate violations and subject them to follow-up inspections or inspections at other worksites controlled by the same firm. So far, approximately one-third of the firms have received subsequent inspections.

## Transparency in rulemaking

For the first time, OSHA asked individuals and organizations that submit scientific or technical studies to the agency on a proposed regulation to disclose the research's funding source. OSHA made its request in the *Federal Register* notice announcing its proposed silica regulation. OSHA noted the request was consistent with the Executive Order 13563, which instructs agencies to ensure the objectivity of the scientific and technological information used to support its regulatory actions.

Sixteen Republican Senators, led by Lamar Alexander (TN), wrote to OSHA chief David Michaels objecting to OSHA's request. They said asking for this information "raises questions about whether OSHA will use that information to prejudge the substance of those comments and could result in dissuading stakeholders from even submitting comments." The Senators and other opponents of the OSHA request failed to acknowledge that the agency was not requiring the information, simply requesting it.

## OIG looks at VPP program

In December 2013, the Labor Department's Office of Inspector General (OIG) issued an audit report on OSHA's Voluntary Protection Program (VPP). The audit was conducted in fiscal year 2012. It followed up on a 2009 Government Accountability Office report that found OSHA had inadequate procedures in place to ensure worksites in the VPP program actually have exceptional safety programs (something the VPP designation signals). The OIG report acknowledged the policy changes adopted by OSHA in the last several years to improve the VPP program. It noted, however, deficiencies in OSHA's data systems to track VPP sites' performance, and raised concern about the 13 percent of VPP sites that have injury and illness rates above the average for their industries.

## MSHA

### Back-tracking on silica rule for mine workers

While MSHA deserves credit for issuing new regulations to protect coal miners from black lung disease, the agency disappointed worker-safety advocates when it announced it was foregoing action on a silica regulation. In the Labor Department's Spring 2014 regulatory agenda, MSHA indicated a proposed silica rule was no longer a priority by classifying it for "long-term action." Previously, MSHA indicated it expected to publish a proposed regulation on silica in June 2014.

Mine workers who extract and process metals, aggregate, and other minerals are often exposed to respirable silica. Early in the Obama Administration, MSHA indicated it would rely on OSHA's risk assessment to develop its own silica rule.

### Targeting the worst of the worst mine operators

For the first time in MSHA's 35-year history, the agency put four coal mining operations on notice for a pattern of violations (POV), which makes them subject to additional enforcement actions. The enhanced enforcement procedure is authorized by a regulation that the agency adopted in March 2013. The POV notices, announced in October and November 2013, targeted three mines in West Virginia and one in Kentucky. The criteria for receiving the designation include receiving 50 or more citations classified as "significant and substantial" (S&S), and having an injury severity measure that is greater than the average for comparable mines. A mine with the POV designation will have its production interrupted every time an inspector observes an S&S violation, because all miners will be removed from the mine until the violation is corrected. The POV status will remain in place until the mine has a wall-to-wall inspection in which no S&S violations are observed.

Patriot Coal Company's Brody No. 1 mine is one of the West Virginia mines with the POV designation. Despite the enhanced scrutiny by MSHA, coal miners Eric D. Legg, 48, and Gary P. Hensley, 46, suffered fatal injuries at the mine in May 2014.

### Calculating mine safety penalties

When MSHA proposes a penalty to a mine operator for a health or safety violation, the agency is required to consider six factors to determine the penalty amount: business size, previous history, negligence, gravity, good faith, and the employer's ability to stay in business. A backlog of contested citations, which grew to 82,000 cases in 2010, was due in part to mine operators' complaints about inconsistency in the way penalties are calculated.

In July 2014, MSHA proposed a rule to revise its process for considering these criteria in order to "promote consistency, objectivity, and efficiency," the agency said. MSHA proposes to put less emphasis on mine size in the calculation, and give more consideration to evidence of employer negligence, the severity of the harm that could be caused by the violation, and the employer's history of violations. The agency is also considering a good faith credit for prompt payment of penalties.



The Upper Big Branch Mining Memorial Group

Memorial to the Upper Big Branch Miners, Whitesville, WV.

## Fourth anniversary of Upper Big Branch disaster

April 2014 marked the fourth anniversary of the Upper Big Branch (UBB) mine disaster that killed 29 coal miners. In September 2013, a former Massey Energy official, David Hughart, 55, was sentenced to 3½ years in prison for his role in conspiring to hide safety violations from MSHA inspectors. Hughart did not work at UBB, but was a management official who reported to Massey CEO Don Blankenship. After it brought the case against Hughart, the Justice Department's criminal investigation seems to have stalled, with no indication that criminal charges will be brought against other individuals who were part of Massey Energy's upper echelon.

## Deterring underreporting of injuries

The Labor Department's Office of Inspector General (OIG) issued a report in March 2014 addressing MSHA's efforts to deter employers from underreporting injuries and illnesses. The OIG recommended that MSHA take advantage of its large database of enforcement records to identify what types of mines are most likely to underreport and what types of injuries or illnesses are most likely to be underreported. The OIG also urged MSHA to issue guidance to mine operators that would alert them to practices that may discourage injury reporting, such as disciplining workers who report an injury, and prize programs for work teams with no recorded injuries. The IG suggested that MSHA issue a policy statement comparable to OSHA's March 2012 memorandum "Employer Safety Incentive and Disincentive Policies and Practices." As of August 2014, MSHA has not issued such guidance to mine operators.

## CHEMICAL SAFETY BOARD

### NDK Crystal explosion

In November 2013, the CSB released a case study describing the December 2009 incident at NDK Crystal Inc. in Belvidere, Illinois that

killed a member of the public and caused heavy property damage. The firm produces synthetic quartz crystals used in cell phones and wireless internet devices. Fifty-foot-tall vessels at the facility are supposed to contain the pressurized and heated process of the crystal-growing operation. On the day of the incident, one of the vessels exploded, and an 8,600-pound fragment of it traveled more than 400 feet and struck the wall of an adjacent business. The blast propelled another piece of the structure toward a nearby highway rest area. Truck driver Ronald Greenfield, 63, was walking in the parking lot of that facility and was fatally injured by the massive debris.

CSB investigators found the NDK vessels to be corroded and cracked. Several years earlier, the firm had experienced an uncontrolled leak of sodium hydroxide, also related to stress corrosion cracking. NDK ignored the advice of its own experts and its insurer to address the problems with the vessels' design. The CSB's case study makes eight recommendations, including that the Illinois State Fire Marshall ensure that its pressure vessel approval process identifies vessels that may be subject to corrosion or deterioration, and that the American Society of Mechanical Engineers revise its pressure vessel code to include specific material thickness limitations.

### Chevron Richmond refinery

CSB chairman Rafael Moure-Eraso scheduled a public meeting for January 2014 on CSB's investigation of the release of flammable hydrocarbon process fluid at the Chevron refinery in Richmond, California. The August 2012 incident threatened the lives of 19 workers and sent more than 15,000 residents to emergency rooms. The CSB issued an initial report on the incident in April 2013.

The purpose of the January 2014 meeting was for the Board to consider staff recommendations contained in the second of three expected reports. Among others, one recommendation suggested by the staff would direct

California's Governor and legislature to amend the State's existing process safety management (PSM) regulation using a "safety case" model. This regulatory approach is used in the United Kingdom, Australia, and Norway. The CSB chairman supported the staff recommendation, but board members Mark Griffon and Beth Rosenberg postponed the vote, indicating a need to evaluate the effectiveness of this alternative regulatory scheme. As of August 2014, the final report remains outstanding.

### Tesoro Anacortes refinery

In May 2014, the CSB released its findings into the April 2010 explosion and fire at the Tesoro Anacortes refinery that killed seven workers. The victims were assisting with the start-up of a heat exchanger (HE) when a companion HE failed catastrophically. Some of the equipment was nearly 40 years old, and investigators found that the carbon-steel components of the HE were severely degraded. The CSB concluded, among other things, that Tesoro's process hazard analyses were ineffective and relied too much on non-specific safeguards. The agency described the facility's process safety culture as one requiring "proof of danger rather than proof of effective safety implementation." The CSB report also notes that Washington State's Department of Labor and Industries (L&I) has only four inspectors with process safety management (PSM) expertise, at a time when there are 270 PSM-covered facilities, including five petroleum refineries, in the state. The CSB made recommendations to Tesoro and the United Steelworkers, which represents workers at the plant, as well as to the State of Washington, the American Petroleum Institute, and US EPA.

### Deepwater Horizon disaster

In June 2014, the CSB released Volumes I and II of its investigation of the 2010 Deepwater Horizon disaster. The first volume describes the series of events leading up to the explosion and fire that killed 11 workers, seriously injured 17, and created an environmental



CSB animation of fire in a heat exchanger at the Tesoro Anacortes refinery.

disaster along the US Gulf Coast. The second volume describes in detail the failure of the deep-sea "blowout preventer" that was supposed to avert an uncontrolled release of oil from the drilling operation. Volume II makes recommendations to the US Department of Interior's Bureau of Safety and Environmental Enforcement and to the American Petroleum Institute. The CSB plans to release two additional volumes of its investigation report in late 2014 or 2015.

### AL Solutions combustible dust explosion

In July 2014, the CSB released its case study on the 2010 combustible dust explosion at AL Solutions, a metal recycling facility located in New Cumberland, West Virginia. Two brothers, Jeffrey Scott Fish, 39, and James Eugene Fish, 38, were fatally injured in the blast, and another worker, Steve Swain, 27, died several days later from severe burns. The incident involved highly flammable titanium powder. CSB investigators noted that AL Solutions had been the site of several fatal explosions and fires prior to the 2010 incident, and that seven

other fires had required response from the local fire department. The CSB repeated its previous calls, dating back to 2006, for OSHA to promulgate a combustible dust regulation based on the National Fire Protection Association's standards 654 and 484.

## NIOSH

### Policy on carcinogens

NIOSH's policy for classifying compounds as carcinogen dates back to 1978. In November 2013, NIOSH issued a revised carcinogens policy entitled "Update of NIOSH Carcinogen Classification and Target Risk Level Policy for Chemical Hazards in the Workplace," and sought public comment on it. The draft policy proposes to use chemical hazard assessments and carcinogen classification systems adopted by the National Toxicology Program, the US EPA, and the International Agency for Research on Cancer. NIOSH also proposes to set recommended exposure limits for carcinogens based on a 1 in 1,000 lifetime risk of cancers for exposed workers. Worker safety advocates strongly oppose that provision of NIOSH's proposal. The BlueGreen Alliance, the United Auto Workers, the United Steelworkers, and others point out that the 1 in 1,000 threshold stems from language in the Supreme Court's 1980 "Benzene decision" (*Industrial Union Department v. American Petroleum Institute*). It is language that OSHA must consider when setting occupational exposure limits, but, they argued, it should not be of any concern to NIOSH when it develops a health-based recommendation. A final version of the policy may be issued by December 2014.

### Worker exposure to nanomaterials

Sunscreen, clothing, and sporting goods are on the growing list of consumer products that contain nanomaterials, such as nano titanium dioxide and carbon nanotubes. Researchers have observed health effects of exposure to nanoparticles in laboratory animals, including a cytological reaction similar to the response

seen from asbestos exposure. In November 2013, NIOSH issued "Current strategies for engineering controls in nanomaterial production and downstream handling processes." The document provides an overview of the composition and use of engineered nanoparticles, describes the primary methods used to produce them, and presents a summary of the literature on the effectiveness of measures to control workers' exposures.

### Mortality study of former IBM workers

A Methodist church in Endicott, New York was the scene of a January 2014 public meeting organized by NIOSH. Agency researchers shared the findings of a mortality study involving nearly 35,000 former IBM employees who worked at the firm's Endicott plant. IBM workers were exposed to trichloroethylene and perchlorethylene, among other chemicals. The study found a statistically significant increased risk of dying from non-Hodgkins lymphoma and rectal cancer among the 17 percent of former workers who were deceased by 2010. The authors also reported excesses in amyotrophic lateral sclerosis and testicular, kidney, and brain cancers. The NIOSH study was conducted at the urging of local leaders, as well as members of the New York congressional delega-



Matt Richmond, WSKG

Wanda Hudak, RN, county commissioner who pushed for the NIOSH study on the health of former IBM workers.

tion. The agency's findings were consistent with those previously reported by Dr. Richard Clapp of the Boston University School of Public Health. NIOSH has yet to release its findings on the incidence of birth defects among the children of former IBM plant workers.

## Deaths related to fracking fluids

Workers involved in hydraulic fracturing are not only exposed to fire, explosion, and mechanical hazards, but to chemical hazards stemming from fluids used in the fracking process. NIOSH researchers examined worker fatality records from many sources to identify deaths likely associated with "flow back" fluids. In a May 2014 blog post, the researchers reported that at least four fracking workers in North Dakota and Montana had died from what appears to be acute exposure to volatile hydrocarbons present in the fluids. NIOSH offered preliminary recommendations to reduce workers' exposure, such as developing an alternative procedure so workers do not have to manually open tank hatches to determine how much fluid they contain. NIOSH called on oil and gas operators to participate in agency research projects designed to evaluate ways to control this and other fracking-related hazards.

## Protecting farm workers from pesticide exposure

Thousands of farm workers in the US suffer acute pesticide poisoning each year. The US Environmental Protection Agency's (EPA) Worker Protection Standard (WPS), adopted in 1992, is the key federal safety regulation designed to prevent farm workers from suffering health consequences associated with pesticide exposure. In February 2014, EPA published a proposed regulation to update the WPS. The proposed changes include annual mandatory training for workers and pesticide handlers, instead of trainings every five years; requiring pesticide handlers to be at least 16 years old; expanding the requirements for the no-entry buffer zone when pesticides are being applied; and incorporating OSHA's respiratory protec-

tion standard into the WPS. The comment period for the EPA proposal ended in August 2014.

## Chemical Safety: Postscript to West Fertilizer

The April 2013 explosion at the West Fertilizer plant in West, Texas killed 15 people. Twelve of the victims were volunteers who responded to a fire that preceded the massive explosion of ammonium nitrate (AN). Federal OSHA issued citations to the firm in October 2013 for 20 serious violations and proposed a \$118,300 penalty. Through a formal settlement agreement, nine of the violations were reclassified to other-than-serious, and the firm agreed to pay an \$85,000 penalty. An investigation by the US Chemical Safety Board continues.

The disaster exposed major gaps in the patchwork of federal and state laws and regulations covering operations like the West Fertilizer facility. In August 2013, President Obama issued Executive Order (EO) 13650, "Improving Chemical Facility Safety and Security." The EO directed six agencies, organized as a working group, to identify ways to improve coordination and information sharing on chemical security, and to reduce the safety risks in the production and storage of hazardous chemicals.

In February 2014, OSHA announced a collaboration with the Agricultural Retailers Association and the Fertilizer Institute to share information on ways to store and handle ammonium nitrate safely. The two trade associations agreed to distribute a letter written by OSHA chief David Michaels to as many as 7,000 agricultural retailers, distributors, and producers. The letter referred to OSHA's existing regulation for ammonium nitrate, as well as best practices developed by industry groups and international bodies.

In May 2014, the federal inter-agency working group issued a progress report that described stakeholder feedback, actions taken to date, and an outline of activities to be completed by October 2016. Tasks identified for OSHA include revising the current interpretation of "retail facilities" as defined in the process

## Worker Safety Concerns Influence Final USDA Poultry Rule

Poultry workers and their allies forced the Obama Administration to recognize the grave consequences to worker health and safety posed by a USDA proposal to privatize the inspection process in poultry slaughter facilities. In addition to eliminating hundreds of federal poultry inspector jobs, the USDA regulation was going to allow line speeds to increase from 140 birds per minute (bpm) to 175 bpm. An April 2014 NIOSH evaluation found evidence of carpal tunnel syndrome in 42 percent of workers at a South Carolina poultry processing plant. The average line speed in that facility was 90 bpm.

USDA proposed its de-regulatory move in January 2012 and planned to fast-track implementation. Worker advocates joined with food safety groups in a two-year campaign to block the USDA from issuing the rule. They organized events to put pressure on the Obama Administration and insist it consider the rule's consequences on poultry workers' health and on consumer safety.

USDA's Food Safety Inspection Service (FSIS) released the final rule on July 31, 2014. It adopted the privatization scheme, but the proposed line speed increase was dropped from the final rule. "I am proud to say that the collective efforts of tireless advocates helped prevent a bad situation from becoming worse," said Janet Murguía, President and CEO of National Council of La Raza. Keeping the status quo, poultry workers will continue to face unrelenting work speeds and suffer the resulting disabling injuries.

The Obama Administration made some other modest concessions in the rule to address worker safety. The estimated 200 poultry processors who adopt the new inspection system will be required (1) to display a new OSHA/FSIS poster with information on symptoms of occupational injuries and illnesses, and a worker's rights to report them without fear of retaliation; and (2) to "attest" to USDA that they have a program to "monitor and document any work-related conditions" of their employees. The attestations will be provided annually to OSHA. FSIS meat, poultry, and egg inspectors will also receive training on how to recognize serious workplace hazards and to make referrals to OSHA about them. A 1994 memorandum of understanding between OSHA and FSIS already calls for this collaboration.

Over the last year, poultry workers and their allies engaged in a variety of activities to push back against the USDA's proposed rule, including:

- A delegation of poultry workers from Arkansas, Mississippi, and North Carolina traveled to Washington, DC in February 2014 to meet with the White House's Domestic Policy Council. They urged the Obama Administration officials to withdraw the USDA rule. The group also met with Assistant Secretary of Labor David Michaels and senior OSHA staff. One worker explained that she was fired from her job after missing work to see her doctor for the severe pain related to her repetitive motion injuries. A highlight of the workers' DC trip was participating in a press conference with US Representative Marcia Fudge (D-OH), the chair of the Congressional Black Caucus, and her colleagues Bennie Thompson (D-MS) and Sheila Jackson Lee (D-TX). Representative Fudge noted:

"Thousands of poultry workers living with painful injuries continue to go to work daily without protest. Until now, many of their stories have not been heard. If the USDA proceeds with this rule, it will only further silence their voices. We refuse to let that happen."

- In March 2014, the Inter-American Commission on Human Rights heard testimony about the harsh working conditions in US meat and poultry processing plants. Teresa Martinez described packing 40-50 hams per minute during her shifts at a Nebraska meatpacking plant. She no longer works at the plant but still suffers disabling



Lashunda Bobbitt, Salvadora Roman, Donaly Brown, Marvie Chapman, Bacilio Castro, Miguel Nix, Ana Nix, and Sherri Jones meet with OSHA chief Dr. David Michaels to discuss hazards facing poultry workers.

pain. Gwen Clements, a poultry worker from Kentucky, described being fired after being diagnosed with carpal tunnel syndrome and asking the company to slow down the line speed. Lee Pearl Duff spoke about her son Ronnie, who was fatally injured in 2012 after being pulled into an unguarded screw auger at a Mississippi chicken processing plant. Also appearing at the hearing were representatives from USDA and OSHA. The former testified that the agency does not have authority or expertise to address worker safety; the latter acknowledged the high injury rates among meat and poultry workers, but said OSHA has limited enforcement resources, and developing a regulation to address the problem will take many years.

The hearing was called to respond to a petition filed with the Inter-American Commission in June 2013 by the Midwest Coalition for Human Rights, Nebraska Appleseed, and the Southern Poverty Law Center. It asserted that the US government's failure to regulate line speed and other ergonomic hazards faced by these workers is a human rights violation. The Commission is part of the Organization of American States.

- Also in March, 68 Members of Congress sent a letter to Agriculture Secretary Tom Vilsack urging him to withdraw the proposed rule. The lawmakers argued that the changes would undermine food safety, and compromise the health of poultry workers who already suffer high rates of work-related injuries.

USDA submitted a revised version of its rule for review on July 10 to the White House's Office of Information and Regulatory Affairs (OIRA). Within days, Salvadora Roman, a poultry worker from Alabama, joined staff from the Southern Poverty Law Center and Oxfam America in a meeting with OIRA staff to reiterate the serious concerns with USDA's proposed rule. Their message was amplified that week by US Representatives Rosa DeLauro (D-CT) and George Miller (D-CA), who called on the USDA to solicit public comments on the revised rule. The lawmakers' request was ignored, and the final rule was released on July 31. The American Federation of Government Employees, which represents FSIS inspectors, and consumer groups are expected to challenge the new rule in federal court.

safety management (PSM) standard, convening a small business review panel to solicit views on modernizing the PSM standard, and reviewing regulatory options to address ammonium nitrate hazards.

The Government Accountability Office (GAO) issued a report in May 2014 entitled “Actions needed to improve federal oversight of facilities with ammonium nitrate.” The report was requested by Senators Barbara Boxer (D-CA) and Bob Casey (D-PA) and Congressmen George Miller (D-CA) and Joe Courtney (D-CT). They asked GAO to investigate how many facilities in the US have ammonium nitrate, assess how OSHA and EPA oversee and regulate ammonium nitrate, and describe how other countries regulate it. GAO’s report describes the limitations in existing OSHA and EPA regulations, and notes several opportunities for improvements, including better data sharing, as an outcome of EO 13650.

On the first anniversary of the West Fertilizer fire and explosion, the *Dallas Morning News* published “Uncounted Casualties,” an examination of the official count of injuries stemming from the disaster. County and state officials estimated about 260 individuals were injured in the incident. Reporter Sue Ambrose examined the shortcomings of the estimate, noting that it was based exclusively on victims treated in emergency rooms and urgent care clinics. By contacting healthcare providers in West, Texas and neighboring communities, Ambrose identified at least 40 individuals who were not part of the government’s count. These included people with injuries treated in the weeks or months following the blast, such as those suffering from hearing loss and post-traumatic stress disorder. Her reporting suggests that policy decisions stemming from major disasters may be insufficiently informed by our passive injury surveillance systems.

Sue Ambrose. “Uncounted casualties.” *Dallas Morning News*, April 12, 2014. <http://bit.ly/1oi8mvF>

## Regulatory Delays and Setbacks

### I2P2

Within just a few months of taking office in December 2009, OSHA chief David Michaels had his signature rulemaking initiative on the agency’s regulatory agenda: I2P2. The official announcement said: “OSHA is developing a rule requiring employers to implement an Injury and Illness Prevention Program (I2P2).” OSHA followed up with its plan by hosting five stakeholder meetings in the cities of Washington, DC; Dallas, TX; New Brunswick, NJ; and Sacramento, CA, at which 185 participants shared their views with the agency on an I2P2 rule. Worker safety advocates were especially encouraged when OSHA announced its plan to convene in June 2011 a required panel of small businesses to review a draft proposal.

But then things stalled. Advocates witnessed the agency’s silica proposal languish for more than two years at the White House’s Office of Information and Regulatory Affairs. Some wondered how the Administration’s reticence about proposing a silica rule affected the future of an I2P2 regulation. Proposing an I2P2 rule remained on OSHA’s list of regulatory priorities until the Department released its spring 2014 regulatory agenda in May. OSHA’s I2P2 rule was now relegated to a list of topics for “long-term action.”

### OIRA interference

The White House’s Office of Information and Regulatory Affairs (OIRA) continues to interfere with and delay new worker safety protections. Several regulatory initiatives developed by MSHA and OSHA languish at OIRA, well beyond the 90-day deadline for completing reviews. MSHA’s final rule to protect coal miners from black lung disease was submitted to OIRA in August 2013, and its review took eight months. A proposal to simplify MSHA’s process for calculating monetary penalties was stuck at OIRA for 32 months. It was finally issued in July 2014 (see p. 9).

As of August 2014, OIRA is holding two worker safety rulemaking packages well beyond 90 days: a final MSHA rule to require proximity detection devices on coal mining equipment (submitted to OIRA in January 2014); and OSHA's final rule to improve employer reporting requirements, including notification within 24 hours of a work-related amputation (submitted to OIRA in February 2014).

OIRA director Howard Shelanski testified at his July 2013 confirmation hearing that timely review of agencies' regulatory initiatives was one of his top priorities. He has yet to meet the 90-day deadline for a single worker safety proposed or final rule.

## Federal contractors and labor law violations

President Obama signed an Executive Order on July 31, 2014 putting federal contractors on notice that they are expected to comply with overtime rules, safety standards, and other labor laws. The Fair Pay and Safe Workplaces Executive Order will affect about 24,000 businesses that employ 28 million workers. Federal agencies will designate a "Labor Compliance Advisor" who will work with contracting officers to promote awareness of labor laws. Firms applying for contracts valued at \$500,000 or more will be required to disclose H&S and other labor law violations received in the previous three-year period, and to update the violation information every six months. The EO's purpose is to "help more contractors come into compliance with the workplace protections, not to deny contracts to contractors. Companies with labor law violations will be offered the opportunity to receive early guidance on whether those violations are problematic and remedy any problems."

## Worker Health and Safety in National News

### "Temp Land": A Dangerous Place to Work

ProPublica continued its "Temp Land" series, first launched in April 2013, with a series of hard-hitting stories about temporary workers killed on the job. In "Temporary Work, Lasting Harm" – a version of which aired on Univision – Michael Grabell, Olga Pierce, and Jeff Larson tell the story of 21-year-old Day Davis. On his first day working for a temp agency at a Bacardi bottling plant in Jacksonville, Florida, Davis was crushed to death by a palletizer, a machine for stacking goods on a pallet. Through interviews with temporary workers and analyses of OSHA investigations and workers' compensation claims, ProPublica reporters found that temp workers often receive little safety training. The consequences can be deadly.

"They're brought to the site, and they're basically pointed in the way of the dumpster," Michael Foley of the Washington State Department of Labor & Industries told ProPublica. "There's no oversight, there's no supervision and they face risks they're not experienced to deal with."

ProPublica's Michael Grabell partnered with the *Boston Globe's* Megan Woolhouse to tell the story of Daniel Collazo, who was killed by a hummus grinder at a Tribe Mediterranean Foods facility (see p. 33 for more). In July 2014, Grabell collaborated with Univision to report on the circumstances behind the death of Janio Salinas, who was buried alive in sugar at a warehouse run by SCS Sugar. Thirteen days before Salinas's co-workers found him suffocated beneath mounds of sugar, the company had removed a safety device that would have prevented his death. According to OSHA, the plant manager ordered it removed because it had slowed production.

Univision producers went undercover at New Jersey temp agencies. They found agencies giving English forms to Spanish-speaking workers,

## A Pulitzer-Winning Investigation of Black Lung Case Disputes

The Center for Public Integrity's Chris Hamby spent a year sorting through records and interviewing miners and their families to answer one question: If so many coal miners were experiencing symptoms of black lung disease, why were so few of them found to be eligible for federal black-lung benefits? His investigation paid off in the form of a Pulitzer Prize and the suspension of a medical program implicated in inappropriate interpretation of X-rays and other medical evidence. Black lung disease (or coal workers' pneumoconiosis) was seen less frequently after federal rules forced mine operators to better control coal dust, but cases are now appearing in relatively young miners. Coal companies must pay benefits to those found to have the most severe form of the disease, and company lawyers often contest miners' claims before an administrative law judge.



F. Brian Ferguson, Center for Public Integrity

Retired coal miner Steve Day, 67, is tethered to an oxygen tank 24 hours a day.

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By reviewing thousands of pages of files, the Center for Public Integrity's investigators found that Jackson Kelly PLLC, a prominent law firm used by many coal companies, had a record of withholding key evidence in black-lung cases. "Some of the firm's tactics go beyond aggressive advocacy, crossing into unethical behavior, according to current and former judges, lawyers and state disciplinary officials," Hamby reported.

The Center for Public Integrity also created a database of doctors' opinions on black lung cases. It revealed a pattern: X-ray readings by radiologists from a particular Johns Hopkins Medicine unit were far less likely to find advanced forms of black lung disease, compared to readings from other doctors. Hundreds of miners have lost their cases after at least one other doctor found black lung on X-rays but a Hopkins doctor did not.

The Center for Public Integrity produced the "Breathless and Burdened" series in partnership with ABC News. Days after the series was published and aired, Johns Hopkins Medicine announced it had suspended its black lung program pending a review. Shortly thereafter, a group of US Senators began crafting a bill to reform the black lung benefits program, which is administered by the Department of Labor.

In April 2014, the Pulitzer Prize Board awarded Hamby their top prize for Investigative Reporting. In May 2014, the US Department of Labor announced that it will issue a new rule to address the problem of coal-company lawyers withholding medical evidence from miners involved in black lung cases.

Chris Hamby and colleagues. "Breathless and Burdened" series. The Center for Public Integrity, October 29 – November 1, 2013.

<http://www.publicintegrity.org/environment/breathless-and-burdened>

sending workers onto new jobs without safety training, and, in one case, asking one of the undercover producers to sign a safety quiz that someone else had already filled out.

In addition to telling the stories of these temp workers and others killed on the job, the "Temp Land" series highlights existing and proposed solutions, including stronger temp industry regulations based on what other countries have in place. OSHA has launched an initiative to educate employers about their responsibilities for temp workers, and instructed inspectors to record information about temp workers during investigations. Massachusetts has adopted a Temporary Workers Right-to-Know Law to give workers basic information about the jobs to which they are assigned. Proposed California legislation would hold employers responsible for violations their subcontractors and temp labor suppliers commit.

Even relatively modest proposals from OSHA can face strong opposition and take years to be finalized. And in the meantime, workers can find it hard to stand up for their safety. As one worker injured on the job told ProPublica, "I knew if I complained again, the temp agency wouldn't send me to work anymore."

**Michael Grabell and colleagues. "Temp Land" Series. ProPublica, ongoing.**  
<http://www.propublica.org/series/temp-land>

## Paper Company's Secret Research Program to Counter Cancer Claims

Facing mounting claims related to asbestos exposure from a "joint compound" building material it made in the 1970s, Georgia-Pacific Corp. launched a secret research program with the hopes of showing its product wasn't cancer-causing. A Center for Public Integrity investigation found that the company paid 18 scientists a total of \$6 million, and the scientists published 13 articles in scientific journals. "Georgia-Pacific funded junk science in an attempt to contest the known facts about asbestos and negate its culpability in this man-made disaster," Linda Reinstein of the Asbestos

Disease Awareness Organization told reporter Jim Morris.

The strategy resembles that of the tobacco industry, which attempted to cast doubt on evidence linking smoking and cancer. A recent New York appeals court ruling requires Georgia-Pacific to turn over to judges the study-related documents. The company is deciding whether to appeal.

**Jim Morris. "Facing asbestos lawsuits, paper giant launched research program." Salon.com, October 21, 2013.**  
<http://bit.ly/1oFBqh0>

## Shortage of Judges Leaves Sick and Injured Workers Waiting for Compensation

The Longshore and Harbor Workers' Compensation Act gives shipyard employees and onshore maritime workers the right to medical and disability compensation for work-related injuries and illness. When an employer or insurer contests a worker's compensation claim, a Department of Labor administrative law judge hears the case. But with a dwindling number of these judges handling a rising number of cases, it can be years before workers receive the payments they need to cover their expenses. Claimants who cannot wait that long often end up settling with their employ-



Hannah Peterson, Center for Public Integrity

**Former shipyard worker James Sawyer, 53, needed a double lung transplant to treat hard-metal disease.**

ers for far less than they would have received if they had been able to wait for a judge's decision.

**Jim Morris.** "Rising caseload, fewer Labor Department judges triggers painful mix for suffering laborers." Center for Public Integrity, December 19, 2013.  
<http://bit.ly/1ktGzHL>

## Manufacturers Shift Work to Temps

Manufacturers whose employees receive good salaries and benefits are increasingly shifting work to temporary workers who get paid far less. Temps hoping to be converted to permanent status can work for years at the same plant with low pay and meager, if any, benefits.

The United Auto Workers (UAW) commissioned a report from Good Jobs First. The report calculates that Nissan received almost \$1.3 billion in state and local subsidies in exchange for constructing a plant in Canton, Mississippi. The report states that around 20 percent of the Canton plant workers are temps, some of whom earn just \$12 an hour. Advocates suggest passing new state and federal laws to require that jobs in taxpayer-subsidized facilities come with good wages and benefits. Meanwhile, Nissan workers have reached out to the UAW, and a union organizing drive is underway.

**Sarah Jaffee.** "Forever Temp?" *In These Times*, January 6, 2014.  
[http://inthesetimes.com/article/15972/perma-temps\\_in\\_manufacturing](http://inthesetimes.com/article/15972/perma-temps_in_manufacturing)

## After the Wars: Veterans Face Ongoing Struggle

Approximately 2.6 million veterans served in the conflicts in Iraq and Afghanistan; they represent only a small portion of the US population. "The burdens of war have been heavy for the past 12 years, but they have not been carried widely." So writes Phillip Carter, an Iraq veteran and former Army officer now at the Center for a New American Security in a

*Washington Post* opinion piece. A poll by the *Washington Post* and Kaiser Family Foundation found that more than half of these service members say their physical or mental health is worse than it was before deployment. A Veterans Administration backlog of disability claims leaves many waiting for compensation.

According to a Department of Veterans Affairs' study, nearly one-fourth of the women who served in Iraq or Afghanistan reported a sexual assault. For many, the assault toll is compounded by difficult decisions about whether and how to report these assaults. In order for an investigation to be launched – a first step to punishing the perpetrator – the service member must file a report in which she (or he) discloses her name. That can have implications for the victims' military careers, thus many choose to maintain anonymity and forego an investigation. "The problem of sexual assault in the military is well known," writes the *Washington Post's* Stephanie McCrummen. "What is less well understood is the extent to which the Pentagon has officially embraced secrecy and anonymity as a means of dealing with the problem."

**Mark Berman, Rajiv Chandrasekaran, Scott Clement, Peyton Craighill, Michèle A. Flournoy, Stephanie McCrummen, and Eli Saslow.** "After the Wars" Series. *Washington Post*. March 30 – April 21, 2014.  
<http://www.washingtonpost.com/pb/after-the-wars>

## Texas Air Quality vs. an Oil and Gas Boom

The oil-and-gas business is booming in Texas, where companies have sunk more than 7,000 wells since 2008. Advocates for local residents and workers have raised concerns about inadequate safeguards for those who may be exposed to the hazardous chemicals used in hydraulic fracturing (a technique to release oil and gas from shale). An eight-month investigation by the Center for Public Integrity, *InsideClimate News*, and the Weather Channel examined what Texas regulatory agencies are

doing to safeguard workers and public health. They found “a system that does more to protect the industry than the public.”

Many residents of the Eagle Ford Shale area report health problems – from nosebleeds to respiratory problems – that have started or worsened since drilling began. Some also say odors are so bad they don’t want to go outside. Addressing these problems will likely be hard in Texas, though. This investigation found a flawed air monitoring system, an inadequate state inventory of oil-and-gas facilities, low fines for law-breakers, and state-agency budget cuts that hamper enforcement. And in 2011, the Texas legislature passed a bill that effectively prevents application of environmental regulations aimed at reducing harmful air emissions in the Eagle Ford Shale region.

David Hasenmeyer, Jim Morris, Lisa Song, Alan Suderman, Ben Wieder. “Fracking the Eagle Ford Shale: Big Oil and Bad Air on the Texas Prairie.” Center for Public Integrity, *InsideClimate News*, and the Weather Channel, February 18, 2014.

<http://stories.weather.com/fracking>

## Teen Workers and Sexual Harassment

Twin sisters Dennise and Cherise Mofidi were high school students when they were hired to work at Papa Murphy’s restaurant in Portland, Oregon. They learned how to make pizza and operate the cash register. What the 16-year-olds didn’t expect was dealing with sexual harassment. *The Oregonian’s* Laura Gunderson introduces us to the Mofidi twins in a series of articles about young workers and sexual harassment.

One in three teen workers report being sexually harassed at work, and the numbers are likely much higher than what is reported. Victims wrestle with the questions – such as “Who should I tell?” “Will I be believed?” “Is this normal work behavior?” – and the situation is more confusing and challenging when faced by a young person. Michael Dale, execu-



Laura Gunderson, *The Oregonian*

Cherise and Dennise Mofidi stand outside the Portland, Oregon restaurant where they were sexually harassed.

tive director of the Northwest Workers’ Justice Project, told Gunderson, “young workers want to be liked and given opportunities. It’s really confusing when that gets tangled up with taking sexual advantage.” The reporter’s efforts to quantify the problem revealed a major data gap: the Equal Employment Opportunity Commission (EEOC) and other agencies responsible for investigating complaints do not keep track of the complainant’s age or year of birth.

Young workers who are victims of the abuse can suffer long-term consequences, such as losing interest in school or career aspirations, and suffering post-traumatic stress. Yanet Alvarez was a 17-year-old restaurant worker when she was sexually harassed. “I don’t feel safe. I don’t want to work again,” she told Gunderson. The reporter notes a growing trend of complaints filed by males, including among teens.

Victims of sexual harassment who file complaints with the responsible state agency can get frustrated by the process. In Oregon, laws have “privatized” the handling of sexual harassment cases. After making their initial complaint to the state, some victims may pursue private lawsuits against their employers. Gunderson examines some pitfalls of this trend, including a halt to the government’s oversight of the case, and confidential settlement agreements. These “sealed” settlement agreements prevent current and potential em-

ployees from knowing what kinds of accusations workers have made against employers.

Unlike others, sisters Dennise and Cherise Mofidi were not interested in keeping their experiences a secret. The sisters organized protests near Papa Murphy's. "Very few people, especially young people, know the law – we didn't," they told Gunderson. "We have to tell them that harassment isn't allowed." The young women settled their case with their employer, but they refused to sign a confidentiality agreement. Gunderson notes "they wanted others to know about their experience."

**Laura Gunderson.** *Series on teen sexual harassment. The Oregonian, April 3 - 23, 2014.*  
<http://tinyurl.com/mfjw5mv>.

## Young Farm Workers: Deaths and Injuries

*The Nation's* Mariya Strauss set out to tally the cost – in deaths – of the Obama Administration's April 2012 decision to withdraw a regulation to safeguard workers under age 16 from some of the most hazardous farming tasks. Strauss used publicly available government data, searched for news stories and death notices, and made FOIA requests to federal and state agencies. The scavenger hunt for cases was a story in itself. States with some of the largest number of young agricultural workers provided no data. Despite the hurdles and significant data gaps, Strauss identified 39 cases of serious injury or death that involved young agriculture workers and occurred following the Administration's decision. At least 12 of the incidents involved hazardous activities that would have been prohibited had the Obama Administration moved forward with the proposed regulation. The reporter notes, however, that even families that have suffered a work-related fatality are not necessarily interested in new regulations. The mother of a young farm worker who was killed on the job told Strauss, "I will not be contributing to that [regulatory] nonsense."

**Mariya Strauss.** "Regulations are killed, and kids die." *The Nation*, November 2013.  
<http://tinyurl.com/qbh4jjz>

## Children Working on US Tobacco Farms

Neftali Cuello was 12 years old the summer she started working with her mother and two sisters in North Carolina's tobacco fields. The family tried to stick together in the fields, but it wasn't easy when they were dizzy and fending off waves of nausea from nicotine poisoning. *The Nation's* Gabriel Thompson introduces us to the Cuello family and other young workers who harvest tobacco in Kentucky and North Carolina. He reports on the science of "green tobacco sickness," and the home remedies tobacco workers use to treat the symptoms. Thompson recounts the fierce lobbying effort by the American Farm Bureau to defeat a Labor Department proposal that would have prohibited children under age 16 from working on tobacco farms. A representative of the North Carolina Farm Bureau dismissed the problem of nicotine poisoning, telling Thompson, "Take a 10 year old boy and give him two cigars and it's the same thing." The story examines the effectiveness of the industry's rhetoric about the government's attack on "family farms."

**Gabriel Thompson.** "Why are children working in American tobacco fields?" *The Nation*, November 2013.  
<http://tinyurl.com/opnu2o4>

The plight of children who work on US tobacco farms was also the subject of a 140-page report released in May 2014 by Human Rights Watch (HRW). "Tobacco's Hidden Children: Hazardous Child Labor in US Tobacco Farming" presents the findings from interviews with 141 children ages 7-17 who worked in tobacco picking or curing. The children were employed as seasonal workers in Kentucky, North Carolina, Tennessee, and Virginia during 2012 and 2013. Nearly three-quarters of them reported experiencing symptoms consistent with green



tobacco sickness, such as nausea, vomiting, headaches, dizziness, skin rashes, and difficulty breathing. The HRW investigation also identifies other health and safety hazards faced by the young workers, from exposure to pesticides, extreme heat, and repetitive motions, to lack of personal protective equipment, water, sanitation, and shade. HRW concludes that the US is in violation of international laws that prohibits children under age 18 from engaging in harmful or hazardous work.

**Human Rights Watch. "Tobacco's Hidden Children: Hazardous Child Labor in US Tobacco Farming," May 2014.**  
<http://tinyurl.com/phho8l2>

HRW's "Tobacco's Hidden Children" was the subject of editorials in both *The New York Times* and *The Washington Post*. Both papers restated the regulatory gaps that cause the failure to protect children who work on US farms, and criticized the Obama Administration's 2012 decision to withdraw its proposal to protect young farm workers from H&S hazards. In "Nicoteens," Samantha Bee of Comedy Central's *The Daily Show* profiled the HRW's report. Three young workers described their experience working in tobacco, including 12-hour days, little water, and few rest breaks. Kentucky State Senator and tobacco farmer Paul Hornback remarked, "All kids complain about work. We're raising a society that is too soft."

## The Push for Paid Leave



White House photo by Pete Souza

At the White House Summit on Working Families in June 2014, President Obama said, “Many women can’t even get a paid day off to give birth. Now, that’s a pretty low bar. You would think [that’s something] that we should be able to take care of.” The US is the only industrialized nation that doesn’t give mothers any paid maternity leave, and in many countries paid parental leave is available to parents regardless of gender and whether a new child arrives by birth or adoption.

President Obama discusses paid leave policies, June 2014.

At its annual meeting in November 2013, the American Public Health Association passed a policy statement describing the negative impacts of inadequate paid leave—sick, medical, or family—and calling for expanded access to paid leave for US workers. Workers without paid sick days often come to work while ill, or send their sick children to school, because they can’t afford to miss a day’s pay, and that contributes to the spread of flu and other transmissible diseases. Employees with new children or seriously ill family members often face a difficult choice between caring for loved ones and earning a paycheck.

Several cities and the state of Connecticut have passed laws requiring some (or in San Francisco’s case, all) employers to allow their workers to earn paid sick days, for instance, accruing one hour of paid sick leave for each 30 hours worked. The states of California, New Jersey, and Rhode Island have also established social-insurance systems for paid family leave. Workers in those states pay an additional small payroll tax, and are then entitled to receive a portion of their salaries while on leave to care for a family member with a serious health condition or bond with a new child.

In December 2013, Senator Kirsten Gillibrand (D-NY) and Representative Rosa DeLauro (D-CT) introduced the Family and Medical Leave Insurance Act, or FAMILY Act, which would create such a social-insurance system for workers nationwide. The Social Security Administration would administer the system, which would be funded by a payroll tax of two-tenths of one percent of workers’ wages. Eligible employees could receive up to 66 percent of their monthly wages for up to 12 weeks while addressing their own serious health conditions, caring for a family member (including a domestic partner) with a serious health condition, or bonding with a new birth or adopted child.

“No one should have to choose between their job and taking care of themselves and their family,” said Representative DeLauro when introducing the bill. “With the FAMILY Act, they would not have to.”

# Addressing Occupational Health and Safety at the State and Local Levels

With the US Congress gridlocked and federal OSHA hobbled by rulemaking barriers and resource constraints, many of the most promising improvements in workplace health and safety are occurring in states and cities. Over the past year, the New Jersey cities of Jersey City and Newark joined the list of jurisdictions requiring employers to let workers earn paid sick days, while New York City and Washington, DC strengthened their existing paid-leave laws. Several states and cities passed minimum-wage increases, and by 2018 six states and four additional cities and counties will have minimum wages at or above \$10 per hour. California and Massachusetts passed new laws to protect domestic workers, while Texas and Maryland took steps to improve healthcare workers' safety. At the same time, workers' prospects worsened in some states, such as Oklahoma, which stripped away workers' compensation protections. Workers and advocates have been battling such worker-unfriendly proposals while fighting for laws and policies that improve workers' wages and working conditions.

## Expanding Access to Paid Sick Leave in New Jersey

Over the past year, New Jersey's two largest cities – Jersey City and Newark – joined the list of jurisdictions requiring some or all employers to allow workers to earn paid sick leave. Those already on the list were the state of Connecticut and the cities of San Francisco, CA; Washington, DC; Seattle, WA; Portland, OR; and New York City.

The Jersey City Earned Sick Time Ordinance requires businesses with 10 or more employees to offer workers up to 40 hours of paid sick leave per year; companies with fewer employees must allow workers to take up to 40 hours of unpaid sick leave. In Newark, private-sector employers with 10 or more employees must also allow up to 40 hours of paid leave per year, while those with fewer employees must allow workers to take 24 hours of paid leave. In both cities, the leave accrues at a rate of one hour for each 30 hours worked, regardless of whether a worker is full- or part-time.

"Low-income workers on the edge shouldn't be forced to lose a day's pay or risk their job

just because they fall sick," New Jersey Working Families Alliance Executive Director Analilia Mejia told NJBIZ when Newark's law went into effect. "In Newark, fairness and common sense have won the day. This city has set an example for the state and the country to follow."

Advocates and lawmakers wasted no time in launching a statewide push for earned sick days. NJ State Senator Loretta Weinberg and Assemblywoman Pamela Lampitt have sponsored bills that would require small employers (those with fewer than 10 workers) to let workers earn up to 40 hours of paid sick time per year, and large employers to offer 72 hours per year.

A *New Jersey Star Ledger* editorial in support of the legislation noted that when Connecticut debated paid sick time in 2011, businesses warned that the costs would lead to job losses. "Two years later, that opposition has withered as business owners reported higher productivity and morale, and virtually no effect on their bottom line," the editorial board noted. "Lawmakers shouldn't hesitate to make New Jersey the second state to mandate paid sick time."

## Strengthening Existing Paid-Sick-Leave Laws in DC and NYC

Back in 2008, Washington, DC became the second city in the country (after San Francisco) to pass a law requiring employers to offer paid sick days. The law had a problematic loop-hole, though: It exempted tipped restaurant workers. In addition, it required that workers eligible to earn sick time be employed for an entire year before they could take the paid sick days they had earned.

The Paid Sick Days for All Coalition rallied DC restaurant workers, public-health experts, and other advocates to push for improvements to the city's paid-leave law. The group teamed up with the Respect DC coalition to push for a higher minimum wage at the same time (see next item), and both groups succeeded. Under DC's Earned Sick and Safe Leave Amendment Act, tipped restaurant workers can now earn paid sick days, and all workers can begin accessing accrued leave after 90 days on the job. "The passage of these two laws is a major step forward for the thousands of hard-working people in the District who live from paycheck to paycheck and can lose their job just because they stay home when they are sick," said Ari Weisbard, Deputy Director of the Employment Justice Center.

In New York City, a paid-sick-days law passed in early 2013 after three years of stalling and a political compromise that left many workers without access to paid leave. The law, which passed after the City Council overrode Mayor Michael Bloomberg's veto, would eventually have covered businesses with at least 15 employees – a far higher limit than in other cities with similar laws – and exempted the manufacturing sector.

In 2014, when Mayor Bill de Blasio took office, the first bill he signed into law lowered the size of businesses subject to the paid-sick-days requirement from those with 15 or more employees to those with five or more workers, and eliminated the exemption for manufacturing businesses. He also eliminated a delayed phase-in for medium-sized businesses. As a re-

sult, an estimated 500,000 workers gained the right to earn paid sick time. "This law is the first of many steps we are taking to fundamentally address inequality in this city, and make this a city where everyone rises together," de Blasio said.

## Higher Pay for Minimum-Wage Workers

Congressional gridlock is stalling efforts to increase the federal minimum wage, while fast-food workers and others continue to demand higher pay and draw attention to how inadequate current minimum wages are. Over the past year, several states and localities have responded by raising their minimum wages. (This section does not include jurisdictions that saw wage increases take effect this year after having passed them in previous years.)

In September 2013, California became the first state in the nation to raise its minimum wage to \$10 per hour, starting in 2016. By 2018, several states will have minimum hourly wages above \$10: Connecticut (\$10.10 in 2017), Hawaii (\$10.10 in 2018), Maryland (\$10.10 in 2018), Massachusetts (\$11 in 2017), and Vermont (\$10.50 in 2018). These increases are phased in over a few years, so minimum-wage workers will get more modest raises soon.

Minimum-wage workers will also see their hourly pay increase in Delaware (\$8.25 in 2015), Michigan (\$9.25 in 2018), Minnesota (\$9.50 in 2016, but with some exceptions), New Jersey (\$8.25 in 2015), and West Virginia (\$8.75 in 2016). The laws in Michigan, Minnesota, and New Jersey take the important step of indexing their wages to inflation (or including annual cost-of-living adjustments) after the increases have been fully phased in. This allows workers to see their paychecks increase along with inflation without having to fight legislative battles. Minnesota's law sets a lower minimum wage for small employers, and Maryland's exempts restaurants making less than \$400,000 per year.

Cities and counties also passed bills raising their wages above those of states. Seattle



made national headlines when it raised its minimum wage to \$15 per hour. There, larger businesses must meet that level within three years (or four if they provide health insurance), and those with fewer than 500 workers over the next seven years. The District of Columbia and its two neighboring Maryland counties, Montgomery and Prince George's, passed coordinated phased increases that will lift the local hourly minimum wage to \$11.50 by 2017. DC's law achieves the increase by 2016 and then indexes increases to inflation.

Some of the states that legislated minimum-wage increases also addressed the wages of tipped workers, whose federal minimum wage is just \$2.13 per hour. (Tips are supposed to bring workers' wages up to the minimum, and employers are required to make up the difference when the tips fall short; many tipped workers report that this does not happen.) With its recent minimum-wage bill, Hawaii joined the list of states that require that tipped workers be paid the same minimum wage as other workers.

Currently, Alaska, California, Oregon, and Washington require all employers to pay tipped workers the same hourly wage as non-tipped workers, while Minnesota, Montana, and Nevada require some employers to do so. Other states have set minimum wages for tipped workers that are above the federal level but below the wages of non-tipped workers.

Campaigns to raise minimum wages are active in other cities and states. As long as the federal minimum wage stagnates, state and local campaigns will likely be the best way for minimum-wage workers to get closer to earning livable paychecks.

## New Protections for Domestic Workers in California and Massachusetts

Over the past year, both California and Massachusetts passed laws strengthening the rights of domestic workers. They join New York and Hawaii in legislating protections for nannies, housekeepers, and other in-home workers, in response to reports of household employees who have experienced wage theft, round-the-clock shifts, abuse, and harassment from employers.

Back in 2012, California Governor Jerry Brown vetoed a Domestic Workers Bill of Rights that mandated rest and meal breaks for domestic workers, as well as requiring overtime pay. In late 2013, the California legislature passed, and Governor Brown signed, a Domestic Workers Bill of Rights that requires in-home workers to receive overtime pay after nine hours of work in a single day or 45 hours of work in one week. It does not contain the rest and meal breaks from the original version, and it will sunset after three years unless lawmakers act to make it permanent.

The Massachusetts' Domestic Workers Bill of Rights, signed by Governor Deval Patrick in July 2014, goes even farther. Employers must give overtime pay to domestic workers logging more than 40 hours in a week, and also assure that these workers have at least 24 consecutive hours off. Employers who hire domestic workers for 16 or more hours in a week must provide the terms of employment in writing; these include the hours, rate of pay, the right to collect workers' compensation if injured, and the process for raising and addressing grievances.

The Massachusetts law, which will take effect in September 2015, also describes forms of sexual harassment that are illegal; prohibits employers from interfering with or monitoring workers' personal communications or taking their personal documents; and specifies the circumstances under which employers may charge for food or lodging. It also directs the Executive Office of Labor and Workforce Development to launch a multilingual outreach program to domestic workers and employers, and to report to the legislature within one year on developing a framework for domestic workers' collective bargaining rights; a state-supported mediation program; occupational safeguards and standards; and a healthcare and retirement fund for domestic workers.

At the federal level, the Department of Labor in September 2013 finalized a rule extending the Fair Labor Standards Act's minimum-wage and overtime protections to home health aides, personal care aides, and others who provide in-home care to elderly people and those with injuries, illnesses, and disabilities. The new rules take effect in January 2015.

## Protecting Healthcare Workers in Texas and Maryland

At a hearing before the Texas House Criminal Jurisprudence Committee last year, emergency-room nurse Norma Broadhurst told lawmakers about how an intoxicated, disruptive patient bit off one of her fingers, leaving her unable to work. She is not alone in having faced violence in an emergency department; an Emergency Nurses Association survey found that 86 percent of respondents reported being the victim of physical violence over the preceding three years. After hearing from emergency-department workers, the Texas legislature passed, and Governor Rick Perry signed, a bill making it a felony offense to assault emergency department personnel. The law took effect in September 2013.

In Maryland, the Health Care Facilities Workplace Violence Prevention Act was signed into law in March 2014. The law requires nursing



Lucian Coman

homes and hospitals to conduct an annual risk assessment, provide staff training, institute a post-incident response system for victims of assaults, and establish a violence prevention committee. The next step will be drafting the regulations to implement the law.

Several states have already passed laws designed to protect healthcare workers from violence; the American Nurses Association summarizes different state laws that cover nurses at <http://nursingworld.org/workplaceviolence>. Advocacy efforts continue in various states. The California Safe Care Standard campaign received more attention after two nurses at separate California medical centers were attacked on the same day. In that state, lawmakers have introduced legislation that would require the Occupational Safety and Health Standards Board to adopt by July 2016 standards requiring hospitals to have workplace violence prevention plans. The Standards Board voted unanimously in June 2014 to move forward on a violence prevention regulation for healthcare workers.

## Leveling the Playing Field for Working Minnesota Women

Minnesota's legislature gave bipartisan approval to the Women's Economic Security Act, which combines nine separate bills "designed

to break down barriers to economic progress facing women – and all Minnesotans.” Governor Mark Dayton signed it into law on Mother’s Day 2014.

Among the law’s provisions are an increase in the state minimum wage to \$9.50 by 2016; this will disproportionately benefit women, who make up the majority of the Minnesota workers currently earning less than that. Women are also disproportionately affected by inadequate sick and family leave. The law increases the amount of unpaid family leave workers can take from six weeks to twelve, and adds “safety leave” so workers can take time off to get care or assistance for sexual assault, domestic violence, or stalking. The law also includes provisions aimed at increasing the availability of affordable childcare.

The law works to reduce the “motherhood penalty” by requiring equal-employment treatment for pregnant women and parents under the Minnesota Human Rights Act; requiring businesses with more than 21 employees to provide reasonable accommodations or position transfers for pregnant workers who need them; and providing enforcement of

workplace protections for mothers to express breast milk during unpaid break times.

To address the gender pay gap, the Act specifies that employees can voluntarily discuss their compensation without fear of retaliation. It also requires businesses that seek state contracts of over \$500,000 and have more than 40 employees to certify that “average compensation for female employees is not consistently below average compensation for male employees within similar major (EEO) job categories.” For more information on these and other provisions of the Women’s Economic Security Act, visit <http://www.mnwesa.org/the-legislation/>.

## Houston Takes a Stand Against Wage Theft

In November 2013, the Houston City Council unanimously passed and Mayor Annise Parker signed an ordinance containing substantial penalties for any person or firm who is criminally convicted of wage theft and exhausts all appeals. Convicted wage thieves will be barred from renewing 46 types of city permits and licenses for five years. The ordinance also



Fe y Justicia Worker Center

Houston workers celebrate city’s new anti-wage theft ordinance.

prohibits the city from hiring those who are criminally convicted or who are assessed civil penalties for wage theft.

Passage came after a sustained campaign led by the Fe y Justicia Worker Center and other members of the Down With Wage Theft coalition, which brought supporters to hearings and publicized the annual loss of \$750 million that is owed but not paid to local workers.

Houston resident Adalinda Guajardo, 25, has personal experience with the devastating impact of wage theft. Her father, a truck driver, was never paid more than \$2,300 for transporting milk from Houston to other Texas destinations. He was the family's sole income earner, and the missing wages left them unable to pay for rent, utilities, her college tuition, or her mother's diabetes medication. "I finally feel like there'll be some justice," she said. "If you're a victim of wage theft, speak up, don't be afraid. Wage theft is a crime and it deserves to be punished."

A group of 13 workers filed the first complaint under the ordinance in April 2014. With the help of the Fe y Justicia worker center, they filed documents alleging that Bradley Demolition and Construction failed to pay them overtime they earned.

## Oklahoma Strips Away Workers' Compensation Protections

A law that radically alters Oklahoma's workers' compensation (WC) system by letting employers "opt out" of WC coverage survived a court challenge and took effect in February 2014. One provision allows employers to withdraw from the state's WC program and establish their own disability plans, which would be largely free of state supervision. It makes Oklahoma the second state – Texas is the other – that permits employers to operate without WC insurance. Worker advocates fear other states may follow suit.

"This opt-out provision is an extraordinary transfer of control over the fate of injured

workers from the state to individual employers, without sufficient oversight," write workers-compensation experts Emily A. Spieler and John F. Burton Jr. in a column in Oklahoma's *The Journal Record*. They note that the law came in response to high WC costs, and that the changes will succeed in lowering costs. "But these are not really 'savings'," they warn. "Instead, these costs of injuries will be transferred to injured workers and their families or to other programs like the Social Security Disability Insurance program."

Read more: Emily A. Spieler and John F. Burton Jr. "Workers' compensation act deeply flawed." *The Journal Record*, May 2, 2013. <http://bit.ly/THloJZ>

## Progress and Challenges at Cal/OSHA

The state of California and its Cal/OSHA agency are often at the forefront of improvements in worker health and safety. Even as the state took positive steps for workers this year, though, worker advocates raised concerns about insufficient state support for Cal/OSHA.

### Preventing heat-related illness

Among the positive developments in California this year was the implementation of a new law designed to compel employers to provide rest breaks to workers employed in high-heat conditions. The state already had a law on the books requiring a recovery period to help prevent heat-related illness. An employer who fails to provide rest breaks now will be required to pay each affected employee an additional hour of pay for each workday the rest period was not provided.

### Chemical right-to-know

Cal/OSHA's Standards Board deliberated this year on ways to respond to OSHA's 2012 update to the Hazard Communication standard (HCS), known as the Globally Harmonized System of Classification and Labeling of Chemi-



Yuttana Jeenamool

als (GHS). In March 2014, the Board voted to maintain key provisions of its existing right-to-know law rather than to simply adopt the new OSHA standard. Had the board done so, California workers would have seen a reduction in their right-to-know protections. Federal OSHA adopted a “weight of evidence” approach, which is consistent with the GHS system. The California rule will continue to require manufacturers that prepare chemical data sheets and labels to refer to the conclusions of expert bodies, such as the International Agency for Research on Cancer (IARC), and apply a “one-study threshold” for disclosing health hazards. The chemical industry asked the Board to go the way of federal OSHA, while unions and public health organizations urged the Board to retain the more protective provisions of the state’s existing hazard communication rule.

### Leadership and funding problems

Cal/OSHA director Ellen Widess resigned abruptly in September 2013. Her priorities were largely aligned with those of Assistant Secretary of Labor for Occupational Safety and Health David Michaels, and included steps such as enhancing oversight of worksites in the Voluntary Protection Program and using the

agency’s enforcement tools more effectively to address recalcitrant employers. The business community disliked Widess’s approach and asserted that her regulatory views were detrimental to California’s struggling economy. Widess’s troubles were compounded by Governor Jerry Brown’s disinvestment in Cal/OSHA. Garrett Brown, a 20-year veteran of the agency, who served as Widess’s special assistant, also resigned. He filed a formal complaint with federal OSHA about Cal/OSHA – known as a CASPA – describing the agency’s inability to function effectively because of its inadequate funding. Garrett Brown’s complaint noted that the agency had fewer inspectors than it did 25 years ago, although the California workforce had grown substantially.

### Other State Activities: State Plans, Responsible Contracting, and More

Other workplace health and safety activities occurring in states over the past year included the following:

#### Hawaii OSHA back on its feet

After ceding part of its enforcement authority to federal OSHA in September 2012, Hawaii resumed responsibility for inspections in most manufacturing industries. The partial takeover of the State Plan was designed to give Hawaii the opportunity to beef up its funding and train staff. Federal OSHA and the state agreed to a three-year improvement plan, which allowed Hawaii to maintain its responsibility for inspections in construction, transportation, warehousing, and public-sector workplaces. Federal OSHA will continue to conduct inspections in facilities governed by its process safety management standard.

#### Kansas: A new OSHA state plan?

The Governor of Kansas signed a law directing the state’s secretary of labor to study and make recommendations for Kansas to convert

to an OSHA State Plan State. The report is due to the Kansas legislature by January 12, 2015.

## Maryland steps forward on responsible contracting

Maryland Governor Martin O'Malley signed a bill in May 2014 that may set the groundwork for a future "responsible contractor" law. The bill requires the State's Department of Labor, Licensing, and Regulation to convene a work-group to study and make recommendations for OHS pre-qualification requirements for contractors hired for public works projects. In addition to industry representatives, the work-group must include representatives from the Center for Construction Research and Training and Public Citizen. Their findings are due to the Maryland General Assembly by the end of December 2014.

## Massachusetts: Two H&S victories

As part of the bill increasing the minimum wage (see p. 26), Massachusetts lawmakers advanced OHS in two important ways. First, the state is establishing an advisory board that will be adopting regulations to protect workers whose places of employment are "maintained by the commonwealth" from work-related injuries and illnesses. The goal is to provide public-sector employees a level of protection that is equivalent to what is provided to workers under federal OSHA. In addition, the advisory board will evaluate injury and illness data in order to develop recommendations, including specifying where additional resources are needed to protect state employees.

The second is a change to the state's workers' compensation law, specifically an increase in the burial benefit provided to the family of a worker who is fatally injured on the job. The allowance is being raised from a maximum of \$4,000, to eight times the state's average weekly wage. At the current weekly wage, the maximum burial benefit will be \$10,000.



Jeff Newton, MassCOSH

Marcy Goldstein-Gelb addresses the crowd gathered at the signing of the bill that increases the minimum wage in Massachusetts.

## Wyoming warns about fracking fluid

Wyoming OSHA notified companies involved in hydraulic fracturing about the risk of acute work-related death for workers exposed to fracking fluids. In a June 2014 letter, the agency urged the firms to collaborate with NIOSH on research to identify ways to control workers' exposures to the chemical hazards. WY-OSHA's action followed a NIOSH report of worker deaths from exposure to fracking fluid (see p. 13).

## Local Reporters Draw Attention to Workplace Health and Safety Problems

### Texas: A Deadly Oil and Gas Boom

"The boom that has brought prosperity to Texas has left a trail of death and devastation for many of the more than 100,000 workers in oil and gas exploration-related jobs," explains *Houston Chronicle* reporter Lise Olsen. Forty percent of the 663 workers killed in the drilling and fracking boom between 2007 and 2012 died in Texas.

In a year-long investigation, the *Houston Chronicle* analyzed 18,000 injury and illness claims, as well as OSHA data and public records, on oil-field incidents during that six-year period. They found that OSHA investigated fewer than 150 of those incidents, and found safety violations in 78 percent of the cases that it did investigate. And of the Texas oil and gas companies where workers were killed in recent years, not one is currently subject to OSHA's Severe Violator Enforcement Program, which is intended to focus attention on companies that willfully and repeatedly disregard their occupational safety and health obligations.

Painful and debilitating injuries are also alarmingly common among workers in this industry. The *Chronicle* found that in a single year, insurance carriers received claims from 92 workers who were burned, 82 who were crushed, and 79 who lost limbs. In Texas, employers are not required to carry workers' compensation insurance, so it is likely that insurance records don't capture all the painful and debilitating injuries among workers in that state's oil and gas operations.

Lise Olsen. "Drilling boom, deadly legacy." *Houston Chronicle*, February 22, 2014. <http://bit.ly/1luWLgx>. And "Texas companies with fatalities not on violator list." *Houston Chronicle*, March 1, 2014. <http://bit.ly/1mp2R6F> or <http://bit.ly/TG1OyN>

## Houston and Beyond: Deadly Fumes Threaten Tank-Cleaning Workers

At a rail yard near the Houston Ship Channel, David Godines's co-workers found him lying dead at the bottom of a rail tanker car. Godines had been cleaning the railcar when he was asphyxiated by hydrogen sulfide gas. The tanks used to transport chemicals by roads and rail can contain hazardous fumes even after they are drained, and the workers responsible for cleaning them do not always receive proper instructions or equipment.

*Houston Chronicle* research found 373 tank and barge cleaning sites nationwide. They

reviewed OSHA records and found only one-third of the sites had been inspected over the past decade. An OSHA compliance officer told the newspaper that it had no way of identifying the companies that perform tank washing. Using OSHA records and news reports, the *Chronicle* calculated that 51 workers had died at these sites over the past 15 years. That toll, notes reporter Ingrid Lobet, "does not count people who died from work-related diseases that become apparent only days, weeks, months, or years later."

Ingrid Lobet. "Largely invisible tank cleaning industry awash in risk." *Houston Chronicle*, May 10, 2014. <http://bit.ly/1q0QnMP>

## Massachusetts: Large Fine for Hummus Maker after Worker's Death

Twenty-eight-year-old Daniel Collazo was cleaning the Tribe hummus plant in Taunton, Massachusetts in 2011 when he became caught in a blending machine. The machine's blades kept turning, crushing his arm and then part of his head as his co-workers tried desperately to cut the power and untangle him from the machine. He died in an ambulance on the way to the hospital. After investigating, OSHA cited Tribe for 18 violations, and the company paid a \$540,000 fine, one of the largest in New England in the past decade.

A *Boston Globe/ProPublica* article points out that Tribe could have prevented Collazo's death by following the standard safety practice of "lock out/tag out," which requires training employees to cut power to machines before starting cleaning activities or repair work. In fact, OSHA had cited Tribe's owner for failing to have proper lock out/tag out procedures (among other violations) back in 2009, a year and a half before Collazo's death. The company paid a total of \$9,500 in fines for those citations.

When OSHA investigated Collazo's death, managers at the plant told investigators that

they did not have the time or money to update Tribe's lock out/tag out procedures. Marcy Goldstein-Gelb of the Massachusetts Coalition for Occupational Safety and Health told the *Globe* and ProPublica that some employers view OSHA fines as the cost of doing business, and perform a cost-benefit calculation comparing the costs of updates to the predicted penalties. It's "reckless and unconscionable," she said.

Megan Woolhouse and Michael Grabell. "Company 'willfully ignored' safety standards in worker's death." *Boston Globe* and ProPublica, May 22, 2014. <http://bit.ly/1ngFsBD> and <http://bit.ly/TxXUc5>

## Texas: Four Workers Die, and a Texas Businessman Heads to Prison

Over the space of four years, four workers died at two companies founded by Houston businessman Matthew L. Bowman, CES Environmental Services and Port Arthur Chemical and Environmental Services (PACES). Adan Juan Pardon, 41, was crushed by falling debris inside a tank; Joey Wayne Sutter, 36, and Charles Brent Sittig, 48, were poisoned by hydrogen sulfide gas in separate incidents; and Bruce Clayton Howard, 45, was killed by a tank explosion.

*Dallas Morning News* reporter Randy Lee Loftis notes that OSHA inspectors often don't visit worksites of smaller companies like these until after a death occurs. Records showed that each of these companies had been in business for at least three years without facing an OSHA inspection. The agency lacks the resources to visit more than a small fraction of the nation's workplaces each year. As the two companies kept failing to take the necessary steps to prevent workers' deaths, OSHA increased the penalties. Fines for environmental violations also mounted.

A federal grand jury indicted Bowman on 13 counts involving hazardous waste, workplace safety, conspiracy, and other violations. A plea bargain whittled a potential 56 years in prison and \$2.57 million fine down to one year in prison and a \$5,000 fine.

Randy Lee Loftis. "OSHA no match for workplace dangers that kill thousands." *Dallas Morning News*, November 23, 2013. <http://share.d-news.co/0iULfta>

## Colorado: Former Nuclear-Weapons Workers Seek Compensation

Thousands of former workers from facilities that made nuclear weapons during the Cold War have applied to the federal Energy Employees Occupational Illness Compensation Program, which compensates workers suffering from cancers and other diseases linked to their on-the-job exposures. Earlier this year, hundreds of former workers from Colorado's Rocky Flats facility received welcome news from federal officials, who granted "Special Exposure Cohort" (SEC) designation to those who worked at the plant between 1952 and 1983 and who have one of 22 types of cancer, chronic beryllium disease, or chronic silicosis.

Workers in the SEC can now receive compensation without needing to reconstruct their past radiation doses or receive a determination that the probability of their conditions being work-related is greater than 50 percent. These requirements had proven difficult for many workers and their survivors to meet, reports the *Denver Post's* Electa Draper, because the Department of Energy records that could allow workers to reconstruct their histories of exposure to radioactive materials are often scattered or lost.

Some workers who worked at the plant between 1983 and its 1989 suspension of operations have diseases they say are related to hazardous exposures that continued to occur after 1983. Others question the exclusion of certain kinds of cancer, such as prostate cancer. But for many former Rocky Flats workers and their families, the end of a long fight for compensation is finally in sight.

Electa Draper. "Rocky Flats workers' burden still heavy even with new legal status." *The Denver Post*, February 23, 2013. <http://dpo.st/1mBY26H>

## During Workers Memorial Week, Advocates Spotlight the Toll of Unsafe Workplaces

During the 2014 Workers Memorial Week of Action (April 21 – 28), advocates, unions, worker centers, faith-based groups, and family members whose loved ones were killed on the job gathered to call for safer workplaces. At events across the country, attendees mourned for those who lost their lives on the job and advocated for policies and practices to prevent future tragedies.

The United Support and Memorial for Workplace Fatalities (USMWF) website lists event details at <http://www.workermemorialday.org/WMD2014.htm>, and the National Coalition for Occupational Safety and Health (National COSH) captures highlights at <http://bit.ly/TUg3Aq>. News coverage of Workers Memorial Week events included:

- **The Philadelphia Inquirer** featured a story on Philadelphia’s memorial event. There, Nancy Winkler spoke about her daughter, Anne Bryan, 24, who was killed when the wall of an improperly demolished building collapsed onto the Salvation Army store next door. She said her grief was deepened because “the death of our loved one was avoidable, preventable, because safety was not the first priority,” and that she will keep advocating for improved regulations and oversight.
- **The South Bend Tribune** covered an event – one of several in Indiana – that remembered eight South Bend-area workers killed on the job last year. Tony Flora, president of the North Central Indiana AFL-CIO, spoke about how to improve the state’s workplace-safety culture, and South Bend resident Mary Ellsworth came to honor her son, Mark Ellsworth Jr., who was killed in a University of Notre Dame tree-trimming incident. “I miss him so much,” she said.
- The community news site **Halfway to Concord** carried an in-depth piece on the Concord, California event, which began with a march from the Concord BART station. Attendees remembered workers killed over the past year, including two workers from the BART transit system who were run over by a train. After describing the calls from event speakers, Cheryl Grover concluded, “There are several measures currently in the state legislature that improve the outlook for workers and clearly we, as responsible communities, should endorse rules that make safety a higher priority.”

At the start of Workers Memorial Week, National COSH released the 2014 edition of its report *Preventable Deaths: The Tragedy of Workplace Fatalities* (<http://bit.ly/1fraga0>) The report focuses special attention on occupational illnesses, citing silica exposures and high-risk populations, including Hispanic and contract workers. In addition to an overview of US workplace hazards and recommendations to improve occupational health and safety, the report features the case studies of incidents where seven workers lost their lives in US workplaces in 2013 and 2014. Other reports released for Workers Memorial Week include:

- Dying at Work in California: The Hidden Stories Behind the Numbers (<http://bit.ly/1kn4Oat>)
- Dying for Work in Massachusetts: The Loss of Life and Limb in Massachusetts Workplaces (<http://bit.ly/1vGDzNc>)
- Houston Area Workers Memorial Day Report (<http://bit.ly/1ruM5Bp>)
- Low-Wage Work in Syracuse: Worker Health in the New Economy (<http://bit.ly/1sGuRBB>)
- Preventable Deaths: Safety and Health in Wyoming (<http://bit.ly/1jRe2f3>)
- Tennessee Workers: Dying for a Job (<http://bit.ly/Wg5Gsv>)



Karin Lau

## Iowa: Asbestos Inspectors are Overloaded

As many as 4,500 asbestos-removal projects occur in Iowa each year, but the state has only one inspector to enforce Environmental Protection Agency (EPA) asbestos-removal regulations and one to enforce OSHA rules on asbestos. This leaves the inspectors struggling to respond to all the complaints their offices receive, and makes unannounced worksite inspections unlikely.

In Des Moines, a former contractor filed a complaint about improper asbestos removal at a downtown Younkers department store build-

ing. Iowa's EPA inspector filed a report stating he found nothing in a building inspection, and a review by the Iowa Division of Labor determined the complaint unfounded. But, explains the *Des Moines Register's* Jason Clayworth, "public records and interviews show none of the departments that dismissed the claims had taken the step the complainant suggested — reviewing the differences in environmental reports to see if there was evidence that hazardous materials were being improperly handled."

The *Register* published a front-page article on the agencies' failure to take this recommended step. The EPA inspector then conducted another visit to the site and discovered an area where he found asbestos to have been improperly removed. Contractors insisted the area was properly abated, but the site will now get further scrutiny. Advocates encouraged the state agencies to hire more inspectors, so a greater number of asbestos complaints can receive thorough investigations.

Jason Clayworth. "Register Investigation: Iowa's asbestos inspectors overloaded." *The Des Moines Register*, March 1, 2014.

<http://dmreg.co/1bWAFk8>

# New Research on Worker Health and Safety

Researchers examining the impact of working conditions on health have had a busy year. They have published dozens of informative articles in the peer-reviewed literature – papers providing insight into scores of different workplace hazards and their relationships to injuries and illnesses. Especially prominent in the literature over the last year were papers addressing the health status of people who responded to or were exposed to the 2001 World Trade Center (WTC) attacks; also noteworthy were studies examining working conditions for Latino workers, healthcare workers, and farmworkers. We profile a few of them below.

## Peer-Reviewed Literature on Latino Workers

### Maternal occupation of Latinas and birth outcomes

Using data from births in Los Angeles County, California in 2003 among Latinas, von Ehrenstein and colleagues investigated the relationship between maternal occupation and having a full-term, low birth weight newborn (TLBW). Employment in transportation and material moving, food prep and serving, production jobs, and office occupations increased the odds of a TLBW newborn by as much as three times for Latina mothers.

von Ehrenstein OS, Wilhelm M, and Ritz B. Maternal occupation and term low birth weight in a predominantly Latina population in Los Angeles, California. *J Occup Environ Med.* 2013 Sep;55(9):1046-51.

<http://www.ncbi.nlm.nih.gov/pubmed/23969503>

### Promotoras engaging with Latino forestry workers

Bush and colleagues evaluated the effectiveness of a pilot program that used promotoras (community health workers) to provide OHS training to 276 Latino forest workers employed in southern Oregon. Using qualitative and quantitative measures, they report increased H&S knowledge and leadership skills for both the promotoras and the workers. The authors present several examples of workers

taking action to address H&S concerns after the intervention.

Bush DE, Wilmsen C, et al. Evaluation of a pilot promotora program for Latino forest workers in southern Oregon. *Am J Ind Med.* 2014 Jul;57(7):788-99.

<http://www.ncbi.nlm.nih.gov/pubmed/24890853>

### Injury influences for Latino horse and crop workers

Swanberg and colleagues examined how work was organized and the injury and illness experiences of Latino horse and crop workers in Kentucky. The odds of occupational injury was three times higher among workers who reported abusive supervision. The odds of suffering an occupational illness was nearly four times higher with increased exposure to awkward postures.

Swanberg JE, Clouser JM, et al. Occupational health among Latino horse and crop workers in Kentucky: the role of work organization factors. *J Agromedicine.* 2013;18(4):312-25.

<http://www.ncbi.nlm.nih.gov/pubmed/24125046>

### Comparing carpal tunnel syndrome among Latino poultry workers and manual laborers

Cartwright and colleagues used nerve conduction measures and symptom surveys to investigate the incidence of carpal tunnel syndrome (CTS) in Latino poultry processing workers and Latino manual laborers. Among 363 work-

ers without CTS at baseline, the incidence of CTS one year later was nearly 20 percent in the poultry processing workers and about 12 percent in the manual laborers. The odds of developing CTS was nearly two times higher for the Latino poultry workers compared to the Latino non-poultry manual laborers.

Cartwright MS, Walker FO, et al. One-year incidence of carpal tunnel syndrome in Latino poultry processing workers and other Latino manual workers. *Am J Ind Med.* 2014 Mar;57(3):362-9. <http://www.ncbi.nlm.nih.gov/pubmed/23996875>

## Peer-Reviewed Literature on Healthcare Workers

### Assessing safety procedures of healthcare employers

A survey of 12,028 healthcare workers (HCW) was used to investigate current practices for minimizing exposure to toxic substances, including anti-neoplastic drugs, anesthetic gases, and surgical smoke. Fifty-five percent of the respondents were nurses. Steege and colleagues reported 94 percent of the HCWs who administer antineoplastic drugs reported that their employers had standard operating procedures to reduce exposure to these substances, compared to 32 percent reporting the presence of procedures to protect those who are exposed to surgical smoke. Some respondents reported never having received training on the safe handling of the toxic substances, including 48 percent of those exposed to aerosolized antibiotics and 43 percent of those exposed to surgical smoke.

Steege AL, Boiano JM, Sweeney MH. NIOSH Health and Safety Practices Survey of Healthcare Workers: Training and awareness of employer safety procedures. *Am J Ind Med.* 2014 Jun;57(6):640-52. <http://www.ncbi.nlm.nih.gov/pubmed/24549581>



Alexander Rath

### Injury risk for home healthcare aides

In a study of home healthcare aides in Massachusetts, Markkanen and colleagues identified the aides' key OHS concerns. For most participants, back and shoulder injuries related to manual handling of patients were of greatest concern. Concerns were exacerbated caring for overweight patients and by the absence of assistance devices. The aides' responses were consistent with data from workers' compensation insurers. The authors also reported that the aides' close bonds with their clients induce them to engage in tasks that exceed their job responsibilities, such as doing laundry or shopping for someone other than their client, washing floors, and providing pet care. Such activities affect job demands and increase the risk of injury.

Qin and colleagues examined the factors associated with the likelihood of home health workers filing a workers' compensation claim for low-back pain. Pain severity and physical demands increased the likelihood of filing a claim, and job strain, social support at work, and education decreased the likelihood.

Markkanen P, Quinn M, et al. Characterizing the nature of home care work and occupational hazards: a developmental intervention study. *Am J Ind Med.* 2014 Apr;57(4):445-57. <http://www.ncbi.nlm.nih.gov/pubmed/24347541>

Qin J, Kurowski A, et al. The impact of workplace factors on filing of workers' compensa-

tion claims among nursing home workers. *BMC Musculoskelet Disord.* 2014 Jan 29;15:29. <http://www.ncbi.nlm.nih.gov/pubmed/24476529>

## Nurses and asthma

Le Moual and colleagues used data from the US Nurses' Health Study to examine asthma symptom severity by nursing specialty. Operating room nurses had nearly two and one-half times the odds of having severe persistent asthma symptoms compared to nurses in administrative jobs. Operating-room nurses are exposed to numerous asthmagens, including disinfecting agents and surgical smoke.

Le Moual N, Varraso R, et al. Are operating room nurses at higher risk of severe persistent asthma? The Nurses' Health Study. *J Occup Environ Med.* 2013 Aug;55(8):973-7. <http://www.ncbi.nlm.nih.gov/pubmed/23887704>

## Verbal abuse and injury risk

Sabbath and colleagues examined the association between non-physical abuse and injury risk among hospital workers. Prevalence of injury was associated with being yelled or sworn at, and experiencing hostile or offensive gestures. Musculoskeletal injuries, rather than traumatic injuries, were more strongly associated with non-physical workplace abuse.

Sabbath EL, Hurtado DA, et al. Occupational injury among hospital patient-care workers: what is the association with workplace verbal abuse? *Am J Ind Med.* 2014 Feb;57(2):222-32. <http://www.ncbi.nlm.nih.gov/pubmed/24151093>

## Safety curricula and needlestick injuries

Researchers used data from a hospital's workers' compensation insurer and a survey of the institution's medical undergraduate students to characterize injuries caused by needlesticks and sharps (NSI), and to compare the effectiveness of two safety curricula. Lauer and colleagues reported a 53 percent rate of under-

reporting, and a significantly lower incidence of NSI's among students assigned to one of the two curricula. Following the introduction of safer needles and sharps, needlestick-injury incident reports to the hospital's insurer decreased 50 percent.

Lauer AC, Reddemann A, et al. Needlestick and sharps injuries among medical undergraduate students. *Am J Infect Control.* 2014 Mar;42(3):235-9. <http://www.ncbi.nlm.nih.gov/pubmed/24387948>



smileus

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## Peer-Reviewed Literature on Construction Workers

### Falls from heights

For the period of 2003-2010, Dong and colleagues reported trends in fatal falls in US residential construction, which account for 80 percent of all work-related deaths in that industry sector. The authors reported that about one-third of the incidents involved the self-employed. A higher proportion of falls were recorded among workers who were age 56 or older, Hispanic foreign-born, or employed in establishments with 10 or fewer employees.

Lipscomb and colleagues used workers' compensation data from the State of Washington to assess falls from heights (FFH) rates and associated days away from work among 24,830 union construction workers. Crude rates of FFH decreased 82 percent over the 20-year period. Rates of paid lost days associated with falls decreased over time, in particular over the years when state and then federal fall protection standards took effect.

Dong XS, Wang X, Largay JA, et al. Fatal falls in the U.S. residential construction industry. *Am J Ind Med.* 2014 May 28. [Epub ahead of print] <http://www.ncbi.nlm.nih.gov/pubmed/24890625>

Lipscomb HJ, Schoenfisch AL, et al. How well are we controlling falls from height in construction? Experiences of union carpenters in Washington State, 1989-2008. *Am J Ind Med.* 2014 Jan;57(1):69-77. <http://www.ncbi.nlm.nih.gov/pubmed/24038233>

### Assertiveness training and H&S practices

Shrestha and Menzel examined whether assertiveness training would influence workers' H&S practices, such as raising safety concerns. They incorporated assertiveness training into a fall-prevention safety training program for 760 construction workers in Las Vegas, Nevada. Eight weeks after the training, more than half the participants provided feedback about different aspects of the training and were also queried about any changes in their H&S practices. Hispanic respondents were less likely to report that the assertiveness training was helpful compared to non-Hispanic respondents, 11 percent versus 28 percent.

Shrestha PP and Menzel NN. Hispanic construction workers and assertiveness training. *Work.* 2013 Sep 4. [Epub ahead of print] <http://www.ncbi.nlm.nih.gov/pubmed/24004784>

### Injury trends among drywall installers

Using workers' compensation data from the State of Washington, Schoenfisch and colleagues examined the injury experiences of 5,073 union drywall installers for the period 1989 through 2008. In nearly 20 percent of the incidents, handling the drywall itself was a contributing factor in the injury, and one-third of these injuries resulted in paid lost time. Overall, the authors reported a decline in injuries by 73.6 percent, which worker experts attributed to technological advances in safety equipment and changes in how managers address safety.

Schoenfisch AL, Lipscomb H, et al. Work-related injuries among union drywall carpenters in Washington State, 1989-2008. *Am J Ind Med.* 2013 Oct;56(10):1137-48. <http://www.ncbi.nlm.nih.gov/pubmed/23861237>

### Work-related pain and leisure activities

A pilot study of 43 construction workers examined the effect of musculoskeletal (MSD) pain on leisure-time physical activities (LTPA). Ninety-three percent of the workers reported engaging in moderate to vigorous LTPA, and 70 percent reported MSD pain. Caban-Martinez and colleagues reported that construction workers with pain participated in more LTPA than those without pain.

Caban-Martinez AJ, Lowe KA, et al. Construction workers working in musculoskeletal pain and engaging in leisure-time physical activity: Findings from a mixed-methods pilot study. *Am J Ind Med.* 2014 Apr 23. [Epub ahead of print] <http://www.ncbi.nlm.nih.gov/pubmed/24760608>

## Peer-Reviewed Literature on Farmworkers

### Undercount of farmworker injuries

Leigh and colleagues used several data sources to estimate the undercount of work-related injuries and illnesses among workers employed in agriculture. Using data from 2011, they estimated that the Bureau of Labor Statistics' Survey of Occupational Injuries and Illnesses missed about 74 percent of cases among crop farm workers, and nearly 82 percent among animal farm workers. They attribute the undercounting to the exclusion of small farms and farm families from Labor Department reporting requirements.

Leigh JP, Du J, et al. An estimate of the US government's undercount of nonfatal occupational injuries and illnesses in agriculture. *Ann Epidemiol.* 2014 Apr;24(4):254-9. <http://www.ncbi.nlm.nih.gov/pubmed/24507952>

### Sexual harassment experiences of immigrant farmworkers

Murphy and colleagues examined the sexual harassment experience of female indigenous and non-indigenous Mexican immigrant farmworkers employed in Oregon. Themes emerging from focus groups involving 49 women included not necessarily using the label "sexual harassment," but witnessing and experiencing the behavior; not having received training on how to deal with the abuse within their company; and the particular vulnerability of indigenous women who did not speak Spanish to sexual harassment.

Murphy J, Samples J, et al. "They talk like that, but we keep working": Sexual harassment and sexual assault experiences among Mexican indigenous farmworker women in Oregon. *J Immigr Minor Health.* 2014 Feb 11. [Epub ahead of print] <http://www.ncbi.nlm.nih.gov/pubmed/24514945>



36clicks

### Dairy workers and musculoskeletal injuries

Douphrate and colleagues administered a questionnaire to dairy workers from Colorado, New Mexico, South Dakota, Texas, and Utah to assess the prevalence of musculoskeletal symptoms. More than 89 percent of the 452 participants were male, and 97 percent were Hispanic. More than 76 percent reported musculoskeletal symptoms. Prevalence rates by body part differed depending on whether the dairy parlor used a herringbone, parallel, or rotary configuration.

Douphrate DI, Gimeno D, et al. Prevalence of work-related musculoskeletal symptoms among US large-herd dairy parlor workers. *Am J Ind Med.* 2014 Mar;57(3):370-9. <http://www.ncbi.nlm.nih.gov/pubmed/24338602>

### Effectiveness of pesticide safety training program

McCauley and colleagues conducted a study involving 140 indigenous farmworkers in Oregon. They set out to evaluate the impact of two different pesticide safety training programs on biomarker measures of exposure to

dialkyl phosphate. One program was a typical video-based training and the other was conducted by promotoras. Both groups showed declines from baseline in dialkyl phosphate metabolites, with improvements in overall pesticide knowledge greater among the promotor training group.

McCauley L, Runkle JD, et al. Oregon indigenous farmworkers: results of promotor intervention on pesticide knowledge and organophosphate metabolite levels. *J Occup Environ Med.* 2013 Oct;55(10):1164-70. <http://www.ncbi.nlm.nih.gov/pubmed/24064776>

## Peer-Reviewed Literature on World Trade Center Responders

September 11, 2014 marks the 13th anniversary of the 9/11 attacks. The World Trade Center Health Registry (WTCHR) – the largest public health registry in US history – tracks the health of individuals who were directly exposed to the WTC event. More than 71,000 individuals volunteered to participate in the study.

Ghuman and colleagues examined the unmet mental health care needs of 9,803 participants with symptoms of post-traumatic stress disorder or depression in the 2011-2012 time period. More than one-third of the study participants reported an unmet mental health care need. The strongest predictors were symptom severity and perceived cost and difficulty accessing care.

Welch and colleagues examined the relationship between the degree of exposure to the WTC event, post-traumatic stress disorder (PTSD), and binge drinking. Nearly 15 percent of individuals with very high WTC exposure engaged in binge drinking, compared to about four percent of individuals with low exposure. Five to six years following the event, individuals in the two highest WTC-event exposure categories reported frequent binge drinking. Incidence of binge drinking among these individuals was comparable regardless of whether or not they had PTSD.

Researchers also assessed the degree to which co-occurrence of lower respiratory symptoms and PTSD among WTC responders intensified their symptoms. Friedman and colleagues measured respiratory illness, psychological distress, and diminished quality of life in responders who suffered both lower respiratory symptoms and PTSD and in those who only suffered from one of the conditions. Among other findings, co-morbid responders compared to those with LRS alone were twice as likely to have frequent dyspnea (shortness of breath). Compared to responders with PTSD alone, co-morbid responders were 2.5 times more likely to express feelings of significant non-specific psychological distress. Comorbid responders were also about 3 times more likely to report only fair or poor general health.

Additional papers reported on PTSD and new-onset diabetes among adult survivors of the WTC attacks, prevalence of chronic physical health consequences among those injured in the WTC attack, and cardiovascular disease hospitalizations among those in the cohort with PTSD.

Brackbill RM, Cone JE, et al. Chronic physical health consequences of being injured during the terrorist attacks on WTC on September 11, 2001. *Am J Epidemiol.* 2014 May 1;179(9):1076-85. <http://www.ncbi.nlm.nih.gov/pubmed/24561992>

Friedman SM, Farfel MR, et al. Comorbid persistent lower respiratory symptoms and posttraumatic stress disorder 5-6 years post-9/11 in responders enrolled in the World Trade Center Health Registry. *Am J Ind Med.* 2013 Nov;56(11):1251-61. <http://www.ncbi.nlm.nih.gov/pubmed/23794365>

Ghuman SJ, Brackbill RM, et al. Unmet mental health care need 10-11 years after the 9/11 terrorist attacks: results from 2011-2012 World Trade Center Health Registry. *BMC Public Health.* 2014 May 22;14(1):491. <http://www.ncbi.nlm.nih.gov/pubmed/24885506>

Jordan HT, Stelman SD, et al. Cardiovascular disease hospitalizations in relation to exposure

to the September 11, 2001 WTC disaster and posttraumatic stress disorder. *J Am Heart Assoc.* 2013 Oct 24;2(5):e000431.  
<http://www.ncbi.nlm.nih.gov/pubmed/24157650>

Miller-Archie SA, Jordan HT, et al. Posttraumatic stress disorder and new-onset diabetes among adult survivors of the WTC disaster. *Prev Med.* 2014 May 28. [Epub ahead of print]  
<http://www.ncbi.nlm.nih.gov/pubmed/24879890>

Welch AE, Caramanica K, et al. Frequent binge drinking five to six years after exposure to 9/11: Findings from the World Trade Center Health Registry. *Drug Alcohol Depend.* 2014 Apr 28. [Epub ahead of print]  
<http://www.ncbi.nlm.nih.gov/pubmed/24831753>

## Reports from Non-Profit Organizations

Several nonprofit organizations issued reports this year addressing the challenges faced by US workers, from low wages to underfunded worker protection agencies. Report authors offer ideas to address inadequate laws and implement reforms.

**What's At Stake: Austerity Budgets Threaten Worker Health and Safety.** Center for Effective Government, August 2013.  
<http://tinyurl.com/ksuwc7h>

A history of stagnant funding and the across-the-board budget cuts in 2013 (due to “sequestration”) make it increasingly difficult for worker-safety agencies to function effectively. This report examines funding for OSHA, NIOSH, and MSHA from 2004 through 2013, and describes the impact of long-term austerity on inspections, rulemaking, and grants to states and researchers.

**Fast Food, Poverty Wages: The Public Cost of Low-Wage Jobs in the Fast-Food Industry.** University of Illinois Urbana-Champaign & UC Berkeley Labor Center, October 2013.  
<http://tinyurl.com/om6xrot>



Steve Estvanik

**Super-Sizing Public Costs: How Low Wages at Top Fast-Food Chains Leave Taxpayers Footing the Bill.** National Employment Law Project, October 2013.  
<http://tinyurl.com/mnedbop>

More than 52 percent of families of front-line fast-food workers are enrolled in one or more public assistance programs such as Medicaid, Temporary Assistance for Needy Families (TANF), and Supplemental Nutrition Assistance Program (SNAP, or food stamps). Labor policy researchers used administrative data from federal assistance programs, and survey data from the Census Bureau and the Bureau of Labor Statistics, to characterize the public cost of low-wage work. The annual public cost of this low-wage work, which is often part-time and without benefits, is nearly \$7 billion. More than two out of five front-line fast-food workers are African-American (23 percent) or Latino (20 percent), and 73 percent are women. Those are just some of the findings provided by the labor policy researchers. The report provides state-specific data, and enrollment and benefits figures for four key benefit programs.

A complementary policy brief produced by the National Employment Law Project (NELP) focuses its analysis on the ten largest fast-food companies in the US. These firms have a combined annual profit of nearly \$7.5 billion, and their CEO's earned \$52.7 million in 2012. Their workforce totals 2.25 million employees. The



Andreas Karelis

**The Price of Inaction: The Cost of Unsafe Construction in New York City.** Public Citizen, November 2013.  
<http://tinyurl.com/lev2wlp>

In 2011 and 2012, fatalities involving construction workers in New York City (NYC) cost the city's economy \$186.3 million in direct, indirect, and quality-of-life costs. NYC provides about \$2 billion a year to public benefit corporations in the form of tax breaks, loans, etc., to foster economic development, frequently for construction projects. However, NYC does not require these corporations to abide by standards such as hiring contractors who participate in the state's registered apprenticeship program. Conventional city contractors are obligated to comply with these and other labor standards.

authors present the estimated cost of public assistance provided to individuals employed by each of the ten firms. The total estimated annual cost is \$3.8 billion, including a \$1.2 billion price tag for employees of McDonald's and \$648 million for those working for Yum! Brands restaurants.

**Securing the Right to a Safe and Healthy Workplace: Improving State Laws to Protect Workers.** Center for Effective Government, October 2013.  
<http://tinyurl.com/mnu3w2k>

OSHA is responsible for enforcing 21 whistleblower protection laws. The weakest of these are those contained in OSHA's own statute. The federal worker safety law has several important whistleblower-protection deficiencies: a requirement for workers to file their complaint within 30 days; an excessive burden on the worker to prove the employer's act was retaliatory; no right for a worker to pursue a private right of action; and OSHA's inability to grant the discharged worker temporary reinstatement. Short of an amendment to the OSH Act, the opportunity to improve whistleblower protections is at the state level. The report highlights more robust whistleblower laws in a few states that could serve as models for reforms elsewhere.

**Acting Responsibly? Federal Contractors Frequently Put Workers' Lives and Livelihoods at Risk.** U.S. Senate, Health, Education, Labor, and Pensions Committee, Majority Staff Report, December 2013.  
<http://tinyurl.com/ns9x2um>

The federal government contracts with thousands of private firms to provide goods and services ranging from computers, vehicles, and poultry to office cleaning and cell phone service. Annually, the total price tag is \$500 billion. The Committee's report identified hundreds of firms currently receiving such contracts despite their violations of federal laws on health and safety and on wages. The report notes that out of federal OSHA's total initial proposed penalties, almost half were penalties proposed to federal contractors. The Tesoro refinery in Anacortes, Washington, for example, received \$463 million in federal contracts in 2012. Seven workers died in an explosion at the site in 2010. Recommendations offered in the report include annual publication of a list of federal contractors with labor law violations, and issuance of Executive Orders to require coordination between agency contracting officials and the Department of Labor. (See p. 17 on the Fair Pay and Safe Workplaces Executive Order signed by President Obama in July 2014.)

**Aim Higher: New York Should Reform its Workers' Compensation Laws to Reduce Injuries.** Public Citizen, May 2014.  
<http://tinyurl.com/kh3rgzd>

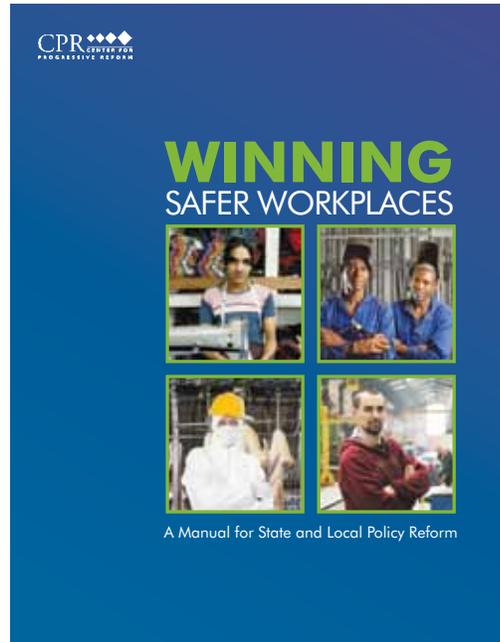
The New York County District Attorney proposed reforms to the state's workers' compensation system to address employer fraud. The proposal, however, does not include measures to prevent injuries and illnesses, which could reduce workers' compensation costs and save workers a great deal of pain. Public Citizen sees this initiative in New York as an opportunity for the state to compel more employers to adopt workplace safety and loss prevention programs. Such programs are currently required for certain employers, such as those paying workers' compensation insurance premiums at least 20 percent higher than the average. The report offers several recommendations, including a monetary penalty for employers who fail to implement such a program.

**Who's the Boss: Restoring Accountability of Labor Standards in Outsourced Work.** National Employment Law Project, May 2014.  
<http://bit.ly/1IYIAPw>

More and more businesses operate by using workers from staffing agencies and contract labor. Firms assert that outsourcing is an important part of their business model because it increases flexibility and profit. In practice, it allows many employers to skirt labor laws and benefits, including workers' compensation and unemployment insurance, and creates unfair competition for law-abiding employers. These outsourced employment arrangements are seen more and more among workers involved in home care, janitorial work, warehousing, and food service. The report offers recommendations, including laws that create a "joint employer" presumption and privately-negotiated codes of conduct.

**Winning Safer Workplaces: A Manual for State and Local Policy Reform.** Center for Progressive Reform, June 2014.  
<http://tinyurl.com/pf8h6t6>

Chronic dysfunction in Congress means that worker health and safety improvements will



have to come from reforms at the state and local levels. The authors of this manual outline some of the key defects in our current OHS system, offer concrete policy solutions, and provide examples where comparable reforms have already been tried. Empowering workers with knowledge and new rights, making crime pay, and strengthening institutions lay the foundation for 14 ideas to win safer workplaces.

## Legal Perspectives on Occupational Health and Safety

Over the past year, several articles appeared in law reviews that addressed occupational health and safety topics. Below we describe a few of them.

**Turn off the danger: The lack of adequate safety incentives in the theatre industry.** Day, LB. *New York University Law Review*, October 2013.

The 2011 Broadway production of *Spider-Man: Turn Off the Dark* was plagued with problems, including several serious injuries to actors. Day uses the stage production to examine the effectiveness of measures to address workplace safety in the theatre industry. She

considers whether such incidents are appropriately labeled “accidents.” She suggests injury incidents likely meet the legal tests for gross negligence or recklessness on the part of the producers. Day examines the systems that are supposed to prevent work-related injuries: workers’ compensation, OSHA, New York’s Arts and Cultural Affairs Law, and the Actors’ Equity Association’s (AEA) collective bargaining agreements. She notes that none of these was effective in protecting the Spider-Man crew. The remedies Day suggests include AEA taking a more active role in OHS by inspecting theatres and productions; establishing much higher economic consequences to producers for worker injuries; and changes to workers’ compensation laws, particularly the system’s exclusive-remedy framework.

**The dominion of agricultural sustainability: Invisible farm laborers.** Luna, GT. Wisconsin Law Review, 2014.

The Wisconsin Law Review hosted a symposium in October 2013 entitled “Safety and Sustainability in the Era of Food Systems: Reaching a More Integrated Approach.” Indiana Tech Law School law professor Guadalupe Luna contributed a paper that examined the exclusion of farm workers in the public discussion on sustainable food systems. She argues that relegating farmworkers to invisible roles foregoes opportunities to improve food systems and perpetuates the cycle of harm that farmworkers already endure. Luna describes how the agriculture industry is explicitly exempt from many US labor laws, and notes the paucity of regulations at the state level. Consistent with her thesis, the papers of other symposium contributors addressed consumer safety and agricultural economics.

**Unsavory associations – placing migrant children in harm’s way: the withdrawal of child-labor rules from the Fair Labor Standards Act.**

Luna, GT. The Scholar St. Mary’s Law Review on Race and Social Justice, 2014.

Indiana Tech Law School law professor Guadalupe Luna recaps the Obama Administration’s decision to withdraw its proposed rules to protect children who work in agriculture from particularly hazardous tasks. She presents her argument in a historical context and within the framework of agrarian cultural norms. Luna notes that the Administration’s decision to abandon the child labor regulations contradicted the evidence and justification the Labor Department presented initially to justify the rules. Luna explores the misinformation and rhetoric used by opponents of the rule, in particular, assertions about “family farms.”

**America’s (not so) golden door: Advocating for awarding full workplace injury recovery to undocumented workers.** Holdsworth, P. University of Richmond Law Review, May 2014.

Holdsworth examines the situation for injured undocumented workers in the context of current immigration law and the Supreme Court’s “Hoffman Plastics” decision in 2002. In that ruling, the majority found that the Immigration Reform and Control Act of 1986 barred an undocumented worker from protections under the NLRA. In that context, Holdsworth examines another labor law: workers’ compensation. Specifically, he explores practices at the state level with respect to the ability of injured undocumented workers to recover damages or benefits under workers’ compensation. Holdsworth finds inconsistency across the states. He opines that allowing undocumented workers to access the workers’ compensation system supports, rather than undermines, federal immigration objectives.

## The Year Ahead

Shortly before this report went to press, Congressman George Miller (D-CA) introduced the Schedules That Work Act, which would take steps to address the problem of employers giving hourly workers unpredictable schedules and sometimes sending them home with little or no pay. Like the Family and Medical Leave Insurance (FAMILY) Act, this bill has very little chance of passage, but it is an example of the kind of laws we might see in a nation that values its workers' health.

Workers, advocates, and lawmakers at the state and local levels aren't waiting for Congress to shake itself free of gridlock. San Francisco and Vermont have already adopted laws allowing workers to request flexible or predictable schedules in order to fulfill caregiving responsibilities. California, New Jersey, and Rhode Island have already established insurance programs for workers who must take time off for caregiving purposes, just as the FAMILY Act proposes. The growing list of cities and states with paid-sick-days laws highlights the momentum for policies that let workers care for their health and their families.

With support from worker centers, COSH groups, faith-based institutions, and other organizations, workers are demanding better for themselves and their communities. Their efforts draw strength from researchers, reporters, and nonprofits that identify and publicize workplace hazards and ways to improve worker health and safety. New and old coalitions are bringing improvements to workplaces in cities and states across the coun-

### Read more at The Pump Handle

Much of the occupational health research and activity described in this report is covered in more detail at the public health blog The Pump Handle, <http://scienceblogs.com/thepumphandle/>. In particular, the twice-monthly "Occupational Health News Roundups" highlight local, national, and international news stories on worker health and safety. All past Roundups are available at: <http://scienceblogs.com/thepumphandle/category/occup-health-news-roundup/1>

try – from Houston's new law to help workers battle wage theft to protections for domestic workers in California and Massachusetts. Next year, different cities and states will be in the spotlight, but the pattern will be the same: Workers are demanding, and achieving, safer and healthier workplaces.



## Peer-Reviewed Research on Occupational Health & Safety Topics (August 2013 through July 2014)

This year OHS researchers published papers addressing a wide range of hazards, involving unique worker populations, analyzing injury and illness trends, and reporting on interventions. The following list represents some of the best peer-reviewed publications from the last 12 months. Those marked with \* are profiled in Section III of this report.

\*Are operating room nurses at higher risk of severe persistent asthma? The Nurses' Health Study. Le Moual N, Varraso R, et al. *J Occup Environ Med.* 2013 Aug;55(8):973-7. <http://www.ncbi.nlm.nih.gov/pubmed/23887704>

Relationship between long working hours and depression: a 3-year longitudinal study of clerical workers. Amagasa T and Nakayama T. *J Occup Environ Med.* 2013 Aug;55(8):863-72. <http://www.ncbi.nlm.nih.gov/pubmed/23924827>

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