

NORTH CAROLINA WORKERS DYING FOR A JOB

A 2013 Report on Worker Fatalities in North Carolina

In Honor of Workers' Memorial Day
April 28, 2013

National Council on Occupational Safety and Health

Dedication

This report is dedicated to the working men and women in North Carolina who were killed on the job in 2012. This includes those workers whose deaths are documented in this report as well as those who died but whose names are not available to us. We join with their families and others to call for rigorous enforcement of workplace health and safety regulations in NC. One worker death is too many.

Report Author

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About the Sponsoring Organization

The National Council on Occupational Safety and Health ("National COSH") is a non-profit organization dedicated to improving workplace safety and health conditions for all. The organization promotes this mission through education, training, and policy advocacy. The National COSH is also the umbrella organization of the National COSH Network, a network of 20 local and statewide Coalitions on Occupational Safety and Health around the country. The National COSH is based in Raleigh, NC. For more information, see www.coshnetwork.org.

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EXECUTIVE SUMMARY

Far more workers die on the job each year in NC than are reported to the public by the NC Department of Labor. In January, 2012, the NC DOL issued a press release indicating that a total of 53 work-related deaths occurred in the state in 2011. A subsequent comprehensive report from the U.S. Bureau of Labor Statistics found that, in fact, 148 workers died on the job in 2011—**nearly three times the number reported by the state DOL.** On average, between 2007 and 2011, NC DOL reported only 32% of the actual number of workplace deaths.

Despite some progress in combating unsafe working conditions, death and injury in NC workplaces continues to be far too common. We estimate that approximately 129 workers died on the job in total in 2012. Our research identified by name at least 68 people who died due to work-related injuries in NC in 2012 (and likely many more from occupational illnesses.) This figure is nearly twice the 35 reported by the NC DOL but the true number, based on prior year data from the U.S. Bureau of Labor Statistics, is likely considerably higher—an estimated 129. Too many of these deaths were due to highly preventable causes such as falls, machinery incidents, and heat stress.

A total of 744 people died on the job in NC in the five year period from 2007-2011. The most common cause of fatalities was transportation incidents (291 deaths), followed by assaults and violent acts (151), contact with objects (121), and falls (109). 52 people died from exposure to harmful substances or environments and 19 from fires and explosions.

North Carolina's fatality rate has declined significantly over the past decade and is roughly equal to the national average. NC's average fatality rate of 3.7 per 100,000 full-time workers over the past six years was significantly below that of neighboring TN (5.1/100,000) and SC (4.9/100,000) and about the same as that of VA and GA. The national average was 3.75/100,000 for this period.

Latino workers continue to die on the job from preventable causes in far greater numbers than their proportion of the state's population. In the two-year period of 2011-2012, 28% of those killed on the job for whom NC OSHA¹ provided race/ethnicity data were Hispanic. This is three and a half times their proportion in the population of the state.

Workplace violence is a major cause of death in the state. We identified 13 people

¹ The correct name of the agency is the Occupational Safety and Health Division of the NC Department of Labor. We use "NC OSHA" in this report as a shorthand.

who were killed on the job due to violence in NC in 2012, but the actual number is likely considerably higher. The US Bureau of Labor Statistics found that 19 people were killed on the job in 2011 in NC due to violent acts.

Fines are far too low to act as an effective deterrent to unsafe working conditions:

According to data from Federal OSHA, the average fine imposed by NC OSHA for a “serious” violation—one presenting the potential for serious bodily harm to an employee—was a mere \$1,309.95. The Federal Occupational Safety and Health Act limits maximum fines to a low level—\$7,000 for a serious violation—but in most cases, NC OSHA fines employers far less than this, even when a fatality occurs. Initial penalties are reduced by an average of 41%, often without any apparent justification, according to an assessment by Federal OSHA.

NC OSHA is far less likely to cite employers for “serious” violations of the OSH Act than is Federal OSHA. An analysis of the NC OSHA program by Federal OSHA found that while Federal OSHA classified as “serious” 73% of the violations it cited, NC OSHA classified only 49% as “serious.” This results in small fines for violations, because of the lower penalties associated with “non-serious” violations.

Even repeat offenders get off easy: Employers cited by NC OSHA for repeat violations—exposing workers to seriously hazardous conditions even after they have been previously cited for doing so—are still issued only a slap on the wrist. Fines in such cases averaged only \$1,906, as compared to \$7,487 by Federal OSHA—75% lower in NC than in Federal jurisdictions.

In Memoriam

Following are the names of individuals in North Carolina who died from work-related causes in 2012. The vast majority of workers who died from occupational *disease* are not listed – no database collects their names. We estimate that for every worker who dies from an acute, traumatic on-the-job injury, ten more die from occupational diseases. We will never know most of their names and faces, but we honor them all.

North Carolina Workers Killed on the Job in 2012

Willet Adams	Luis Martinez
Gaber Alawi	William Mast, Jr.
Nabil Al'Mogannah	Mark Nichols
Mokbel Almunjanhi	Miguel Ortiz
Florenti Alvarez	Terry Palmer
Gilberto Arias	Jorge Roberto Pinto
Victor Ascencio	Manuel Rey
Charles Baker	Belinda Gayle Rivers
Johhny Blackman	Jason Robins
Frank Booth	Edward Rosen
David Bottoms	Keith DeCarlo Smith
Jamie Brantley	Richard Snyder
Melvin Brock	Michael Stevenson
Dana Bruce	Michael Stimpson
Dannie Burrell	Donald L. Suggs
Samuel Butler	Walter M. Summerville
Gary Charles Cassidy	David M. Tatum
Zacharias Castro Renteria	Brandon Christopher Taylor
David Cook	Randall "Shane" Thomas
Daniel Thomas Davis	Lawrence Tisdale
Bobby Gene Demuth, Jr.	Huston Tomlinson
Jimmy Denny	Alvaro Tomos
Eusebio Diaz Gomez	Victor "Bo" Towery
Isaac Dortch	Terry Dean Washan
Jeremiah M. Goodson, Jr.	Danielle Watson
Sonya Graham	Christopher Webb
Bernie Gross	Naomi White
John M. Hall	James Willard
Patrick Halstead	Randy Wilson
Roland Harlow	Herman Glenn Wooten
Dewayne Charles Hester	William Wright
John Johnson	Tony Wright
Vicente Lopez Hernandez	Michael Scot Wyatt
Jose Galdino Lopez Iquierdo	

NORTH CAROLINA WORKER FATALITIES

Through our research, we identified 68 workers who died on the job due to work-related causes in NC in 2012, but the true number is likely considerably higher. We estimate that approximately 129 workers died on the job in NC in 2012.

NC DOL's annual report to the public of worker fatalities seriously underestimates the toll of workplace fatalities in the state. In their January 2012 news release, the NC DOL reported that 53 workers died on the job in NC in 2011. Data subsequently released by the Bureau of Labor Statistics' Census of Fatal Occupational Injuries (CFOI) reported that the total number of workers who died on the job in NC in 2011 was actually 148.

The most comprehensive count of workplace deaths each year is done by the CFOI program. The annual CFOI report, which is normally released approximately a year after the end of the year being analyzed, includes many cases not inspected by NC OSHA and, therefore, not included in NC DOL's annual report to the public on worker deaths. In the period from 2009 through 2011, there was an average of 94 such cases identified by CFOI, but not counted in NC DOL's annual figures. This number has been quite steady over the years, ranging from 91 to 122 over the past five years. Adding these projected 94 cases to NC DOL's count of 35, we reach an estimate of 129 workers killed on the job in 2012 in NC.

Why the discrepancy between NC DOL's figures and the Census of Fatal Occupational Injuries (CFOI)?

NC DOL's official report to the public of work-related deaths includes only those cases investigated by NC OSHA. It fails to count the many fatalities due to vehicle accidents and workplace violence, as well as fatalities suffered by the self-employed, thus seriously understating the extent of the problem of work-related deaths.

Fatality Rates declining in NC

NC OSHA has made good progress in achieving steadily declining fatality rates over the years. In 2010, the most recent year for which this figure is available, the state's fatality rate was 3.5 per 100,000 full-time workers, just slightly below the national figure of 3.6. NC's average fatality rate of 3.7/100,000 over the past six years was significantly below that of neighboring TN (5.1/100,000) and SC (4.9/100,000) and about the same as that of VA and GA.

The Main Causes of Workplace Deaths in NC

We conducted an analysis of CFOI data from the most recent five-year period available, the results of which are in the table below. As shown in the table, the leading cause of death over this five-year period was transportation-related incidents with a total of 291 deaths, followed by incidents relating to violence. Contact with objects and falls were the other leading causes of death, with 121 and 109 deaths respectively.

Causes of Death, Worker Fatalities in NC, 2007-2011

Source: Census of Fatal Occupational Injuries

Year	Total	Contact w/ Objects	Falls	Harmful Subs/ Envir's	Transport	Fires/ Explosions	Violence*
2007	167	27	19	9	79	--	32
2008	121	29	22	7	63	6	34
2009	129	17	18	9	51	9	25
2010	139	24	22	15	47	0	31
2011	148	24	28	12	51	4	29
Total	744	121	109	52	291	19	151

Source: US Bureau of Labor Statistics, Census of Fatal Occupational Injuries, annual reports by state.

* CFOI changed its definition in 2011 so that this category now includes animal-related injuries as well as those inflicted by people. This category also includes a small number of suicides that occurred at work, which we may not consider work-related.

Many Deaths Are Easily Preventable

Since the passage of the federal Occupational Safety and Health Act in 1970, significant progress has been made in reducing job fatality and injury rates. Yet, NC workers continue to die today from entirely preventable causes, such as falls, machinery hazards, and toxic substance exposure.

Special Focus

1. IMMIGRANT WORKERS

Reading the names of the victims of workplace fatalities in NC, it is impossible to overlook the fact that immigrant workers are far overrepresented in this tragic roll call. Eusebio Diaz Gomez, Gilberto Arias, Zacharias Castro Renteria, Nabil Al'Mogannahi, Mokbel Almuhanhi, Jorge Roberto Pinto...these are just a few of the names of individuals who came to the U.S. and to North Carolina seeking a better life, but whose work resulted in early and tragic death.

Hispanic workers are particularly overrepresented among NC's list of worker fatalities. NC OSHA data indicate that in the two year period of 2011-2012, 28% of those killed on the job for whom race/ethnicity data was available were Hispanic. This is three and a half times their proportion in the population of the state. This figure is particularly striking given that thousands of Hispanic immigrants have left the state in recent years as jobs dried up in the state's construction industry.

Luis Javier Martinez, 39, was working on a project installing a water line on the NC State University campus this past November when the trench he was working in caved in. He was buried in several feet of dirt and died. Deaths from trench cave-ins are entirely preventable with the use of proper equipment, such as a trench box that supports the sides. Yet, every year, workers continue to die needlessly from this hazard.

In Luis Martinez's case, the tragedy is even more infuriating because his employer, J.F. Wilkerson Contracting Co. of Morrisville, had been cited previously for failure to provide its workers with adequate protections from trench cave-ins. Despite evidence that the company was not protecting its workers, NC OSHA failed to penalize the company with more than a slap on the wrist and Luis Martinez paid the ultimate price as a result.

Here is a summary of the sad history of NC OSHA's failure to prevent this tragedy:

- *August 22, 2007: As part of a planned inspection, NC OSHA finds that J.F. Wilkerson has violated trench safety standards and assesses a fine of \$1,175. But the penalty is reduced to **zero** as part of an "informal settlement" with the company.*
- *November 14, 2007: After a worker files a complaint of unsafe conditions on the company's jobsite, NC OSHA investigates and finds **five serious violations. The company is fined \$7,920 but the penalty is reduced to a paltry \$1,820.***

- *February 23, 2011: Another worker files a complaint of unsafe conditions on a J.F. Wilkerson jobsite. NC OSHA inspects but does not cite the company for any violations.*
- *November 19, 2012: Unsafe conditions persist at the worksite and Luis Martinez is killed. NC OSHA's investigation is still in process.*

2. TEMPORARY WORKERS

At a recent national conference, Federal OSHA Director David Michaels noted that the vastly expanding use of temporary workers in everything from manufacturing to construction day labor has resulted in major health and safety problems. These workers are often provided minimal training in the hazards that they will face on their jobs and neither the staffing agency nor the host employer take full responsibility for ensuring that these workers are well-trained and protected.



In these tough economic times in NC, permanent, full-time employment can be nearly impossible to find. So when Terry Palmer had the opportunity to land a temporary position with Select Staffing agency, he took it. The agency placed him in what turned out to be a dangerous work environment—at the Chipita manufacturing plant in Yadkinville.

On October 16, 2012, Terry was working at the plant when a pan got stuck. In an attempt to dislodge it, Terry climbed on a conveyor belt and was pulled into a machine. First responders were able to free him from the machine and perform CPR, but Terry died soon after the incident.

Once again, this tragic death took place at a plant that had been cited previously for similar hazards and received nothing more than a slap on the wrist. Just a year before

*Terry's death, NC OSHA had inspected the plant and found a serious violation of machinery safety standards. They fined the company a mere \$3,250. In the inspection following Terry's death, NC OSHA again found violations of machinery safety standards. **Despite the company's previous record of violations, NC OSHA fined the company only \$4,000.***

Facebook comments on the tragedy from current and former workers at the plant were stunning in the depiction of a hellish work environment:

*"That place should've been shut down from day one. It's nothing but a Hell Hole!!"
(L.H.)*

"Yes they are horrible to work for! I worked there when I was 4-5 months pregnant (as a temp) 10 - 12hours a day EVERYDAY with one break for lunch and it was cut way short! Eventually they fired me...I found out months later from a friend/co-worker that they fired me because I was pregnant! I feel sorry for anyone who works there!" (A.R.)

3. OCCUPATIONAL DISEASE AND ILLNESS

A recent exposé by the *New York Times* revealed that Federal OSHA rules and enforcement focused almost exclusively on safety hazards, while ignoring the effects of thousands of chemicals and other hazardous substances that disabled workers. The article focused on the North Carolina operations of Royale Comfort Seating, a foam cushion manufacturer that uses a highly toxic chemical called n-propyl bromide, or nPB. As is the case for most of the thousands of chemicals in common use at the workplace, Federal OSHA has no standards limiting exposure to nPB.

Workers at the Royale Comfort plants in NC were often enveloped in a toxic chemical haze and dozens were made sick. Yet NC OSHA failed to take any significant action to prevent workers from continuing to fall victim to serious illness and disability.

A local physician who treated many of the poisoned workers described what he saw when they came to his clinic:

Looking like "upright cadavers," Dr. Wofford said, cushion workers arrived unable to stand on their own, supported under their arms by family members. They had showered and changed out of their work clothes, he said, but their breath still carried an odor he

remembered from his boyhood days putting together model airplanes.

A plant manager noted that these “upright cadavers” were easily replaceable in an area where good jobs were scarce:

“Folks was limping in and getting worse,” said Dewaun Teague, a former Royale manager. “Then they would be let go, and we would hire more.”

The *Times* story was a scathing indictment of the failure of NC OSHA to carry out their mission of ensuring that workers labored in safe and healthy conditions. The agency inspected the company’s plants in 1996, 2000, 2002, and 2005, each time finding that workers were being exposed to dangerous levels of toxic chemicals and each time imposing modest fines on the company. But little changed after each inspection. Workers continued to be exposed to the chemical mist and continued to be sickened.

The story demonstrated the need for an overhaul in the way toxic chemicals are regulated at the federal level and for a far more aggressive approach by Federal OSHA in enforcing health standards in the workplace.

(Rec'd on 4/6/05)

OSHA's Form 300 (Rev. 01/2004)

Log of Work-Related Injuries and Illnesses

Attention: This form contains information relating to employa health and must be used in a manner that protects the confidentiality of employees to the extent possible while the information is being used for occupational safety and health purposes.

Year 2005
U.S. Department of Labor
Occupational Safety and Health Administration

You must record information about every work-related death and about every work-related injury or illness that involves loss of consciousness, restricted work activity or job transfer, days away from work, or medical treatment beyond first aid. You must also record significant work-related injuries and illnesses that are diagnosed by a physician or licensed health care professional. You must also record work-related injuries and illnesses that meet any of the specific recording criteria listed in 29 CFR Part 1904.8 through 1904.12. Feel free to use two lines for a single case if you need to. You must complete an Injury and Illness Incident Report (OSHA Form 301) or equivalent form for each injury or illness recorded on this form. If you're not sure whether a case is recordable, call your local OSHA office for help.

As of April 6

Employer Name: Royale Comfort Seating
City: Conover State: NC

Identify the injured		Describe the case		Classify the case							Enter the number of days the injured or ill worker was		Check the "injury" column												
(A) Case no.	(B) Employer's name	(C) Job title (e.g., Welder)	(D) Date of injury or onset of illness	(E) Where the event occurred (e.g., Loading dock with cut)	(F) Describe injury or illness, parts of body affected, and objective/measure that directly injured or made person ill (e.g., Severe degree burn on right forearm from oxy-acetylene work)	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16				
			2/31	glue line	Alleged Neurotoxin injury																				
			2/31	glue line	Alleged Neurotoxin injury																				
			2/18	glue line	Alleged Neurotoxin injury																				
			1/31	glue line	Alleged Neurotoxin injury																				
			1/31	glue line	Alleged Neurotoxin injury																				
			1/31	glue line	Alleged Neurotoxin injury																				
			2/17	glue line	Alleged Neurotoxin injury																				
			1/31	glue line	Alleged Neurotoxin injury																				
			2/21	glue line	Alleged Neurotoxin injury																				
			2/31	substance	Alleged Neurotoxin injury																				
	3/14	Sand Dept	Alleged Neurotoxin injury																						
	2/21	Fiber Dept	Alleged Neurotoxin injury																						

As of April 6, 2005 14 wks into yr.

$$80 \text{ res} \times 40 \text{ hrs/wk} = 3200 \text{ (wks)} \\ \times 14 \\ \hline 44800$$

Change to 14 wks

Above: Injury log from the Royale Comfort Seating plant in Conover, NC listing a dozen workers who had fallen ill ("alleged neurotoxin injury" in the company's parlance) from exposure to toxic chemicals within a three-month period. Published in the *New York Times* on March 30, 2013

4. WORKPLACE VIOLENCE

Workplace violence is one of the leading causes of occupational fatalities in the U.S. and in NC. Over a five year period, 151 people died on the job due to violent acts in NC.

These included people working at convenient stores, police officers, taxi drivers, and other occupations. Among the workers most exposed to workplace violence are employees of mental health facilities. In one high profile 2012 case, employees at Cherry Hospital in Goldsboro, a psychiatric facility, reported at least eight injuries from patient-related violence. **To its credit, NC OSHA stepped in and fined the hospital \$15,300 for failure to protect its employees from workplace violence.** NC OSHA used its authority under the OSH Act's "General Duty Clause" to cite the employer for violations, despite the absence of a workplace violence standard.

5. PUBLIC SECTOR WORKERS

We may think that most public sector workers face less serious hazards than those in more obviously hazardous private sector jobs, but at least 18 public sector workers lost their lives on the job in 2012 in NC. These included police officers, firefighters, road crew workers, school employees, and parks employees. Among them were four employees of the NC Department of Transportation, all of whom died in vehicle incidents. Their tragic deaths attest to the need for greater care by motorists passing through work zones.

NC OSHA CITATIONS AND FINES: AN INADEQUATE DETERRENT TO UNSAFE CONDITIONS

When OSHA inspectors discover violations of standards in the course of an investigation, they issue citations and can assess penalties. Violations are classified as either “Serious,” “Repeat,” “Willful,” or “Other than Serious.” The latter category is intended for violations not expected to put workers’ lives or health in danger.

According to a 2012 review of NC OSHA’s program by Federal OSHA, NC OSHA classifies violations as “Other than Serious” far more often than Federal OSHA, which leads to low penalties. While Federal OSHA classified 78% of violations as either serious, repeat, or willful in FY11, the comparable figure for NC OSHA was only 51%.

The Federal OSHA analysis was critical of the state program’s practice of classifying as non-serious violations that appeared to present serious health and safety hazards. These violations included failure to inform workers of the hazards of deadly crystalline silica, workers exposed to unprotected falls of 20 feet, and failure to provide respiratory protection to workers exposed to hazardous materials.

Even when NC OSHA does classify violations as serious, the fines it assesses are meager—only \$1,310 on average, 22% below that of Federal OSHA.

Federal OSHA has also been critical in recent years of NC OSHA’s reluctance to classify violations as “Willful.” Their most recent report noted that several cases appeared to warrant “Willful” violations but were not categorized as such by NC OSHA. (The application of willful violations in the Smithfield packing case described below is a positive sign that the state has taken this criticism to heart.)

“Cooperative” Employers Given a Free Pass

A particularly disturbing critique in Federal OSHA’s report was the tendency of NC OSHA inspectors to automatically lower assessed fines for “cooperative” employers. To quote from the Federal report:

*Finding 11-08: The OSHNC Field Operations Manual (FOM), Chapter VI, permits a CSHO (Compliance Officer) to give a “cooperation” penalty reduction to an employer of up to 10 percent. This reduction is applied by the CSHO at his/her discretion to a “cooperative” employer. **A significant percentage of the case files reviewed was given***

the Cooperation penalty reduction with minimal written justification or no justification at all. There is no way to understand the rationale for these penalty reductions.

Recommendation 11-08: OSHNC should eliminate the Cooperation penalty reduction policy.

Repeat Violators: Still Let Off Easy

One might argue that those employers who unknowingly violate OSHA standards a first time should not face harsh penalties. But it is hard to argue that those **who have previously been cited by OSHA for the same violations** should not face more severe sanctions. Sadly, that is the case in NC, where repeat violators were fined a paltry \$1,906, as compared to \$7,487 by Federal OSHA—75% lower in NC than in Federal jurisdictions.

The bottom line: NC OSHA Penalties Far Lower than Federal OSHA

As a result of all of the above practices, the penalties typically assessed by NC OSHA are significantly lower than those of Federal OSHA. The average total penalty assessed by NC OSHA in inspections in which violations were found was only \$2,483, as compared to \$7,049 by Federal OSHA.

Even when larger fines are assessed, the NCDOL has struggled to collect these fines. A Fed OSHA review found that at the time of the analysis in 2011, \$2,862,162 of NC OSHA fines was outstanding. While the report noted that the state had made progress on the collection process in recent years, a substantial percentage of the fines levied by NC OSHA for violations of its standards remained uncollected.

Family members of workplace fatality victims are often shocked to learn that the penalty for unsafe conditions leading to a worker's death is often pitifully small. The maximum fine that NC OSHA can levy on an employer for a serious violation of an OSHA standard, even if it results in a worker's death, is only \$7,000. Repeated attempts to amend the Federal Occupational Safety and Health Act to raise these maximum penalties—even to keep up with inflation over the decades since they were established—have failed in the U.S. Congress.

Minnesota's legislators decided that they should take action to change this. They passed a law requiring their state OSHA program to levy fines of no less than \$25,000 and, in

cases involving repeat or willful violations, no less than \$50,000.

SMITHFIELD PACKING: One fatality that drew a big fine in 2012

As noted above, NC OSHA often assesses paltry fines in cases involving worker deaths, even when serious violations are found. One exception to this rule in 2012 was the case involving the death of 26-year-old Brandon Taylor from inhalation of hydrogen sulfide gas at the Smithfield Packing plant in Clinton.



Brandon was cleaning out a waste tanker at the plant when he was overcome by deadly fumes and went into cardiac arrest. He was found with his head in the opening of the tanker. NC OSHA cited Smithfield with 12 violations, including 7 serious and 3 “willful” violations, including failure to provide respiratory protection, and failure to train workers in how to protect themselves from hydrogen sulfide gas. The “willful” category, indicating that the company knew it was exposing workers to serious hazards but did it anyway, is rarely used by NC OSHA (see above.) Its application in this case allowed for a far greater penalty than usual—a total of \$238,125, later reduced to \$161,525.

For a large corporation such as Smithfield, \$160,000 is not a great deal of money. But at least in this case, unlike in the deaths of Luis Martinez and Terry Palmer, NC OSHA sent a message that disregard for worker safety would bring more than a slap on the wrist.

What Needs to be Done to Make NC Workplaces Safer?

At the Federal Level

- 1. Increase the Maximum Fines that State and Federal OSHA Can Impose for Serious Violations:** The U.S. Congress should pass the Protecting America's Workers Act, S.665, introduced by Sen. Patty Murray, which includes amendments to the Occupational Safety and Health Act to increase the maximum fines that state and federal OSHA programs can impose for serious violations of OSHA standards.
- 2. Enact an Injury and Illness Prevention Program Standard:** The Federal Occupational Safety and Health Administration should promulgate an Injury and Illness Prevention Program Standard requiring all employers to develop safety and health plans that identify hazards and implement preventive measures.
- 3. Permit Felony Criminal Prosecution in Cases in Which Reckless Employer Misconduct Leads to Worker Deaths:** The U.S. Congress should enact legislation that allows for the possibility of felony criminal prosecution in cases in which reckless employer misconduct leads to worker deaths. Currently, these crimes can only be prosecuted as misdemeanors. This provision is also included in the Protecting America's Workers Act.
- 4. Overhaul the System for Regulating Toxic Chemicals and Other Hazardous Substances:** The chemical-by-chemical system of regulating toxic chemicals has failed. We need a new approach that will allow OSHA to ensure that workers are not exposed to serious health hazards.

At the State Level

NC OSHA Should:

- 1. Impose More Stringent Penalties in Cases in Which Employers' Actions and Misconduct Put Workers' Lives at Grave Risk in Order to Act as an Effective Deterrent to Unsafe Working Conditions.** NC OSHA should use its authority to impose more stringent penalties in cases of employer misconduct that puts workers' lives at risk. NC OSHA's current practice of imposing small fines and frequently negotiating these even further downward in settlement discussions leads to fines that are so low that they fail to act as an effective deterrent.
- 2. Use Current Authority to Cite Employers With "Willful" Violations When Appropriate.** In cases of egregious employer misconduct, NC OSHA should cite employers with "willful" violations that carry significantly higher penalties in order

to send a strong message to the employer community in NC that disregard of employee safety and health will not be tolerated.

- 3. Launch a Special Emphasis Program to Protect Hispanic Workers with Outreach to Workers and Employers.** NC OSHA should make a particular effort to protect the safety and health of Hispanic workers by reaching out to these workers with information about job hazards and their rights under OSHA; emphasizing to employers the need to conduct adequate training for their employees who may have limited English ability; and imposing the maximum fines possible on those employers who fail to provide adequate training and protective equipment to these vulnerable workers.
- 4. Ensure that Temporary Workers Are Protected.** Both temporary staffing agencies and host companies that employ temporary workers should be held accountable in ensuring that temporary employees are provided adequate training and protective equipment to do their jobs safely.

The NC Legislature Should:

- 1. Ensure that Contractors With Bad Safety Records Are Not Permitted to Receive State Contracts.** Rep. Paul Luebke has introduced legislation that would require state agencies to develop strict safety screening processes to ensure that contractors with bad safety records are not allowed to bid on public works projects. The legislature should pass this bill.
- 2. Pass Legislation Mandating Minimum Fines For Violations in Cases Involving Worker Fatalities,** modeled after that of Minnesota.

At the Workplace:

- 1. Ensure that Temporary Workers Are Adequately Trained.** Temporary workers are particularly vulnerable to workplace hazards because they are often unfamiliar with workplace conditions and receive inadequate safety training. Employers hiring temporary workers should ensure that they are adequately trained on job hazards and encouraged to speak up about any concerns they may have for their safety or health on the job.
- 2. Ensure that Immigrant Workers, especially those with limited English ability, are adequately trained and protected.** Many of the deaths of immigrant workers cited in this report could have been prevented with adequate training and protective

equipment.

3. All Employers Should Develop Comprehensive Injury and Illness Prevention

Programs. Several US states require that certain employers, particularly those in hazardous industries, develop comprehensive programs to identify hazards in the workplace and develop plans to reduce or eliminate these hazards. This practice has proven effective in reducing job injury and illness rates and should be adopted by all employers.

About Data Sources and Methods

Sources: Information on fatalities included in this report came from the following sources:

- 1) The Census of Fatal Occupational Injuries annual reports (<http://www.bls.gov/iif/oshwc/foi/tgs/2011/iiffw37.htm>)
- 2) North Carolina OSHA's "Occupational Fatality Investigation Review" database, posted on its website at http://www.nclabor.com/dol_statistics/stats.htm
- 3) Federal OSHA's database of investigations (which includes investigations conducted by federal OSHA and state OSHA programs) (<http://www.osha.gov/oshstats/index.html>)
- 4) Published news reports

Information on NC OSHA inspections and penalties is from Federal OSHA's Federal Annual Monitoring Evaluation report for FY11, issued August 2012.

Methods: We included in our list of occupational fatalities list those that either:

- Were reported by NC OSHA as an occupational fatality; or
- Occurred on the job and information from news reports clearly indicated that the fatality was work-related.