

Tennessee Workers: *Dying for a Job*

**A Report on Worker
Fatalities in Tennessee
2013 & 2014**

**In Honor of Workers' Memorial Day
April 2015**

**A project of:
Knox Area Workers' Memorial Day
Committee
Knoxville, Tennessee**

Cover photo:
Workers' Memorial Day 2014—Michael Tallent's daughter holds a photo of her father. Michael was electrocuted in a construction site accident in Knoxville on New Year's Eve, 2012.

Photo by Alyssa Hansen

Dedication

This report is dedicated to all the working men and women in Tennessee -- both known and unknown -- who died in 2013 and 2014 on the job or from illness or injury contracted on the job.

We also remember here the five men who died building Tennessee bridges while working for either Mountain States Contractors or its close affiliate, Britton Bridge LLC on contracts awarded by the Tennessee Department of Transportation (TDOT). This year is the tenth anniversary of the first death in this shameful train. Mario Perez was killed in Nashville in 2005 when the unsupported wall of a botched excavation collapsed and buried him. Other fatalities on TDOT projects under the same contractors followed in 2010, 2011 and 2012. In each case the Tennessee Occupational Health and Safety Administration (TOSHA) investigated, finding in each case that Mountain States, Britton Bridge, or both were responsible for serious safety violations. Yet the companies continued to gain lucrative TDOT contracts.

Two groups eventually emerged in response to this story: Bridges to Justice, a campaign focused on greater safety in contracting at TDOT, and the Knox Area Workers' Memorial Day Committee, a coalition that co-sponsors annual observances of Workers' Memorial Day in late April each year, accompanied since 2013 by the issuance of this yearly Report. We believe it is fitting that we remember by name in this anniversary year the men whose stories first moved us to action: Mario Perez, René Mendez, John Womac, Solín Estrada-Jimenez and Abimael Contreras.

Table of Contents

Executive Summary.....	v
In Memoriam: 2013 and 2014.....	8
Tennessee Worker Deaths: An Overview.....	14
Positive Developments.....	20
Fatality numbers move modestly down	
TDOT launches new study to find ways of better screening contractors.	
State and federal actions may help reduce danger for immigrant workers.	
On-Going Concerns.....	24
24. Occupational disease is still largely an untold and costly story.	
26. Unnecessary deaths on public works continue.	
29. Immigrant and Latino workers remain vulnerable.	
30. Enforcement toolbox weak and resources thin.	
30. Workers' compensation damaged and destabilized.	
Recommendations.....	35
References.....	36
Additional resources.....	39
Glossary of Acronyms and Other Terms.....	41
Appendices.....	43
A. Proposed legislation for safety in public contracting (H.B.1027 amended)	
B. Letter from Paul Degges of TDOT to Rep. Mike Stewart	
C. Letter from Mike Stewart to Paul Degges of TDOT	
D. Proposed legislation to strengthen TOSHA penalties (H.B. 0483)	
Sponsoring Organizations, Authors, and Acknowledgements.....	58

Executive Summary

In Memoriam. The list that opens this Report shows 172 known Tennessee worker fatalities for 2013-14. Assembled from public records, available news sources, and the work of voluntary groups that honor fallen workers, it is only a partial tally.

Tennessee Worker Deaths: An Overview. Some of the deaths reported here were probably unrelated to conditions within an employer's control. However, the majority involved hazards that could have been eliminated with proper care or managed in a way that avoided death or serious injury. Some of the numbers have improved since 2010, but Tennessee's average rate remains unacceptably high -- averaging 32% above the national rate in the most recent five years of available federal data.

Positive Developments. Some encouraging signs are visible:

- Modest decline in fatalities. Federal data indicate that the number and rate of job fatalities in Tennessee declined between 2010 and 2013.
- Promising new initiative at TDOT. The Tennessee Department of Transportation is investigating how it may better evaluate the safety record of companies seeking to bid for TDOT contracts.
- Reducing abuse of immigrant workers. Two state courts in 2014 upheld the right of undocumented workers to workers' compensation protections, and a federal task force is charged with reducing conflict between labor and immigration laws.

On-going Concerns. Serious problems remain:

- Occupational disease. Workplace death from trauma represents only the tip of the iceberg. Many workers continue to contract occupational illness after exposure to dust, radiation, repetitive motion, and toxic chemicals. Yet resulting harms are not captured in lists like ours.
- Deaths on public works. Deaths of men engaged in the public's work in 2013 and 2014 continue to show that state and local agencies of many kinds need to do a better job in selecting contractors with the demonstrated capacity to achieve a culture of safety on the job.
- Disproportionate injury and death for Latino workers. Employed in some of Tennessee's most dangerous and dirty jobs, Latino immigrant workers still account for a disproportionate share of job fatalities. Health and safety practices have not caught up with new demographics.
- Enforcement issues. Penalties for violating safety standards are still so low they barely constitute a nuisance when compared to the money an employer can save by cutting corners. The estimated time it would take for TOSHA to investigate every covered worksite in Tennessee now stands at 82 years - up alarmingly from the "mere" 69-year span estimated last year.
- Workers' Compensation. Workers' compensation is a crucial piece of our over-all system for dealing with the issue of workplace injury and death, but it has been substantially weakened in recent years, and a proposal before the General Assembly in spring 2015 threatens worse.

Recommendations - some nineteen in all -- are directed at the federal, state and local government, as well as public and private employers.

In Memoriam: Tennessee Worker Deaths 2013 and 2014

The purposes of Workers' Memorial Day are two: to mourn for the dead and to fight for the living. Both goals are important to this Report, and in later sections our focus will turn to what can and should be done to protect the living. But the first goal has been our primary one in compiling the following In Memoriam list.

Because we aim to mourn the dead -- that is, to honor those who died in workplace fatalities, and to comfort families left behind -- we lean toward inclusion here. The list therefore contains the names of workers who came to work in Tennessee from elsewhere, and the names of Tennesseans who died while working out of state.

Similarly, the list includes people who died on the job, without regard to whether the death was directly or primarily caused by the job, without regard to whether an employer was ever found legally responsible for the death, and without regard to opportunities for prevention. Some heart attacks, for instance, and other sudden illnesses experienced at work are almost certainly related to conditions at work, but many are not. We do not have the information to distinguish the factors leading to loss of life in such cases, and therefore, since we lean toward inclusion, this list includes all such events. We also include the self-employed.

Finally, despite our desire to be inclusive, we know that occupational disease cases are overwhelmingly absent from our list. Studies suggest that for every acute workplace fatality, ten times as many people die of occupational disease, but the vast majority of those cases go unmarked in records of job-related fatalities.

Given the limitations of the sources and resources available to us, and given the lag time involved in many reporting systems, we have done what we conscientiously could to find all recorded relevant Tennessee fatalities for 2013 and 2014 that could be identified by name. Nevertheless, it is certain that the two lists below do not include all cases and do not get every detail right.¹

Please take the time to pause and review this roll. Not only does it speak to the magnitude of losses suffered, it also reminds us of the tasks done by workers every day, and of the dignity and value of human labor.

¹ Cases were drawn primarily from three sources: Tennessee Dept. of Labor Workers' Compensation Division, federal Occupational Safety and Health Administration (OSHA), and Tennessee OSHA (TOSHA). Also consulted were news sources, public agencies, and groups that provide support to families or honor particular kinds of workers. (See Resources below.) Each source has its holes, and some fatalities were undoubtedly missed. Some federal, maritime, and local government fatalities, for instance, may have been omitted, along with some workers employed by out-of-state employers but working in Tennessee at the time of their death.

Fatalities in 2014: *A Partial List*

<i>Date</i>	<i>Name</i>	<i>Age</i>	<i>Occupation/Employer</i>	<i>Location</i>	<i>Incident</i>
1/9/2014	Andrew Arnold	29	Armored truck driver	Davidson	Killed after vehicle ran off road
1/9/2014	Terry Jordan	64	Tradebe GP employee	Shelby	Chemical exposure on job
1/10/2014	Cedric Lyle	45	Construction worker	Montgomery	Suffered heart attack after installing brick step
1/11/2014	Robert Smith	72	Grocery store employee	Rutherford	Died of heart attack, found at work
1/12/2014	David Johnson	52	Sheriff's deputy	Montgomery	Killed when vehicle went off roadway into tree
1/15/2014	Angela Presnell	50	McFarland Apothecary	Knox	Killed when hit head-on by van in wrong lane
1/16/2014	John Courtney	71	Security guard	Monroe	Found dead in security office
1/17/2014	Jerry Turner	63	Paper mill worker	Rutherford	Died of cancer after chemical exposures on job
1/18/2014	José Barcenás	40	Carpenter	Haywood	Crushed between beam on bridge and aerial lift
1/18/2014	Ronald Lemmons	67	Advanced Tech. Staffing	Out-of-state	Hit in head by part of tree
1/21/2014	Danny Case	50	Materials handler	Out-of-state	Back injury led to surgery, quadriplegia, death
1/24/2014	Omar Badillo	36	Worker at fence company	Davidson	Hit by material loaded onto truck by forklift
1/27/2014	Eddie Hamer	36	Animal control officer	Hardeman	Killed when vehicle left roadway and overturned
1/30/2014	Ned Livingstone	77	Agricultural statistician	Rutherford	Killed when passenger in car wreck
2/5/2014	Camron Hill	24	Lumber company worker	Perry	Died days after right arm pulled into machine
2/11/2014	David Moore	43	Goodwill employee	Shelby	Died of heart attack
2/24/2014	Michael Chism	41	Worker in flare factory	Hardeman	Burned over 90% of body in flash fire at plant
2/28/2014	Harold Ledford	51	Bottled water employee	Polk	Struck by unsecured forks that fell from lift
3/1/2014	Jerry Campbell	61	Wildland fire fighter	Cocke	Suffered heart attack while deploying to fire
3/6/2014	Christopher Weaver	22	Truck driver	Jefferson	Died in construction zone pile-up
3/11/2014	Mark Appel	45	Maintenance worker	Shelby	Suffered heart attack
3/11/2014	Khon Latsombath	57	Sequoia Club employee	Davidson	Found unresponsive after heart attack
3/14/2014	Steve Young	61	Simmco LLC	Haywood	
3/18/2014	Howard German	78	Chemical employee	Hamilton	Exposure to asbestos in past incident
3/30/2014	Richard Cox	61	Lowe's Home Centers	Davidson	
4/2/2014	Johnnie Adams	55	Concrete finisher	Davidson	Collapsed on job after finishing concrete
4/3/2014	Danny McDonald	53	Bid runner for contractor	Out-of-state	Killed in car wreck, may have had heart attack
4/8/2014	Bradford Higgins	28	Youth counselor	Gibson	Hurt in collision after last session of day
4/16/2014	Rodney Edwards, Jr.	23	Factory worker	Humphreys	Killed in explosion at shotgun-shell plant
4/16/2014	Martin Pack	50	Truck driver	Out-of-state	Died in construction zone pile-up in Kentucky
4/24/2014	Theodore Fortner	45	Construction worker	Roane	Died at home unexpectedly after injuring ankle in fall
5/6/2014	Terry Tomlinson	49	Equipment operator	Williamson	Killed when truck went into ravine
5/10/2014	Michael Petrina	25	Police officer	Davidson	Struck by negligent driver while directing traffic
5/14/2014	Edward Congleton	64	Truck driver	Cumberland	Suffered heart attack while inspecting his truck
5/19/2014	Scott Crisp	45	Self-employed caterer	McMinn	Electrocuted while repairing wiring in food truck
5/20/2014	Joseph Seul	54	Alexander Metals	Davidson	Heart attack
5/22/2014	Jamie Fore	37	Truck driver	Shelby	Killed after his truck crashed, burst into flame
5/31/2014	Billy Shelton	39	Truck driver	Washington	Disabling injury led to death after several years
6/6/2014	Terry Lawson	66	Truck driver	Sullivan	Suffered heart attack at work
6/6/2014	William Waddell	57	Animal Health Int'l	Shelby	Fell from lift platform

6/7/2014	Jason Ramirez	31	Roland Ramirez employee	Johnson	Died in motorcycle crash
6/10/2014	Tommy Newman	55	Ergon-Knoxville employee	Knox	
6/10/2014	Larry Releford	42	Steel worker	Knox	Severely burned in steel mill furnace explosion
6/16/2014	Aron Pack	45	Self-employed contractor	Knox	Electrocuted on ladder at office building job
6/16/2014	Dwight Anderson	49	Labor Finders of Tn	Williamson	Passed out with heart attack in heat
6/28/2014	Brian Crawford	35	Tower climber	Knox	Struck and killed on highway
6/29/2014	Paul Shepherd	40	Taxi driver	Knox	Shot during robbery after two days on the job
6/30/2014	Larry Cash	68	Officer in sheriff's office	Knox	Suffered heart attack
7/2/2014	William Dougherty	65	Feed delivery driver	Out-of-state	Electrocuted by power lines at Ky chicken farm
7/2/2014	Chandler Warren	19	Material handler at FedEx	Shelby	Crushed between platform and loader
7/7/2014	Jack Hesson	68	Tree feller	Williamson	Fell and hit head while dodging debris
7/9/2014	James Holland	48	Finchum Sports Flooring	Davidson	Collapsed of heart attack at hotel on business
7/10/2014	Thomas Kiersnowski	54	Assistant retail manager	Sullivan	Suddenly fell backwards while stocking product
7/17/2014	Jack Moody	58	Maintenance worker	Benton	Crushed by forklift that fell on him during repair
7/25/2014	Charles Garrison	63	Paper mill worker	Hardin	Struck by roll clamp truck
8/5/2014	Pierre Davis	29	Equipment operator	Shelby	Killed when county's mowing tractor flipped
8/11/2014	Charles Taylor	83	Apartment maintenance	Cocke	Passed away in maintenance shed
8/12/2014	Merrill Kingsbury	69	Truck driver	Hardin	Struck on roadway after stopped to help motorist
8/15/2014	Bobby Bobo	67	Truck driver	Giles	Killed in explosion of tanker truck he was driving
8/16/2014	David Ciglar	50	Coca-Cola Refreshments	Bradley	Collapsed at work
8/26/2014	John Gavin Duncan	23	Christian staff counselor	Hamilton	Fell into river on group trip to Big South Fork
8/26/2014	Trevor Flum	37	Tower technician	Out-of-state	Struck on roadside while securing load in Okla.
8/31/2014	Phillip Toombs	27	Truck driver	Coffee	Struck by car after his own truck crashed
9/3/2014	Donald Edens	44	Empire Equipment	Hamilton	Died piloting small plane that crashed
9/23/2014	Ricky McCurry	58	Construction worker	Rutherford	Pinned under flipped back hoe on school job
10/6/2014	Maggie Bloodsaw	32	New hire at FedEx	Hamilton	Taken ill and died, first day at orientation
10/14/2014	Gary Reedy	43	Nuclear waste worker	Unicoi	Fell 27 feet from deck into transfer vault
10/16/2014	Pruitt Watson	62	Levy employee	Shelby	Taken ill at work
10/20/2014	Gordon Schaffer	22	Fast food worker	Maury	Shot in night robbery while alone at restaurant
10/21/2014	Juana Mendoza	65	Staff Line employee	Out-of-state	Died of heart attack while at work
10/24/2014	Kagan Dindar	37	Police detective	Montgomery	Heart attack while directing traffic at large event
10/24/2014	Zach Holliday	21	Construction worker	Shelby	Fell into large package chute on job site
10/30/2014	Jerry Anders	59	Truck driver	Out-of-state	Head injuries in accident while passenger in truck
11/4/2014	Darrell Perritt	42	Law enforcement	Maury	Killed in course of vehicle pursuit
11/7/2014	Doris Hopson	55	School bus driver	Shelby	Heart attack while driving, no children hurt
11/13/2014	Ray Rhodes	27	American Bottling Co.	Shelby	Killed when his truck hit ice and flipped
11/14/2014	Gerald Mathews	64	Truck driver	Putnam	Found unconscious in the bed of his truck
11/17/2014	Steven Woolridge	46	Elwood Staffing	Davidson	Taken ill while packing boxes
11/18/2014	Dale Jones	37	Automation Temp Svcs	Rutherford	Suffered heart attack
11/18/2014	Gregory Rigney	55	Sequatchie Concrete	Williamson	Pinned by forklift that tipped over onto him
11/20/2014	Thomas Dunn	61	FedEx employee	Shelby	Suffered heart attack
11/23/2014	Monty Crabtree	43	Hotel employee	Montgomery	Collapsed walking down hallway
12/2/2014	Michael Donley	52	Truck driver	Davidson	Smashed head-on by semi that crossed median
12/2/2014	Jon Greer	29	Truck driver	Davidson	Died in head-on collision with other truck
12/9/2014	Gus Losleben	69	Fire fighter	Hardin	Killed in fire tanker collision with logging truck
12/15/2014	Jason Webb	35	Utility worker	Shelby	Severely burned in gas explosion
12/15/2014	Ricky Jones	59	Truck driver	Knox	Heart attack
12/15/2014	Miguel Nave	60	Heat & air employee	Knox	Suffered heart attack on the job
12/18/2014	Allen Cotton	44	Cell tower climber	Greene	Fell 105 feet from cell tower

Fatalities in 2013: *A Partial List*

<i>Date</i>	<i>Name</i>	<i>Age</i>	<i>Occupation/Employer</i>	<i>Location</i>	<i>Incident</i>
1/2/2013	Richard Haga	41	Construction worker	Campbell	Fell from scaffold onto concrete
1/7/2013	Jackie Fryar	49	Nexus Partnership	Shelby	Slipped and fell from a table while cleaning blinds
1/12/2013	Archie Roberts	47	Driver	Johnson	Suffered heart attack while driving
1/18/2013	Gaylon Karnes	69	Truck driver	Shelby	Struck by front-end loader while truck being loaded
1/25/2013	Hong Dao	49	Driver	Shelby	Run over while changing tire
1/25/2013	Michael Slagle	53	Highway patrol trooper	Knox	Suffered heart attack after cruiser slid off icy road
1/30/2013	Joshua Colwell	34	Aloriconn	Rutherford	Choked on a piece of food at work, died same day
2/2/2013	Bryan Delk	41	Driver	Rutherford	Killed driving loaded delivery truck in snow and ice
2/18/2013	Mark Henes	60	Construction worker	Davidson	
2/20/2013	Vernon Sutton	49	Grocery store employee	Bradley	Heart attack
2/23/2013	Dave Ratslaff	74	Minister and funeral home employee	Shelby	Collapsed while carrying flowers from van to grave
2/25/2013	David Schnepf	43	Firefighter	Hawkins	Died at home soon after fighting two structural fires
2/28/2013	Chad Rogers	34	Highway crew	Hamblen	Struck by truck on highway as he ran after hard hat
3/4/2013	Joel Scott	53	Screen installer and repairman	Out-of-State	Taken ill and died while working on screen porch
3/13/2013	Bruce Summerlin	54	Human resource manager	Out-of-State	Died of heart attack while on business trip
3/16/2013	John Boyd	52	Truck operator at quarry	Rutherford	Killed when truck went over edge of rock quarry
3/23/2013	Aaron Vasquez	19	Restaurant employee	Shelby	Stabbed behind restaurant while taking out the trash
3/25/2013	Craig Miller	59	Reg'l director health services company	Rutherford	Car left road, struck bridge barrier, and overturned
3/25/2013	Gregory Simpson	56	Restaurant manager	Hamilton	Collapsed with heart attack soon after getting to work
4/3/2013	James McManus	26	Welder and fabricator	Hamilton	Struck by falling panel after welded hook broke
4/5/2013	Brian Hampton	39	Truck driver	Out-of-state	Found dead in his truck at a rest stop in Arkansas
4/10/2013	Paul Hulse	62	Truck driver	Out-of-state	Died in Little Rock
4/17/2013	Cody Bennett	29	Landscaper	Davidson	Killed when riding mower flipped on embankment
4/18/2013	Joel Pineda Muñiz	24	Cement mason	Sumner	Buried when poorly supported new wall collapsed
4/18/2013	José Velasco	36	Laborer	Sumner	Buried when poorly supported new wall collapsed
4/22/2013	David Haynes	48	County grounds maintenance worker	Maury	Killed when zero-turn mower turned over on slope
4/25/2013	Tan Van To	45	Complete Automation, Lake Orion, MI	Rutherford	Struck by falling electric panel at auto paint plant
5/2/2013	Lorrie Eckel	49	Spotsylvania Towne Centre	Davidson	
5/3/2013	Calvin Daugherty	60	Tree feller	Campbell	Struck when bent tree snapped back, poor retreat path
5/5/2013	David McGiboney	64	Landscaping equipment operator	Williamson	Killed when bobcat flipped over
5/10/2013	Rick Beck	61	Welder in asphalt equipment plant	Hamilton	Struck on side of head by part of silo he was welding
5/20/2013	Steven Johnson	52	IT Project Manager	Out-of-State	Cardiac arrest resulted in car crash during business trip
5/22/2013	Allen Phillips	45	Financial analyst, taxi driver	Hamilton	Struck by another vehicle while driving taxi
5/26/2013	Joseph Gillentine	42	Williams Cabinet Co. Inc.	Rutherford	Had seizure and fell at work, died a week or so later
5/28/2013	Brian Crane	42	Truck driver	Madison	Crushed betw semi and trailer as adjusting air pressure
5/31/2013	Timothy Fowler	47	Sheet metal and air conditioning tech	Dyer	Suffered a heart attack while working under a house

6/4/2013	Michael Souviron	52	Owner of landscaping company	Rutherford	Heart attack while on grounds of assisted-living facility
6/13/2013	Roger Lee	43	Jake Marshall Service, Inc.	Hamilton	Fell from a house
6/16/2013	Michael Hooper	43	Auto worker	Rutherford	Crushed by collapse of armature on robot
6/24/2013	Carlos Frias	27	Landscaper	Rutherford	Killed when mower flipped over on embankment
6/24/2013	Zackary Rose	28	Medical resident in anesthesiology	Knox	Found in call room, accidental overdose taken for sleep
6/25/2013	James McMullen	61	Federal Express Corporation	Shelby	Heart attack
7/8/2013	John Barker	48	E & W Electrical Solutions, LLC	Henry	Electocuted
7/8/2013	Namon Smith	42	Tower technician from Tennessee	Out-of-State	Fell from telecommunications tower in North Dakota
7/10/2013	Chris Humphreys	31	RG Builders	Davidson	Collapsed inside garage at work
7/10/2013	Joe Trevathan	68	Equipment operator	Obion	Fell from 60-foot ledge while operating bulldozer
7/15/2013	Guadalupe Rodriguez	43	Construction worker	Chester	Thrown from unsecured man basket on unbraked truck
7/19/2013	Tarry Hay	61	Truck driver from Florida	Wilson	Died while on work trip in Tennessee
7/20/2013	John Meyer	51	Bridgestone America's Tire	Rutherford	Died after caught in machine
7/20/2013	Joseph Williams	32	Black Lion Security LLC	Shelby	Shot three times in the chest
7/26/2013	Charles Flynn	42	Driver for beverage service	Out-of-state	Lost control when cut off by other driver in Arkansas
8/3/2013	James Long	59	Truck driver	Out-of-State	Truck ran off upper deck of Tx freeway, fell, caught on fire
8/6/2013	Joe Williams	57	Airline executive	Out-of-State	Died in Minnesota while on business trip
8/10/2013	William Davis	53	Custom Foods of America	Knox	Heart attack after clocking out of work
8/15/2013	Joseph Jones	44	Driver	Madison	TDOT truck crashed, rolled down embankment, hit tree
8/19/2013	Justin Bass	31	Window cleaner	Jefferson	Washing windows when aerial lift tipped over
8/22/2013	John Spall	38	Grimes Recycling Center	Lawrence	Killed in single-car accident while driving company car
9/8/2013	Iran Morales	26	Painter	White	Fell from scaffolding on city water tower
9/17/2013	Kevin Bellamy	53	Truck driver	Out-of-State	Found dead in his truck in Wisconsin
9/17/2013	Antonio Powell	29	Vanderbilt Landscaping LLC	Tipton	Hit by semi truck that crossed highway
9/19/2013	Steve Conner	53	Seneca Medical Inc.	Anderson	
9/21/2013	Billy Russell	46	Frito Lay, Inc	Lincoln	Became ill at work
10/2/2013	Richard Floersch	56	Firefighter	Gibson	Found unresponsive after heart attack at fire station
10/4/2013	John Shelley	42	Self-employed home remodeler	Shelby	Shot during robbery by intruders while alone at job site
10/16/2013	J Jackson	65	AT&T Services, Inc.	Williamson	Found deceased in the workout room
10/18/2013	Abdolreza Zaltash	54	Senior R&D staff at ORNL	Knox	Acute myeloid monocytic leukemia
10/20/2013	Juan Agustin-Ruiz	20	Chris Tuck Farms	Macon	Killed in motor vehicle accident
10/20/2013	Amanda Chitwood	34	Wm Wrigley Jr. Co.	Hamilton	Fell from a ladder and onto the floor
10/22/2013	Denise Adams	43	Respiratory therapist	Fayette	Killed in air ambulance crash, on way to pick up child
10/22/2013	Carrie Barlow	43	Pediatric nurse	Fayette	Killed in air ambulance crash, on way to pick up child
10/22/2013	Charles Smith	47	Helicopter pilot	Shelby	Killed in air ambulance crash on way to pick up child
11/8/2013	Ashley Seus	24	Counselor for people with disabilities	Montgomery	Hit from behind and pushed into on-coming traffic
11/12/2013	Earleen Garrett	61	Employee of security company	Shelby	Found unconscious after she called to say light-headed
11/18/2013	Jason Reynolds	36	Auto mechanic	Sullivan	Crushed in shop by car with by-passed safety switch
11/21/2013	Raymond Schulz	54	Truck driver	Shelby	Found face-down in parking lot, died same day

Harold Ledford

1962 - 2014

Harold Ledford worked as a maintenance technician at C. G. Roxane Water Company in Benton Tennessee. On Feb. 28, 2014 he was repairing a hydraulic leak in a fork lift. In order to reach and replace a faulty hydraulic valve, Harold and a co-worker lifted the vehicle's prongs approximately eight feet. They believed that the prongs rested securely on the top of a shipping container, but when Harold removed the valve, disconnecting the hydraulic system, the prongs slipped off of the container and hit Harold in the back. He died in the hospital later the same day.

Harold Ledford grew up in a tight-knit family in Old Fort, Tennessee, just above the Georgia state line, where his parents and many siblings still live. He graduated from Polk County High School in 1980. Harold was a devoted family man; he and his wife, Anita, had two daughters, Jennifer and Michelle, who were 28 and 23 years old at the time of Harold's death. His step-son, Daniel, was 31 when Harold died. Harold and Anita shared a love for hunting and fishing. Anita said that Harold especially loved trout fishing in the nearby Ocoee River. Harold and his mother, Ruth, were avid flower gardeners. Ruth reported that Harold would bring her wild flowers whenever he walked in the woods.



Harold was very active in his community. He was a deacon in Calvary Church of God in Greasy Creek, Tennessee, and ran the church's sound system. His favorite charity was "People Helping People", which provided resources for needy families and individuals. Anita and Ruth said that Harold had a natural mechanical ability. He could fix anything, and he offered that talent to his neighbors in need. His energy and devotion to community work is sorely missed by his neighbors in Polk County.

TOSHA's investigation cited Harold's employer for four "serious" safety violations that were involved in his death, including failure to develop and follow specific procedures for the control of stored energy while workers performed maintenance work on industrial trucks, and allowing employees to work under improperly secured equipment. TOSHA investigators also cited C. G. Roxane for six "non-serious" violations that reflected a sloppy and dangerous work environment in their Benton, Tennessee facility. The company was fined a total of \$11,500.

11/22/2013	Moises Cedeno	32	A & S Electric	Davidson	Shot by attacker while sitting in company van on break
12/6/2013	Zewdneh Assemu	43	Taxi driver	Fayette	Beaten and stabbed to death by robbers
12/8/2013	Janet Mays	58	Employee of non-profit serving children	Shelby	Collapsed and had seizure at work, died three days later
12/17/2013	Rubin Coffey	36	Truck driver	Out-of-State	Truck went off highway in Kentucky and overturned
12/17/2013	Ronald Ray	61	Sheriff's deputy	Shelby	Heart attack working DUI checkpoint, died 3 days later
12/21/2013	Terry Baxter	53	Truck driver	Cocke	Heart attack while hooking truck to trailer in parking lot
12/22/2013	Samuel Martin	77	Part-time facilities services employee	Shelby	Collapsed at work on break, could not revive
12/24/2013	Rosalie Parks	49	Shipping company employee	Davidson	Trying to break a jam, fell, hurt neck, later died

The information sources available to us, as to other advocates around the country, are incomplete and sometimes difficult to work with, especially in the first year or two after a fatality. We hope that reporting systems soon improve in ways that will help us to produce more prompt, complete and accurate In Memoriam lists in the future. We sincerely apologize if your co-worker, employee or loved one was omitted from this list despite suffering an occupational fatality in 2012 or 2013, if any name was wrongly included, or if other details are in error. Please help us correct the record. Send accurate information to <fran.ansley@gmail.com>.

Tennessee Worker Deaths: An Overview

Names and Human Beings

We do the work to build this list because we believe it is important to name these names and to mark each death individually. Each entry represents a person with his or her own story, someone torn too soon from family and friends.

Eventually, in its Census of Fatal Occupational Injuries (CFOI), the U.S. Bureau of Labor Statistics will release more extensive information it has been able to gather on 2014 deaths, and federal statisticians will be able to analyze the data and compare them to the record in other states and to that of the nation as a whole. Eventually as well, the Tennessee Occupational Safety and Health Administration (TOSHA) will post a list of specific Tennessee fatality investigations it undertook in 2014, along with summary descriptions of these investigations.

However, much of the data eventually released will be purged of names. And much of it will come too late to provide much comfort to those suffering recent loss. So we work as best we can to put together a timely list. We also join others around the country in calling on federal and state authorities to find more prompt and helpful ways of making this important information available to the public.

We hope that the list itself, and the handful of personal stories included at other spots in this Report, will provide a more concrete sense of some individuals and of those they left behind. The costs of such losses can and should be counted in dollars, but each life lost was also priceless, and none can rightly be summed up in numbers alone.

Numbers and Patterns

Nevertheless, in order to reduce the toll of workplace hazards in the future, it is also important not only to memorialize, but also to count and analyze. Taken as a group, and scanned for patterns, these cases as a whole, though incomplete, may help us to identify what hazards are harming workers in our state, and what can be done to eliminate or better control them. So this section will undertake a quick scan, focusing primarily on the types of incidents and hazards the list reveals.

Note that the Bureau of Labor Statistics, in its Census of Fatal Occupational Injuries (CFOI), already reports 101 fatalities in Tennessee for 2013 (preliminary data), compared to only 83 we have been able to identify from that year for the In Memoriam list above. When the CFOI numbers for 2014 are eventually released, they too will almost certainly be higher than the 2014 number reflected in the list above. Incomplete though they are, the two lists above contain a total of 172 occupational fatalities, 83 identified for 2013 and 89 for 2014. Demographic distribution of these injuries by gender and ethnicity reflects national trends.

1. Motor vehicle accidents and workers struck by vehicles

The largest category of clearly occupational cases on this In Memoriam list – 35 in all, or some 20% of the total -- is made up of fatalities where the deceased worker was on the job and was either a driver or passenger on a public road. Sometimes these cases involved a business trip by a manager or other office employee. However, most often those who die on the road at work are professional drivers. In either case, TOSHA typically does not investigate the deaths of workers killed in vehicles on public highways, leaving those investigations to other authorities. So these deaths do not show up on its annual list of fatality investigations.

A related but different category of transportation deaths happen to those driving through or—like Chad Rogers—laboring in loading areas or highway work zones. Work zones are filled with danger from vehicles merely passing through, as well as from work vehicles carrying out projects -- from repaving to mowing, utility work and more. ***Tennessee's record on work zone cases is an on-going cause for concern. The CDC reports that over the 11 years from 2003 through 2013, Tennessee had the fifth highest number of worker deaths in highway work zones of all states in the country (CDC 2015), despite public appeals to motorists on TV, radio, and other media to slow down in work areas.***

A few transportation cases on our list involved aircraft. One man was piloting a small plane on business. In another case, a helicopter pilot, a respiratory therapist, and a pediatric nurse were tragically killed in a crash in West Tennessee while attempting to reach a child in a medical emergency.

2. Falls

We identified seventeen Tennessee workers who died from fatal falls in this period, about 10% of the total. A majority of these fatalities involved falls from heights in construction. Federal OSHA recognizes the magnitude of the problem in construction and has called for a second national “stand-down” on construction falls, slated for May 4-15, 2015. In issuing the call OSHA observed:

Fatalities caused by falls from elevation continue to be a leading cause of death for construction workers, accounting for 279 of the 806 construction fatalities recorded in 2012. **Those deaths were preventable.** Fall prevention safety standards were among the top 10 most frequently cited OSHA standards, during fiscal year 2014 (OSHA 2015, emphasis in original).

Falls occur outside construction as well. Two workers on our list – one in 2013 and one in 2014 -- fell from communication towers, incidents that are becoming all too common as the telecommunications world goes ever more wireless.² Another worker fell from a ladder that was struck by a forklift in an industrial building. Roger Lee, unequipped with legally required fall protection gear, fell from a roof. Others, including Gary Reedy, fell from heights through holes that had been left unguarded, in violation of clear safety standards.

Meanwhile, job sites exist all over the state of Tennessee where known safety measures -- such as designing hazards out or using guardrails, safety nets, or personal fall arrest systems properly tied off -- are either absent altogether, or improperly employed. To its credit, TOSHA has adopted a special emphasis program on falls, but the impact of the program is limited when the number of inspectors remains so low in proportion to the number of worksites where fall hazards exist.

3. Encounters with Machinery

A significant number of cases in 2013 and 2014 involved some problem with machinery or its operation. Four men were killed in incidents involving aerial lifts, and six died when large machines they were operating flipped over. Circumstances vary, but indications are that proper training on safe operation and adequate maintenance of this equipment are often lacking.

² Cell tower falls have caught the attention of federal OSHA, which announced in February of this year that it is concerned about “the alarming increase in preventable injuries and fatalities at communication tower worksites. In 2013, thirteen fatalities occurred in this industry, more than in the previous two years combined. This disturbing trend appears to be continuing, with the four worker deaths occurring in the first five weeks of 2014.” https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=25593. (See also Knutson and Day 2012; Day 2012.)

Several workers were crushed, pinned or struck by forklifts or by a forklift's load. One was killed when a robot's armature in an auto plant collapsed. A paper-mill worker was hit and killed by a roll-clamp truck, and a worker in a lumber mill died after his arm was pulled into an unguarded machine and amputated.

4. Other "Struck-By" Incidents

Falling objects. Two men were killed in Tennessee factories when panels fell on them. Other men -- like Rick Beck and Harold Ledford, whose personal stories appear elsewhere in this Report -- died when struck by large pieces of equipment they were working on.

Wall collapses. Two Latino workers were killed in the same incident, when an inadequately supported masonry wall under construction literally blew over in a strong wind (TOSHA Inspections # 137-146-124, etc. on Pineda and Velasco).

5. Violence

Seven workers on the In Memoriam list died from violent physical attacks by other persons at the worksite. A restaurant worker was stabbed in an alley where he had gone to take out the trash. A self-employed home remodeler was killed by intruding robbers who found him alone on the job. Two taxi drivers, one from Memphis and one from Knoxville, were killed by robbers. (Orman; WBIR) A 22-year-old fast-food worker was assigned to work alone on night shift in a high-risk area, and he was shot and killed during the course of a robbery (Apel).

Occupational health and safety professionals point out that at least in some cases, violence on the job is not only a matter for the criminal justice system, but also a matter of workplace safety. Effective prevention measures vary with the context and with the type of violence involved. TOSHA does not ordinarily investigate cases of criminal assault, but there are instances where the agency now considers investigation appropriate, and in 2012 the agency adopted specific procedures for when and how to investigate cases of workplace violence. (TOSHA 2012).

6. Heart attacks and other sudden illness

Cases of sudden illness or collapse at work number 65 cases on this year's In Memoriam lists, making up a significant portion of the whole, about 36%. The facts in many of these cases are sketchy, but they seem to range from obvious heart attacks, through other circumstances, including workers found dead or unresponsive, going into seizure, or choking on a bite of food while on break.

Many of these sudden-onset attacks were not likely to be related to work in any significant way other than simple presence at the worksite. Accordingly, many of them should be set aside when it comes to seeking patterns that could point the way to better practices at the workplace. As with motor vehicle accidents and cases of homicide, this questionable connection to employer practice is a reason TOSHA does not typically investigate these kinds of fatalities.

On the other hand, working conditions are likely to have played a major role in some of these cases. For instance, one firefighter died at his fire station. A second died at home shortly after fighting two structural fires. A third suffered a heart attack as he was deploying to fight a wildland fire in Cherokee National Forest. For multiple reasons, firefighters are known to suffer a highly elevated risk of injury and death from heart disease, which kills more firefighters than burns and smoke inhalation combined. Effective strategies for reducing these risks are and should be under investigation. (Kales et al 2007)

Similarly, nine of the sudden-onset cases were truck drivers who appear to have died of heart

Comparisons

To make valid comparisons over time, and to compare Tennessee to the rest of the country, we must move from the In Memoriam list of named Tennessee fatalities compiled specifically for this Report, and turn instead to federal data. The Bureau of Labor Statistics (BLS) provides information on fatalities, fatality rates, deaths by industry, and much else.³

Trends over time. The total number of Tennessee fatalities in 2013 as reported by the BLS in the most recent releases from the Census of Fatal Occupational Injuries (CFOI) was 93. (Numbers for 2013 are still preliminary.) That total is down from the final number of fatalities recorded by CFOI in each of the preceding five years, when the final totals were 101, 120, 138, 111 and 135 respectively (Table 1). Different from the total number of fatalities is the fatality rate. Tennessee's overall job fatality rate as determined by CFOI has remained fairly constant in recent years, about 5.0 per 100,000 workers, but it too has declined modestly since 2010. ***The indication of continued improvement is welcome news.***

How Tennessee compares to other places. Some of the above indicators are encouraging and it is to be hoped that the most recent years' positive trend continues. Nevertheless, significant cause for concern remains. ***Tennessee's fatality rate of close to 5 per 100,000 over the past five years compares unfavorably to a rate of 3.4 for the United States as a whole in 2012, the latest year for which CFOI rates by state are presently available.⁴ The degree of Tennessee's difference has varied from 12% to 50% higher than the national rate during the period from 2008 to 2012. (Table 1).***

Table 1. Fatality Rates* in Tennessee and U.S. 2008 to 2011

	Total Fatalities	Tennessee Rate	National Rate	TN % above National Average
2013	93	---	---	---
2012	101	3.8	3.4	12%
2011	120	4.5	3.5	29%
2010	138	5.4	3.6	50%
2009	111	4.5	3.5	29%
2008	135	5.1	3.7	38%
6-year total	698			
5-year average rate		4.7	3.5	31.6

* Per 100,000 full-time-equivalent workers (an hours-based rate) Source: CFOI (data for 2013 preliminary)

³ Bear in mind that because of differences in data collection and in criteria for inclusion, this report's *In Memoriam* list includes deaths excluded by the BLS and vice versa.

⁴ CFOI data for 2013 are still preliminary. Final numbers of fatalities will not be released by the Bureau of Labor Statistics until April 2015, and BLS does not calculate state fatality rates until that time -- too late for inclusion in this Report.

Rick Beck

1951-2013

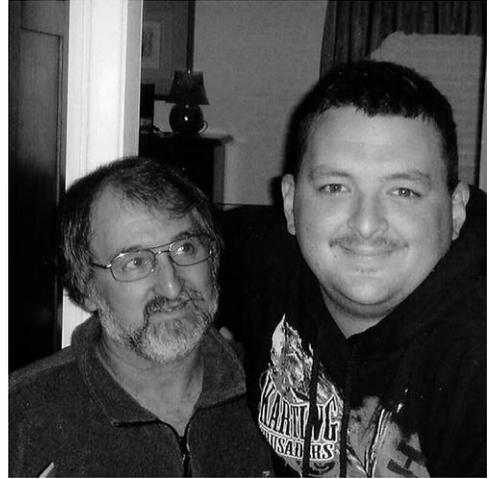
Rick Beck was a longtime and trusted employee of Astec Industries in Chattanooga. Astec makes asphalt manufacturing plants and fabricates the large, very heavy components of the plants. Rick worked as a welder. He was responsible for moving large parts into position and welding them together. Early on the morning of May 10, 2013, he and a fellow worker were manipulating a silo head weighing three tons onto a set of rollers that held the components while they were being welded. A gap between the rollers caused the silo head to flip over and it struck Rick on the right side of the head. He was pronounced dead at the scene.

A proud member of the Choctaw Indian tribe, Rick was born in Oklahoma, and moved to Tennessee with his family in the early 70's, when his father's construction work brought him to the Chattanooga area. In 1973, not long after arriving, Rick met and married Jan who was his wife for forty years. Jan says the couple happily settled into country living in Turtletown, in the southeastern corner of Tennessee, not far from the borders with North Carolina and Georgia. Rick loved country life; his neighbors often saw him mowing the lawn or riding a golf cart around his property, accompanied by his English bulldog, Roscoe.

Rick was a quiet man who had many friends both at work and in his neighborhood. He enjoyed family life and was surrounded by close relatives who lived nearby. He was a member of First Baptist Church in McCaysville, Georgia. He was a graduate of Tri-County Community College in Jasper, Georgia.

For many years Rick built and raced Go-Karts. It was a hobby that he passed along to his son, Justin. Most weekends would find father and son at the local Go-Kart racetrack. In recent years they formed a kind of Go-Kart Dynamic Duo, with Justin doing the driving and Rick serving as a one-man pit crew. Justin followed his father in another important aspect of his life: he works at Astec Industries in Chattanooga, where his father had worked since 1978. In order to reach his own workplace each workday Justin must pass the spot where his father lost his life almost one year ago. Thus every one of Justin's work days includes a painful reminder of the accident that cost him his father--an accident that was entirely preventable.

The TOSHA investigation of the accident cited Astec for two serious violations that were directly related to Rick's death: (1) Astec's roller machine had gaps between the rollers that prevented the head sections of silos from being adequately supported while employees were working on them. (2) Astec also failed to ensure that affected employees wore protective helmets in the work area. For these two violations TOSHA assessed Astec a total of \$7,800.



Positive Developments

Sometimes people speak of workplace injury and death as a phenomenon that is unavoidable – something that is somehow a natural feature of the economy or even of human life, a fact that may be tragic but will always be with us. Experience in the real world proves otherwise, however.

The system of standards and enforcement established by the Occupational Safety and Health Act has saved the lives of thousands of workers since it was instituted in the 1970s. Similarly, strong apprenticeship and training programs radically reduce injury and death even on the most dangerous jobs. Organizations in the public and private sectors that get serious about instituting a culture of safety produce real results. Dedicated safety staff and other leaders within businesses and unions, passionate investigative journalists, conscientious inspectors at enforcement agencies, elected officials who press for stronger laws, and workers themselves who get the facts and take a stand for themselves and their co-workers – all these human beings can and do make a difference. Policy matters (Steinzor et al). Preventable deaths do not have to continue.

If such matters are indeed within our control, then positive trends are worth celebrating, marking, and analyzing, so we can see how to get more of the same. This year our Report seeks to highlight several developments we believe are worthy of praise.

Fatality numbers and fatality rates have decreased in the past several years.

The In Memoriam list gathered for this Report contains more names for 2014 than for 2013, showing a slight upward trend from 83 in 2013 to 89 in 2014. However, for the many reasons explained above, the In Memoriam list is more important for recognizing specific human and community loss than for analyzing numerical trends. Federal statistics are a more thorough and reliable quantitative measure, and according to those numbers the record for 2014 is likely to look better than that of 2013 when the final numbers are in.

As reflected in Table 1 above, the Census of Fatal Occupational Injuries indicates that the total number of on-the-job deaths in Tennessee dropped in each of the most recent three years for which statistics are available. This reduction is in accord with the trend at a national level, which saw total fatalities in the United States fall from 4,628 in 2012 to 4,405 (preliminary) in 2013.

The reasons for this trend in Tennessee or in the country at large, and the likelihood of its continuing, are beyond the scope of this Report. It is nonetheless a positive development and one that all stakeholders should celebrate and work to extend.

TDOT has recently launched a new initiative aimed at doing a better job of screening its construction contractors for safety, responding, in part, to legislative initiatives in the General Assembly.

Publication of this annual Report was originally prompted by a string of five worker deaths and then the near-death of two passing motorists – all of them taking place over the course of seven years, all on bridge projects funded by the Tennessee Department of Transportation (TDOT) and carried out by a set of closely affiliated construction companies including Mountain States Contractors and Britton Bridge LLC (Alund, Curth, Harris, Hickman, Jacobs). Moved by this outrageous train of events, each edition of Tennessee Workers Dying for a Job has consequently called attention to the question of public contracting in construction, and each Report has

repeatedly called for stronger prequalification and assessment systems that could better assure safety for both workers and the general public on construction sites where taxpayer-funded infrastructure is being built and maintained.

In both 2014 and 2015, bills were introduced into the Tennessee legislature by Rep. Mike Stewart (D-Nashville) that would have required certain agencies in Tennessee to find better ways of screening construction contractors for safety. The 2014 bill was addressed to a broad range of state agencies, while the 2015 bill focused solely on TDOT. (See Appendix A for the text of 2015 bill, HB 1027.) Although neither bill ended up coming to a vote in committee, each prompted productive conversations among both lawmakers and administrative agency staff.

Now we are happy to report a promising initiative launched by TDOT as a matter of administrative action. The agency has announced it plans to investigate a range of options for developing a system – through prequalification, contract specification or both – that will be better able to reliably evaluate the safety capacity of companies seeking contracts with TDOT. The agency has explained that it expects to compile and review data from a range of sources, and then to develop an implementation process. It has also expressed willingness to talk with interested parties throughout the development of the plan, a process it anticipates will stretch over the course of three months or more.

Neither the immediate parameters of TDOT’s undertaking nor its eventual outcomes are clear. But the agency has indicated its willingness to talk with interested parties at different stages of the investigation and development of the plan, and this openness to a broad range of inputs is genuinely encouraging news.

The Knox Area Workers’ Memorial Day Committee and its partner groups are pleased at this sign of progress, and we congratulate TDOT on its decision to take on this important project. We believe a well-designed prequalification and assessment process can go a long way to preventing deaths and serious injuries on TDOT projects. We are hopeful that TDOT will design and implement a system that can serve as a model for other state departments of transportation around the country, and for other state agencies that undertake construction projects in Tennessee. (See Appendices B and C for correspondence between TDOT and Rep. Mike Stewart about TDOT’s new initiative.)

Recent actions at a state and federal level may help reduce the “super-exploitability” of immigrant workers on the job and thereby make all workplaces safer.

Each year examination of fatalities at Tennessee job sites has forced observers to recognize that Latino immigrants are at a heightened risk of death and serious injury on the job. This pattern is an unfair burden for the workers subjected to disproportionate risk. Further, it points to a problem for all workers and for responsible businesses. If we enforce immigration law in a way that produces a vulnerable underclass in the labor force, it undermines standards for all, releasing a pack of perverse incentives for employers willing to cut corners on safety.

For this reason in past years we have called for reforms aimed specifically at this problem. Congress holds the real key to fixing the broken immigration system, and unfortunately, Congress is still stalled. However, some positive signs were visible this year, and we want to highlight them here:

a. State court action

Two state court opinions in Tennessee recognized the conflict that can develop between labor standards enforcement and immigration enforcement, and saw the wisdom of minimizing that conflict. In May 2014 the Tennessee Court of Appeals held that if an undocumented worker in

Tennessee is fired for filing a workers' compensation claim, that worker has standing to sue the employer for retaliatory discharge, just as any other injured worker would. (Tennessee Court of Appeals 2014). In its opinion the court observed:

A retaliatory discharge cause of action was created, not to protect the right to work, but rather to prevent a chilling effect on employees asserting their rights under the Tennessee Workers' Compensation Act ...

We find that depriving unauthorized aliens of an avenue to bring a retaliatory discharge claim could potentially increase the incentive of employers to hire illegal workers that they could terminate if a workers' compensation claim was filed. This defeats the goals and policies of the immigration laws and Tennessee Workers' Compensation Act. It also decreases the burden on employers to provide and maintain a safe workplace, if an employer can easily escape paying workers' compensation for an injury by firing an unauthorized alien employee without consequence.

Roger Lee

1969 - 2013

On the afternoon of June 6, 2013, Roger Lee and a co-worker were installing an HVAC compressor on the roof of a two-storey building in East Ridge, TN. Roger was on the roof, guiding the 200 lb. compressor up the side of the building when the lifting system they were using gave way, pulling Roger over the roof edge. He fell 22 ft. onto an asphalt parking lot. A week later, on June 13, he died of his injuries at Erlanger Hospital.

A life-long resident of the Chattanooga area, Roger grew up in LaFayette, Georgia. He graduated from LaFayette High School in 1988, and attended Covington Theological Seminary in Ft. Oglethorpe, GA, where he earned an Associate degree in Sacred Literature in 1998. At the time of his death Roger was married to Debbie Kay Lee. He had a daughter, Lindsey, and a son, Jonathan Caleb by previous marriages. Jonathan was only seven years old when his father died. Roger's mother, Carolyn, said that Roger had worked in the heating and air conditioning business since he was nineteen. Roger was a certified journeyman gas pipe fitter and had extensive training in HVAC service and repair. He had worked for Jake Marshall Service since 2009, when he returned to LaFayette from a brief residence in Charlotte, North Carolina.

Roger's overriding passion and interest was in the church. He was an ordained Baptist minister and

member of Calvary Baptist Church in LaFayette. Carolyn reported that Roger was especially devoted to working with young people. He had served as youth minister in several churches. At the time of his death Roger was planning a youth rally for LaFayette area churches; his church went ahead with the rally in his honor. Carolyn said that Roger also had a deep love for the music and hymns of the Christian church, and had served as choir director to several Baptist congregations. His family cherishes several recordings they have of Roger singing with a gospel choral group.

TOSHA investigators fined Jake Marshall Service more than \$10,000 for serious safety violations directly related to Roger's death. These included failure to provide proper rigging equipment and failure to provide fall protection where there is any danger of a fall of more than four feet. Perhaps the most distressing fact the investigators turned up was that several Jake Marshall supervisors had visited the worksite where the incident occurred, but that none of them had instructed the workers to follow required safety procedures that would have prevented Roger's untimely death.



In March of this year a Davidson County chancery court further considered the question of undocumented workers and their relationship to the workers' compensation system in Tennessee. That case was brought on behalf of a Guatemalan man whose left arm was severely injured when he fell and was run over by a lawnmower at his work. The employer claimed to owe the man less than it would have owed a worker without immigration issues, basing its claim on a Tennessee statute that limited benefits available to undocumented immigrants. The chancellor ruled that this portion of the Tennessee statute was unconstitutional, making similar observations about the perverse incentives that would be created by a different rule. (Burke)

It is likely that many undocumented workers will not know of these court rulings or will remain intimidated for other reasons. Nonetheless, the approach taken in these cases shows that some key people in authority are aware of important power dynamics in the workplace, and that bodes well for worker safety.

b. Federal executive action

In November 2014, President Obama issued an executive order on immigration matters that among other things granted temporary relief from deportation to certain undocumented adults (Immigration Policy Center; Johnson).⁵ If this order goes into effect, one important consequence for workplace safety will be that many qualified workers will be able to come out of the shadows and function in their jobs without fear of suffering immigration consequences if they speak up about unsafe or unhealthy conditions at work.

In conjunction with this federal executive order, the U.S. Department of Labor announced creation of an Interagency Working Group that is to focus on workers situated at the intersection of immigration and labor protection laws. The group is charged with finding better ways to see that federal labor, employment, and immigration laws are enforced in a way that encourages immigrant workers to cooperate with labor enforcement officials, and ensures that unscrupulous employers do not undermine worker-protection laws and safety standards by enmeshing immigration officials in labor disputes.

Not unexpectedly, the president's executive order was warmly welcomed in some quarters but highly controversial in others. At this writing, it is the subject of an active legal challenge and has not yet gone into effect, pending the outcome of that challenge. It is therefore too early to assess what impact the order will have, or even whether it will be implemented at all. But we note here that in last year's Report one of our recommendations called on the president to take action along just these lines in the event that Congress continued to fail to enact immigration reform (Tennessee Workers Dying for a Job 2014, p. 42). Accordingly we applaud him for initiating this step toward relief, while we continue to call on Congress to pass lasting reform.

⁵ To be eligible, an immigrant must have a child that is a U.S. citizen or lawful permanent resident and must meet other criteria such as having lived in the U.S for a specified period and not having been convicted of serious crime.

On-Going Concerns

Despite the pieces of good news reported above, many concerns remain.

Occupational disease is still largely an untold and costly story.

Professionals knowledgeable about occupational health and safety consistently caution that any attempt to count the cost of occupational harms to the physical well-being of workers will be wildly off the mark if it fails to account for illness and disease.⁶ Each year the authors of this Report likewise point out that our own In Memoriam list, like the statistics reported in the Census of Fatal Occupational Injuries, is skewed heavily toward deaths from trauma or sudden-onset illness.

Such skewed data fail to honor the many workers who die each year from past on-the-job exposures to toxic dusts and chemicals or from the accumulated effects of repeated stresses, sometimes suffered over the course of many years. Further, such data fail to provide a full picture of the measures needed to assure that workers and their families, as well as society at large, are not burdened with the heavy costs of preventable disease and disability.

This year again we note the inadequate coverage of occupational illnesses, and again we offer our regret. As one gesture toward righting the imbalance, however, this year we lift up for special mention the case of black-lung disease, also known as coal miner's pneumoconiosis. We are not able to list all the victims of black lung who died from that disease in Tennessee in 2013 and 2014. Instead, we offer a profile of one much-loved man, Dewey Duncan, who passed away many years ago but is still vividly remembered by his East Tennessee family.

We also take this opportunity to highlight some facts about this preventable scourge. Black lung is a particularly appropriate focus for this Report because ours is a state with a history of coal mining, and one deeply affected by black-lung disease. In fiscal year 2014 almost 674 former coal miners received federal black-lung benefits in Tennessee. They represented the sixth largest number of identified victims among U.S. states, coming behind only Pennsylvania, West Virginia, Kentucky, Virginia, and Ohio. (Office of Workers' Compensation Programs, Division of Coal Mine Workers' compensation 2015)

Black lung is also an appropriate topic for this Report because coal miners have earned a special place in the long-term crusade to combat death and injury on the job, and to insist on the right to a safe and healthy workplace. Over the years coal miners and their unions have played a leading role in bringing to public attention the urgent need to protect workers from danger on the job.

Over 100,000 American miners lost their lives in coal mines between 1900 and mid-century. A slow and combative process of reform brought gradual improvement to safety practices in the industry, but injury and death rates were still high. Then in 1968 an explosion and resulting fire killed 78 men at the Consol No 9 mines in Farmington, West Virginia. Some 40,000 West Virginia coal miners went on an unauthorized strike for close to a month, demanding government action. Out of that turmoil Congress passed and President Nixon signed into law the Federal Coal Mine Health and Safety Act of 1969. The act then served as the model for the Occupational Safety and Health Act that soon followed. (CDC 1999)

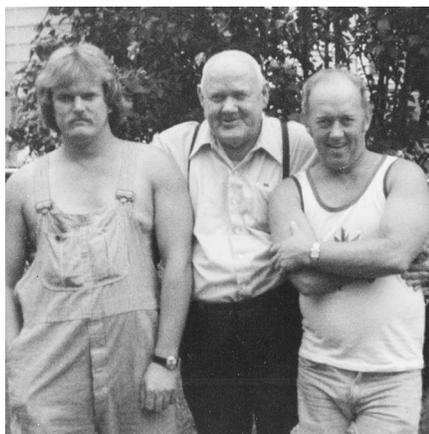
⁶ For instance, a 2011 study by economist J. Paul Leigh of the University of California-Davis estimated more than 53,000 U.S. deaths in 2007 from respiratory, cardiovascular and renal diseases, cancer and other conditions that can be linked directly to workplace exposure (Leigh 2011). That figure is far in excess of the 4,405 U.S. fatalities from acute traumatic injury reported by the Bureau of Labor Statistics in its preliminary data for 2013.

Dewey W. Duncan

1913 - 1984

Worker deaths that result from exposure to toxic working conditions are far more difficult to document than accidental deaths. Many workers sicken after prolonged exposure to toxins and die after long, debilitating illnesses. In order to avoid health care costs and disability payments, employers routinely deny that their employees become ill and die as a result of toxic working conditions. Yet investigators estimate that for every worker killed in a workplace accident, at least ten die as a result of working conditions that undermined their health and sent them to an early grave.

Dewey Duncan was a Tennessee coal miner who died of black lung disease (pneumoconiosis), a respiratory illness caused by breathing coal dust. He was born and raised in Duncan Flats in Anderson County, on the edge of the coalfields. He entered the mines when he was still a teenager. In 1938 he married Marie Wright. Dewey and Marie raised eleven children. For years Dewey worked in the Beech Grove coal mine in Anderson County, where his family lived in a company coal camp. The eighth of Dewey's children, Patti Ford, remembers her father coming home from work covered in coal dust, with only his eyes and teeth still white. In the winter months, Patti said, her father reported to work before dawn, toiled in the dark of the mine shafts all day, and emerged from the mine after dark. All told, Dewey worked in the mines for about 32 years. By 1958, when he quit coal mining, his health was already failing.



Dewey was, above all else, a family man. When he was young there were few alternatives to coal mining if you were to support your family. Dewey loved to whittle and to work with wood. He made baseball bats, and tool handles, and often got in trouble with Marie for whittling in the kitchen. Dewey's children remember their father's singing and his beautiful voice. Dewey and Marie both sang in the Beech Grove Baptist Church choir. At home the family would read and study Scripture together.

Dewey served for many years as president of United Mine Workers District 19. He was an early recipient of black lung disability payments when the federal government finally established a black lung disability program. As a union activist he helped many of his fellow coal miners apply for and receive black lung disability payments. Dewey's nephew, Freddie Wright, credits his uncle's influence as a major reason why he chose a career as a United Mine Worker organizer.

In his last years Dewey was confined indoors and eventually to his bed. He was in and out of the hospital. Patti has terrible memories of her father coughing up blood and black matter, the result of decades of breathing coal dust. Like all sufferers from black lung disease, Dewey continually struggled to breathe. Finally his lungs failed him and he died in July of 1984.

The rate of traumatic injury and death for coal miners has significantly improved over time. For instance, from 1911-1915, coal miners were killed by fatal injuries at an average annual rate of 329 per 100,000 miners, but by the end of the century that rate had decreased steeply to 25 per 100,000. (CDC 1999) In 2013, the last year for which figures are yet available, 20 deaths were recorded out of a total work force of 123,259 miners, for a rate of 16 per 100,000 (MSHA 2014).

Of course that rate is still far too high and much higher than that for most occupations, and the days of traumatic death in coal mines and even mass disasters are hardly over.⁷ Likewise, slow death from black lung disease is not only a question of past harms living on.

Recent disturbing reports suggest that black lung disease, far from declining in intensity, is now roaring back. In 2012 the Center for Public Integrity investigated government data on black lung cases and found that in the decades after passage of the 1969 law, rates of the disease at

first dropped significantly, just as reformers had hoped. In the late 1990s, however, this trend reversed. Even more alarming, incidence of the most severe, fast-progressing type of black lung had jumped significantly, and that type was occurring in younger and younger miners. (Hamby)

Experts cannot yet agree on the reasons for this resurgence. The Mine Safety and Health Administration (MSHA) recently succeeded after many years of effort in issuing new regulations aimed at reducing dust levels and disease rates. (MSHA 2014) But it is too early to tell if the new regulations and their enforcement will stem the tide.

In the meantime at younger and younger ages, coal miners are being struck down by a disease that makes it progressively harder for the victim to go about even the simplest activities of daily life. As Edward Petsonk, a doctor who treats black-lung patients and works with the National Institute for Occupational Safety and Health described it to one reporter:

No human being should have to go through the misery that dying of [black lung] entails. It is like a screw being slowly tightened across your throat. Day and night towards the end, the miner struggles to get enough oxygen. It is really almost a diabolical torture. (Hamby)

Unnecessary deaths on public works continue.

It is not possible for us to identify from among the fatalities on the In Memoriam list for 2013 and 2014 all of the ones that took place on publicly funded projects. Sometimes sufficient background information can be gathered to allow a determination, but in other cases this level of detail is unknown. Although the names below are likely an incomplete list, they are at least a start toward identifying workers who were killed while employed by a contractor or sub-contractor on a public project. Sometimes the steps needed to save lives are complex and call for special expertise, and sometimes they require simple commonsense and reasonable discipline from those in charge, as the stories below can illustrate.

José Barcenás worked for Dement Construction Company, the general contractor on a TDOT bridge project where Highway 222 goes over Interstate 40 in Haywood County. He was killed on January 18, 2014, when he was pinned and crushed between an aerial lift and a beam of the bridge under construction. Mr. Barcenás was the operator of the aerial lift at the time of the incident. A TOSHA investigator inspected the site, interviewed witnesses, and concluded that Barcenás was a carpenter who had not been trained in proper operation of the aerial lift. The company was assessed a \$3600 penalty for this serious violation of safety standards. (TOSHA Inspection # 317-585-545)

Cody Bennett was employed by a business called Five Star Lawn and Landscaping, working on a mowing contract from the city of Goodlettsville. He was killed on April 17, 2013, while mowing on a median at the intersection of two highways. There were no eye-witnesses to the event, but Mr. Bennett was found dead by a co-worker. The mower had flipped, and Bennett was pinned underneath it in a ditch filled with water. A TOSHA

7 For instance, in 2010 an explosion at Massey Energy's Big Branch Mine in West Virginia killed 29 miners. The company was found to be in flagrant and willful violation of safety standards, with MSHA describing the deaths and injuries as "entirely preventable" and the United Mine Workers Union calling the explosion "industrial homicide." (Gazette-Mail 2014) Several company employees were eventually convicted of criminal charges, and in a highly unusual development, Don Blankenship, the former controversial CEO of Massey Energy, has since been indicted by a federal grand jury for conspiring to violate safety standards, falsifying coal dust samples and defrauding federal financial regulators. (AP, 2015)

investigation revealed that at the time it flipped over, the mower was being operated on a slope far steeper than the manufacturer's recommended limit of ten degrees, its roll bar was not in the recommended raised position, and the mower had no seat belt, even though the owner's manual for that model advised that a seat belt should be used whenever the mower was in operation. TOSHA found the situation to constitute a serious violation and assessed the company a \$1200 fine. (TOSHA Inspection # 317-146-256)

Ricky McCurry worked as a carpenter/operator for Robert S. Biscan and Company, and at the time of his death he was employed on a contract to build the Eagleville High School in Rutherford County. He had been working for the company for two weeks by the time of his death on September 23, 2014. He was operating a back-hoe on the construction site and was found trapped and crushed between the canopy of the back-hoe and the ground. A TOSHA inspection revealed that the back-hoe was not even equipped with a seat-belt, nor did the company require workers to use one while operating the back-hoe, even in situations where it was at risk of overturn. In fact, the superintendant was one of the people who operated the equipment with no seatbelt, in clear violation of TOSHA standards. This was deemed serious, and the company was assessed a penalty of \$13,400 for several related violations. (TOSHA Inspection # 100-4075)

Iran Morales (or the last name may be Gallardo) was employed by a contractor to help paint a 30-foot, two-million-gallon water tower for the city of Sparta in July, 2013. He was twenty-four feet off the ground in a two-point suspension scaffolding system when one of the cables holding the scaffold pulled free and he fell, striking his head on the way down. He was taken to the hospital and died several weeks later. TOSHA cited the company for multiple serious violations having to do with the rigging of the scaffold, the lack of a competent person on site to inspect and supervise, the lack of adequate training, and the fact that workers on the scaffold were not equipped with fall arrest protection. TOSHA found many serious violations and assessed a penalty of \$19,800 (TOSHA Inspection # 317-276-582)

Luis Berrocal was a foreman with Payne Steel Erectors, a sub-contractor to Dement Construction on a TDOT job where he was helping to repair the I-40 bridge that spans the Mississippi River between Tennessee and Arkansas. He was killed on the Arkansas side of the river. Because he was a resident of Olive Branch, Mississippi, and because he did not die within the state of Tennessee, he did not meet the criteria for inclusion in our In Memoriam list. However, we include a description of his case in this section of our Report, because of its connection to a TDOT contract and to the sobering toll of death we have been attempting to monitor on TDOT bridge projects. Counting the 2014 death of Mr. Barcenas above, and that of Mr. Berrocal, the list of contracted workers we have so far identified as having been killed on TDOT bridge projects since 2005 now numbers seven. Six of those men were Latinos.

On August 22, 2014, Mr. Berrocal and his crew were working on the I-40 bridge. It was an extremely hot day and the crew was pressing to finish the job before quitting. He and another employee got onto an aerial work platform in mid-afternoon and were lifted up to the bridge, where Berrocal stepped from the lift and onto a wooden form. Neither of the men was tied off or otherwise protected from falling at that point. Berrocal leaned over and fell from the bridge to his death on the ground some fifty feet below. Heat stress may have played some role in the fall. Federal OSHA conducted an investigation and cited the employer for the lack of fall protection, assessing a \$7000 penalty for the serious violation. (OSHA inspection # 992-190.)

A near miss

In addition to the five public contract cases highlighted above, another incident at the site of a highway bridge project bears mention here. This one was a near miss involving passing motorists, rather than a fatality involving an employee. But the case carries a dramatic lesson in how workplace risks can spill over and threaten harm beyond the workforce to the general public. It also serves as one more demonstration of the need for agencies like TDOT to develop stronger systems for screening and monitoring contractors for safety.

The event took place on a TDOT bridge project in Gallatin, and it represents only the latest chapter in the train of life-threatening and life-taking incidents on TDOT projects where contracts were awarded to the Mountain States family of companies. On a day in mid-May 2013, two motorists were driving past the construction site, and as they came abreast of the bridge work, a Mountain States crane collapsed into the roadway, dropping directly onto their car and crushing it. Miraculously, both the driver and his friend escaped with their lives.

Because this equipment failure constituted a risk to workers, OSHA investigated and eventually fined the company for serious and willful violations.⁸ The agency noted that Mountain States had allowed the crane to operate even though the contractor's own crane inspections had already revealed the cable was worn, and a replacement cable had been purchased and was already on site. (Curth, May 2013; OSHA Nov. 2013)

Need for stronger screening

Both the tally of needless deaths and the dramatic near-miss catalogued above show that government agencies at both the state and local level still need to do a better job of weeding out unsafe contractors. Contracts should be awarded to companies that can demonstrate the capacity and the will to achieve a culture of safety on public works. Because they hold the purse strings on public funds – and in the case of agencies as big as TDOT, these funds measure in the many millions -- public contractors often have far more power than TOSHA to affect contractor behavior and to raise the level of safety on public projects. They should use that power to save lives.

Last year the federal government took action to assure better screening of companies seeking contracts with the federal government, aiming especially at probing contractors' past record of labor law violations, including those related to workplace safety and health (Jayakumar; White House). New rules and procedures to implement the Fair Pay and Safe Workplaces Executive Order are in the works, but it appears that many companies will soon be getting accustomed to sharper scrutiny of past safety performance if they expect to win federal contracts. Surely workers employed on state and local projects deserve as much protection as those on federal ones.

Several entities in Tennessee already use prequalification questionnaires and rating systems to guide their contracting practices, so the basic mechanisms of this approach are nothing new. Further, in recent years a number of companies have begun developing sophisticated web-based systems that enable their corporate and public-sector clients to do enhanced screening of contractors and safer management of contractor relationships. These services and the methods they have pioneered present new opportunities for contracting agencies to prequalify contractors and oversee their performance in remarkably cost-effective ways.⁹

⁸ Federal OSHA rather than Tennessee OSHA conducted this particular investigation because the crane that collapsed was located on a navigable waterway.

Immigrant and Latino workers remain vulnerable.

This Report's In Memoriam list for 2013 and 2014 indicates 12 deaths of Latino workers, some 7% of the total 172 fatalities we have been able to identify. This is an elevated proportion, given that Latinos make up only 4.9% of the state's population (U.S. Census Quick Facts). If we included the death of Luis Berrocal -- a man whose death was closely tied to Tennessee, given that he lived in the north Mississippi outskirts of Memphis, was killed in West Memphis, Arkansas, and worked for a Tennessee sub-contractor on a TDOT job -- then the total Latino deaths identified for this period would be 13 out of 173 cases, or 8%. Alternatively, if the 65 cases of heart attacks and other sudden illness or collapse at work were removed from the whole, then Latino deaths would jump to 11% of the remaining total.

Statistics from the U.S. Bureau of Labor Statistics also show disproportionate deaths among Latinos working in Tennessee, and likewise in other parts of the country. In its preliminary report on fatalities in 2013, the Bureau of Labor Standards also reported that fatal work injuries among Hispanic or Latino workers in the U.S. had increased, rising 7 percent in 2013 over the prior year and constituting the highest total since 2008, even though fatal work injuries were lower among all other major racial/ethnic groups. (CFOI 2014)

Reasons for the disproportionate rate of injury and death suffered by Latino workers here and elsewhere are complex. Because Tennessee is a place where Latinos have begun settling in significant numbers only in recent decades, a relatively high proportion of Latinos living in the state are foreign-born. (Pew Research Center 2012) These immigrants are especially likely to be employed in high-risk sectors like construction, demolition, and agriculture where they are subject to hazards greater and more numerous than the norm.

Further, Latino immigrants -- and especially those who lack legal immigration status -- are particularly vulnerable to mistreatment and often tend to be concentrated in workplaces where abuses of many kinds are common. Except in the unusual case where undocumented immigrant workers have access to relevant information and are in a position to find competent and ethical people willing to advocate on their behalf, they are unlikely to know or exercise their right to a safe and healthy workplace, a right that under U.S. law is supposed to be afforded to all who labor, regardless of race, ethnicity or immigration status.

Far too many employers have shown they are willing to take advantage of immigrant workers whose legal status or other matters limit their options and make them fearful of taking action. (Smith and Cho) ***The vulnerability of this sub-class in turn undermines health and safety standards for all workers, reduces the likelihood that dangerous worksites will be reported, makes it more difficult for health and safety inspectors to get accurate information during investigations, and puts conscientious employers at a material disadvantage.***

Congress surely bears the greatest responsibility for our presently dysfunctional immigration system. But policy makers at all levels have opportunities to reduce the harm that this broken system is imposing on efforts to improve the health and safety of American workplaces for everyone.

The enforcement toolbox remains weak and enforcement resources are still thin.

OSHA's process for adopting new standards is sluggish. Many standards badly needed to protect worker health and safety have been blocked for years or even decades by unjustified industry resistance. Though this Report will not attempt to catalog the list of needed standards

9 A few positively reviewed examples of such services that have come to the attention of the authors are (in alphabetical order) Browz at <https://www.browz.com/en/>; Construct Secure at <https://www.constructsecure.com/>; and ISNetworld at <https://www.isnetworld.com/>.

still mired in delay, readers should be aware that it is a long one worthy of serious study. (Rabinowitz 2012)

Good standards, however, even when achieved, are only as good as the accompanying system for their enforcement. Today weaknesses in the enforcement of existing occupational safety and health standards are a problem in Tennessee and across the country.

Agencies charged with enforcement need adequate resources. ***At current levels, the AFL-CIO estimates it would take TOSHA's inspectors 82 years to inspect all the workplaces that are supposed to be within that agency's jurisdiction. That number is up from 69 calculated for Tennessee last year.*** (AFL-CIO, 2013 and 2014)

Another need is for better education of affected workers and better protection for those who attempt to exercise their rights. In the absence of sufficient resources to carry out regular inspections of all covered workplaces, the system as it now exists relies heavily on worker complaints to identify workplaces where official attention is needed. But workers themselves are often unaware of their right to a safe and healthful workplace, or if they are aware, they are deterred from exercising these rights by the fear they will suffer retaliation if they speak up.

A third priority should be strengthening existing penalties. Even when problems do come to light, the typical penalties imposed by federal OSHA and by state-plan agencies like TOSHA for violations of health and safety standards are too low to effectively deter employers from maintaining unsafe working conditions. Congress can and should raise penalty levels across the nation by amending OSHA, but in state-plan states like Tennessee the state legislature has the power to do so. And TOSHA itself has more discretion than it currently exercises to at least modestly raise the price that employers must pay when they are caught violating safety standards. Meanwhile, criminal prosecutions are virtually non-existent when it comes to workplace violations, even when the facts would support such action (Steinzor 2014).

Workers' compensation in Tennessee has been damaged and destabilized.

Workers' compensation is a crucial piece of our nation's over-all system for dealing with the issue of workplace injury and death. When it works as it should, it provides a safety net for workers injured on the job, helping them weather the medical bills and at least some portion of the loss of income associated with temporary disability resulting from a workplace injury, and also providing some compensation to the worker or family dependants for any permanent disability or death. In addition, the system is supposed to help prevent workplace injury and death by requiring employers to internalize more of the cost of worker injuries and by creating other incentives that make workplace safety a matter of more immediate self-interest for employers.

The workers' compensation system -- a patchwork of different but related programs in each of the fifty states -- has always represented complex compromise between the sometimes different interests of employers, workers, and the public. Advocates who seek greater workplace safety and a fuller measure of compensation for injured workers and their families have voiced plenty of criticism over the years and have often pushed for greater levels of protection and compensation for workers.

But today, workers' compensation programs are under vigorous attack by those who claim they are too burdensome to business, or that sweeter deals will be necessary if a given state hopes to lure investment. As organized business interests have gained clout in state political arenas and the influence of labor unions and pro-worker organizations has declined, many state legislatures have begun to "reform" workers' compensation in ways that weaken the rights of workers and strengthen the hand of employers. (Grabell and Berkes; NESRI)

Sadly, Tennessee has been in the forefront of these disturbing developments. Changes to workers' compensation are not always easy to understand, so we are grateful to Knoxville attorney Garry Ferraris for agreeing to provide an introduction to the radical changes that went into effect last year as a result of earlier action by the General Assembly.

Damaging Changes to Tennessee Workers' Compensation Law

Garry Ferraris, J.D.

Workers' compensation schemes were enacted in the early part of the twentieth century in a wave of social reform. Among the purposes was to provide a no-fault social safety net for workers injured or killed on the job. This social contract was designed to provide reasonably certain compensation for injuries that arose out of and in the course of employment. In exchange, employers were immune from the common-law tort suits available in non-employment settings, with their potentially higher damages for injuries or death caused by employer negligence.

Tennessee first enacted workers' compensation legislation in 1919. Among its goals was to require employers to internalize more of the cost of workplace injuries as an expense of doing business rather than burdening the injured workers' family and society in general with the costs of unsafe employment. To reduce the cost of injuries and death, employers had an incentive to improve workplace safety.

The social contract that endured for almost a century in Tennessee has now been breached. Beginning in 1992, the legislature at the prompting of business and insurance interests began whittling away at the workers' compensation statute. Recently Governor Haslam and the legislature veered from this pattern of gradual erosion to a wholesale abandonment of fair compensation.

For workplace injuries that take place on or after July 1, 2014, the workers' compensation statute was no longer to be considered remedial legislation, thereby undercutting almost a century of legal precedents. No longer was any reasonable doubt about the cause of any injury to be construed in the injured worker's favor. Instead, a series of presumptions were imposed, presumptions in favor of the opinion of the employer's hand-picked physicians. The employer's physician opinion on the work-relatedness and the extent of impairment now is presumed to be correct. To compound this burden, the injured worker now must prove not merely that the injury arose out of employment but that it arose primarily out of employment.

In addition, new procedures were imposed closing the courthouse doors to workers. No longer will elected trial judges be allowed to adjudicate disputes; all claims must be filed solely through the state's administrative process. In the vast majority of cases injured workers will no longer be able to obtain legal advice because the amount of compensation is insufficient and so arbitrary that participation of counsel cannot be justified.

Historically, compensation for permanent disability in Tennessee was based on workers "vocational" disability. This common-sense approach was predicated on the assumption that identical injuries with identical medical impairments could have vastly different effects on workers' ability to work. Vocational disability formerly was determined from all the evidence, not solely medical impairment. Other factors such as education, training, job skills, experience, restrictions, age and job opportunities were considered.

Now regardless of the vocational impact, an employee who returns to work is limited to the medical impairment. Whether age twenty or sixty, eighth grade education or Ph.D., highly skilled or unskilled, no restriction or restricted to sedentary work, the permanent vocational compensation is defined arbitrarily as matching the medical impairment rating (that same impairment rating established by the employer's physician whose opinion is presumptively correct).

Even when the worker loses his job, an arbitrary scale allows for only small additional increments based on education, age or exceptionally high unemployment in the county where previously employed.

The impact on workers will be immediate and clear:

- In most cases workers will receive substantially less compensation under the new law than for the same

injuries under the old law.

- Many injuries or death will be found non-compensable that were previously compensable.
- Workers will face complicated administrative procedures, likely without the aid of legal counsel.
- Insurers and employers will be emboldened to deny claims filed by unrepresented workers.

If the theory is valid that the cost of injuries incentivizes employers to avoid workplace injuries and death, then a more insidious effect follows: Reducing the compensation an employer pays for an unsafe workplace thereby reduces the monetary incentive to maintain a safe workplace. The upshot: If economic incentives matter, workers are at a greater risk of being injured or killed at work. Clearly, injured workers will receive less compensation for workplace disabilities with a consequently greater burden on workers, their families and Tennessee taxpayers.

With the above changes having barely gone into effect in July 2014, observers were astounded when even more radical proposals were put before the General Assembly this spring. Companion bills HB/997 and SB/721 were introduced as the "Tennessee Employee Injury Benefit Alternative." If enacted, the proposed statute would transform workers' compensation into an optional program, bringing our state into line with only Texas and Oklahoma among other U.S. jurisdictions, and bringing potentially far-reaching consequences. A March article in Mother Jones Magazine revealed a few of the underlying dynamics, facts that the Tennessee public needs to know (Redden 2015). A few excerpts follow:

Nearly two dozen major corporations, including Walmart, Nordstrom, and Safeway, are bankrolling a quiet, multistate lobbying effort to make it harder for workers hurt on the job to access lost wages and medical care—the benefits collectively known as workers' compensation.

The companies have financed a lobbying group, the Association for Responsible Alternatives to Workers' Compensation (ARAWC), that has already helped write legislation in one state, Tennessee ...

ARAWC's mission is to pass laws allowing private employers to opt out of the traditional workers' compensation plans that almost every state requires businesses to carry. Employers that opt out would still be compelled to purchase workers' comp plans. But they would be allowed to write their own rules governing when, for how long, and for which reasons an injured employee can access medical benefits and wages ...

Two states, Texas and Oklahoma, already allow employers to opt out of state-mandated

workers' comp. ... Businesses can save millions of dollars by opting out and writing plans with narrow benefits, putting pressure on their competitors to do the same. "It creates a race to the bottom," says Michael Clingman, a workers' advocate in Oklahoma, which passed an opt-out measure in January 2014. The state's oil and gas industry, along with major retailers, such as the craft store chain Hobby Lobby, pushed hard for the change—with help from a lobbyist, Steve Edwards, who now heads ARAWC's legislative strategy. Dillard's, a department store chain with 10 locations in Oklahoma, took advantage of the change by requiring workers to report injuries before the end of their shift to be eligible for workers' comp. Walmart and Dillard's declined to comment for this article.

Now, ARAWC wants to take the Texas and Oklahoma model nationwide. Tennessee, where Lowe's, Walmart, and Kohl's each have about 20 locations, is the only state where the group has pushed legislation so far. But ARAWC is already considering its next targets.

Fortunately at least for now, neither of these bills passed the legislature this session. Both were deferred in committee, however, and they are likely to return in future. We urge the General Assembly to undertake serious monitoring and assessment of the ill-advised changes it has already unleashed on workers' compensation and to refrain from any further gutting of Tennessee's system for protecting workers on the job and compensating those who are injured.

Chad Rogers

1978 - 2013

When Chad Rogers went to work on February 28, 2013, he was in his second week of working for Charles Blalock and Sons, a construction company hired by the Tennessee Department of Transportation to make repairs on Interstate-81 near Morristown. Chad was crossing the northbound lanes of the highway when the wind blew his hard hat from his head. He took several steps into traffic to retrieve the hat and was struck and killed by a tractor-trailer. Chad was 34 years old.

Chad's mother, Teresa Horner, said that if you wanted to know what kind of person Chad was, you needed only to look at his smile. Though a quiet person, Chad met people easily and was well liked by others, including his new co-workers on the highway job. Chad's father, Jerry Rogers, was a skilled brick mason. For many years Chad followed the same trade, and worked alongside his father. In the year before his death Chad had tried his hand at work other than masonry. His varied work experience had made him a valuable and highly skilled tradesman. Teresa and Jerry said that Chad could repair almost anything.

Chad's closest friend was his brother, Jason. As boys the two were inseparable. Both boys graduated

from East High School in Morristown. Chad played on his high school baseball team and for years after graduation played on a local, sandlot softball team. Teresa

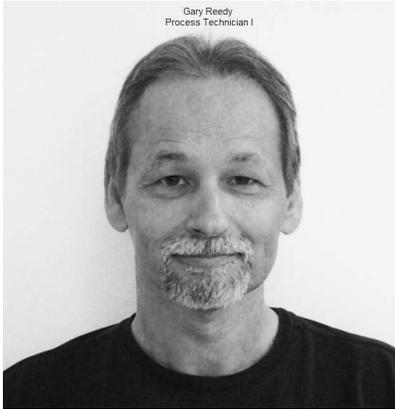
said that Chad was an avid reader—a love he learned from his mother. Mother and son often shared books with each other. Chad loved the outdoors and spent much time swimming and boating on Cherokee Lake. Teresa described her son as a fanatical Tennessee Volunteers fan. Chad and Jason often made the trip to Knoxville to attend UT football and basketball games. Just days before his untimely death Chad had attended and thoroughly enjoyed his beloved Vol's victory over their arch-rival Kentucky Wildcats.

While TOSHA investigators found no safety violations and made no citations in the accident on I-81 that took Chad's life, this tragic incident highlights the inherent dangers to workers in highway work zones where TODT seeks to maintain both the flow of traffic and the safety of its workers. And it is worth noting that during the ten year period from 2003 to 2012 Tennessee ranked fifth among all states in the number of highway work zone fatalities. Clearly there is room for improving our state's protection of the workers who build and repair our highways.



Gary Reedy

1962 - 2014



Gary Reedy was an employee at Erwin Resins Solutions in Erwin, a subsidiary of Energy Solutions. The company recycles, processes, and disposes of nuclear material from nuclear power plants and various medical and research facilities. Gary began employment at Erwin Resins Solutions in August, 2012, as a custodian but was promoted to technician shortly before his death on the job at age 51. On October 14, 2014, Gary fell backwards 21 feet into an open transfer vault while attempting to switch out a bull-horn attachment from the transfer bell that covered it. Gary remained conscious while on-site personnel worked on him. It was an hour and 40 minutes before the company finally attempted to transfer him to a hospital. He died from cardiac arrest in an ambulance seven minutes away from the hospital. Gary's head wound was considered "hot" and some of the emergency medical

technicians had to be decontaminated after the incident.

Elbert "Gary" Reedy was born in Baltimore, Maryland, on December 30, 1962. After a brief stint in the Army, Gary moved to Erwin to raise his three children, Rocky, Jessi and Matt, as a single father with the help of his loving mother, the late Mary Lou Tilson Reedy, and other family members. He loved his children and family and adored his only grandchild, five-year-old Nalei. Gary and his fiancée, Janice Monroe, were raising two of her grandchildren, Breanna and Hannah, after their mother passed away with cancer. Gary himself had overcome two different bouts with cancer.

He attended West Park Street Church and had newly rededicated his life to God shortly before his death. According to his sister Shelby, "Gary put his heart into everything he did and was a kind-hearted and thoughtful friend. Everyone you talk to about him mentions what a great worker he was and how much they loved him, his sense of humor, and his compassion."

Gary loved sports, especially the National Football League's Baltimore Ravens. He loved to work out, to lift weights, and to run.

Management refused to clear Gary's co-workers to speak at the funeral service, but one of his co-workers wrote a private tribute to Gary: "Gary loved working at the Erwin facility. He loved his job and the friends and family he had at work. Gary was an exemplary employee who had a fantastic work ethic. He always went above and beyond; if someone needed assistance, he was there. There were times he would come to work as early as 4 AM to get the facility ready for visitors. Or he would work night shift during outages and weekends when asked. Gary had been promoted to a process technician recently and officially moved into that role a few weeks ago. It was a well-deserved promotion. He wanted this job so badly and he was so proud of this accomplishment. The picture displayed [at the funeral] is the picture we have at work in our employee picture board. When he saw his new title displayed on his picture he was so happy."

The TOSHA investigation showed that Erwin Resins Solutions had failed to provide a safety rail along the open pit, as required, a violation deemed serious. The company was assessed a total \$6,450 for the violations it found.

Recommendations

FEDERAL LEVEL

Congress should:

- Strengthen OSHA and its mission of making workplaces safe.
- Enact immigration reform with protection for immigrant whistleblowers.

OSHA should:

- Improve protection against retaliation for all workers who press for safety.
- Collaborate with new Working Group to improve job safety for immigrants.

The President should:

- Implement the Fair Pay and Safe Workplaces Executive Order.
- Defend recent executive orders on immigration and prepare to implement them.

STATE LEVEL

The Governor should:

- Champion an agenda that takes worker health and safety seriously.
- Reach out to private sector employers to embrace a culture of safety.

The General Assembly should:

- Strengthen TOSHA's budget and its authority to impose effective penalties.
- Enact laws requiring state agencies to screen and monitor contractors for safety.
- Repair past damage done to workers' comp and reject new opt-out proposal.

TOSHA should:

- Toughen penalties imposed for serious, willful and repeat violations.
- Improve methods for protecting whistleblowers and assuring confidentiality.
- Launch sustained initiative to reduce death and injury of Latino workers.

TDOT should:

- Proceed with new study of methods to screen contractors and assure safety.
- Consult with broad range of interested parties during study and planning.
- Establish and maintain channels of communication with affected workers.

LOCAL LEVEL

Local government should:

- Develop contracting policies that reward responsible contractors.
- Build worker safety into local planning, contracting and financing practices.

AT THE WORKPLACE

Employers should:

- Initiate comprehensive injury and illness prevention programs.

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TOSHA Inspection # 315-366-112 (John Womac)

TOSHA Inspection # 315-685-552 (Solín Estrada-Jimenez)

TOSHA Inspections # 316-483-676 and # 316-483-965 (Abimael Contreras)

TOSHA Inspection # 317-146-124, -132, -137, and -140 (Joel Pineda and Jose Velasco)

TOSHA Inspection # 317-156-131 (Rick Beck)

TOSHA Inspection # 317-276-582 (Iran Morales)

TOSHA Inspection #317-741-270 (Rodney Edwards, Jr.)

TOSHA Inspection # 317-585-545 (José Barcenás)

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Additional resources

Organizations

Always Remember (Wildland Firefighters)
<http://wlfalwaysremember.org/home.html>

American Federation of Labor-Congress of Industrial Organizations (AFL-CIO)
<http://www.aflcio.org/Issues/Job-Safety>

Asbestos Disease Awareness Organization
<http://www.asbestosdiseaseawareness.org>

Centers for Disease Control & Prevention, Highway Work Zone Safety.
<http://www.cdc.gov/niosh/topics/highwayworkzones/>

Hubble Foundation (support for families of cell tower climbers)
<http://www.hubblefoundation.org/>

Mine Safety and Health Administration (MSHA)
<http://www.msha.gov/>

National Council for Occupational Safety and Health (National COSH)
<http://www.coshnetwork.org/>

National Institute for Occupational Safety and Health (NIOSH)
<http://www.cdc.gov/niosh/about.html>

Office of Workers' Compensation Programs (OWCP)
<http://www.dol.gov/owcp/>

Officer Down Memorial Page (ODMP)
<https://www.odmp.org/>

Stop Construction Falls Campaign Main Page
<http://stopconstructionfalls.com/>

Stop Construction Falls Fatality Mapping Project
http://stopconstructionfalls.com/?page_id=1239

Taxi Driver Memorial List
<http://www.taxi-library.org/poster.htm>

United Support and Memorial for Workplace Fatalities (USMWF)
<http://usmwf.org>

U.S. Fire Administration, Firefighter Fatalities
<http://apps.usfa.fema.gov/firefighter-fatalities/>

Selected Hazard Information

NIOSH. Fall Injuries Prevention
<http://www.cdc.gov/niosh/topics/falls/>

NIOSH. Firefighter Fatality Investigation and Prevention Program
<http://www.cdc.gov/niosh/fire/>

NIOSH. Highway Work Zone Safety
<http://www.cdc.gov/niosh/topics/highwayworkzones/>

NIOSH. Trenching and excavation
<http://www.cdc.gov/niosh/topics/trenching/>

NIOSH. Women's Safety and Health Issues at Work
<http://www.cdc.gov/niosh/topics/women/>

OSHA. Aerial Lifts
https://www.osha.gov/Publications/aerial_lifts_safety.html

OSHA. Communication Towers
<https://www.osha.gov/doc/topics/communicationtower/index.html>

OSHA. Dangers of Roll-overs of Riding Mowers
https://www.osha.gov/dsg/riding_mowers/

OSHA. Electrical Incidents
https://www.osha.gov/SLTC/etools/construction/electrical_incidents/mainpage.html

OSHA. Falls
<https://www.osha.gov/SLTC/etools/construction/falls/mainpage.html>

OSHA. Felling Trees
<https://www.osha.gov/SLTC/etools/logging/manual/felling.html>

OSHA. Forklifts
<https://www.osha.gov/SLTC/powerindustrialtrucks/>

OSHA. Machine Guarding
<https://www.osha.gov/SLTC/machineguarding/>

OSHA. Safeguarding Equipment And Protecting Employees From Amputations
<https://www.osha.gov/Publications/OSHA3170/3170-02R-2007-English.html>

OSHA. Struck-by hazards (includes vehicles, falling objects, masonry walls)
<https://www.osha.gov/SLTC/etools/construction/struckby/mainpage.html>

OSHA. Trenching and excavation
<https://www.osha.gov/SLTC/etools/construction/trenching/mainpage.html>

OSHA. Workplace violence
<https://www.osha.gov/SLTC/workplaceviolence/>
https://www.osha.gov/OshDoc/Directive_pdf/CPL_02-01-052.pdf

TOSHA. Fall Protection Brochure
http://www.tn.gov/labor-wfd/Publications/TOSHA/TOSHA_Falls.pdf

Glossary of Acronyms and Other Terms

AFL-CIO - American Federation of Labor-Congress of Industrial Organizations

American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) -- An umbrella federation that brings together a large number of U.S. labor unions, and partners with worker centers and other allied organizations. Its 56 affiliated member unions represent some 12.5 million working men and women.

BLS -- Bureau of Labor Statistics

Bureau of Labor Statistics (BLS) -- The principal fact-finding agency for the U.S. federal government in the broad field of labor economics and statistics.

CDC - Centers for Disease Control and Prevention

Census of Fatal Occupational Injuries (CFOI) -- A program that produces counts of fatal work injuries. CFOI is a Federal-State cooperative program, organized by the U.S. Bureau of Labor Statistics and implemented in all 50 States and the District of Columbia since 1992. The census uses multiple sources to identify, verify, and profile fatal worker injuries across the United States.

Centers for Disease Control and Prevention (CDC) - This network of institutions describes itself as “the nation’s health protection agency.” It conducts research and provides information about health threats, and responds when these arise. The National Institute for Occupational Safety and Health is a component of CDC.

CFOI -- Census of Fatal Occupational Injuries

Mine Safety and Health Administration (MSHA) -- The purpose of the Mine Safety and Health Administration is to prevent death, disease, and injury from mining and to promote safe and healthful workplaces for the Nation’s miners. MSHA conducts regular inspections, fatality and injury investigations, develops standards, and conducts education.

MSHA -- Mine Safety and Health Administration

National Institute for Occupational Safety and Health (NIOSH) -- NIOSH is housed within the CDC. It conducts research and training and makes recommendations for the prevention of work-related illnesses and injuries, working with others in government, industry, labor, professional associations, academia and the media to communicate findings on workplace risks and promote prevention measures.

NIOSH -- National Institute for Occupational Safety and Health

Occupational Safety and Health Administration (OSHA) -- The federal agency charged with enforcing federal health and safety laws and mandating better practices in the workplace. OSHA was created by the Occupational Safety and Health Act in the 1970s. That federal statute gave states the option of having federal OSHA administer their occupational health and safety programs or creating their own “state plan,” as long as the state plans standards and procedures are equal to or stronger than federal ones. About half the states, including Tennessee, have chosen to adopt state plans.

OSHA -- federal Occupational Safety and Health Administration

OSHAct -- federal Occupational Safety and Health Act

TDOT -- Tennessee Department of Transportation

Tennessee Department of Labor and Workforce Development -- A department of state government that has responsibility for a range of workplace issues and programs, including unemployment insurance, workers’ compensation, employment services, and occupational health and safety.

Tennessee Department of Transportation (TDOT) -- A department of state government that has responsibility for the construction and maintenance of highways and bridges across the state, and for selection and oversight of companies that receive millions of dollars in highway and bridge construction contracts each year.

Tennessee Occupational Health and Safety Administration -- TOSHA is a “state plan” created by the Tennessee General Assembly under the part of the federal OSHAct that gives states the option to enforce health and safety standards, as long as they are equal to or stronger than federal OSHA’s. It is part of the Tennessee Department of Labor and Workforce Development. TOSHA - Tennessee Occupational Safety and Health Administration

Appendices

- A. Legislation proposed by Rep. Mike Stewart in Spring 2015 for safety in TDOT contracting (H.B. 1027 as amended)
- B. Letter of March 31, 2015, from Deputy Commissioner and Chief Engineer Paul Degges of TDOT to Rep. Stewart announcing plan to study options for development of a system to evaluate contractors and better assure safety on TDOT projects.
- C. Letter of April 15, 2015, from Stewart to Degges in reply to his letter.
- D. Legislation proposed by Rep. Mike Stewart in Spring 2015 strengthening penalties available to TOSHA in cases of serious, willful or repeat violations of safety standards (H.B. 0483)

HOUSE BILL 1027

By Stewart

AN ACT to amend Tennessee Code Annotated, Title 54, Chapter 5, relative to worker safety.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 54-5-117, is amended by deleting the language “or any other matter” and substituting instead the language “occupational safety and health, or any other matter”.

SECTION 2. Tennessee Code Annotated, Title 54, Chapter 5, is amended by adding the following language as a new part:

54-5-1501. This part shall be known and may be cited as the “Public Construction Contractor Safety Act.”

54-5-1502. As used in this part:

- (1) “Bidder” means a person submitting or intending to submit a bid for a construction contract;
- (2) “Contractor” means a person that contracts directly with the department to complete a department construction project;
- (3) “Department construction project” means a construction project for which a contract is awarded by the department;
- (4) “Injury and illness incidence rates” means any measurement based on the number of bidder- or subcontractor-reported nonfatal work-related injuries, cases of illness, or days during which employees were away from work, transferred to other jobs, or restricted in their performance of tasks in the workplace;
- (5) “Occupational safety and health agency” means:
 - (A) The federal occupational safety and health administration (OSHA);

(B) The Tennessee occupational safety and health administration (TOSHA); or

(C) Any agency responsible for implementation of the occupational safety and health plan for any other public jurisdiction established under Section 18 of the federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 667);

(6) "Prequalification score" means the score assigned to a bidder or subcontractor pursuant to § 54-5-1504(c)(1)(C);

(7) "Questionnaire" means the standardized prequalification questionnaire developed by the department pursuant to § 54-5-1503;

(8) "Rating system" means the rating system developed by the department pursuant to § 54-5-1503; and

(9) "Subcontractor"

(A) Means a person that:

(i) Has contracted with a contractor or subcontractor to perform construction work on a department construction project; or

(ii) Has contracted with or intends to contract with a bidder or subcontractor seeking to perform construction work on a department construction project; and

(B) Does not include an employee of a bidder, contractor, or subcontractor.

54-5-1503.

(a) Notwithstanding § 54-5-116, the department of transportation, in consultation with the department of labor and workforce development, shall develop a standardized prequalification questionnaire and rating system to assess bidders on objective metrics of occupational safety and health performance for the purpose of prequalifying bidders and their subcontractors on department construction contracts. The views of the administrator of the Tennessee occupational safety and health administration (TOSHA)

shall be accorded special consideration in developing the prequalification questionnaire and rating system. The department of transportation shall also consult with occupational safety and health professionals, contractor management consulting firms, construction contractors, building trades unions, and other interested or knowledgeable parties in developing the standardized questionnaire and rating system.

(b)

(1) The department of transportation is authorized to use the services of a private sector management consulting firm to assist in developing the prequalification questionnaire and rating system, administering the prequalification questionnaire, evaluating the information contained in answers to the prequalification questionnaire, and updating information for the duration of any resulting contract.

(2) The department is authorized to negotiate a compensation agreement with the private sector management consulting firm whereby the cost of its services are absorbed by bidders for department construction contracts.

(c) The department shall review relevant scientific and engineering literature, standards in use by other awarding bodies, and federal occupational safety and health administration guidance documents to determine key occupational safety and health metrics for the purposes of this section.

(d) The prequalification questionnaire and rating system shall include, without limitation, an assessment of whether the bidder and each of its subcontractors:

(1) Implements written, site-specific occupational health and safety plans that contain the following core elements:

(A) Methods for identifying, assessing, and documenting potential occupational safety and health hazards;

(B) Methods for preventing and controlling occupational safety and health hazards that are developed and implemented with the active participation of the project's employees;

(C) Methods for communicating and implementing safety information and providing new-hire and refresher training to supervisors and employees in a language and format they can understand;

(D) Methods for evaluating supervisory personnel based on the project's safety performance record;

(E) Methods for assuring that subcontractors on the bidder or subcontractor's projects are equipped to comply with the site-specific occupational health and safety plan and are held accountable for doing so;

(F) Record-keeping requirements; and

(G) Regular evaluation of and continuing improvements to the site-specific occupational health and safety plan and its implementation;

(2) Demonstrates managerial commitment to the health and safety of workers, other personnel, and the general public by adopting, posting, and implementing an explicit company policy that:

(A) Requires directors, officers, and employees to observe high standards of business and personal ethics in the conduct of their duties and responsibilities related to safety and health;

(B) Describes relevant reporting responsibilities and reporting procedures;

(C) Protects against retaliation for employees who in good faith report problems or incidents related to safety or health;

(D) Assures notice is given to all employees about OSHA-

mandated education and training requirements that apply to the employees' specific job duties;

- (E) Designates individuals responsible for compliance; and
- (F) Provides for annual review of the policy's effectiveness;

54-5-1504.

(a) No bidder shall submit a bid for, or be awarded the contract for, a department construction project unless:

(1) The bidder submits a list of all subcontractors who will perform construction work on the project to the department; and

(2) The bidder and all subcontractors who will perform construction work on the project have valid prequalification scores.

(b) No subcontractor shall perform construction work on any department construction project unless the subcontractor has a valid prequalification score.

(c)

(1) The department shall:

(A) Review the information provided in the prequalification questionnaire to determine its validity;

(B) Gather any additional information about past performance or present capacity of bidders and subcontractors that the department deems important for rating them;

(C) Assign each bidder or subcontractor a prequalification score based on objective standards in accordance with the rating system provided in § 54-5-1503(a).

(2) The department is authorized to use the services of a management consulting firm as described in § 54-5-1503(b), to assist with compliance with subdivision (c)(1).

(3) Prequalification scores expire and must be renewed after one (1) year.

SECTION 3. The commissioner of transportation is authorized to promulgate rules to effectuate the purposes of this act. All rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 4. For the purposes of promulgating rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2016, the public welfare requiring it, and shall apply to contracts entered into or renewed on or after that date.

Appendix B Letter of March 31, 2015, from Deputy Commissioner and Chief Engineer Paul Degges of TDOT to Rep. Stewart announcing plan to study options for development of a system to evaluate contractors and better assure safety on TDOT projects.



**STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION**

BUREAU OF ENGINEERING
SUITE 700, JAMES K. POLK BUILDING
505 DEADERICK STREET
NASHVILLE, TENNESSEE 37243-1402
(615) 741-0791

JOHN C. SCHROER
COMMISSIONER

BILL HASLAM
GOVERNOR

March 31, 2015

The Honorable Mike Stewart
State Representative
17 Legislative Plaza
Nashville, TN 37243

Dear Representative Stewart:

On behalf of the Tennessee Department of Transportation (TDOT), I would like to thank you for your engagement in discussions related to worker safety on TDOT projects. Encouraging a culture of safety for contractors, our employees and the traveling public has always been and will continue to be a priority for us.

With regard to contractor safety specifically, the The Department is investigating the development of a system to evaluate the contractors' safety record as a part of the pre-qualification process and/or as a specification requirement. A general timeline for developing a plan of action with regard to the strengthening of our current requirement is as follows:

Phase 1: 4-8 weeks Gather data and meet with internal and external entities (e.g. insurance representatives, contractors, state governments, and federal government).

Phase 2: 4-6 weeks Analyze data to determine appropriate plan of action (with internal and external Review).

Phase 3: 4-8 weeks Develop a plan of action for implementation.

This process will require TDOT to compile data from insurance providers, contractors, other state transportation department, and government agencies such as the Occupational Safety and Health Administration. The data will then be reviewed to determine which parameters should to be considered in a plan of action for the Department. When an draft plan of action is developed,

Representative Mike Stewart
March 31, 2015
Page 2

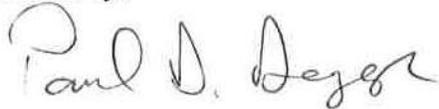
an implementation process will be developed to place safety thresholds as a part of the pre-qualification process and/or as a specification.

Throughout the development of the aforementioned plan, the Department will be glad to meet with and or talk to interested parties with the goal of producing an effective process that contributes to enhanced safety on our construction sites. In addition, we would like to propose the following meetings to accommodate your continued engagement in the effort:

- Kickoff meeting – To discuss objectives and goals of evaluation system.
- Progress meeting – The Department will report out on what we have found relative to industry practices, etc.
- Action plan presentation – The Department will report out on our draft plan of action.

We thank you for your interest and leadership related to this important effort and look forward to working toward strengthening our culture of safety on TDOT projects. If I can be of further assistance, do not hesitate to contact me at 615.741.0791 or by email at Paul.Degges@tn.gov.

Sincerely,



Paul D. Degges, P.E.
Deputy Commissioner/ Chief Engineer

PDD/jc

CC: Mr. Matt Barnes
Mr. Will Reid, P.E.
Mr. Greg Duncan, P.E.
Ms. Margaret Mahler

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**House of
Representatives
State of Tennessee**

**MIKE STEWART
CHAIRMAN
DEMOCRAT CAUCUS**

**52ND LEGISLATIVE DISTRICT
DAVIDSON COUNTY**

COMMITTEES

**CRIMINAL JUSTICE
GOVERNMENT OPERATIONS
INSURANCE AND BANKING
CRIMINAL JUSTICE SUBCOMMITTEE
JOINT GOVERNMENT OPERATIONS
HOUSE RULES
ETHICS**

April 15, 2015

Mr. Paul D. Degges, P.E.
Deputy Commissioner/Chief Engineer
Suite 700, James K. Polk Building
505 Deaderick Street
Nashville, TN 37243-1402

Dear Mr. Degges:

Thank you for your letter of March 31, 2015 that sets forth how the Tennessee Department of Transportation (TDOT) plans to proceed in strengthening the culture of safety on departmental construction projects. It reflects many of the objectives found in my legislation, the Public Construction Contractor Safety Act (HB 1027 and SB 1370), and it provides a basis on which to proceed to strengthen the pre-qualification process.

An important focus of your letter is the commitment to meet with interested parties during the three phases of development. As you know, in addition to interested members of the General Assembly, these parties include community representatives, faith-based groups, and labor organizations that came together in the aftermath of the spate of fatalities and injuries associated with the renovation of the Henley Street Bridge, the Wolf River Bridge, the Highway 41 Bridge over Nickajack Lake in Marion County, and the construction crane collapse on Highway 109 in Gallatin. It is important

that representatives of these groups be among those who meet with the TDOT during the three-phase design process.

As an element of Phase 1, I think it would be desirable to explore the resources of several private-sector safety/management consulting firms that specialize in data acquisition and analysis of firms in the pre-qualification process. It is my understanding that TVA and the Knoxville Utilities Board (KUB) have found the expertise and data acquisition capabilities of these firms to be helpful in strengthening the pre-qualification of contractors, as well as maintaining satisfactory safety practices during project execution. Another element of Phase 1 that I deem critically important is gathering data related to projects that include the views of workers in designing and implementing a project safety plan.

You have suggested that a kickoff meeting be scheduled to discuss objectives and goals of the evaluation system. I think this is an excellent idea and you will have my full cooperation in such a meeting. I also believe representatives of the external groups would be able to make a positive contribution in regards to objectives and goals. Identifying and agreeing on the evaluation system's objectives and goals at the beginning will be a major factor in achieving an outcome in which we can all take pride.

I want to express my personal thanks to you and your associates at TDOT for responding to my suggestions in H.B. 1027 in a positive way. A strengthened pre-qualification process that leads to the maintenance of recognized safety practices over the life of the project will not only contribute to a reduced likelihood of serious injury or loss of life but also is likely to save money and time. These are goals we all share.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Stewart", with a stylized, cursive script.

Mike Stewart

HOUSE BILL 483

By Stewart

AN ACT to amend Tennessee Code Annotated, Title 50, Chapter 3, relative to the occupational safety and health act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 50-3-403, is amended by deleting the section and substituting instead the following:

(a) If an employer knows or has reason to know that an employment condition or practice in the employer's business seriously endangers the health or safety of the employer's employees, and if the condition or practice is not in compliance with any standard promulgated pursuant to this chapter, then a penalty of not less than five thousand dollars (\$5,000) and up to fifty thousand dollars (\$50,000) shall be assessed for each violation.

(b) If an employer knows or has reason to know that an employment condition or practice in the employer's business seriously endangers the health or safety of the employer's employees, and if the condition or practice is not in compliance with a standard promulgated pursuant to this chapter, then in addition to any fine or civil penalty otherwise provided for the violation, a further civil penalty of up to fifty thousand dollars (\$50,000) shall be assessed for each violation that materially contributes to causing the death of an employee, subject to the following:

(1) The additional penalty may be increased to not more than two hundred fifty thousand dollars (\$250,000) for an employer with two hundred fifty (250) or more employees.

(2) If the commissioner issues a valid citation and penalty assessment to an entity other than the employer for a safety violation that materially contributes to the death of a person, then the entity shall be assessed an additional civil penalty of up to fifty thousand dollars (\$50,000). This penalty shall be separate from and in addition to any penalty assessed against the employer or its parent or subsidiary.

(3) The commissioner may waive or reduce the penalty provided by this subsection (b) only if:

(A) The deceased employee owns ten percent (10%) or more of the employing entity and the imposition of the penalty would pose a financial hardship on the employee's family or dependents; or

(B) The employer or the owner of the employer is a natural person who is also killed or severely injured as a result of the violation that materially contributed to the death of the employee and the imposition of the penalty would pose a financial hardship on the employer's family or dependents.

(4) If the penalties assessed pursuant to this section threaten the financial solvency of the violator or impair the violator's ability to implement needed safety measures, then the department may negotiate a payment plan to collect the full penalties due over a time period not to exceed five (5) years.

SECTION 2. Tennessee Code Annotated, Section 50-3-404, is amended by deleting the language "seven thousand dollars (\$7,000)" and substituting instead the language "twelve thousand dollars (\$12,000)".

SECTION 3. Tennessee Code Annotated, Section 50-3-405(b), is amended by designating the subsection as subsection (c) and by deleting the language "seventy thousand dollars (\$70,000)" and substituting instead the language "one hundred thousand dollars (\$100,000)".

SECTION 4. Tennessee Code Annotated, Section 50-3-405, is further amended by adding the following new, appropriately designated subsection:

(b) Any employer who has received a citation for a violation of this chapter or standard or regulation promulgated pursuant to this chapter, and the violation is specifically determined to be of a serious nature, may be assessed a penalty of up to twelve thousand dollars (\$12,000) for each violation.

SECTION 5. Tennessee Code Annotated, Section 50-3-406, is amended by deleting the language "seven thousand dollars (\$7,000)" and substituting instead the language "twelve thousand dollars (\$12,000)".

SECTION 6. This act shall take effect July 1, 2015, the public welfare requiring it, and shall apply to violations occurring on or after that date.

Sponsoring Organizations

Knox Area Workers' Memorial Day Committee

The Knox Area Workers' Memorial Day Committee began as a joint project of the Knoxville- Oak-Ridge Area Central Labor Council and Bridges to Justice, both described below. The Committee has taken a lead role in organizing Workers' Memorial Day observances in Knoxville since 2012 and offers technical support and assistance to other groups interested in holding observances in other parts of Tennessee. Since 2013, the Committee has been an Associate Member of the National Council on Occupational Health and Safety.

Bridges to Justice

<http://www.bridgestojustice.org/>

Bridges to Justice is a worker and community alliance fighting to improve safety and working conditions for those who build Tennessee's bridges and other public infrastructure. B2J was formed in response to the deaths of five men, all employed on TDOT bridge projects where contracts or sub-contracts had been awarded to Mountain States Contractors or its close affiliate Britton Bridge LLC.

Church of the Savior, United Church of Christ

934 N. Weisgarber Rd.

Knoxville, TN 37909

584-7531

<http://www.cos-ucc.org/index.php>

Church of the Savior is an inclusive, caring, open and affirming congregation with a special commitment to social and economic justice.

Interfaith Worker Justice of East Tennessee

934 Weisgarber Rd.

Knoxville, TN 37920

(865) 584-7531;

<http://etiwj.org/>

IWJ of East Tennessee is a local chapter of Interfaith Worker Justice, a coalition of faith communities that advocates for the well-being of all working people. IWJ envisions a nation where workers enjoy the rights to wages, benefits and conditions that allow them to live with dignity.

Jobs with Justice of East Tennessee

1415 Elm St.

Knoxville, TN 37921

email: jwjofet@bellsouth.net

www.jwjjet

A local coalition linked to national Jobs with Justice/American Rights at Work. It is an alliance of faith-based and community-based organizations, labor unions, and individuals committed to social and economic justice for working people and their families in East Tn.

Knoxville-Oak Ridge Area Central Labor Council, AFL-CIO

1522 Bill Williams Ave.

Knoxville, TN 37917

Phone: 865-591-2300

<http://tn.aflcio.org/391/>

An umbrella organization that brings together local unions representing workers in different industries across 13 counties in East Tennessee. For many years it has held observances of Workers' Memorial Day to honor those killed on the job in Tennessee in the previous year.

Authors of this Report

Fran Ansley is Distinguished Professor of Law Emeritus at the University of Tennessee College of Law.

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Our greatest thanks go to each of the families who shared with us the stories of those who died.

