



**STATEMENT OF
DAVID MICHAELS, PHD, MPH
ASSISTANT SECRETARY
OCCUPATIONAL SAFETY AND HEALTH
ADMINISTRATION
U.S. DEPARTMENT OF LABOR**

**BEFORE THE
COMMITTEE ON OVERSIGHT AND GOVERNMENT
REFORM
SUBCOMMITTEE ON REGULATORY AFFAIRS,
STIMULUS OVERSIGHT
AND GOVERNMENT SPENDING
U.S. HOUSE OF REPRESENTATIVES**

March 16, 2011

Thank you very much for inviting me to testify here today. I have been looking forward to coming before you to describe the important work of the Occupational Safety and Health Administration and to listen to your comments and suggestions about how we might improve the approaches we take to fulfill the important mission given to us by the Congress.

This year marks the 40th anniversary of the establishment of the Occupational Safety and Health Administration and I think by any measure, this agency has been one of the true successes of government efforts to protect workers and promote the public welfare.

It is difficult to believe that only 40 years ago, although some states had limited worker protection laws, most American workers did not enjoy the basic human right to work in a safe workplace. Instead they were told they always had a choice: They could continue to work under dangerous conditions, risking their lives, or they could move on to another job. I think we can all agree that we have made great progress since then.

The results of this law speak for themselves. In the four decades since the OSH Act was enacted, the nation has made dramatic progress in reducing work-related deaths and injuries. Since 1970, workplace fatalities have been reduced by more than 65 percent. Reported occupational injury and illness rates have decreased by over 67 percent since 1973, but far too many preventable injuries and fatalities continue to occur.

In 1971, the National Safety Council estimated that 38 workers died on the job every day of the year. Today, the Bureau of Labor Statistics puts that number at 12 per day, with a workforce that is almost twice as large.

The Private Construction Industry

I am also glad that you chose the important issue of construction safety to discuss here today. Construction safety is also one of OSHA's top concerns. Construction is among the most dangerous industries in the country and construction inspections comprise 60% of OSHA's total inspections. In 2009, preliminary data from the Bureau of Labor Statistics indicate that there were 816 fatal on-the-job injuries to construction workers – more than in any other single industry sector and nearly one out of every five work-related deaths in the U.S. that year.

In 2009, private industry construction workers had a fatal occupational injury rate nearly three times that of all workers in the United States: 9.7 per 100,000 full-time equivalent construction workers vs. 3.3 for all workers. Construction also had two of the ten occupations with the highest fatal injury rates: roofers at 34.7 fatal work injuries per 100,000 full-time equivalent workers and structural iron and steel workers at 30.3. The number of fatal injuries in construction declined from 975 in 2008 to 816 in 2009. The Bureau of Labor Statistics attributes much of the fall in construction fatalities to a weak economy. The challenge for OSHA will be to keep these numbers down as the economy begins to pick up.

The leading causes of worker deaths in the construction industry were: falls, struck by object, caught-in/between, and electrocution. These "Fatal Four" were responsible for nearly three out of five (59%) construction worker deaths in 2009, BLS reports. In 2009, falls accounted for more than one-third of fatal occupational injuries in construction (34%). Nearly half (48%) of all fatal falls in private industry involved construction workers. Transportation-related events were the second leading fatal injury event (25%) in construction, followed by contact with objects and equipment (19%) and exposure to harmful substances and environments (16%). Illnesses in construction include lead poisoning, lung disease and cancer from exposure to asbestos and silica, hearing loss and musculoskeletal disorders.

But we're talking about much more than just statistics. We read about these tragedies almost every day in the newspaper or see them on the 11:00 news. Almost every construction worker that dies leaves behind a family: children, spouses, parents whose lives are devastated. A breadwinner's serious injury can throw a family permanently out of the middle class.

Enforcement

We know that OSHA enforcement and regulations save lives, that many workers are alive today because of OSHA's activities. But it is rare to see news reports about the lives that *haven't* been lost, the fathers who can still join their children for dinner because they are alive after a day of work. Just over a week ago, the nation witnessed the dramatic demonstration of lives saved when a scaffold holding two workers collapsed 12 stories above the ground in Yonkers, NY. The two men on that scaffold were protected by fall protection equipment until rescuers were able to bring them safely to the ground.

And last week in the state of Ohio, we were reminded again about the life-saving value of OSHA regulations. Our inspectors were called to investigate a report of a worker in a deep construction trench. Upon arrival, OSHA inspector Rick Burns identified a worker in a 10-foot deep unprotected trench. OSHA regulations require trenches greater than 5 feet deep to be shored, sloped or protected in some way.

Burns immediately directed the worker to leave the trench. The worker exited the trench and 5 minutes later, the walls of the trench collapsed right where the worker had been standing. There is little doubt that he would have been seriously injured or killed.

Unfortunately, for construction workers, far too many work days do not end so happily.

One of the goals of enforcement is to level the playing field for the vast majority of employers, who play by the rules and make the health and safety of their employees a priority. While most employers strive to do the right thing, too many try to save a few dollars by cutting corners on safety and health – often with tragic results. Last year, for example, OSHA fined the C.A. Franc construction company \$539,000 following the investigation of the death of a roofing worker, Carl Beck, who fell 40 feet at a Washington, PA worksite. Fall protection equipment was readily available on site but not provided to workers. Carl Beck Jr. was 29 years old and had two small children.

But I also want to be very clear that OSHA is not satisfied with just responding to fatalities or dramatic accidents after a worker has been hurt or killed. We are about prevention – getting to dangerous workplaces BEFORE incidents happen that injure or kill workers.

Here is one example of preventive enforcement. In December, OSHA proposed penalties totaling \$360,000 to Gerardi Sewer & Water Co. in Norridge, IL for eight willful, two serious and three repeat safety violations for failing to protect workers from cave-ins during trenching operations. The company had been cited 8 times before for many of the same violations. We later ordered the company to inform OSHA of all of its future work locations. Enforcement actions like this are a success story for OSHA and for workers. We were able to send a strong message to this company and others – before workers were hurt or killed – that OSHA will not tolerate putting workers in dangerous environments.

The ultimate goal of OSHA penalties is deterrence – using penalties as one way to change employers' behavior. Unfortunately, maximum OSHA fines do not rise with inflation and are generally quite low. The last time OSHA penalties were raised was in 1990. Despite the high fines in a few egregious cases like CA Franc and Gerardi, for example, the average OSHA fine for a serious violation in 2010 was only around \$1,000.

Vulnerable Workers

Among the most vulnerable workers in America are those who work in high-risk industries, particularly construction.

Because of language barriers, literacy and other limitations, these workers are often hard to reach through traditional communications methods.

Latino workers suffer and die on the job at a higher rate than other workers. To put this in painful, human perspective: About 13 Latino workers die on the job every week while doing the most difficult, unhealthful and dangerous jobs in America. This is an intolerable, national disgrace.

These hard-to-reach workers, who are so vulnerable to serious harm, are also the least likely to feel safe speaking up for their rights. As a result, they are often exploited by unscrupulous employers who callously expose them to health and safety hazards with little or no training or personal protective equipment.

OSHA is reminding employers to comply with requirements that they must present information about workers' rights, safety and health training materials, information and instructions in a language that their workers can understand. Earlier this year we issued a directive to OSHA inspectors to check for this during site visits to be sure that employers are complying.

To address the problem of protecting these hard-to-reach workers, Secretary Solis convened a National Action Summit for Latino Worker Health and Safety in Houston in April 2010.

Nearly a thousand workers, employers, labor leaders, representatives from community- and faith-based organizations, consulates and government gathered for two days to seek new and effective ways to improve workers' knowledge of their workplace rights and their ability to exercise those rights.

Texas was an appropriate location for this conference. At the summit, we met the surviving worker from a June 2009 tragedy in Austin. Juan Mirabel came to the summit to tell how he warned his employer, to no avail, not to overload a scaffold, not to use it to haul heavy loads. He told us how the scaffold – uninspected, improperly assembled and overburdened – collapsed. Juan hung on for his life while three other workers fell to their deaths.

These are not just tragedies for workers and their families; they are also tragedies for the American economy. Workplace injuries, illnesses and fatalities take an enormous toll on this nation's economy – a toll we can hardly afford in good times, but that is intolerable in the difficult times we are experiencing today. A March 2010 Liberty Mutual Insurance company report showed that the most disabling injuries (those involving 6 or more days away from work) cost American employers more than \$53 billion a year – over \$1 billion a week – in workers' compensation costs alone. Indirect costs to employers, such as costs of down time for other employees as a result of the accident, investigations, claims adjustment, legal fees, and associated property damage can up to double these costs. Costs to employees and their families through wage losses uncompensated through workers' compensation, loss of home production, and family care for the workers

further increase the total costs to the economy, even without considering pain and suffering.¹

OSHA Standards

One of the main duties that Congress gave OSHA was to issue standards to protect workers from these costly injuries and deaths. OSHA goes through a long and extensive public consultation process before issuing any new standards. OSHA conducts sophisticated reviews of the economic impact of regulations, and reports on economic and technical feasibility. In addition to stakeholder meetings and on-line webchats, OSHA gets small business input through the Small Business Regulatory Enforcement Fairness Act (SBREFA) panels for major regulations, holds public hearings and solicits extensive written comments. All significant regulatory proposals and final standards are extensively reviewed by the White House Office of Management and Budget.

Just this past year, OSHA issued a long awaited standard to protect employees who work in and around cranes and derricks. The previous rule, which dated back to 1971, was based on then 40-year-old standards. After years of extensive research, consultation and negotiation with industry experts, this long overdue rule addressed the leading causes of deaths and injuries related to cranes and derricks, including electrocution, boom collapse and overturning. The final standard will prevent 22 fatalities and 175 non-fatal injuries each year.

Like the Cranes and Derricks Standard, many standards that OSHA is working on are long overdue and replace outdated and outmoded regulations. For example, OSHA is currently working on a much needed standard to protect workers – including construction workers – against silica exposure. Silica exposure causes lung cancer and has been known for hundreds of years to cause a debilitating disease called silicosis. The current OSHA silica exposure limit that covers construction workers dates from the early 1970's and is based on an obsolete sampling method that has not been used for many years.

But OSHA is not satisfied with just issuing new and updated standards. We also look back at our previously issued standards to ensure that they effectively protect workers without overburdening business. Some of those lookback studies have addressed construction standards. For example, according to comments and analyses in the final lookback report for the Trenching and Excavation Standard, the number of trenching and excavation fatalities declined from an estimated 90 fatalities per year prior to the enactment of the 1989 Standard, to approximately 70 per year since 1990. The numbers have now fallen to fewer than 50 per year according to the Bureau of Labor Statistics. Since this 22% reduction occurred over a period when there was a 20% real increase in construction activity, fatalities were actually reduced by more than 35%.

Similarly, according to another lookback review final report for OSHA's Lead in Construction Standard, issued in August 2007, blood lead levels of exposed employees declined significantly after the standard was adopted, showing that

compliance with the OSHA Lead in Construction Standard effectively protects workers from high lead levels.

To further ensure that OSHA targets the right areas in standards and enforcement, OSHA also has a committee to advise the Assistant Secretary on construction-related issues. The Advisory Committee on Construction Safety and Health (ACCSH) is composed of labor, management and public representatives and meets several times a year.

Compliance Assistance

At OSHA, we are also committed to a robust compliance assistance effort. We recognize that most small construction businesses may not be able to hire full time health and safety staff, nor are many able to afford to hire consultants to address their safety and health obligations. To assist these small employers, OSHA's Onsite Consultation Service provides **free** workplace safety and health evaluations and advice to small businesses with 250 or fewer employees, and is completely separate and independent from OSHA's enforcement program with very few exceptions. Last year, the Consultation Service conducted over 30,000 consultation visits, more than 9,000 in small construction companies.

We also invest heavily in compliance assistance to ensure that employers know how to comply with our standards. OSHA has compliance assistance specialists in most of our area offices – ready to provide assistance and information. In FY 2010, we helped over 200,000 individuals through our toll-free number. In addition, we develop materials for employers to help with compliance. For example, with respect to our new cranes standard that I mentioned before, in addition to the materials we have already published, we are currently developing 4 fact sheets to help employees and employers implement the new standard. Last week we issued a Small Entity Compliance Guide for Cranes and Derricks, and we are working on a compliance directive, as well as adding additional frequently asked questions.

OSHA has also been working closely with the building industry and labor unions to find and implement solutions to worker injuries and deaths by incorporating engineering controls into construction practices. For example, Prevention Through Design, a novel idea a few years ago, is finding wider acceptance in the industry. With the support and leadership of IMPACT, Building Trades Employers' Association of NY, ACCSH and others, these life-saving controls are moving toward becoming the norm for new and renovated buildings.

Examples of Prevention Through Design that OSHA has promoted include reinforcing skylights and designing parapets for rooftop workers, and the idea of "cocooning" for poured-in-place concrete buildings is now providing added safety for workers erecting One World Trade Center in New York. Cocooning means wrapping entire floors of a building in plastic, preventing falls and avoiding the need for fall protection equipment and other more expensive and less safe measures.

OSHA Initiatives

Finally, I know there is also some interest in two proposals that OSHA has recently withdrawn. I'd like to say a few words about both of those.

First, OSHA has temporarily withdrawn its musculoskeletal disorder column regulation because it was clear to us that there was still a great deal of concern about what this regulation would require, and we thought it made sense to take more time to listen to stakeholders' concerns. We are currently working with the Small Business Administration's Office of Advocacy to organize small business stakeholder meetings to listen to small businesses and address their concerns.

I'll summarize briefly what this regulation would do. Since the early 1970's, OSHA has required that high hazard employers maintain a list of work-related injuries and illnesses on the OSHA 300 log. These include musculoskeletal disorders such as back injuries. Recordable injuries must meet one of the following criteria: involve medical treatment (more than first aid); involve lost time; involve restricted duty. In addition to deciding whether the employee has suffered an injury or illness, the employer must also decide whether that injury or illness is work-related. Again, this is what employers must do now for all work-related injuries and illnesses. Almost 350,000 musculoskeletal disorders (MSDs) with days away from work are recorded by private industry and State and local government employers who go through this process every year.

Our proposed regulation would add a column to the OSHA 300 log to identify which recordable injuries and illnesses are MSDs. Employers who have recorded a work-related musculoskeletal disorder would be required to identify such injuries as MSD by checking a box in a new MSD column. This new MSD column would join existing columns that identify recordable work-related injuries or illnesses, including skin disorders, respiratory conditions, and hearing loss. We believe that including the MSD column on the 300 log will provide valuable information about the magnitude of MSD problems and trends across industries. Employers and workers would have a much clearer understanding of the pattern of injuries in their workplace which is the first step in controlling those hazards.

You should also note that low hazard employers and small employers with 10 or fewer employees do not have to keep an OSHA 300 log. This means that only around 15% of small employers even have to keep a log and would even then only be affected by this standard if one of their employees suffered a recordable musculoskeletal disorder.

Second, I'll describe briefly the intent of OSHA's proposal regarding noise – which, as you know, we have withdrawn. First, let me provide a little background. Between 20,000 and 25,000 workers every year suffer noise-induced hearing loss. Hearing loss is also a major problem for construction workers. OSHA has a history of working constructively with employers to develop cost-effective ways to control noise. Most construction workers have suffered substantial loss of hearing after 15-25 years on the job and have to live with a significant

loss of hearing for the rest of their lives. Hearing aids can increase the sound levels, but do nothing to increase comprehensibility or decrease problems like ringing in the ears. Hearing loss is rarely compensated among construction workers.

Last year, OSHA issued a Federal Register notice announcing a proposal to change the way we interpret OSHA's noise standard. I want to emphasize that this was a proposal, issued for public comment in order to gather information. It was not a final decision. The Agency committed to reviewing all of the comments prior to making any final decision. In fact, OSHA extended the comment period and is continuing to accept comments, even though the proposal has been withdrawn. OSHA withdrew the proposed interpretation because it became clear from the concerns raised that addressing this problem would have required much more public outreach and many more of the agency's scarce resources than we had originally anticipated. The agency decided to suspend work on the proposal in order to conduct more education and consultation on work-related hearing loss. We are initiating a robust outreach and compliance assistance effort to provide enhanced technical information and guidance on the many inexpensive, effective engineering controls for dangerous noise levels.

In conclusion, construction is hazardous work, and OSHA is working hard to protect workers in this industry with standards, enforcement, outreach, education, and consultation. We are hopeful that the current record low numbers of fatalities and injuries are more than an indication of low construction levels associated with economic difficulties, and that safer and more healthful construction work will help keep the toll of these accidents down as the economy and construction industry recover.

Thank you again for inviting me to this hearing to discuss the important issue of keeping this nation's construction workers safe on the job. I would be glad to answer your questions.

Footnote 1: Liberty Mutual Research Institute for Safety, 2010 Liberty Mutual Workplace Safety Index, available at www.libertymutualgroup.com

For more info contact:

David Michaels: Assistant Secretary of Labor for Occupational Safety and Health,

U.S. Department of Labor Occupational Safety & Health Administration,
200 Constitution Avenue Washington, D.C. 20210,
<http://www.osha.gov>, publicdavidmichaels@dol.gov,

Tel. 800-321-6742