

**Testimony of Peg Seminario, Director Safety and Health, AFL-CIO
Before the Senate Committee on Health, Education, Labor and Pensions Hearing
on Penalties for Worker Fatalities under the Occupational Safety and Health Act
April 29, 2008**

Senator Kennedy, Ranking Member Enzi, and other members of the committee, I appreciate the opportunity to testify today on the issue of penalties for workplace fatalities under the Occupational Safety and Health Act.

Yesterday, April 28, was Workers Memorial Day – a day unions and others here and around the globe remember those who have been killed, injured and diseased on the job. Here in the United States, it also marked the 38th anniversary of when the Occupational Safety and Health Act went into effect.

Nearly four decades after the job safety law was passed we find that the promise of safe jobs for American workers is far from being fulfilled. Without question, progress has been made in improving protections and in reducing job fatalities, injuries and illnesses. But in recent years that progress has come to a halt, and for some groups of workers the situation is getting much worse.

The Number of Workplace Fatalities Has Increased - Fatality Rates Remain Unchanged. For Some Workers Jobs are More Dangerous

This month, the Bureau of Labor Statistics (BLS) issued revised workplace fatality statistics for 2006, which showed that job deaths increased in 2006 to 5,840, as opposed to declining as originally reported. The job fatality rate for 2006 was 4.0/100,000 workers – essentially the same as it has been for the past five years. (Attachment 1).

For some groups of workers, the situation is getting worse. In 2006, the number of fatalities among Hispanic workers jumped to 990, the highest number ever reported since BLS began the Census of Fatal Occupational Injuries (CFOI) in 1992. (Attachment 2). The fatality rate among Hispanic or Latino workers also increased to 5.0/100,000 (from 4.9/100,000 in 2005), twenty-five percent greater than for the workforce as a whole. Deaths among immigrant workers also increased to 1,046 fatalities. This increase in Latino and immigrant worker deaths was due almost entirely to increased deaths in the construction industry.

The latest fatality report also shows other disturbing news. In 2006, the number of workplace deaths from falls, exposure to harmful substances or environments (such as confined spaces) and fires and explosions increased significantly. The number of deaths from falls reached an all-time high with 827 deaths reported, with most of the increase in fatalities coming in the construction industry. (Attachment 3). These trends are particular disturbing since these hazards are subject to OSHA standards and oversight.

In fact, a close review of the job fatality data since 1992 when the fatality census began, shows that the only significant decline in the job fatality numbers has been for deaths due to assaults and violent acts. For all the other major causes of workplace deaths, the number of fatalities have remained essentially the same or have increased. (Attachment 4).

The vast majority of workplace deaths could be prevented if protective safety and health measures were followed. But the fact is that for too many employers, the safety of workers is secondary, taking a back seat to production. For some employers, there is a total and blatant disregard for workers. Worker safety requirements and other worker protections are totally ignored.

These include employers like McWane, Inc., one of the largest producers of steel pipe in the U.S., where over the course of a ten-year period (1995- 2005), 11 workers were killed and thousands were injured at multiple facilities around the country. This persistent violator racked up violation after violation in dozens of OSHA investigations. But in virtually every case, penalties were reduced and citations dropped, resulting in enforcement actions that were little more than a slap on the wrist. It wasn't until the *New York Times* exposed McWane's pattern of abuse and violations in 2003, and criminal prosecutions were pursued largely using environmental statutes, that McWane was moved to change its manner of operating.

The Occupational Safety and Health Act is Too Weak to Create an Incentive to Improve Conditions and Deter Violations

The Occupational Safety and Health Act places the responsibility on employers to protect workers from hazards and to comply with the law. The law relies largely on the good faith of employers to address hazards and improve conditions. For this system to work, it must be backed up with strong and meaningful enforcement. But at present, the Occupational Safety and Health Act and the OSHA enforcement program provide little deterrence to employers who put workers in danger. OSHA inspections and oversight of workplaces is exceedingly rare. There are no mandatory inspections even for the most dangerous industries or workplaces. Between federal OSHA and the states there are approximately 2,100 inspectors. OSHA has the capacity and resources to inspect workplaces on average once every 92 years -- once every 133 years in the federal OSHA states. Over the years OSHA's oversight capacity has been diminished. Federal OSHA has fewer staff today than it did in 1975, but a much bigger job with twice as many workers and workplaces and new hazards to cover.

Since there is no regular oversight, strong enforcement when workplaces are inspected and violations are found is even more important. But the penalties in the OSH Act are weak. Serious violations of the law (those that pose a substantial probability of death or serious physical harm to workers) are subject to a maximum penalty of \$7,000. Willful and repeated violations carry a maximum penalty of \$70,000 and willful violations a minimum of \$5,000. These penalties were last adjusted by the Congress in 1990 (the only time they have been raised). Unlike all other federal enforcement agencies (except the IRS), the OSH Act is exempt from the Federal Civil Penalties Inflation Adjustment Act, so there have not even been increases in OSHA penalties for inflation, which has reduced the real dollar value of OSHA penalties by about 39%. For OSHA penalties to have the same value as they did in 1990, they would have to be increased to \$11,500 for a serious violation and to \$115,000 for a willful violation of the law.

By comparison, the Mine Safety and Health Act requires mandatory inspections - four per year at underground mines and two per year at surface mines. As a result of Congressional action following the Sago mine disaster and other disasters in 2006, the Mine Act now provides for much tougher penalties. The MINER Act increased maximum civil penalties for violations to \$60,000 (from \$10,000), which may be assessed on an instance-by-instance basis. The 2006 mine safety legislation also added a new provision for “flagrant” violations, with a maximum civil penalty of \$220,000.

The maximum civil penalties provided for under the OSHA Act are rarely assessed. Indeed, just the opposite is the case. In FY 2007, the average penalty for a serious violation of the law was \$906 for federal OSHA and \$913 for the state OSHA plans combined. Again this is the average penalty for violations that pose a substantial probability of death or serious physical harm. For violations that are “other” than serious, which also carry a statutory maximum of \$7,000, the average federal OSHA penalty was just \$40. Clearly, for most employers these levels of penalties are not sufficient to change employer behavior, improve workplace conditions or deter future violations.

Even in cases where workers are killed, penalties are abysmally low. According to OSHA inspection data, the average serious penalty in fatality cases for FY 2007 was just \$2,343 for federal OSHA and \$3,988 for the state plans combined. The average total penalty assessed in fatality cases was just \$10,133 nationally (\$12,226 for federal OSHA and \$7,525 for the OSHA state plans). These averages include open cases, which when finally resolved, will result in a reduction in these average penalty levels. Average penalties in fatality cases for FY 2003 – 2006, where most cases have been resolved, show a national average of \$6078 (\$6646 for federal OSHA and \$5363 for the state plan states). All of these average penalties include several high penalty cases, which increase the averages. (Attachment 5).

A state-by-state review shows that there is wide variability in penalties assessed in cases involving worker deaths, with the penalties in some states exceedingly low. For example, in FY 2007 Alaska’s average penalty in worker fatality cases was just \$750, and in Oregon the average penalty was \$793. (Attachment 6).

OSHA highlights the few cases where it imposes high penalties. These cases are the subject of press releases that are posted prominently on the agency’s website. But these high penalty cases are the exception. The norm in most fatality cases is minimal citations and penalties of just a few thousand dollars, with these cases receiving little attention. For example:

In 2004, two Pennsylvania sewer workers, Robert Hampton, 43 and Larry Dunning, 61, were asphyxiated and died while working in a 10-foot deep manhole. No confined space entry procedures were followed or protection provided. The contractor, Rittenbaugh, Inc., was cited for one serious violation of the general duty clause (since there still is no confined space entry standard for construction) and one serious violation of safety training requirements, with an initial penalty of \$1,500. The case was settled for \$1,000.

In New Jersey, Jose Duran Painting was cited for one serious violation and penalized \$2,000 in the death of an immigrant worker, for failing to provide fall protection. The penalty was reduced to \$1,400.

In Michigan, in 2006, Midwest Energy Cooperative, was fined \$4,200 for 2 serious violations for excavation and safety program requirements in the death of Danny Young, 27, who was killed when a backhoe hit a gas line which exploded. The case was settled for \$2,940.

In Austin, Texas, in September 2004, a worker was killed in a trench cave in. The sewer contractor, ID Guerra, was cited for one serious and one repeat violation of OSHA's trenching standards, and penalized \$8,400, including a \$5,600 penalty for the repeat violation. Despite being cited by OSHA for a similar trenching violation in 2003, OSHA reduced the repeat penalty in the fatality case to just \$2,800. (Under the Act, the maximum penalty for a repeat violation is \$70,000).

What kind of message does it send to employers, workers and family members, that the death of a worker caused by a serious or even repeated violation of the law warrants only a penalty of a few thousands dollars? It tells them that there is little value placed on the lives of workers in this country and that there are no serious consequences for violating the law.

The OSHAct and OSHA Enforcement Policies Discount Penalties for Violations Even in Cases of Worker Death

So why are penalties for workplace fatalities and job safety violations so low? The problems are largely systemic and start with the OSHAct itself. The Act sets low maximum penalty levels, particularly for serious violations, which carry a maximum of \$7,000. This is the most common type of violation cited in fatality cases and other enforcement cases. These penalty levels are then adjusted downward based on employer size, good faith, history, and gravity of the violation. Under OSHA policy, violations directly related to fatalities are supposed to be classified as high-gravity, but penalty reductions are still allowed for employer size and history. Reductions for employer size range from 20 percent (for employers with 101-250 employees) to 60 percent (for employers with 1-25 employees); and the reduction for no history of serious, willful or repeat violations in the past 3 years is an additional 10 percent. So in many cases there is an automatic 30 to 70 percent discount in penalties, regardless of the gravity of the violations that are found.

OSHA's general policy is to group multiple instances of the same violation into one citation, with one penalty. So, for example, if five workers are injured due to an employer's failure to provide guarding for machines, the employer will only be cited once for the violation, even though five workers were hurt. This policy further minimizes the level of overall penalties in enforcement cases, including fatalities.

In 1986, OSHA instituted a policy to provide for instance-by-instance penalties in those cases where there was a flagrant and willful violation of the law. This "egregious" policy as it came to be known, was designed to penalize employers who put workers at risk and to send a message to other employers about the potential consequences of not complying with

the law. Over the years, the egregious policy has had some positive impact, particularly when used as part of an industry-wide enforcement initiative, as was the case in the 1980's and early 1990's, when it was used for widespread injury reporting and ergonomic hazard violations. But in recent years, the impact of the policy has been reduced, as the Bush appointees to the Occupational Safety and Health Review Commission (OSHRC) have taken an exceedingly restrictive view of the types of violations that may be cited on an instance-by-instance basis. For example, OSHRC ruled that an employer could not be cited on a per-employee, instance-by-instance basis for failing to provide respirators or training to workers exposed to asbestos.

The initial citations and penalties in OSHA enforcement cases, weak to begin with, are reduced even further in the resolution of cases. Due to limited staff and resources, OSHA area directors and Department of Labor solicitors are under tremendous pressure to settle cases and avoid time consuming and costly litigation. In both informal settlements by the agency, and formal settlements after employer challenges to OSHA citations, penalties are routinely cut by another 30 – 50 percent. Indeed, it is OSHA practice to offer employers an automatic additional 30 percent penalty reduction at the time the citations are issued, no questions asked, if the employer agrees to correct all violations. (Attachment 7). The effect of these policies and practices in most cases is to reduce penalties to a level too minimal to have any effect.

A recent in-depth investigation by the *Las Vegas Sun* of construction worker fatalities on the Las Vegas Strip highlighted the weakness of OSHA enforcement in responding to and preventing workplace fatalities. Over the past 16 months, nine construction workers have died on a massive construction project overseen by some of the nation's largest contractors. In more than \$30 billion dollars worth of currently ongoing building projects along the Strip, construction workers are facing massive speedup pressure to complete projects on time amid unsafe conditions, including inadequate fall protection measures, faulty equipment, and lack of required safety training that led to some of the deaths.

The *Sun* reported that Nevada OSHA inspections of the nine fatalities initially resulted in findings of serious violations of safety standards and penalties, albeit fairly low. However, in case after case during informal conferences with the contractors, the agency withdrew many citations and reduced the penalties, in some cases removing all the citations and penalties in their entirety. For example, in a case involving the death of Harvey Englander, a veteran operating engineer, who was killed when struck by a man-lift in August 2007, Nevada OSHA issued 3 serious violations with \$21,000 in penalties against the Pernini Building Company for lock-out and training violations. The citations and penalties were later withdrawn. Just a few months later, in October 2007, Harold Billingsly, a 46 year-old iron worker fell to his death, falling 59 feet through an unguarded opening. SME Steel Contractors was issued three serious citations and penalized \$13,500 for failing to provide fall protection and other violations. But, as in the Perini case, following an informal conference with the company, Nevada OSHA withdrew all the citations and penalties.

As a result of the *Sun* expose, federal OSHA and the Nevada legislature are examining Nevada OSHA enforcement practices, which already are changing. The public scrutiny has also led to much greater attention to safety requirements at the Las Vegas construction projects on the Las Vegas strip. But, if it hadn't been for the enterprising work of the *Sun*

reporters, it's unlikely likely that these dangerous practices and conditions would have changed.

Another way the impact of OSHA enforcement in fatality cases is minimized is through downgrading the classification of citations from willful to serious, which greatly undermines any possibility of criminal prosecution under the OSHAct. In some cases OSHA has utilized a practice of changing the characterization of willful or repeat violations to "unclassified," even though the OSHAct makes no provision for the issuance of such citations. For example, in a fatality investigation of a worker death at McWane Inc. Atlantic Cast States Iron Pipe Company in March 2000, OSHA downgraded four repeat violations to "unclassified" violations, even though the company had been cited previously for serious violations in a fatality that occurred at the same facility the year before.

Employers will seek "unclassified" violations, particularly in fatality cases, not only to undermine the potential for criminal prosecution, but to lessen the impact of the violations in any civil litigation and to keep willful or repeat violations off their safety and health record. The use of these "unclassified" violations may allow for settlements with higher monetary penalties or additional safety and health requirements. But these "unclassified" violations greatly weaken the deterrent effect of OSHA enforcement to prevent future occurrence of similar violations.

In FY 2003 there were 50 unclassified violations in federal OSHA fatality cases and in FY 2004 there were 49 such violations. In recent years that number has dropped, and for FY 2007, OSHA inspection data shows no unclassified violations associated with fatality cases. But the OSHA policy of allowing unclassified citations, even in fatality cases, is still on the books.

Enhanced Enforcement Program - A Limited Step in the Right Direction

In 2003, in response to the *New York Times* expose on McWane, Inc's history and pattern of worker deaths and OSHA's weak enforcement actions, OSHA adopted a new Enhanced Enforcement Program (EEP). The purpose of the program as described by then-OSHA Assistant Secretary John Henshaw was to target "employers who are indifferent to their obligations under the OSHAct. Under the program, employers with worker fatalities with high gravity serious, willful or repeat violations, or other inspections resulting in multiple serious, willful or repeat violations, are subject to enhanced oversight. This enhanced scrutiny includes follow-up inspections and/or inspections at other facilities of the employer and may result in stricter settlement practices and enforcement actions in future cases.

In FY 2007, there were 719 inspections involving EEP cases, compared to 467 EEP cases in FY 2006, 593 EEP cases in FY 2005 and 313 EEP cases in FY 2004. Many of these cases were among small employers (25 or fewer) who had workplace fatalities with a serious violation, but no prior OSHA history. In 2008, OSHA modified the EEP program for cases involving fatalities with a serious violation to include only those employers who had a history of similar serious, willful or repeat violations or another workplace fatality in the last three years.

This increased oversight of more serious violators by OSHA is welcome, but the program is limited in its impact in terms of deterring future violations and affecting employer behavior. The program includes no provisions for actually enhancing penalties against serial violators or even changing practices for informal settlements or penalty reductions in future cases. For example, in one EEP case at ADM Milling in Nebraska, in 2003, the employer was cited for serious and repeat violations of lock-out/tag-out, machine guarding and electrical safety requirements. Initial penalties of \$124,000 were proposed, reduced to \$62,000 in an informal settlement. Two years later a follow-up inspection at the same plant found 2 repeat violations for machine guarding standards. Penalties of \$50,000 were proposed, but were later reduced by OSHA to \$32,500 in an informal settlement -- clearly not a deterrent for a company the size of ADM, which had \$44 billion in sales in 2007.

Under the EEP, expansion of investigations to other facilities of the same employer is not automatic, and only occurs in limited cases. Thus, the program provides little leverage to force employers who have similar violations and unsafe practices at multiple facilities to change the behavior and address hazards on a corporate-wide basis.

OSHA keeps an internal list of employers who are targeted for this enhanced enforcement and notifies employers that they have been targeted for enhanced scrutiny. But there is no public disclosure of the list of companies that are being targeted under the EEP due to their history of fatalities and serious, willful or repeat job safety violations. Publicizing this list could increase public awareness and scrutiny of these companies and create an added incentive for these companies to change their safety and health practices.

OSHA Criminal Penalties Are Weak and Provide Almost No Deterrence

If the civil penalties under the Occupational Safety and Health Act provide little deterrence or incentive for employers, the criminal penalties are even weaker. Under the Occupational Safety and Health Act, criminal penalties are limited to those cases where a willful violation of an OSHA standard results in the death of a worker, and to cases of false statements or misrepresentations. The maximum period of incarceration upon conviction is six months in jail, making these crimes a misdemeanor.

The criminal penalty provisions of the OSHAct have never been updated since the law was enacted in 1970 and are weaker than virtually every other safety and environmental law. For example, since 1977 the Mine Safety and Health Act has provided for criminal penalties for willful violations of safety and health standards and knowing violations for failure to comply with orders or final decisions issued under the law, and the Mine Act makes these violations a felony. Unlike the OSHAct, these criminal penalties are not limited to cases involving a worker's death.

Federal environmental laws have also been strengthened over the years to provide for much tougher criminal penalties. The Clean Air Act, the Clean Water Act, and the Resource Conservation and Recovery Act all provide for criminal prosecution for knowing violations of the law, and for knowing endangerment that places a person in imminent danger of death or serious bodily harm, with penalties of up to 15 years in jail. Again, there is no prerequisite for a death or serious injury to occur.

The weak criminal penalties under the OSHAct result in relatively few prosecutions. With limited resources, federal prosecutors are not willing or able to devote significant time or energy to these cases. According to information provided by the Department of Labor, since the passage of the Act in 1970, only 68 cases have been prosecuted, with defendants serving a total of 42 months in jail. During this time, there were 341,000 workplace fatalities according to National Safety Council and BLS data, about 20 percent of which were investigated by federal OSHA. In FY 2007, there were 10 cases referred by DOL for possible criminal prosecution, but to date the Justice Department has not acted on any of them.

By comparison, according to EPA in FY 2007 there were 340 criminal enforcement cases initiated under federal environmental laws and 226 defendants charged resulting in 64 years of jail time and \$63 million in penalties – more cases, fines and jail time in one year than during OSHA’s entire history. The aggressive use of criminal penalties for enforcement of environmental laws, and the real potential for jail time for corporate officials, serve as a powerful deterrent to environmental violators.

The contrast between the weak enforcement provisions of the OSHAct and the stronger environmental law provisions can be seen starkly seen in cases involving both workplace safety and environmental violations.

The case of Eric Ho is one example. In 1998, Ho was engaged in a building renovation project in Houston, Texas. The building contained asbestos. Ho hired 11 undocumented workers from Mexico to remove the asbestos, and failed to provide them with any training, respirators or protective equipment. A city building inspector stopped the work due to the lack of proper permits, but Ho continued to do the work secretly at night to avoid detection. Two months into the job, an explosion from a gas line occurred at the site, releasing asbestos into the air.

OSHA inspected and issued serious and willful citations against Ho for failing to provide workers with respirators and training required by the OSHA asbestos standard. But these violations could not be criminally prosecuted under the OSHAct, because despite the flagrant violations, no workers were killed. At the same time, however, Ho was criminally prosecuted and convicted for violations of the Clean Air Act for his illegal asbestos-removal activities.

It is worth noting that OSHA proposed significant civil penalties against Ho, citing him on an instance-by-instance, per employee basis for exposing the 11 workers to asbestos hazards without respirators or training. But the Occupational Safety and Health Review Commission struck down these instance-by-instance violations, and greatly reduced the penalties, finding that OSHA’s respirator and asbestos training standards did not allow for per-employee, instance by instance violations.

In recent years the Justice Department launched a new Worker Endangerment Initiative that focuses on companies that put workers in danger while violating environmental laws. The Justice Department prosecutes these employers using the much tougher criminal provisions of environmental statutes. Under the initiative, the Justice Department has

prosecuted employers such as McWane, Inc. a major manufacturer of cast iron pipe, responsible for the deaths of several workers; Motiva Enterprises, which negligently endangered workers in an explosion that killed one worker, injured eight others and caused major environmental releases of sulfuric acid; and British Petroleum for a 2005 explosion at a Texas refinery that killed 15 workers.

These prosecutions have led to major criminal penalties for violations of environmental laws, but at the same time underscore the weaknesses in the enforcement provisions of the Occupational Safety and Health Act.

In the Motiva case, the company pleaded guilty to endangering its workers under the Clean Water Act and was ordered to pay a \$10 million fine. The company also paid more than \$12 million in civil penalties for environmental violations. In contrast, in 2002 following the explosion, OSHA initially cited the company for 3 serious and 2 willful violations with proposed penalties of \$161,000. As a result of a formal settlement, the original serious and willful citations were dropped and replaced with “unclassified” citations carrying \$175,000 in penalties, greatly undermining any possibility of criminal enforcement under the OSHAct.

In the BP Texas City refinery disaster, where 15 workers were killed and another 170 injured, under a plea agreement, the company pleaded guilty to a felony violation of the Clean Air Act and agreed to pay \$50 million in penalties and serve a 3-year probation. BP also agreed to pay \$100 million in criminal penalties for manipulating the propane market. But BP paid no criminal penalties under the OSH Act, even though 15 workers died and OSHA issued hundreds of civil citations for willful, egregious violations of the law. And under the OSH Act, even if BP had paid criminal penalties, it would have been a misdemeanor, not a felony. Cases like this send a terrible message to workers about the value our laws place on their health and safety on the job.

Congress Must Act - The Occupational Safety and Health Act Should be Strengthened.

In 1970, the Congress enacted the Occupational Safety and Health Act, declaring that workers’ lives were important and protecting workers’ safety and health was a national priority. That same kind of commitment and Congressional action is needed today.

The Occupational Safety and Health Act must be strengthened to provide for strong, meaningful enforcement that will deter violations and serve as an incentive to improve conditions and protect workers from harm.

The OSHA civil penalties should be increased – significantly. The enhanced penalties for mine safety adopted by Congress in the MINER Act in 2006 - \$60,000 for serious violations and \$220,000 for flagrant violations - provide a good guide. There should also be a floor for penalties in fatality cases, to take into account the harm that has been done. These increased penalties should be automatically adjusted for inflation, as is the case with other federal laws, so their impact is not diluted with the passage of time.

OSHA's authority to issue violations and assess penalties for each instance of a violation should be made clear and unambiguous. The greater the number of workers put at risk or in danger or who have been injured or killed due to workplace violations, the greater the penalty should be. The use of 'unclassified' citations should be prohibited.

Consideration should also be given to adopting special provisions to address safety and health practices at the corporate level. Presently, the enforcement structure of the OSHA Act is focused primarily at the establishment level, which as the Committee heard at a hearing earlier this month, is inadequate to change the practice and culture at the corporate level. Requirements for corporate officials to address identified violations and hazards on a corporate-wide basis would greatly enhance the Act's effectiveness, and result in improved workplace conditions and greater protection for workers.

The criminal enforcement provisions of the Act must also be strengthened and expanded. At a minimum, criminal violations should be made a felony carrying a significant prison term and monetary fines, and expanded to cover cases where violations cause serious injury to workers. The law should make clear that responsible corporate officials are subject to prosecution in appropriate cases. As a matter of fundamental fairness and sound public policy, the criminal provisions of the Occupational Safety and Health Act should be strengthened so that violations of workplace safety laws carry at least the same potential consequences under our criminal justice system as violations of federal environmental statutes.

For these legislatively improvements to be effectively implemented, OSHA and the Department of Labor must be given additional resources to enforce the law.

The Committee has before it legislation that would accomplish most of these recommendations. The Protecting America's Workers Act (S.1244), introduced last year by Senator Kennedy with the support of many others, would improve the foundation for worker's job safety protections. It would strengthen OSHA enforcement by increasing civil and criminal penalties and expanding their scope. It would also put in place a mandatory minimum penalty in cases involving worker deaths, so that we would no longer see the current meager fines of a few thousand dollars in fatality cases. Family members of victims would also be given rights in OSHA fatality investigations.

In addition to strengthening enforcement, the Protecting America's Workers Act (PAWA) would extend the Act's coverage to state and local public employees, flight attendants and other workers who currently lack OSHA protection. It would enhance the anti-discrimination provisions of the OSHA Act to better protect workers from retaliation, by bringing the law into line with other federal whistleblower statutes.

The Protecting America's Workers Act is a good, sound bill that should be enacted into law.

Four decades after the passage of the Occupational Safety and Health Act, its time for the country and the Congress to keep the promise to workers to protect them death, injury and disease on the job.

ATTACHMENTS

ATTACHMENT 1

Workplace Fatalities Since the Passage of OSHA^{1,2}

Year	Work Deaths	Employment (000)³	Fatality Rate⁴
1970.....	13,800	77,700	18
1971.....	13,700	78,500	17
1972.....	14,000	81,300	17
1973.....	14,300	84,300	17
1974.....	13,500	86,200	16
1975.....	13,000	85,200	15
1976.....	12,500	88,100	14
1977.....	12,900	91,500	14
1978.....	13,100	95,500	14
1979.....	13,000	98,300	13
1980.....	13,200	98,800	13
1981.....	12,500	99,800	13
1982.....	11,900	98,800	12
1983.....	11,700	100,100	12
1984.....	11,500	104,300	11
1985.....	11,500	106,400	11
1986.....	11,100	108,900	10
1987.....	11,300	111,700	10
1988.....	10,800	114,300	9
1989.....	10,400	116,700	9
1990.....	10,500	117,400	9
1991.....	9,900	116,400	9
1992 ²	6,217	117,000	7
1993.....	6,331	118,700	8
1994.....	6,632	122,400	5
1995.....	6,275	126,200	5
1996.....	6,202	127,997	4.8
1997.....	6,238	130,810	4.7
1998.....	6,055	132,684	4.5
1999.....	6,054	134,666	4.5
2000.....	5,920	136,377	4.3
2001.....	5,915*	136,252	4.3
2002.....	5,534	137,700	4.0
2003.....	5,575	138,928	4.0
2004.....	5,764	140,411	4.1
2005.....	5,734	142,894	4.0
2006.....	5,840	145,501	4.0

¹Fatality information for 1971-1991, from National Safety Council Accident Facts, 1994.

² Fatality information for 1992 to 2006 is from the Bureau of Labor Statistics, Census of Fatal Occupational Injuries In 1994, the National Safety Council changed their reporting method for workplace fatalities and adopted the BLS count. The earlier NSC numbers are based on an estimate, the BLS numbers are based on an actual census.

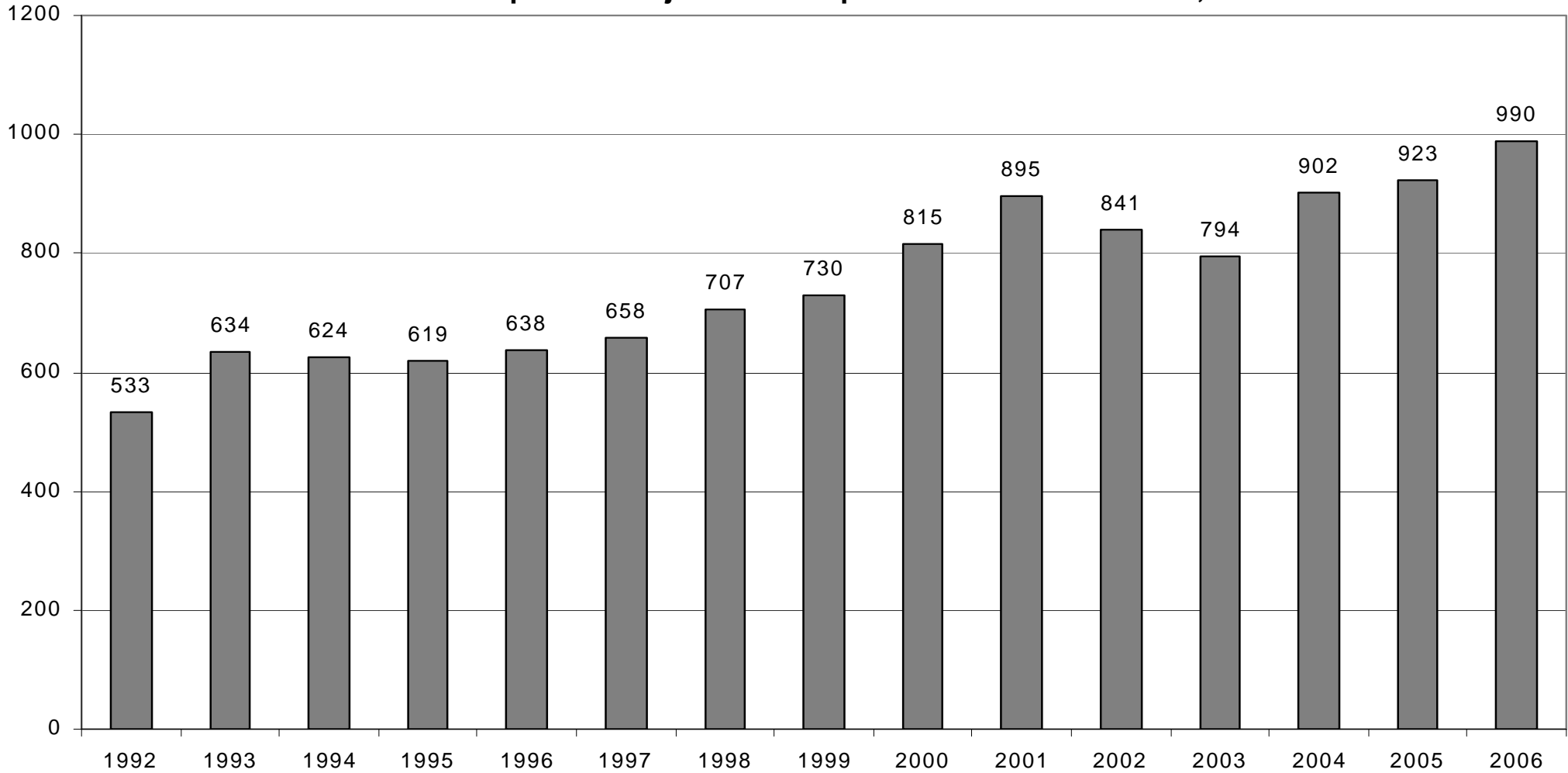
³ Employment is an annual average of employed civilians 16 years of age and older from the Current Population Survey, adjusted to include data for resident and armed forces from the Department of Defense.

⁴ Deaths per 100,000 workers.

* Excludes fatalities from the events of September 11, 2001.

ATTACHMENT 2

Number of Fatal Occupational Injuries to Hispanic or Latino Workers, 1992-2006

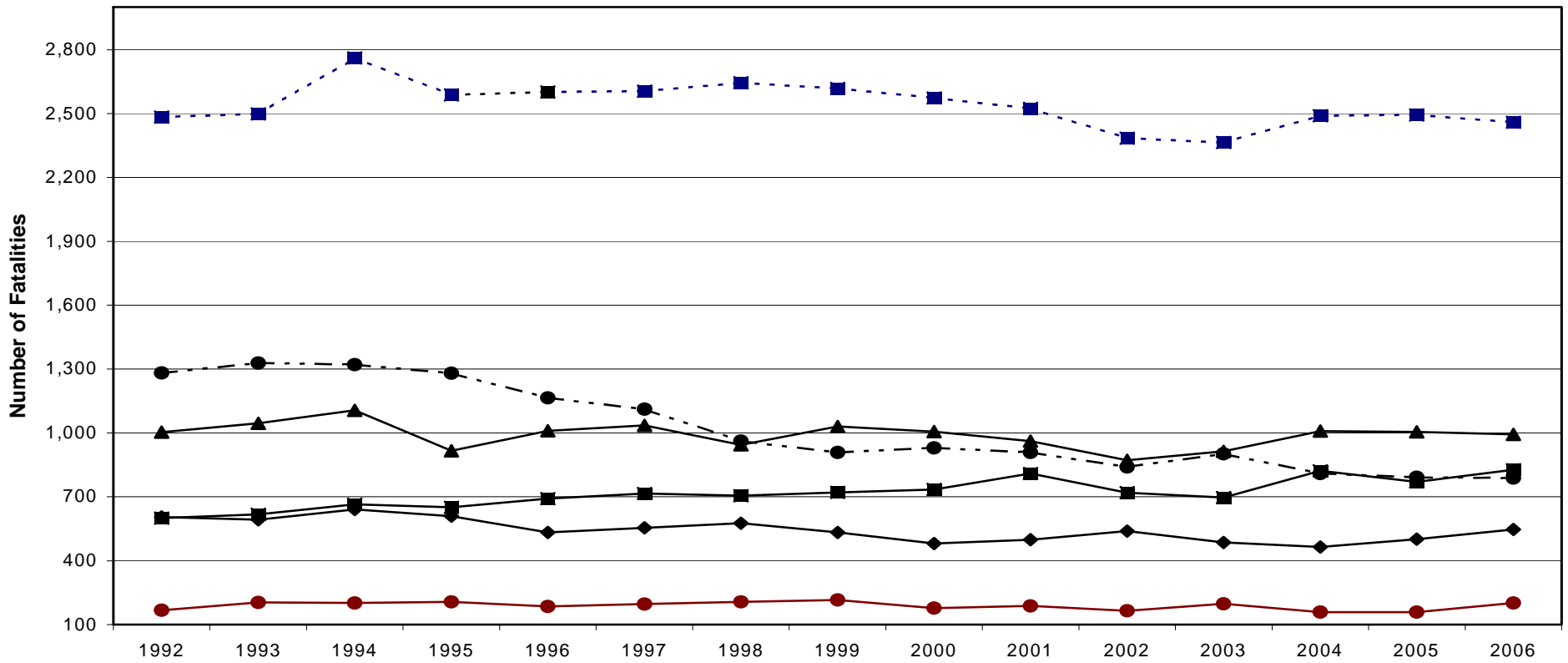


Number of Fatal Work Injuries By Event or Exposure, 1992-2006*

EVENT OR EXPOSURE	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2006
TOTAL FATALITIES	6,217	6,331	6,632	6,275	6,202	6,238	6,055	6,054	5,920	5,915	5,534	5,575	5,764	5,734	5,840	5,840
Transportation Incidents	2,484	2,499	2,762	2,587	2,601	2,605	2,645	2,618	2,573	2,524	2,385	2,364	2,490	2,493	100	2,459
Assaults and Violent Acts	1,281	1,329	1,321	1,280	1,165	1,111	962	909	930	908	840	902	809	792	45	788
Contact With Objects and Equipment	1,004	1,045	1,017	916	1,010	1,035	944	1,030	1,006	962	872	913	1,009	1,005	112	993
Falls	600	618	665	651	691	716	706	721	734	810	719	696	822	770	78	827
Exposure to Harmful Substances or Environments	605	592	641	609	533	554	576	533	481	499	539	486	464	501	537	547
Fires and Explosions	167	204	202	207	185	196	206	216	177	188	165	198	159	159	137	202

*Census of Fatal Occupational Injuries. Bureau of Labor Statistics

Number of Fatal Work Injuries by Event or Exposure, 1992-2006*



AVERAGE TOTAL PENALTY (\$) PER OSHA FATALITY INSPECTION, FY 2003-2007 ¹

Fiscal Year	Number of Fatality Inspections Conducted	Total Penalties (\$)	Average Total Penalty Per Inspection (\$)
<u>FY 2003</u>			
Federal States	1,504	7,120,953	6,756
State Plan States	816	3,448,520	4,214
Nation Wide	1,870	10,559,473	5,647
<u>FY 2004</u>			
Federal States	1,115	7,502,645	6,729
State Plan States	890	4,557,757	5,121
Nation Wide	2,005	12,060,402	6,015
<u>FY 2005</u>			
Federal States	1,131	7,522,700	6,651
State Plan States	887	5,714,741	6,443
Nation Wide	2,018	13,237,441	6,560
<u>FY 2006</u>			
Federal States	1,106	7,133,639	6,450
State Plan States	950	5,391,602	5,675
Nation Wide	2,056	12,525,241	6,092
<u>FY 2007</u>			
Federal States	1,048	12,813,214	12,226
State Plan States	841	6,328,528	7,525
Nation Wide	1,889	19,141,742	10,133

**ATTACHMENT 6
STATE BY STATE OSHA FATALITY INVESTIGATIONS, FY 2007**

State	Number of OSHA Fatality Investigations Conducted, FY 2007 ¹	Total Penalties ¹ (\$)	Average Total Penalty Per Investigation (\$)	Rank of Average Penalty ²	State or Federal Program ³
Alabama	31	233,772	7,541	17	FEDERAL
Alaska	4	3,000	750	49	STATE
Arizona	26	168,910	6,497	22	STATE
Arkansas	29	156,340	5,391	29	FEDERAL
California	193	2,749,295	14,245	7	STATE
Colorado	28	179,435	6,408	23	FEDERAL
Connecticut	16	70,007	4,375	33	FEDERAL
Delaware	2	0	0	50	FEDERAL
Florida	113	990,221	8,763	12	FEDERAL
Georgia	63	416,341	6,609	21	FEDERAL
Hawaii	9	17,218	1,913	47	STATE
Idaho	12	23,650	1,970	46	FEDERAL
Illinois	53	312,985	5,905	26	FEDERAL
Indiana	39	109,937	2,819	42	STATE
Iowa	22	99,250	4,511	31	STATE
Kansas	29	104,775	3,613	38	FEDERAL
Kentucky	30	328,920	10,964	10	STATE
Louisiana	32	141,180	4,412	32	FEDERAL
Maine	6	17,065	2,844	41	FEDERAL
Maryland	25	104,386	4,175	35	STATE
Massachusetts	21	147,110	7,005	18	FEDERAL
Michigan	43	291,625	6,782	19	STATE
Minnesota	21	701,937	33,426	3	STATE
Mississippi	29	240,220	8,283	13	FEDERAL
Missouri	25	2,658,708	106,348	1	FEDERAL
Montana	9	55,925	6,214	24	FEDERAL
Nebraska	15	342,252	22,816	4	FEDERAL
Nevada	27	269,705	9,989	11	STATE

State	Number of OSHA Fatality Investigations Conducted, FY 2007 ¹	Total Penalties ¹ (\$)	Average Total Penalty Per Investigation (\$)	Rank of Average Penalty ²	State or Federal Program ³
New Hampshire	6	46,860	7,810	16	FEDERAL
New Mexico	13	52,737	4,057	36	STATE
New York	72	585,130	8,127	14	FEDERAL
North Carolina	68	151,349	2,226	44	STATE
North Dakota	4	26,997	6,749	20	FEDERAL
Ohio	57	926,705	16,258	6	FEDERAL
Oklahoma	30	2,874,325	95,811	2	FEDERAL
Oregon	32	25,375	793	48	STATE
Pennsylvania	67	379,388	5,663	27	FEDERAL
Rhode Island	5	24,500	4,900	30	FEDERAL
South Carolina	31	134,560	4,341	34	STATE
South Dakota	3	39,150	13,050	8	FEDERAL
Tennessee	44	237,500	5,398	28	STATE
Texas	185	1,119,602	6,052	25	FEDERAL
Utah	22	46,950	2,134	45	STATE
Vermont	3	39,100	13,033	9	STATE
Virginia	54	438,640	8,123	15	STATE
Washington	64	255,565	3,993	37	STATE
West Virginia	27	72,475	2,684	43	FEDERAL
Wisconsin	20	389,830	19,492	5	FEDERAL
Wyoming	12	43,099	3,592	39	STATE
Total or National Average	1,889	19,141,742	10,133⁴		

¹ OSHA IMIS Fatality Inspection Reports, FY 2007.

² Rankings are based on highest to lowest average total penalty (\$) per fatality inspection (1-highest, 50-lowest).

³ Under the OSHAct, states may operate their own OSHA programs. Connecticut, New Jersey and New York have state programs covering state and local employees only. Twenty-one states and one territory have state OSHA programs covering both public and private sector workers.

⁴ National average is per fatality investigation for all federal OSHA and state OSHA plan states combined. Federal OSHA average is \$12,226 per fatality investigation; state plan OSHA states average is \$7,525 per fatality investigation.

Example of OSHA Informal Settlement Offer

IMPORTANT NOTICE

(READ THIS CAREFULLY)

The proposed penalties assessed for this inspection's citation(s) reflect reductions that have been granted for the size, good faith, and history of the employer.

ORIGINAL PENALTY	\$12,500.00
PROPOSED PENALTY	\$7,125.00

INFORMAL SETTLEMENT OFFER

An additional **30% reduction** in penalties (rounded to the nearest dollar) will be granted if all citation items are abated and the **INFORMAL SETTLEMENT AGREEMENT** is signed.

However, full payment for the settlement amount must be paid to **OSHA** within 15 Federal working days (excluding weekends and Federal holidays) from the receipt of the citation. **In addition**, a detailed abatement plan **must** be submitted with the **INFORMAL SETTLEMENT AGREEMENT** for those items which have not been abated and for those requiring a longer abatement period.

REDUCED PENALTY AMOUNT FOR INFORMAL SETTLEMENT:	\$4,988.00
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Corrective Action, taken by you for each alleged violation should be submitted to this office on or about the abatement date(s) indicated on the Citation and Notification of Penalty and included with the submitted **INFORMAL SETTLEMENT AGREEMENT**. A work sheet has been provided to assist in submitting the required abatement information.

This is the only offer for penalty reductions that will be made.

Meetings may be held to discuss questions concerning citation/violation issues (other than the penalties) or dates and methods of abatement prior to the final contest date of the citation. Please contact the U.S. Department of Labor - OSHA at (419)259-7542 for an appointment.