

Testimony of Deborah Berkowitz

National Employment Law Project

Before the California Assembly Committee on Labor and Employment Hearing on Latino Worker Health and Safety Issues: Exploring Challenges and Seeking Solutions

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Mr. Chairmen and members of the committee, thank you for inviting me to testify at this hearing on Latino Worker Health and Safety Issues: Exploring Challenges and Seeking Solutions. I just recently joined the National Employment Law Project (NELP) as a Senior Fellow on Worker Safety and Health after spending six years in the US Department of Labor's Occupational Safety and Health Administration (OSHA) as both the Chief of Staff and the Senior Policy Advisor. NELP is a non-profit, non-partisan research, education and advocacy organization that for more than 45 years has sought to ensure that the basic workplace protections guaranteed by our nation's labor and employment laws and social insurance programs extend to all workers, especially those that because of low wages, immigration status, race or gender, are particularly vulnerable to workplace exploitation or abuse. NELP has offices in New York, Washington DC, Seattle and Oakland. We partner with federal, state, and local allies, including policy makers, on a wide range of workforce issues. Here in California NELP has been an active supporter of efforts to improve workplace safety and health for low wage immigrant workers. We applaud you for conducting this hearing to seek solutions to better protect Latino workers in California.

The high rate of work-related deaths and injuries among Latino workers is a tragedy that must be addressed. But these deaths and injuries are not only tragic, as you will hear, they are preventable. No worker in this day and age should have to sacrifice their health or life to earn a paycheck.

The facts underscore the urgency of the problem. Latino workers die at higher rates on the job overall compared to all other workers. In 2013, Latino workers had a fatality rate of 3.9 per 100,000 workers. This rate is fully 18 percent higher than the overall fatality rate for all other workers of 3.3 per 100,000 workers.

In 2013, the last full year that statistics are available from the Bureau of Labor Statistics (BLS), 4,585 workers died on the job. Of those, 817 were Latino workers, and approximately two thirds of these were immigrant workers. And in 2013, nearly one in four workplace fatalities among Latinos (24 percent) occurred in California, up from 18 percent in 2012, despite employment among Latinos remaining relatively stable during that time. The increase in workplace fatalities among Latino workers in California was concentrated in the Los Angeles area, where fatalities increased from 38 in 2012 to 66 in 2013.

The BLS has only reported preliminary numbers for 2014—the full and accurate count will be available next April. According to the preliminary reports, there was a slight drop in the total number of Latino workers who were fatally injured last year— but these numbers are preliminary and could rise. According to the preliminary numbers, 789 Latino workers

were killed on the job last year. On average, this is more than 15 Latino worker deaths a week -- or two Latino workers killed every single day all year long. Though the numbers have gone down, Latino workers are still dying at higher rates. The preliminary BLS data indicates that Latino workers suffered a fatal work injury rate of 3.6 fatal work injuries per 100,000 workers in 2014 compared with the rate for all other workers at 3.3 per 100,000 workers.

A closer look at the national data over the past few years reveals that the construction industry was responsible for the greatest number of Latino worker deaths, followed by transportation and material-moving, and then administrative and waste services, which includes landscaping. In California, in 2013, administrative and waste services overtook construction as the largest source of workplace fatalities among Latino workers—with the majority of fatalities occurring in the landscaping services industry.

In addition to high fatality rates, Latino workers also suffer high rates of work related injuries and illnesses. But, as the head of the Center for Disease Control's (CDC) National Institute for Occupational Safety and Health (NIOSH) said at a recent conference: "It is likely, that as bad as the reported injury statistics are for Latinos, non-fatal occupational injuries and illnesses are undercounted among Latino workers."

The high rates of Latino workers killed and injured on the job are a result of a number of factors: the disproportional high participation rates for Latino workers in very hazardous jobs; the lack of adequate safety training - especially the lack of training in a language and vocabulary that workers can understand; and workplace policies and practices that create a reluctance to report unsafe conditions and injuries for fear of retaliation from employers. I will address each of these.

Disproportionate representation of Latino workers in hazardous jobs. Latino workers are more likely to work in low wage occupations and in the more hazardous jobs. In the construction industry, for instance, Latinos represent 25.5 percent of construction workers, compared to only 15.6 percent of the overall workforce. However, Latinos make up more than 40 percent of construction laborers, an occupation with a fatality rate of 18 per 100,000 workers - five times the average for all industries.

Further, according to estimates based on the National Health Interview Survey conducted by the CDC in 2013 and other surveys, a significant portion of Latino immigrant workers work for small businesses with ten or fewer employees. Here in California, a recent report by the National Council of LA Raza (NCLR) notes that nearly half (49.4 percent) of Latinos work for a firm with fewer than 100 employees and 23.8 percent work for a firm with ten or fewer employees. According to NIOSH and others, smaller businesses experience a disproportionate share of occupational injuries, illnesses and fatalities. In fact numerous studies report a linear inverse relationship between organization size (business size) and reports of work related injury, illness and fatalities.

Inadequate or lack of safety training. Safety training for workers is critical to preventing injuries and illnesses - which is why many OSHA standards require specific training. Only with training will workers understand the dangers on the job, learn what steps need to be taken to prevent injuries while working around dangerous machines and hazards, and understand how to use the safety equipment provided whether it be ear plugs -- to dampen noise levels that will cause hearing loss -- or fall protection equipment such as safety harnesses and lines. But studies consistently find that immigrant workers frequently report not receiving any safety training on the job or receiving poor quality training. If there is training, the studies also point to language differences between workers and supervisors as contributing to barriers to safety. Further, it is well documented that small business, where many Latino workers are employed, lack occupational safety and health resources to provide required safety training.

Fear of retaliation. It is also well documented that Latino workers fear retaliation if they speak up about safety or report an injury. This is especially true with day laborers and other temporary workers— who may not report hazards or their injuries for fear of jeopardizing future employment opportunities. If workers don't feel free to report hazards, or to report an injury, then worker safety is compromised. A recent report "Bending Toward Justice," written collectively by Rutgers University in New Jersey, the worker center New Labor, and the Center for Construction Research and Training, underscored this fear and stated that virtually all workers coming to New Labor had been injured on the job or knew someone who had been injured. The report found that economically desperate workers frequently accept jobs they know are unsafe in order to survive and have money for their families. Few of them knew they had a right to a safe workplace and none of them understood how job hazards can be prevented.

NELP issued a report in 2013 and has been very supportive of California's work to strengthen protections for immigrant workers against retaliation, and is proud to be a partner in the passage of the new labor code protections against retaliation.

Federal Initiatives to address Latino worker death and injuries. Since 2010, Federal OSHA has launched a number of initiatives to reduce injuries and fatalities among Latino workers by enhancing knowledge of their workplace rights and empowering workers to use their rights. I would like to quickly review these initiatives because I think it will help inform the committee as you investigate strategies and policies to increase worker protection.

Expanded federal outreach. Six years ago OSHA implemented a robust outreach strategy to collaborate with hundreds of community- and faith-based organizations, unions, employers, consulates and many other nonprofit organizations at the local, regional, and national levels to reach Latino workers in high-risk jobs with education and training about their rights and to provide assistance and support to help them exercise their rights. OSHA launched this effort in 2010 at its National Action Summit on Latino Worker Health and Safety that brought together 1,000 participants in Houston and followed it up with regional summits around the country, including one here in LA three years ago.

At the groundbreaking National Latino Summit, federal OSHA implemented a strong policy, followed with robust enforcement, requiring that workers must receive training and education in a language and vocabulary that they understand. Now, when federal OSHA conducts an inspection, the compliance officer interviews and questions workers on the training they received and whether they understand the training. It is no longer good enough for the employer to just hand the investigator a copy of any training materials or logs that show that workers attended a training session.

Further, OSHA engaged in a multi-year effort to develop materials and campaigns to reach Latino workers with information about their rights and job hazards. OSHA's campaign to prevent heat related illness and deaths and the outreach campaign to prevent fatal falls was specifically focused on reaching Latino workers. Since falls are the leading cause of death in construction -- reaching Latino workers with information on their rights and the requirements that employers provide protection from falls is vital to their safety.

Federal OSHA also developed other materials in Spanish for limited-English proficiency Latino workers, such as its publication on landscaping hazards. The OSHA homepage features a short video on worker rights in English and Spanish and a special message for Latino workers emphasizing the rights that all workers have under OSHA.

Federal OSHA also has a **small grant program** that is among the most effective resources for providing hands-on training and education to vulnerable workers and small businesses. This program, the **Susan Harwood Grant program**, provides funds to nonprofit organizations, including community organizations, faith based organizations, employers, unions, universities and others to reach vulnerable workers with information, training and technical assistance on their rights under the law, education about the hazards they face on the job and the protective measures required under the law. The program is focused on reaching Latino and other vulnerable workers in high risk jobs who may have never received any other safety or health training.

Increased federal protection of worker voice in the workplace. As noted, Latino and other vulnerable workers are often the least likely to speak up for their rights. It is simply not enough for them to learn about hazards and the protections they must be provided, they must also be able to exercise their voice.

In my years as a senior official at OSHA, I learned from enforcement investigations and heard first hand from workers about employer practices that retaliate against workers for reporting an injury or a job hazard. Under the OSHA law, workers have the guaranteed right to report workplace hazards as well as workplace injuries free from discrimination or retaliation.

To better assure that worker voice is protected in the workplace—especially the voice of vulnerable immigrant workers—federal OSHA strengthened its whistleblower protection program that seeks to protect workers that have been illegally retaliated against for

exercising their rights under the law. Federal OSHA dramatically increased program staffing and launched an ongoing effort to increase training of investigators.

Further, over a decade ago, federal OSHA made clear in its policies and procedures manual that to better protect workers from retaliation when filing a health and safety complaint with the agency – such complaints could be filed by not just the worker, an attorney or their union, but also “by any other person acting in a bona fide representative capacity, including, but not limited to, members of the clergy, social workers, spouses and other family members, and government officials or nonprofit groups and organizations acting upon specific complaints and injuries from individuals who are employees.” This allowed worker centers and community and faith based organizations to file complaints alleging a workplace hazard on behalf of those workers that are not part of a union – to better protect workers from retaliation. It is important to make sure that Cal-OSHA also follows these important worker protection policies.

In addition to protecting a worker's right to file a complaint or raise a safety hazard, Federal OSHA also focused on protecting a worker's right to report an injury. Some employers have implemented policies and practices that actively discourage workers from reporting an injury, for example giving workers demerits or points for reporting an injury, and firing them if they accumulate enough points.

In 2012, federal OSHA issued a memo that made it clear that Section 11 (C) of the OSH Act prohibits discriminating against an employee because the employee reports an injury or illness. The memo states:

“Reporting a work related injury or illness is a core employee right, and retaliating against a worker for reporting an injury or illness is illegal discrimination under section 11 (C). If employees do not feel free to report injuries or illnesses, the employer's entire workforce is put at risk. Employers do not learn of and correct dangerous conditions that have resulted in injuries, and injured employees may not receive the proper medical attention, or the workers' compensation benefits to which they are entitled. Ensuring that employees can report injuries or illnesses without fear of retaliation is therefore crucial to protecting worker safety and health.”

It is critical that these rights are upheld with vigorous enforcement, not just by federal OSHA but in states with their own OSHA, such as California. Workers in California are entitled to equivalent protection under the law as those under federal OSHA enforcement.

Federal action on protecting temporary workers. Another area where strong enforcement is necessary to protect Latino workers, is in the temporary work force. A few years ago, federal OSHA launched a concerted outreach and enforcement effort to ensure that temporary workers get the protections and training they need.

The number of U.S. workers in temporary help jobs has reached an all-time high. Fully 2.8 million Americans are currently employed in temporary help services, which constitute the

majority of staffing industry jobs. Staffing agencies often hire the most vulnerable workers. Latinos make up 16 percent of employed workers, and account for 20 percent of the staffing industry.

A growing body of research shows that temporary workers are at a greater risk of workplace injuries and illness than non-temps. The research points to a range of factors for the increased risk. The two leading factors are:

1. Lack of job information and safety training for temps increasingly employed in dangerous occupations, and
2. Employer financial and performance incentives to minimize workers' compensation and other benefits.

The term "temporary help agency workers" is defined by BLS as workers who are paid by a temporary help agency, whether or not their job is temporary. For the purposes of OSHA's initiative, "temporary workers" are those supplied to a host employer and paid by a staffing agency.

As part of the OSHA initiative, federal OSHA sent a memorandum to all its Regional Administrators underscoring the importance of assessing whether employers who use temporary workers are complying with their responsibilities under the OSHA law. As all of you are well aware, under the OSHA law, this nation's workers *all* have the right to safe working conditions, and employers have the duty to provide necessary safety and health training to all workers for workplace hazards—whether directly employed by a company or provided by a staffing agency.

Federal OSHA inspectors have been informed of the importance of ensuring that employers who use temporary workers are complying with their responsibilities under the OSH Act; inspectors now code the information in their records to denote when temporary workers are exposed to safety and health violations; and OSHA inspectors assess whether any temporary workers at an inspected job sight received required training in a language and vocabulary they could understand.

Use of targeted federal enforcement. Both Federal and Cal-OSHA have limited inspection resources. In California, for example, it would take Cal-OSHA 180 years to inspect every workplace in the state. Therefore it is important to target those scarce resources to make sure the agency is protecting vulnerable workers in dangerous industries. To better target inspection resources, OSHA launched national and local targeted inspection programs in industries with high injury rates where Latino and other vulnerable workers are employed. These include construction, landscaping, food processing and others.

RECOMMENDATIONS

Latino workers are being killed on the job at higher rates than all other workers—and they are injured at high rates. Yes, over the last decade the job fatality rate among Latino workers has been significantly reduced. But as you will hear today, there is much more

work to be done. The high rates and numbers of Latino workers killed and injured on the job is a preventable tragedy. Worker injuries and deaths are preventable—they are caused by unsafe conditions that can be corrected.

It is clear that to address these occupational health and safety disparities, California must at a minimum:

- Develop and implement policies to ensure Latino workers understand their rights under the law to a safe workplace.
- Expand Cal OSHA's work with and possible funding of worker centers, community groups, and faith based organizations, unions and other organizations that are trusted partners in the Latino community to provide training and education to empower workers to exercise their rights.
- Assure that Latino workers are provided required training in a language and vocabulary they understand. CAL OSHA should instruct all inspectors to assure that they have not only received required training but they understand it.
- California must protect a workers' right to report hazards and to report injuries. Government must protect a workers voice in the workplace. A paycheck is not payment for silence—it is not a license to endure pain. Workers in California are entitled to equivalent protection under the law as those under federal OSHA enforcement.

Further, in those workplaces without union representation, Cal-OSHA should make sure that complaints about job hazards can be filed by worker centers and other organizations that represent the worker—as is Federal OSHA policy.

- Cal OSHA should conduct special targeted investigations into dangerous industries with a high concentration of low-wage immigrant workers such as landscaping, construction, warehousing, food processing, recycling, and other industries.

All workers deserve the right to come home at the end of every work day. There is no reason that any worker should be injured or killed on the job just to earn a paycheck.

Thank you for the opportunity to be here today.