

'ROCKET DOCKET': YOUR HELP NEEDED

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NEW YORK STATE INSURANCE FUND

Workers' Comp.

ADVISOR

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January, February, March 2009



DANGER

Fatal Falls at All-Time High

RISK OF FALLING

Getting Serious About Fall Protection

Are You and Your Employees
Taking Unnecessary Risks?

What's Next for
Workers' Comp:
Navigating Five
Long-Term
'Mega Trends'

Need to know...

Nonfatal occupational injuries and illnesses dropped 11.9% from 2006 to 2007. Lost time days declined 2%.



NYSIF Workers' Comp. Advisor
January/February/March 2009



This Issue
Taking Steps to Prevent Falls

The Bureau of Labor Statistics

reported more fatal falls—835—in U.S. workplaces in 2007 than at any time since it started tracking such numbers. In New York, 53 workers died in falls, according to the latest statistics made available by the U.S. Department of Labor. Thousands more suffered the uncompensated misery of pain, broken bones, soft-tissue damage and other injuries in non-fatal falls, causing several billion dollars in workers' comp. indemnity costs. All workplaces need to heed these dire danger signs and make fall prevention a key part of their safety programs. It's time to get serious about fall prevention.

Pages 4-7

Fatalities Down; Fatal Falls Rise

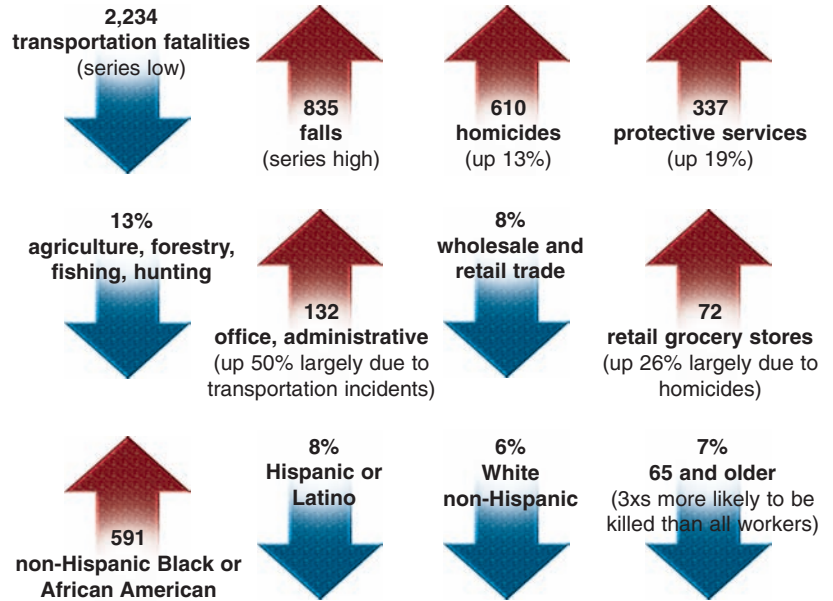
Preliminary counts by the Bureau of Labor Statistics show a drop of 6% in the nation's fatal workplace injuries: 5,488 in 2007 compared to 5,840 in 2006. The 3.7 fatal work injuries per 100,000 U.S. workers in 2007 is the lowest annual fatality rate since the Department of Labor's Census of Fatal Occupational Injuries (CFOI) began in 1992. Final stats are due in April 2009. **Good news:** transportation incidents, typically two-fifths of all workplace fatalities, fell to a series low 2,234. **Bad news:** Fatal falls rose to a series high 835, a 39% increase since 1992, driven primarily by falls on the same level (up 21%) and falls from non-moving vehicles (up 17%). More than one-third of fatal falls, 35%, were from roofs and ladders.

CFOI reported the highest fatality rates for fishing workers (111.8 per 100,000), logging (86.4), aircraft pilots-flight engineers (66.7) and structural iron-steel workers (45.5). Of the 5,488 CFOI total, 959 involved foreign born workers, the largest share, 44%, born in Mexico.

Find out who's dying on the job (chart, top r.), and how falls are happening (Safety Cop/Pages 4-7)

DEATHS ON THE JOB

2007 Census of Fatal Occupational Injuries (selected categories, all numbers preliminary)



Fraud On Holiday? Think Not

The economic downturn didn't slow the workers' comp. fraud industry in the quarter just ended. Law enforcement officials across the state were bringing charges in cases developed by NYSIF Division of Confidential Investigations on leads from Claims, Underwriting and Premium Audit staffs, and the public. ■ DCI averaged more than one arrest per week in the closing months of 2008, keeping prosecutors busy in locales from Syracuse, Utica and Cicero, to Niagara, Erie, Dutchess, Westchester, Queens, Nassau and Suffolk counties. ■ Some cases included: a man alleged to have used a dead brother's identity to collect benefits; an illegal alien in a premium fraud case involving asbestos removal; a mother/son charged in a fraudulent application scheme, and mother/daughter massage therapists who pleaded guilty in connection with fraudulent billing practices. ■ Several cases involved fraudulent insurance certificates. NYSIF offers online verification of NYSIF certificates at nysif.com to prevent fraud. "Fraud is not a victimless crime, it's a billion dollar industry," NYSIF Executive Director David P. Wehner said. "We bring fraud criminals to justice year-round, but we need the public's help."

Last Issue

Our back safety special (WCA Oct-Nov 08) geared toward helping workers avoid back injuries generated favorable feedback. Two sharp-eyed readers also corrected the phrasing of a mathematical formula about lifting and pressure on the lower back. We reported: "The pressure on your lower back is equal to the weight of your upper body plus 10 times the weight of the item you are lifting." The formula should have been stated: "The pressure on your lower back is equal to the total of the weight of your upper body plus the weight of the item you are lifting, times 10." Thanks to Mary Ishmael and Maria Sasso.



Next Challenges for Workers' Comp.

Navigating Five Emerging Long-Term 'Mega Trends' Amid the Economic Storm

Obesity, aging, claims severity, returning veterans and non-English speaking workers are the issues that have the most far reaching consequences for workers' compensation well into the next decade and are the areas with which insurers and employers should be most concerned.

So advised Dr. Steven N. Weisbart, vice president/chief economist of the Insurance Information Institute in New York City, as he addressed the American Society of Workers' Compensation Professionals (AMCOMP) seminar, *The Evolving Dynamics of Workers' Compensation*, in a keynote presentation, "Trends in Workers' Compensation: Challenges Amid the Economic Storm," at NYSIF last fall. Dr. Weisbart cautioned insurers and businesses trying to weather a troubled financial climate to point their fiscal compasses toward five emerging "mega trends" that pose "longer term issues" for the bottom line in workers' comp. insurance:

OBESITY Dr. Weisbart called obesity, measured by the relationship between an adult's weight and height, or Body Mass Index (BMI), a U.S. epidemic. Twenty percent of the adult population in every state except Colorado was found to be obese in a 2007 behavioral risk assessment by the Centers for Disease Control and Prevention. A BMI of 30 or higher is considered first-level obesity. Roughly translated, this means anyone 30 lbs. or more overweight qualifies as obese.

"People who are very obese relative to normal weight workers tend to have more costly claims," he said, citing studies showing obese workers have 13 more lost workdays than healthy weight workers, 6.8 times higher medical claims costs and 11 times higher claims indemnity costs. He cautioned not to draw a correlation between high claims costs and obesity alone. "Confounding factors" for high BMI include smoking, diabetes and lack of regular exercise.

AGING According to U.S. Census Bureau projections, there will be nearly twice as many people 70-74 years old in 2025 as there are today. If current trends continue, more of them will be working. Labor force participation rates for workers 70-74 has grown by about 50% since 1998, Dr. Weisbart said. That number may accelerate in today's economy.

"We now see a generation born during a time when if you asked them how long they thought they were going to live they'd have told you they didn't think they were going to be alive at 75, much less be in the workforce," he said. **Fact:** Workplace fatalities/lost time climb sharply with age. **Prediction:** Dr. Weisbart says future workplaces will need to be completely redesigned to accommodate the surge in older workers.

RESURGENT CLAIMS SEVERITY Statistics show comp. indemnity once again outpacing wage inflation, but tort cost growth and medical cost inflation are the driving forces causing claims costs to continue to rise, Dr. Weisbart said. Data from 1995-2007 shows the medical



Dr. Michael Weisbart (l.), vp and chief economist of the Insurance Information Institute, keyed the day-long AMCOMP conference that included NYS Workers' Comp. Board Chair Zachary Weiss (second, l.), NYSIF Vice Chair Donald DeCarlo and NYSIF Executive Director David Wehner (r.) among industry participants last fall.

share of total comp. claims not only increasing steadily, but also outpacing the overall Medical Consumer Price Index.

If trends continue expect medical costs to be 70% of total claims cost by 2017, Dr. Weisbart said. Higher numbers of older workers will likely support an increasing trend in claim severity.

RETURNING VETERANS Large numbers of returning injured war veterans would appear to loom ominous for employers, according to Dr. Weisbart. According to the Brookings Institution, 30,757 U.S. military personnel were reported wounded in Operation Iraqi Freedom through October 22, 2008. U.S. troops deployed to Iraq or Afghanistan and declared medically unfit for combat jumped 69% between 2005 and 2007. The likelihood of developing Post Traumatic Stress Disorder jumps with each deployment: 12% for first deployment to 27% for three tours or more.



"This has the potential to have a tremendous impact on [veterans] who try to re-enter the workforce," Dr. Weisbart said. Up to 40% of military personnel deployed to the region are National Guard or Reservists, he said, representing about 200,000 people who have been or will soon be returned to the labor pool.

NON-ENGLISH SPEAKING WORKERS Although Hispanic workers have higher fatality and non-fatal injury rates after adjusting for industry across the board, and the fatality rate accelerates for foreign-born Hispanics, Dr. Weisbart qualified one of the most-oft used explanations: "Language barrier is a guess, not an analysis." A disproportionate number of racial and ethnic minorities are killed in traffic crashes, which Dr. Weisbart described as the single, most common workers' comp. fatality. He also said there is no data to indicate if victims were first generation U.S. residents, spoke English, or lived here a short or long time.



Age may be a primary factor. Adjusted for age, motor vehicle fatality rates among Hispanic males are similar to that of whites. "In general, Hispanics tend to be younger than other racial populations," Dr. Weisbart said, hypothesizing that a rapid rise in Hispanic population, including a large number of undocumented workers, could see workplace injury and death rates spike, but as the group attains higher levels of education and lower-risk jobs, worker injuries and deaths may decline.



Fall Prevention - Are You I

All workplaces should make fall prevention a key part of their safety programs.

Cover Story

A Warning That Begs the Need to Pay Heed

Gary Dombroff, WCP/CSC

Safety Cop



Eight-hundred and thirty-five workers died in falls in the U.S. in 2007—an all-time high. According to the latest numbers from the Bureau of Labor Statistics (BLS), falls caused 53 of 219 fatal injuries in New York State that year. Falls continue to be a leading cause of workplace injury and death in the United States, incurring several billion dollars in workers' comp. costs each year. This is in addition to the uncompensated misery of pain, broken bones, soft-tissue damage and other injuries associated with non-fatal falls (nation-wide, over 250,000 reported in 2006).

MORE REASONS TO TAKE HEED

- The BLS Census of Fatal Occupational Injuries (CFOI) reported the highest total of fatal falls since its start in 1992.
- An aging workforce; the likelihood of falls increases with age.
- Deadly falls are high-profile cases that put the victim's employer in the spotlight.
- OSHA imposes large fines for serious and willful violations in fall cases.

DEVASTATING CONSEQUENCES

The outcome of any fall is unpredictable. Diet Doctor Robert Atkins died after slipping on an icy sidewalk in 2003. Window washer Alcides Moreno survived a 47-story plunge—almost 500 feet—in 2007. Yet, two window washers, cousins, died after falling about 30 feet at the World Financial Center in August 2008 when their aerial truck tipped over. Mr. Moreno may have lived because he clung to a scaffold, lessening the impact of his landing. His brother, Edgar, worked next to him, but fell clear of the scaffold and died of his injuries.

Window washers, firefighters, construction workers and others who work at heights aren't the only fall victims who sustain serious or deadly injuries. Land the wrong way, and life will never be the same. Mr. Moreno needed more than a dozen surgeries before taking his first, halting steps months after the accident. Dr. Atkins never got a second chance.

Putting Employees At Unnecessary Risk?

All workplaces should make fall prevention a key part of their safety programs. OSHA has several applicable standards related to preventing falls.

WALKING, WORKING STANDARDS

OSHA's Walking & Working Surfaces standard addresses the hazards that cause falls. OSHA also has a Fall Prevention standard for construction workers. Sections of other standards address falls and prevention for general industry, construction operations, telecommunications, electric utilities, shipyards and longshoring. Key points of the Walking and Working standard include basics like housekeeping, aisles and passageways, as well as more complex requirements, such as covers and guardrails to "protect personnel from the hazards of open pits, tanks, vats, ditches, etc."

Falls are grouped into two main categories: falls from a higher to a lower level, and falls on the same level. According to the 2007 CFOI, the majority of workplace deaths from falls were in the first category. However, a great many non-fatal, but debilitating and expensive, falls occur on the same level.

FALLS ON SAME LEVEL

The CFOI noted an increase in same-level falls (up 21% from 2006). Slips and trips frequently precede this kind of fall. Causes include poor lighting, inadequate housekeeping, flooring or carpets in disrepair, spilled liquids, inattention, cords and cables, and improper footwear. Other causes can include coordination and balance problems, medication usage, age and distractions.

It's important to choose the proper protection method and train workers to properly use supplied fall protection devices.

IMPROVE HOUSEKEEPING

Improving housekeeping, encouraging all employees to report hazardous conditions, and correcting them when they are reported, can prevent many falls.

The following will help:

- Keep all work areas clean and orderly.
- Keep floors clean, level and dry. Provide warning signs for wet areas or broken flooring.
- Keep aisles and passageways clear and in good repair, with no obstructions.

NYSIF *Safety Matters* tips:

- When carrying something, can you see where you're going?
- Is carpeting torn, bulging or bunched? Do rugs or mats have non-slip backings?
- Are floors slippery?
- Do stairs have hand railings?
- Are ladders used safely?
- Is snow, ice or rainwater promptly removed?
- Is lighting adequate in all work areas, halls and stairways?
- Do employees wear appropriate footwear?
- Identify potential tripping and fall hazards before work starts.





'HIGHER' STANDARD

Workers must be protected any time they are at a height of four feet or more (general industry) or six feet or more (construction). This includes platforms, loading docks, stairways, or any open edges. Separate rules govern portable ladders, stairs, hand rails and stair railings. ■ OSHA's definition of a "standard railing" consists of a top rail, a mid rail, a toe board and supporting posts. Standard railings must guard open-sided floors or platforms four feet (six in construction) or more above adjacent floors or ground level on all open sides, except where there is an entrance ramp, stairway or fixed ladder. ■ The top rail must begin no lower than 42 inches from the floor; mid-rail height must be 21 inches; toe board four inches high, with not more than 1/4-inch clearance above the floor. ■ The Fall Prevention Standard mandates further precautions to protect construction workers in addition to housekeeping, railing, handrail and ladder precautions mandated by the Walking and Working Surfaces Standard. ■ The Fall Prevention Standard contains specific requirements for personal fall arrest systems, restraints, warning lines, guardrails and safety nets. Fall arrest systems require proper fit and attachment. They have three components commonly called the "A-B-C" components: Anchor point, body harness and connecting device.

MORE FALL PREVENTION TIPS

- Look for hazards such as unprotected floor openings/edges, shafts, skylights, stairwells and roof openings/edges.
- Select and use proper fall protection equipment for the task.
- Inspect fall protection equipment for defects before use.

- Secure and stabilize all ladders before climbing them.
- Never stand on the top rung/step of a ladder.
- Use handrails when you go up or down stairs.

It is very important that employers choose the proper protection method, train workers to recognize and minimize fall hazards, and properly use the fall protection devices supplied.

Are You and Your Employees Taking Unnecessary Risks?

Time to Get Serious About Fall Prevention: The Real Cost of Falls



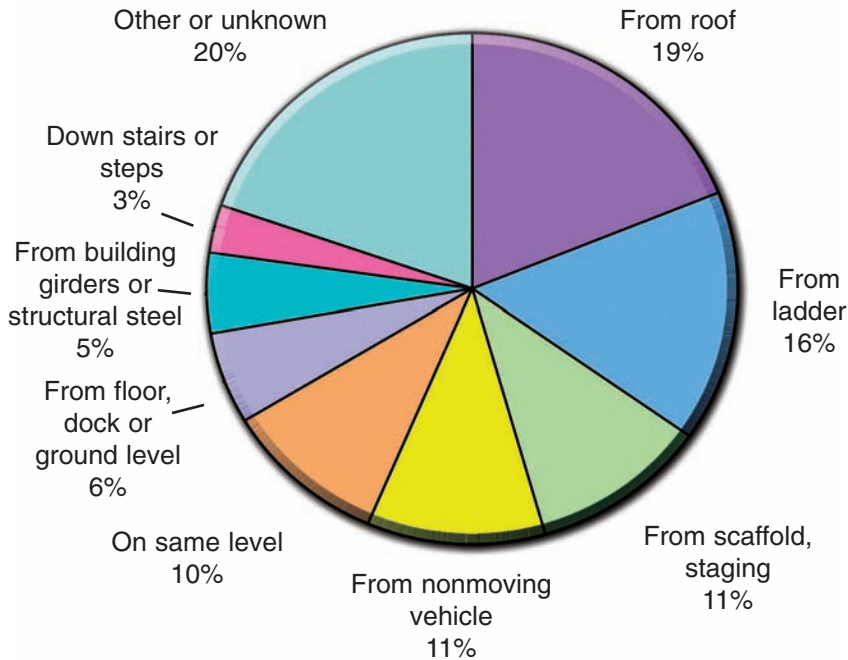
Last year OSHA cited hundreds of New York businesses for willful and serious violations of fall protection standards, levying millions of dollars in fines for scaffold, rigging and other fall hazards. One such offense led to the removal of a NYSIF policyholder from the safety group program and forfeiture of preferred pricing for the insured upon renewal. That's hardly the real cost of preventable falls, however.

Last January, a 42-year-old construction worker, described as a handsome and outgoing man supporting a wife and daughter in Mexico, fell 10 stories to his death in a Brooklyn scaffold accident in which OSHA inspectors said 25 gauge wire was used to secure the rig. Workers had the specified masonry screws to install the correct ties, but not the right-sized drill bit to install them. OSHA estimated the bit would have cost \$4 at a hardware store.



Falls — Who's At Risk?

FALLS BY CATEGORY, 2007



Percentages may not add up to 100% because of rounding.

Source: US Bureau of Labor Statistics, US Department of Labor, 2008

FREE NYSIF SAFETY RESOURCES

Visit nysif.com > Safety & Risk Management

Safety Matters (Construction):

- Falls - Guardrail Systems
- Falls - Improper Scaffold Construction
- Falls - Misuse of Portable Ladders
- Falls - Personal Fall Arrest Systems
- Falls - Safety Net Systems
- Falls - Safety Net Systems Drop Testing

Safety Matters:

- Avoiding Slips and Falls
- Ladder Safety

Safety Basics:

- Fall Prevention Basics
- Fall Prevention Tips
- Ladder Safety Basics
- Ladder Safety Tips

Safety Basics (Healthcare)

- Floor care (dry)
- Floor care (wet)
- Floor care (buffing)

Safety Cop:

- On Ladder Safety
- Avoid Winter Slips, Trips & Falls
- Get Good Housekeeping Seal

Posters:

- Ladder Safety (inspect before use)
- Ladder Safety (stability and footwear)
- Office safety (clutter tripping hazard)
- Office safety (exposed wire)
- Office safety (open file drawer)
- Falls/Slips (clean up spills)
- Falls/Slips (walkways, stairs, handrails)

'Rocket Docket' Takes Off; Your Help Needed!



Claims Hearing Process Set to Accelerate

Workers' Compensation Board Streamlined Adjudication Procedures, the so-called "rocket docket" for resolving controverted claims, went into effect January 1, 2009. The new regulations set specific benchmarks for resolving disputed claims



within 90 days under reform measures set forth in 2007. ■ The rules specifically require insurers to be fully prepared to present evidence and argue cases at a pre-hearing conference within 30 days of filing a C-7 "Notice of Controversy."

■ For NYSIF insureds, cooperation is the key to protecting their interests in controverted claims, said NYSIF Supervising Hearing Rep. John Zenkewich (above), speaking to NYSIF group managers in December. The process begins once the C-7 is filed:

Cooperation is the key to protecting your interests

- Day 20** Pre-Hearing Statement filed, Independent Medical Exam (IME) secured
- Day 30** Pre-Hearing Conference
- Day 57** IME filed and served
- Day 60** Initial Expedited Hearing
- Day 85** Medical testimony completed, transcripts filed
- Day 90** Record closed/Decision on record

How You Can Help

- Provide NYSIF prompt notification of accidents.
- When contacted, respond promptly to NYSIF investigators.
- Provide full cooperation and assistance in the investigation of claims.

"Employer cooperation is critical for promptly resolving compensability in contested claims so employers rights are protected, and so workers receive payment of benefits when they're entitled," Mr. Zenkewich said.

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On Worker Safety

New E-tools for Business

New stand-alone, web-based training eTools for the healthcare industry and for employers who use forklifts in are now available from OSHA. The Hospital eTool, which covers health-care-wide hazards, has added sonography and updated surgical modules. The Powered Industrial Trucks (Forklift) eTool provides a review of potential hazards and summarizes key OSHA requirements and industry-recommended practices for forklifts commonly used in general industry.

Resources for Industry

New safety and health information bulletins and publications by OSHA offer ways to recognize and manage hazards in a variety of industries. Titles include: *Guidance for the Identification and Control of Safety*

and Health Hazards in Metal Scrap Recycling, Hazardous Waste Operations and Emergency Response, Compactor Rollover Hazards, Hazards of Transporting, Unloading, Storing and Handling Granite, Marble and Stone Slabs, and Hazards of Using Flammable Liquids in Cutting Laminated Glass. Go to osha.gov.

Lingo Not Understood

A Purdue University study concluded that construction workers are in danger because they don't understand safety terms. Professors used the 10-hour OSHA training course and found that most trainees didn't understand terminology or acronyms used in the teaching.

Most at risk: new construction workers and Hispanic workers.

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