



Aim Higher

New York Should Reform Its Workers' Compensation Laws
to Reduce Injuries

Acknowledgments

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Disclaimer

Although this report invokes the costs of injuries to buttress the case that New York state should take steps to reduce the incidence of workplace accidents, this should not be interpreted as an endorsement of the use of cost-benefit analysis as a prerequisite for moving forward with public safety measures. Policymakers who are beholden to cost-benefit analyses require government agencies to demonstrate that the quantifiable monetary benefits of any proposed action would outweigh the costs. Adherence to this philosophy inhibits problem-solving for numerous reasons. For instance, the formulas invoked for cost-benefit analyses invariably overstate the costs and understate the benefits. On the cost side, they often ignore the ability of industry to develop less-expensive solutions through innovation and economies of scale. On the benefits side, they typically do not permit agencies to place a value on protecting against potential harms that are not quantifiable. Ultimately, bowing to cost-benefit analysis can prevent government agencies from implementing feasible solutions to major problems.

I. Introduction

From 2010 to 2012, the Bureau of Labor Statistics reported 463,400 injuries and illnesses among private-sector employees in New York.¹ Of these, 245,600 workplace injuries and illnesses were considered serious incidents of worker injury that caused days away from work, job transfer or restriction of duties.² In 2012 New York reported 146,300 private industry injury and illness cases, 79,500 of which were considered serious injuries, involving days away from work, job transfer, or restriction.³ Serious accidents causing days away from work with no opportunity to perform light-duty services while recovering at work are a major concern in New York where almost 90 percent of these workplace accidents resulted in at least one day away from work, compared to 58 percent nationally.⁴

A particular area of concern is the frequency of injuries that are occurring in New York's service providing industries. During 2012, service providing industries accounted for 83 percent of New York's occupational injuries and illnesses.⁵ Service providing industries consist of utilities, wholesale and retail trade, transportation and warehousing, information, finance, insurance, real estate, rental, and leasing, professional and business services, educational services, health care and social assistance, accommodation and food services.

There is a misperception that workers in these industries work in safe conditions. For various reasons, OSHA has created fewer safety and health standards to protect service-sector workers.

This paper highlights the economic burden of occupational injuries in New York state's private sector industries by estimating the direct, indirect, and quality of life costs resulting from occupational injuries. From 2010 to 2012, private sector occupational injuries in New York cost the State economy \$10.9 billion, according to our analysis of a research paper that quantifies the costs of worker injuries. (The figures in this paper are adjusted to 2014 dollars.)

¹ *Numbers of Nonfatal Occupational Injuries and Illnesses by Industry and Case Types, New York State, 2010-2012*, U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS (viewed in April 2014).

² *Id.*

³ Press Release, U.S. Department of Labor, Bureau of Labor Statistics, New York-New Jersey Information Office, *Employer reported Workplace Injuries and Illnesses in New York-2012* (January 29, 2014) <http://1.usa.gov/1iT4fUn>.

⁴ *Id.*

⁵ *Id.*

Therefore, if New York state were to reduce workplace accidents, the state's economy would benefit greatly. A highly effective way the state could reduce workplace accidents would be to require more employers to institute Injury and Illness Prevention Programs, commonly known as I2P2s.

I2P2s amount to little more than employers developing a comprehensive plan to identify and address workplace hazards before they cause injuries or illnesses. Typically, I2P2s involve employers and workers collaborating on an ongoing basis to achieve optimal safety conditions in the workplace. The goal should be to reduce injuries to zero.⁶

Recently, the New York County District Attorney Cyrus Vance Jr. proposed making significant reforms to New York's workers compensation system in order to stifle fraud.⁷ We generally agree with the recommendations in the district attorney's report (Summarized in Appendix A). But we believe modifications of worker's compensation laws to incorporate the report's recommendations should be accompanied by changes to the law to reduce workplace injuries, which the district attorney's proposal does not discuss.

The worker's compensation system provides some insight into the relative safety of different work sites. Those that have more injuries, and thus experience more claims, pay higher premiums. New York requires workplaces that are assessed premiums at least 20 percent higher than average to implement "workplace safety and loss prevention" programs, which are similar to I2P2s, as discussed above.⁸

We believe that the 20 percent threshold is too high. Safety programs are a relatively inexpensive—and ultimately cost effective—way to ensure that a workplace provides for safe working conditions without hazard. For example, a 30-employee tank washing and box rental operation company with \$8 million in annual revenues, spent just \$20,000 to start its I2P2. OSHA has argued that implementation of an I2P2 would pay for itself because of the reduction in workplace accidents.⁹ We propose that New York state's legislature should remove the threshold(s) for requiring a workplace safety plan to capture all employers in New York state.

⁶ OSHA Fact Sheet, *Injury Illness Prevention Programs*, <http://1.usa.gov/1hbWTP7> (viewed on April 23, 2014).

⁷ CYRUS VANCE JR., THE GRAND JURY OF THE SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NEW YORK, REPORT OF THE GRAND JURY OF THE SUPREME COURT, STATE OF NEW YORK, FIRST JUDICIAL DISTRICT, ISSUED PURSUANT TO CRIMINAL PROCEDURE LAW SECTION 190.85 SUBDIVISION (1) (C), (2014) <http://bit.ly/1m50LVq>.

⁸ Workers' compensation law of the state of New York Section 134, Part 59 Workplace Safety and Loss Prevention Program, <http://bit.ly/1gylEkC>. This requirement is enumerated within Part 59 of New York's workers compensation laws.

⁹ See section 4.4 Economic Impact, Injury and Illness Prevention Programs Stakeholder Meeting, Dallas, Texas, (June 10, 2010) <http://1.usa.gov/1nGCdQ7>.

New York has long been at the forefront of safety reforms. Specifically, in 2005, New York implemented safe patient handling laws to providing health care workers protection against lifting, handling and repositioning patients.¹⁰ During 2006, New York enacted legislation requiring public employers to develop and implement programs to prevent and minimize workplace violence and help ensure the safety of public employees.¹¹

The American Federation of Labor-Congress of Industrial Organization (AFL-CIO) reports that New York had the 8th lowest worker-fatality rate during 2011.¹² But New York should aspire to do better. The district attorney's report provides an excellent opportunity to act.

II. Workplace Injuries Impact on New York's Economy

A. Data and Methods

The forthcoming analysis of the cost of occupational injuries and illnesses in the private sector to New York's economy draws on data from the Bureau of Labor Statistics (BLS); and a 2004 study by Waehrer et al. that quantifies the costs of occupational injuries.

The findings of Waehrer et al. are used in concert with recent data on the number of private-sector occupational injuries and consumer price index data to estimate the inflation-adjusted costs of workplace injuries in New York state for recent years. Appendix B explains how Waehrer et al. arrived at estimated costs, and how we adjusted such figures to account for recent data.

¹⁰ *Safety and Health Topics: Safe Patient Handling*, U.S. DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION, <http://1.usa.gov/Q9p1s5> (viewed on April 10, 2014).

¹¹ *Workplace Violence Prevention Information: Workplace Violence Prevention for New York State Public Employers*, NEW YORK DEPARTMENT OF LABOR, <http://bit.ly/RICUEk> (viewed on April 11, 2014).

¹² AFL-CIO, DEATH ON THE JOB: THE TOLL OF NEGLECT, at 171 (2013), <http://bit.ly/1hxniWM>. Ranking based on best to worst (1=best; 50=worst).

B. Data About Private Industry Injuries in New York

- In 2010, there were 154,200 reported occupational injury and illness cases involving private-sector employees in New York, according to the Bureau of Labor Statistics. Of these, 81,800 required days away from work, job transfer, or restriction of duties.¹³
- In 2011, there were 162,900 reported occupational injury and illness cases involving private-sector employees in New York, according to the Bureau of Labor Statistics. Of these, 84,300 required days away from work, job transfer, or restriction.¹⁴
- In 2012, there were 146,300 reported occupational injury and illness cases involving private-sector employees in New York, according to the Bureau of Labor Statistics. Of these, 79,500 required days away from work, job transfer, or restriction.¹⁵

Combined, from 2010 to 2012, there were 463,500 reported, private sector occupational injuries and illnesses from 2010 to 2012. Of these, 245,600 required days away from work, job transfer, or restriction.

C. Quantifying the Costs of Injuries in New York State

The Occupational Safety and Health Act of 1970 states “that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments.”¹⁶ Days away from work due to occupational injuries are costing employers, workers and New York taxpayers. Likewise, when occupational injuries occur, more is lost than a day’s work. The tragedy of serious occupational injuries devastates families and their surrounding communities.

Our economic impact analysis relies on the findings of a 2004 paper by Geetha M. Waehrer, et al. that quantified the costs of workplace injuries, coupled with more recent consumer price index data. Waehrer, et al., determined costs of occupational injuries and by adding up three broad categories of consequences from such incidents: direct costs, indirect costs and quality of life costs. Direct costs include payments for hospital, physician and allied services. Indirect costs refer to victim productivity losses, employer productivity losses and

¹³ *Numbers of Nonfatal Occupational Injuries and Illnesses by Industry and Case Types, New York State 2010*, U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS (viewed in April 2014), <http://1.usa.gov/1iTzbFk>.

¹⁴ *Numbers of Nonfatal Occupational Injuries and Illnesses by Industry and Case Types, New York State 2011*, U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS (viewed in April 2014), <http://1.usa.gov/1ktuCEw>.

¹⁵ *Numbers of Nonfatal Occupational Injuries and Illnesses by Industry and Case Types, New York State, 2012*, U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS (viewed in April 2014), <http://1.usa.gov/P2THdc>.

¹⁶ Occupational Safety and Health Act, S.2193, 91st Congress, § 2 (1970), <http://1.usa.gov/9gSBuk>.

administrative cost associated with an occupational accident. Quality of life costs refer to the value attributed to the pain and suffering of victims and their families.¹⁷

The 2004 Waehrer et al. study estimated that the average cost of an occupational injury that caused days away from work, job transfer or restriction was \$27,382 (in 1993 dollars).¹⁸ This translates to a cost of \$44,776 per injury in 2014 dollars.

There were 245,600 private sector occupational injuries in New York state that caused days away from work, job transfer or restriction during from 2010 to 2012. Applying the inflation-adjusted \$44,776 cost per injury, this translates to a total of \$11 billion in costs for New York state resulting from these injuries.¹⁹

III. OSHA Is Not Keeping Up With the Times

A. The Evolving Workplace

Since the end of World War II, the balance of the nation's economy has steadily gravitated away from manufacturing and toward services. Services made up just more than 50 percent of employment in 1948. By 2008, the sector's share was approaching 85 percent.²⁰ The decline in goods producing jobs has been characterized as the de-industrialization of America.²¹

In theory, OSHA would have adapted to the shift from a goods-producing to services-based economy by addressing emerging workplace hazards by creating new standards and increasing its inspections of service-sector work sites. However, that has not been the case. Since the 1980s, the agency has struggled to create new safety standards, in large part due to challenges imposed by Congress and the courts.²² Meanwhile, the paucity of OSHA's budget has prevented it from sending enough inspectors to service-sector work sites.

From 1971 to 1973, OSHA was given the authority to adopt standards without following typical notice and comment rulemaking procedures so it could address the urgency of

¹⁷ WAHRER G, LEIGH JP, CASSADY D, AND MILLER T, *Costs Of Occupational Injury and Illness Across States*, 46 JOURNAL OF OCCUPATIONAL AND ENVIRONMENTAL MEDICINE 1084-1095 (2004).

¹⁸ *Id.*

¹⁹ Due to rounding, some category averages may not equal the total sum.

²⁰ Louis D. Johnston, *History Lessons: Understanding the Decline in Manufacturing*, MINN POST (Feb. 22, 2012), <http://bit.ly/1jGtfzK>.

²¹ *Workplace*, U.S. DEPARTMENT OF LABOR, OFFICE OF THE SECRETARY, <http://1.usa.gov/1gAQ49t> (viewed on April 07, 2014).

²² JUSTIN FELDMAN, PUBLIC CITIZEN, OSHA INACTION: ONEROUS REQUIREMENTS IMPOSED ON OSHA PREVENT THE AGENCY FROM ISSUING LIFESAVING RULES (October 2011) <http://bit.ly/1gASV1Y> and *Occupational Exposure to Methylene Chloride: VII. Significance of Risk*, U.S. DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION, <HTTP://1.U.S.A.GOV/1NOCOE3> (viewed on April 07, 2014).

lowering fatal and nonfatal injuries in the nation's workplaces.²³ During this period of rapid standard creation, a majority of the safety and health standards that were adopted concerned specific goods-producing industries, such as construction. Standards that would protect service-sector workers typically (though not always) fall under the rubric of general industry standards, such as those covering the risk of trips and falls, lifting materials and workplace violence.²⁴ Consequently, there is a shortage of standards to address specific service-sector industry risks.

Besides lacking necessary standards, OSHA is handcuffed by an insufficient budget. OSHA's budget for fiscal year 2012 was \$583 million, amounting to about \$4 per U.S. worker.²⁵ In 2012, there were only 115 OSHA inspectors assigned to inspect 592,148 New York state's workplaces (including state and local government workplaces).²⁶ It inspected 5,511 New York workplaces in 2012, just 0.93 percent of the state's workplaces.²⁷ At this rate, it would take OSHA approximately 110 years to inspect each workplace in New York state once.²⁸

B. Absence of Needed Standards and Inspections Leaves Service Sector Workers Unprotected in New York State

The dearth of attention by OSHA to service-sector work sites is acutely felt in New York. New York's service providing industry is composed of more than 8 million workers,²⁹ representing 91 percent of all nonfarm workers in state.³⁰ During 2012, service providing industries accounted for 83 percent of New York's occupational injuries and illnesses.³¹

From 2010 to 2012, overexertion (due to lifting, lowering and body reaction) was the leading event that caused a workplace injury in the services sector in New York state. Although this condition can affect goods-producing employers, it often strikes those in the

²³ Updating OSHA Standards Based on National Consensus Standards, 69 Fed. Reg. 68283-68285 (Nov. 24, 2004) <http://1.usa.gov/1etG2HM>.

²⁴ U.S. Department of Labor, Occupational Safety & Health Administration Regulations (29 CFR 1910) <http://1.usa.gov/1emDnJF>

²⁵ KEITH WRIGHTSON, CITIZEN VOX, *This Workers' Memorial Day, 'Pray for the dead and fight like hell for the living' (Mother Jones, 1925)* (April 25, 2013) <http://bit.ly/1etMnDr>.

²⁶ AFL-CIO, DEATH ON THE JOB: THE TOLL OF NEGLECT, 155 (2012) (includes municipal and state workplaces) <http://bit.ly/MOhT1U>.

²⁷ AFL-CIO, DEATH ON THE JOB: THE TOLL OF NEGLECT, 171 (2013), <http://bit.ly/1hxniWM>.

²⁸ AFL-CIO, DEATH ON THE JOB: THE TOLL OF NEGLECT, 155 (2012), <http://bit.ly/MOhT1U>.

²⁹ *State and Area Employment, Hours, and Earnings, Service-Providing Industry, 2012*, U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS. Search function available at <http://data.bls.gov/pdq/SurveyOutputServlet>

³⁰ *State and Area Employment, Hours, and Earnings, Nonfarm Employment, 2012*, U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, Search function available at <http://data.bls.gov/pdq/SurveyOutputServlet>

³¹ Press Release, U.S. Department of Labor, Bureau of Labor Statistics, New York-New Jersey Information Office, *Employer reported Workplace Injuries and Illnesses in New York-2012* (January 29, 2014) <http://1.usa.gov/1iT4fUn>.

service sector, such as hotel workers. From 2010 to 2012 there were 77,370 reported overexertion injuries that caused days away from work, job transfer, or restriction.³² These injuries accounted 31.5 percent of the 245,600 reported injuries and illnesses that caused days away from work, job transfer, or restriction during these years.

But OSHA lacks the resources to adequately inspect service sector sites, even if the needed standards were in effect. As shown above, it would take 110 years for OSHA to inspect every worksite in the state. But even that figure fails to take into account how few service-sector sites are inspected.

Of the 5,511 conducted in New York in 2012, just 416 (7.5 percent) concerned workplaces in service providing industries.³³

C. Data About Service Providing Injuries in New York and Related Costs

- In 2010, there were 127,600 reported occupational injury and illness cases involving private-sector employees in service-providing industries in New York, according to the Bureau of Labor Statistics. Of these, 67,100 required days away from work, job transfer, or restriction.³⁴
- In 2011, there were 133,100 reported occupational injury and illness cases involving private-sector employees in service-providing industries in New York, according to the Bureau of Labor Statistics. Of these, 68,900 required days away from work, job transfer, or restriction.³⁵
- In 2012, there were 121,000 reported occupational injury and illness cases involving private-sector employees in service-providing employees in New York, according to the Bureau of Labor Statistics. Of these, 64,800 required days away from work, job transfer, or restriction.³⁶

The above figures show that there were 381,700 reported injuries and illnesses in New York's service-providing industries from 2010 to 2012. Of these, 200,800 required days away from work, job transfer, or restriction, meaning service providers sustain the

³² *Numbers of Nonfatal Occupational Injuries and Illnesses by Industry and Case Types, New York State, 2010-2012*, U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS. Search tool via: <http://1.usa.gov/1jQKErk>.

³³ OSHA Enforcement Inspections Search Results (2012): SIC Codes 7000, 7200-7399, 7500-7999, 8000-8999, Search function available at <http://1.usa.gov/1hHLOH5>.

³⁴ U.S. Department of Labor, Bureau of Labor Statistics, Numbers of nonfatal occupational injuries and illnesses by industry and case types, New York State, 2010 <http://1.usa.gov/1iTzbFk>.

³⁵ U.S. Department of Labor, Bureau of Labor Statistics, Numbers of nonfatal occupational injuries and illnesses by industry and case types, New York State, 2011 <http://1.usa.gov/1ktuCEw>.

³⁶ U.S. Department of Labor, Bureau of Labor Statistics, Numbers of nonfatal occupational injuries and illnesses by industry and case types, New York State, 2012 <http://1.usa.gov/P2THdc>.

majority of occupational injury in New York.³⁷ Using the inflation-adjusted costs of \$44,776 per injury based on Waehrer's, private-sector service industry injuries in New York cost the state's economy \$9 billion from 2010 to 2012.

IV. Vision: Zero Workplace Injuries

An injury and illness prevention program is a proactive strategy that employers can use to identify and remedy workplace hazards before they cause injuries. Thirty-four states have laws that either require or encourage such approaches,³⁸ including 15 states with mandatory regulations for all or some employers.³⁹ There are zero federal requirements directing employers to implement an injury illness prevention program.⁴⁰

Injury and illness prevention programs are proven to reduce workplace injury and illnesses.⁴¹ Employers who participate in injury and illness prevention programs experience dramatic decreases in workplace injuries, but they often report a transformed workplace culture that can lead to higher productivity and quality, reduced turnover, reduced costs, and greater employee satisfaction.⁴² For example, California began requiring employers to institute injury and illness prevention program in 1991. Five years after this requirement began; Injuries and illnesses among California workers were down by 19 percent.⁴³ In Massachusetts, firms who choose to enroll in their program through the workers' compensation insurance system had a 20.8 percent reduction in their workplace loss ratios in the first year of its program.⁴⁴ [See Figure 1]

³⁷ *Totals of numbers of nonfatal occupational injuries and illnesses by industry and case types, New York State, 2010-2012.*

³⁸ *State Programs*, U.S. DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION, <http://1.usa.gov/1AEExLK>. (viewed on April 21, 2014).

³⁹ The 15 states are: Arkansas, California, Hawaii, Louisiana, Michigan, Minnesota, Mississippi, Montana, North Carolina, New Hampshire, Nevada, New York, Oregon, Utah, and Washington.

⁴⁰ *Safety and Health Program Management Guidelines; Issuance of Voluntary Guidelines*, U.S. DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION, <http://1.usa.gov/1nNFmY> (viewed on April 21, 2014).

⁴¹ U.S. DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION, INJURY AND ILLNESS PREVENTION PROGRAMS 5 (JANUARY 2012) <http://1.usa.gov/1nEhs7Q>.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

Figure 1: Successes of State-Based I2P2 Programs

Alaska had an injury and illness plan requirement for over 20 years (1973 to 1995). Five years after the program was implemented, the net decrease in injuries and illnesses (i.e., the statewide reduction in injuries and illnesses over and above the national decrease during the same time period) for Alaska was 17.4 percent.

California began to require an injury and illness prevention program in 1991. Five years after this requirement began, California had a net decrease in injuries and illnesses of 19 percent.

Colorado has a program that allows firms to adopt basic injury and illness prevention program components in return for a workers' compensation premium reduction. The cumulative annual reduction in accidents was 23 percent and the cumulative reduction in accident costs was between 58 and 62 percent.

Hawaii began to require employers to have injury and illness prevention programs in 1985. The net reduction in injuries and illnesses was 20.7 percent.

Massachusetts Workers' Compensation program firms receive a premium credit for enrolling in a loss management program. In the first year of this program, firms participating in the program had a 20.8 percent improvement in their loss ratios.

North Dakota has a program under its workers' compensation program for employers who have a risk management program. The incentive is a 5 percent discount on annual workers' compensation premiums. These risk management programs contain many of the elements of an injury and illness prevention program. They resulted in a cumulative decline for serious injuries of 38 percent over a four-year period.

Texas had a program under its workers' compensation commission from 1991 to 2005 which identified the most hazardous workplaces. Those employers were required to develop and implement injury and illness prevention programs. The reduction in injuries, over a four-year period (1992-1995), averaged 63 percent each year.

Washington began requiring establishments to have injury and illness prevention programs in 1973. Five years later the net decrease in injuries and illnesses was 9.4 percent.

Source: Reprinted from *Injury and Illness Prevention Programs White Paper*, OCCUPATIONAL HEALTH AND SAFETY ADMINISTRATION (January 2012).

Practical elements that focus on finding all hazards in the workplace and developing a plan for preventing and controlling those hazards are what lead to a successful injury and illness prevention program. Worker and management participation are core elements in ensuring that all hazards are identified so employees are not placed in harm's way. Worker training on hazard identification must be at the forefront of any injury and illness prevention programs and management must be committed to providing such training on an ongoing basis.

OSHA estimates that if employers that do not currently have injury and illness prevention programs were to implement them, the number of workplace injuries would be reduced by 15 to 35 percent. This would save \$9 billion to \$23 billion per year in workers' compensation costs alone.⁴⁵

In New York I2P2s are known as workplace safety and loss prevention programs. New York's workplace safety and loss prevention program (Appendix C) contains the core elements of an I2P2 including requirements for management leadership in occupational safety and health, worker participation in hazard identification, assessment, prevention and control, employee education and training and program evaluation and improvement.⁴⁶

Employers with annual payrolls in excess of \$800,000 and a workers' compensation insurance rate above 1.2 are required to create workplace safety and loss prevention programs.⁴⁷ Workers compensation insurance rates are set in accordance with employers' claims history; those employers with higher premiums to create loss prevention programs captures the employers with the riskiest track records.

Given OSHA's shortage of inspections, standard promulgation and enforcement, New York should to craft proposals that will ensure worker safety and health. New York could take steps to mitigate occupational injuries and illnesses while it considers reforms to its workers compensation regulations.

The goal of the workers compensation system should not only include monetary relief and healthcare services after workplace accidents occur. New York's current workplace safety and loss prevention program provides an adequate means for workers and employers to mitigate potential job hazards, but the policy need to be expanded.

New York should take a progressive approach preventing workplace injuries by modernizing Part 59 of its workers' compensation regulations.⁴⁸ New York mandate employers to implement and injury illnesses prevention program by widening the existing scope of its current program.⁴⁹

⁴⁵ *Injury and Illness Prevention Programs White Paper*, OCCUPATIONAL HEALTH AND SAFETY ADMINISTRATION (January 2012), at 7, <http://1.usa.gov/Rjm8zc>.

⁴⁶ 6 KEY ELEMENTS OF AN EFFECTIVE I2P2, SAFETY.BLR.COM (JANUARY, 21, 2014) <http://bit.ly/11AIM9T>

⁴⁷ Workers' compensation law of the state of New York Section 134, Part 59 Workplace Safety and Loss Prevention Program, <http://bit.ly/1gylEkC>.

⁴⁸ Workers' compensation law of the state of New York Section 134, Part 59 Workplace Safety and Loss Prevention Program, <http://bit.ly/1gylEkC>.

⁴⁹ Workers' compensation law of the state of New York Section 134, Part 59 Workplace Safety and Loss Prevention Program, <http://bit.ly/1gylEkC>, <http://bit.ly/1gylEkC>.

Given the high counts of occupational injuries in New York, lawmakers should change the scope and application of Part §59-1.3 of its workers compensation regulation and remove the payroll thresholds and experience modification rate requirements to require all employers to implement a workplace safety and loss prevention program.

In addition to removing the payroll threshold and removal of the experience modification rate, New York should also reform Part §59-1.7 of its workers' compensation regulations and strengthen compliance mechanism of the workplace safety and loss prevention program. An increase in fines will hold employers accountable to the workplace safety and loss prevention program. At present, employers who chose not to comply with the implementation of the workplace safety and loss prevention program are charged 05 percent increase in their workers compensation insurance policy.⁵⁰

New safety regulations will have an impact on all of New York's workplaces, especially where employers place their employee's in harm's way.

V. Conclusion

New York should reform its workers compensation regulation immediately. These regulations should include widening the scope of the current workplace safety prevention program and also implementing the District Attorney's recommendation's found in Appendix A.

Implementing workplace safety and loss prevention and transparency requirements as a part of workers compensation reforms will not address all of the safety problems that threaten private sector workers. But such a step has the potential to yield significant gains for minimal costs. Additionally, New York will experience lower counts of reported injuries, which will in turn lower the economic impact of injuries in the state.

⁵⁰ Workers' compensation law of the state of New York Section 134, Part 59 Workplace Safety and Loss Prevention Program, <http://bit.ly/1gylEkC>. , <http://bit.ly/1gylEkC>.

Appendix A: New York County District Attorney Recommendations

The recommendations proposed by the Grand Jury of the Supreme Court of the State of New York County of New York are designed to assist in early detection of premium fraud, improve compliance and enforcement efforts, deter cheating, and ensure fair and equitable treatment of all policyholders. They fall into general categories of:

- Increased Penalties to ensure that sentences are proportionate to the magnitude of the fraud. Under current law, a defendant faces no more than a class E felony whether the amount of the fraud is \$1,000 or \$100,000. The Grand Jury recommends:
- Gradating the Workers' Compensation Law and relevant criminal statutes based on monetary thresholds;
- Amend relevant provisions of the Penal Law, such as the money-laundering statutes and the enterprise-corruption statute, to include Workers' Compensation Law felonies as possible predicate felonies.
- Increased Transparency by overhauling the application process used by employers and the audit procedure of the policyholder.
- Design a uniform workers' compensation insurance application that will be submitted electronically to the Workers' Compensation Board;
- Require vigorous audits by all insurance carriers, ensuring that employers pay the correct premium; and
- Issue every employee a Workers' Compensation Insurance card for the employee to present when seeking medical services or prescription drugs in connection with a job-related injury or illness.
- Broader Data Collection and Collaboration to increase dissemination of information in the hands of those charged with investigating and prosecuting fraud.
- Create an integrated database to combat workers' compensation insurance fraud, including all application, audit reports, and certificates of insurance; and
- Create a real-time database of information from commercial check cashers available to the Workers' Compensation Board.
- Broader Education for employees and the community at large about the workers' compensation system and its value to the public, so that everyone is better able to protect the system from fraud.
- Employers should know their obligations under the system;
- Community recognition about the negative effects of premium fraud; and
- Employees should be encouraged to invoke their rights under the system.

Appendix B: Calculations of Occupational Injuries

Waehrer *et al.* determined the costs of workplace injuries by adding up costs under three categories: direct costs, indirect costs, and quality of life costs.

Direct costs include payments for hospital visits, allied services, rehabilitation, nursing home care, medical equipment, burial costs, and insurance administrative costs for medical claims, payments for mental health treatment, police, fire, emergency transport, coroner services, and property damage.⁵¹

Indirect costs refer to: victim productivity losses, which include wage losses and household production losses; employer productivity losses, which is time spent by supervisors and coworkers investigating accidents, juggling schedules, and recruiting and training replacements for injured workers; and administrative costs, which include the cost of administering Workers' Compensation programs.

Quality of life costs refer to the value attributed to the pain and suffering of victims and their families.⁵²

In this paper, we adjusted the costs per incident as reported by Waehrer *et al.* for inflation (in 2013 dollars), and multiplied the inflation-adjusted costs by New York City's frequency of incidents during 2010- 2012.

In 1993, Waehrer *et al.* reported that 126,216 workers were injured across New York's private industry occupations and concluded that these injuries imposed a cost of \$3,456,000,000.

$\$3,456,000,000 \div 126,216 \text{ worker injuries} = \$27,381.63$ in 1993. This is the cost per injury. Adjusted for inflation, this would equal \$44,776 per injury in 2014 dollars.

This report calculates the costs of New York private industry occupations related injuries during 2010-2012. In 2010, there were 81,800 reported injuries in private industry occupations that caused days away from work, resulting in a calculated cost \$3,662,676,800.

In 2011, there were 84,300 reported injuries in private industry occupations that caused days away from work, resulting in a calculated cost \$3,774,616,800.

⁵¹ WAEHRER G, LEIGH JP, CASSADY D, AND MILLER T, *Costs of Occupational Injury and Illness Across States*, 46 JOURNAL OF OCCUPATIONAL AND ENVIRONMENTAL MEDICINE 1084-1095 (2004).

⁵² WAEHRER G, LEIGH JP, CASSADY D, AND MILLER T, *Costs of Occupational Injury and Illness Across States*, 46 JOURNAL OF OCCUPATIONAL AND ENVIRONMENTAL MEDICINE 1084-1095 (2004).

In 2012, there were 79,500 reported injuries in private industry occupations that caused days away from work, resulting in a calculated cost \$3,559,692,000.

The combined costs were \$10,996,985,600 (\$11 billion).⁵³

Appendix C: New York's Existing Workplace Safety and Loss Prevention Program

Upon the recommendation of the consultant, the employer shall institute and maintain an effective safety and loss prevention program to identify, evaluate and control workplace hazards. Employers' workplace safety and loss prevention programs, which were developed prior to the promulgation of this rule, may be used to satisfy this requirement if they meet the criteria for an acceptable program set forth in this section. Such program shall be in writing and shall at a minimum:

1. Set forth policies, procedures and practices that recognize and protect employees from occupational safety hazards.
2. Establish and communicate a clear goal for the workplace safety and loss prevention program and the mechanisms which will be utilized in meeting this goal.
3. Provide for visible top management leadership in implementing the program and ensure that all workers at the site are provided equally high quality safety protection, so that all will understand that management's commitment is serious.
4. Provide for and encourage employee involvement in the structure and operation of the program, so that they will commit their insight and energy to achieving the goals and objectives of the safety program. Such involvement shall be accomplished through the recognized employee organization(s), if any.
5. Assign and communicate responsibilities for all aspects of the workplace safety and loss prevention program to managers, supervisors and employees so that such persons know and understand what is expected of them in the implementation of the program. Provide a system to hold managers and supervisors accountable for their responsibilities under the workplace safety and loss prevention program.
6. The employer shall ensure that the supervisors, managers and employees understand their responsibilities under the workplace safety and loss prevention program and their

⁵³ Due to rounding, some category totals may not equal the total sum.

importance to the safety of the workplace. In particular, appropriate training for managers, supervisors and employees shall enable them to:

- recognize potential hazards;
- maintain safety protection in the work area; and
- reinforce employee training on the nature of the potential hazards and required protective measures.

7. Provide a reliable system for employees to notify management personnel of conditions that appear hazardous or of non-compliance with the terms of the workplace safety and loss prevention program without fear of reprisal and provide a mechanism to ensure timely and appropriate responses.

8. Provide a mechanism to investigate accidents so that the root cause(s) and means for preventing a recurrence are identified. For the purposes of this rule, the term "accident" shall mean any unexpected happening that interrupts the work sequence or process and that may result in injury, illness or property damage.

9. Provide a means to review injury and illness trends over time so that patterns with common causes can be identified and eliminated.

10. Establish a mechanism for the employer to conduct ongoing, periodic in-house safety inspections so that new or previously missed hazards or failures in controls are identified. Such inspections shall be conducted with a frequency necessary to be effective and this frequency shall be reviewed by the consultant performing the workplace safety and loss prevention consultation.

11. Address the impact of emergency situations and develop written plans and procedures to insure employee safety during such emergencies. For the purposes of this rule, the term "emergency situation" shall mean an unforeseen single event or combination of events that calls for immediate action to prevent, control or contain injury or illness to person(s) or damage to property.

12. Establish procedures for transmitting and enforcing safe work practices in the workplace through training, positive reinforcement and correction of unsafe performance.

Such program shall be provided to the recognized employee organizations and shall be made available to the employees upon request.