

Summary of
Submission to the
New York State
Exploited Workers
Advisory Committee
and Task Force

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1. Introduction

1.1 The context

It's difficult to separate the different types of exploitation and abuse that workers face in the targeted 14 industries. Therefore, attempts to end these unjust practices must recognize and account for the tangled webs involved. Proposals for changes also need to use a gender lens, with an understanding of the racialization and nature of the low wage workforce, particularly precarious/contingent/temporary/agency work. ...

1.2 Prevention is the goal

As public health practitioners -- and as part of the Clinic Network -- we focus on preventing job-related injuries, illnesses, diseases and deaths. ...

1.3 Health and safety must be part of the solutions

For all these reasons, it is imperative that the Governor's Advisory Committee and the Task Force incorporate health and safety in their proposals to improve working conditions for workers who face abuse and exploitation in the state. We offer recommendations about what needs to be included. ...

2. Approaches to prevention -- *Recommendations to prevent health and safety exploitation and abuse of workers*

2.1 Improve enforcement

1. Increase funding, staffing levels and other resources for State agencies that enforce relevant current regulations and laws. Start by restoring recent cuts. After developing the overall program to prevent abuse and exploitation in these sectors, determine what additional staff and financial resources are needed to implement the program, in consultation with staff, their representatives (and stakeholders like ourselves).
2. a. Determine which existing laws and regulations deal with wage theft, OHS, hours of work, and other working conditions,

including those in the [Labor Law](#) and others administered by DOSH and the Department of Health. Ascertain where they are supplemented (or could be) by federal health and safety requirements or other regulations.

- b. Assess their relevance for:
- low wage workers, using a lens that pays attention to women and workers of color,
 - preventing and reducing abuse and exploitation of workers in the 14 sectors, and
 - gaps in federal OSHA standards including those the agency (effectively) acknowledges in:
 - [Transitioning to safer chemicals](#),
 - [Protecting temporary workers](#),
 - websites about anti-retaliation or [whistleblower](#) protection (and the related [Fairfax memo](#)), injury and illness [prevention programs](#), [record keeping](#) requirements, [young workers](#); and
 - its “Hot Topics” (on the [enforcement](#) page of its website).
- c. Do this in conjunction with reviewing the 2014 federal Follow-up Federal Annual Monitoring and Evaluation (FAME) report (about how well the PESH program is doing in terms of OSHA’s expectations and previous reports) for information about how well the public sector health and safety regulations are working and their relevance for (b) above.
3. Improve co-ordination among government agencies -- in the state, and with federal agencies -- that enforce workplace-related laws and regulations, and better integrate state-run and state-funded job development programs into the mix. Use methods such as cross training of state staff, regular inter-agency meetings, and inter-agency training about all efforts to reduce abuse and exploitation of low wage workers. Do this in consultation with unions representing those state employees.
4. Ensure that all fines related to working conditions are effective incentives for change, whether they are for OHS, wage theft, hours of work, etc. Analyze enforcement, looking at when and how they are collected and publicized and recommend improvements to both. Ensure they are indexed to inflation, at least. Establish criminal sanctions for egregious violations of wage theft, workers compensation, health and safety and other working conditions.

5. Make the OHS complaint process accessible, simple, and non-threatening, especially for those who fear retribution.

2.2 Build and support community-based health and safety infrastructure

1. Enlist community-based worker advocacy groups and the Occupational Health Clinic Network to supplement enforcement and education to prevent exploitation and abuse of low wage workers. Give them rights (standing) to represent and speak on behalf of workers who can't easily do so, whether it's for making complaints, inspections, hearings, representing workers' voices in workplace discussions to identify hazards, fix them and evaluate the effectiveness of those "fixes", or having access to information (e.g., data sheets, injury report logs, monitoring results) that a "worker representative" is entitled to receive.
2. Increase capacity for the Hazard Abatement Board's Occupational Health and Safety Training and Education Program (OSHTEP) so they can fund far more activities to reach and represent low wage workers to identify and prevent job-related injuries and illnesses. Fund community-based worker advocacy groups, so they can hire more staff, offer more workshops and are better equipped to represent and advocate for workers' health and safety in particular. The Occupational Health Clinic Network (OHCN) also needs more funds for preventive outreach and education.

2.3 Increase education and outreach funding and mandates

Active outreach and education for employers and workers is crucial to the success of New York State's efforts to prevent and reduce hazards in the targeted sectors. Both need information about employers' duties, workers' rights, hazards in specific workplaces and jobs, steps to eliminate or reduce hazards, and resources about all these topics. Therefore, we recommend:

1. a. Develop effective multilingual educational materials and training programs about:
 - sector-specific hazards in all categories (i.e., safety and mechanical, chemical and mineral, ergonomic design, biological/communicable and work organization/stressors);
 - principles of prevention and short and long-term effective prevention methods;
 - employers' responsibilities; and

- workers' rights (including OHS, no retaliation, hours of work, pay "rules", etc., whether county, state or federal).
- b. Ensure job development programs include the full spectrum of workers' rights and training about basic OHS principles. This should be done in consultation -- and with funded help from -- community-based worker advocacy groups as well as State agencies.

2. Disseminate materials through all possible avenues including:

- State agency websites and social media;
- State agency personnel who visit workplaces;
- public libraries;
- via other outreach activities to public health and other health care providers;
- the Clinic Network;
- COSHs, workers' centers and other community-based organizations providing services to workers; and
- employer sectoral organizations.

3. Expand training capacity through increased funding for the Hazard Abatement Board Training and Education Program (OSHTEP).

2.4 Improve information about hazards and injuries/illnesses in the 14 sectors (and other low wage jobs)

1. Review current sources of injury, illness and disease data, and hazard information for the sectors, including those within the State and outside it. Develop processes and procedures to improve the State's information collection and keep it up-to-date.
2. Develop a system to notify employers and workers about emerging hazards or ones for which there is new information.

2.5 Workers need new regulations and laws, and policies and procedures to back them up

Achieving the goals of hazard and injury/illness elimination and reduction in the 14 targeted industries requires new regulations and legislation, some of which has been suggested in the preceding sections.

We recognize that public sector workers in the state are covered by the Department of Labor’s Public Employee Safety and Health (PESH) program in the Department of Occupational Safety and Health (DOSHS). OSHA has responsibility for the private sector, although they are not allowed to do anything on farms with less than 11 non-family employees (common in New York State).

Interestingly, there also are a variety of OHS-related provisions in the state’s [Labor Law](#), including some that deserve particular attention.

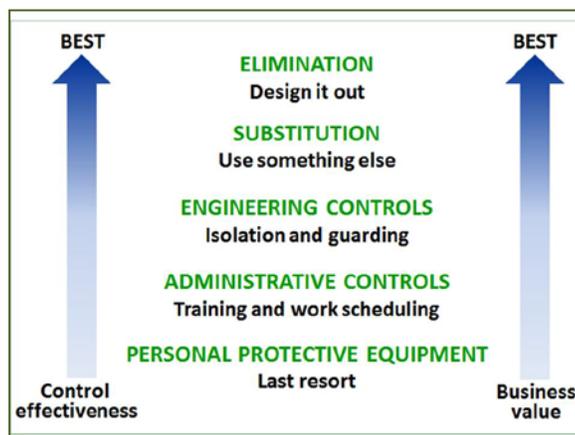
The state can advocate for changes to OSHA’s activities, programs and regulations. On its own, it can develop standards and programs for any topic that federal OSHA does not cover, or improve upon existing OSHA regulations. It has taken advantage of this with the *New York State Sharps Safety Act*, developed a safe patient handling program, and developed innovative workplace violence prevention regulations (at least for the public sector).

1. Develop and implement a plan to change/introduce laws and regulations about topics recommended in Appendix 1. There are general overall ones, and specific items such as:

- updating Section 203-B of Article 7 to provide seating for all workers who regularly stand at work, a common hazard for female workers in many targeted sectors (information about the importance of this hazard is in Appendix 1);
- extending the workplace violence prevention program to schools, and then all workers (as is done in other jurisdictions); and
- developing a working alone regulation, particularly for cleaning, farming, home health care, janitorial services, and retail workers.

3. Preventing injuries and illnesses: Barriers to prevention

The technical methods to prevent and reduce (control) hazards are often uncomplicated and straightforward. They usually are based on a hierarchy or set of levels that reflects the effectiveness of different measures. The prevention triangle (in Section 1 of this submission) sets out one way



to describe this. The hierarchy of prevention diagram at the right is another.

The most effective -- and best business value -- is to design out the hazard or use informed substitution (i.e., the alternative really is much less hazardous). The “last resort” is personal protective equipment.

Given that effective solutions often are available, fixing hazards and preventing health and safety consequences is typically the result of other issues. The recommendations in the preceding section are based on recognizing the important barriers to prevention and the necessity to address them. Key barriers are summarized below.

- 3.1 Perception that only the federal government (OSHA) is responsible for workplace safety and health**
- 3.2 State agencies remain in their own ‘silos’**
- 3.3 Lack of information for employers and workers**
- 3.4 Employers often resist “outside interference”**
- 3.5 Workers’ fear of coming forward is real and strong**
- 3.6 State and federal agencies responsible for health and safety are seriously under-funded and under-staffed**
- 3.7 State and federal agencies responsible for health and safety lack effective up-to-date standards and regulations**
- 3.8 Workers and employers lack knowledge of health and safety resources and information**
- 3.9 Injured and sick workers don’t have easy access to medical care**
- 3.10 Community-based health and safety organizations cannot meet the demands made of them**
- 3.11 Scant data about who gets ill or injured at work inhibits improving working conditions and preventing hazards**

Appendix 1

**Recommended
regulatory/legislative changes to
prevent and reduce abuse and
exploitation of low wage workers'
health and safety**

1. General

1.1 To get a business license, require employers to:

- demonstrate they have coverage for workers' compensation and unemployment insurance;
- prepare a written hazard analysis of their facilities, detailing safety and health hazards, that:
 - includes worker participation in the process of identifying and fixing hazards, and
 - must be updated annually or when changes occur to tasks/jobs or in the workplace, that could affect employees' safety and health (e.g., new chemicals or processes);
- prepare a written program of worker health and safety training for all hazards, including procedures that comply with OSHA's Hazard Communication Standard and the State's current regulations, with annual refresher training;
- prepare a written violence prevention program which includes worker input in the identification and prevention of hazards, that must be updated annually (this already is required in the public sector and was recently expanded to those in the non-profit sector who receive State funding);
- prepare a written program about the use and care of personal protective equipment (PPE) that complies with OSHA's PPE standard (except that employers must provide PPE at no cost to employees, as required in California), and covers appropriate use and training;
- prepare a written whistle-blower (non-retaliation) protection policy that is distributed to all workers and supervisors in the appropriate language(s), and covers reporting of health and safety concerns, hazards, injuries, and illnesses;
- post information about workers' rights, the programs above, injury reports, and the no-retaliation/whistle-blower policy; and
- take a class in which their legal obligations to employees (including those hired through agencies) are spelled out, with annual or biannual refreshers.

2. Specific topics

- 2.1 Establish a unit to specifically oversee enforcement of child labor laws within the Department of Labor. Set up an electronic filing system so information can be shared easily between the Departments of Education and Labor. (Currently, working papers

are filed with schools and administered by the Department of Education. The Department of Labor does not use the filed documents to ensure that employers comply with child labor laws.)

Specifically, require employers who employ youth below the age of 18 to:

- file with the State's Department of Labor;
- provide all employees under the age of 18, and their parents, with a notice detailing the limitations on hours of work for young workers required by state and federal laws;
- provide evidence that they are following the new Environmental Protection Agency's [Worker Protection Standard](#) that bans children under 16 from handling pesticides except when an immediate family member owns the farm (although it would be better to set the bar at 18 years and make no exemptions for family members); and
- certify that all employees under the age of 18 have had, or will have, appropriate training about their rights under the State's labor law, OSHA and other required training about job-related hazards.

2.2 Enact Bills of Rights for:

1. Temporary workers. These workers should be covered, no matter the number employed by an employer. The bill of rights should:
 - require temporary agencies give workers basic information about the job for which they are being hired, in the language which the temporary agency usually communicates with the worker;
 - specify the information required, including rate of pay, hazards and protection from them, and what fees are legal;
 - make explicit who is responsible for all required safety and health training, record keeping and personal protective equipment;
 - includes OSHA's [information](#) about temporary workers and the COSH Network's [recommendations](#) to OSHA; and
 - is informed by the issues raised by Sarah Horowitz in the New York Times in [September, 2015](#).
2. Retail workers. Aside from providing seating (as required currently for women by the State's *Labor Law*), and expanding it

to male workers (as recommended elsewhere), the bill of rights should:

- promote full-time work and access to hours encourage full-time employment before hiring additional part-time workers;
- encourage fair, predictable schedules, and discourage erratic, unpredictable “on-call” scheduling practices, by requiring employers to post schedules at least two weeks in advance, pay employees one hour of pay at their regular rate for schedule changes made with less than a week’s notice and two to four hours of pay for schedule changes made with less than 24 hours’ notice;
- provide equal treatment for part-time workers so that employers cannot discriminate against them in terms of their starting rate of pay, access to employer-provided paid and unpaid time off, or access to promotion opportunities; and
- encourage worker retention and job security so that if a company is bought or sold, the workers must keep on at their jobs for at least a 90-day trial period.

3. Domestic workers. To be at least consistent with the Massachusetts [*Domestic Workers Bill of Rights*](#), the rights should include:

- being paid for all working time;
- days of rest;
- not paying for food and beverages, in most circumstances;
- limited restrictions on free lodging;
- protection against trafficking through civil enforcement;
- asking for a written evaluation;
- a written employment agreement;
- document retention and notice of rights;
- notice/lodging/severance before termination of live-in domestic worker without cause;
- protection against retaliation; and
- OSHA and other required training about job-related hazards.

2.3 Pass A.7528/Nolan et al./S.3884/Flanagan et al. ([*An Act to amend the labor law in New York State*](#)). This is designed to provide protection for farm workers, including:

- collective bargaining rights;
- allowing farm workers one day of rest each week;

- coverage under provisions about overtime compensation and unemployment insurance;
- changes to the public health law about the application of the sanitary code to all farm and food processing labor camps for migrant workers;
- amendments to the workers' compensation law, so that farm laborers are eligible for workers' compensation benefits and must be given claim forms if they are injured or become ill;
- amendments to the labor law, about fair pay for young workers.

2.4 Provide for criminal prosecution of negligent employers. It is very difficult for District Attorneys to bring criminal charges against employers whose negligence results in workplace deaths or serious illnesses or injuries. As one lawyer has said about this, "If I go into your house and take your \$400 TV and \$1,000 worth of jewelry, I get jail time. If I steal money from workers by not paying overtime or minimum wage, I get a fine." The same is true for health and safety violations.

Prosecution is an important incentive for employers to comply with health and safety laws, regulations, and best practices. (For examples of what could be done, see [*Prosecuting worker endangerment: The need for stronger criminal penalties for violations of the Occupational Safety And Health Act*](#), the work of lawyer Harry Glasbeek [e.g., [*Crime, Health and Safety and Corporations: Meanings of the Failed Crimes \(Workplace Deaths and Serious Injuries\) Bill*](#)], and Canada's federal legislation about this ([Bill C-45](#)).

2.5 Adopt indoor and outdoor heat standards. See OSHA's website about heat stress (<https://www.osha.gov/SLTC/heatstress/standards.html>) and the recent [decision](#) by California's Occupational Safety and Health Appeals Board about indoor heat. As climate change takes its toll, this will become even more important as a health hazard to low wage workers in particular. (Despite its information about heat stress, OSHA does not have any standard for the hazard; California's outdoor one now has been applied indoors.)

- 2.6 Update and enforce the requirements for seating in Article 7 (Section 203-B) of the Labor Law. Expand coverage to all workers (as is done in California's Wage Orders). Standing is not the answer to sitting all day. It has its own significant hazards as cashiers, retail workers and others can testify. One did in our [*Healthy work in Syracuse? Conversations with low-wage workers:*](#)

Pretty much every part of me hurts because I am standing all the time. Mainly, my feet and my lower back hurt. When I go on break, I feel the throbbing. At the end of the day, my legs are tired, exhausted.

Those reports are backed up by studies, particularly about the need for a gender perspective on the hazard. For example, see chapter 3 of Dr. Karen Messing's most recent book, [*Pain and Prejudice: What science can learn about work from the people who do it.*](#)

- 2.7 Expand the workplace violenceprevention program to all workplaces, and develop a related working alone regulation/standard to go with it. New York State's program covers the public sector at the moment -- except for schools. The low wage workers, and others, in schools need protection too. Expand the definition of violence to include severe verbal abuse, part of the spectrum of workplace violence. Working alone regulations are common in Canada, dating back to the 1980s. For examples, see the federal and Manitoba rules, referred to in the Canadian Centre for Occupational Health and Safety's [web page](#) about workplace violence.
- 2.8 Expand the state's "green purchasing" program to sectors where cleaning products are used, especially in contracts issued by the state. The successes reported in the [Third Progress Report](#) need to be replicated in all places where cleaning products are used.