

## What is OSHA doing About Immigrant Worker Safety?

John Henshaw is pissed off. Why? A couple of weeks ago, AP reporter Justin Pritchard published an investigation into the workplace deaths of Mexican workers in the United States. Pritchard had written that "The jobs that lure Mexican workers to the United States are killing them in a worsening epidemic that is now claiming a victim a day, an Associated Press investigation has found."

In a letter responding to the AP investigation, OSHA Director Henshaw wrote that the AP investigation was "full of mischaracterizations" and wrong from the first sentence. Mexican worker deaths, while sharply rising for a decade, had fallen by 8.3 percent in 2002. Henshaw credited "OSHA's effort" for the drop.

In a follow-up article, Pritchard notes that while Mexican worker deaths did fall in 2002, the good news did not extend to the overall Hispanic immigrant population the department is trying to reach. Workers in that group -- which includes Central and South Americans, as well as Mexicans -- continued to die in record numbers in 2002, federal data show....

The decline in Mexican-born worker deaths came during the safest year on record for the overall work force in the United States. From 2001 to 2002, total on-the-job deaths fell from 5,915 workers to 5,524 workers -- an unprecedented 6.6 percent drop.

Deaths among U.S.-born Hispanic workers declined at an even greater rate in 2002. However, deaths among all foreign-born Hispanics rose that year over 2001, from 572 to 577. It was also the first year Mexican-born worker fatalities fell since 1994-1995, when deaths dropped from 213 to 206.

What's the Real Story?

Reflecting rising media attention, I have written frequently about the plight of immigrant -- especially Hispanic -- workers in this country. Despite the fact that the numbers for specific nationalities may vary from year to year, the overall trend in immigrant health and safety is tragically disheartening. OSHA claims to be making a serious effort to address this problem, and takes full credit for whatever favorable trends the data picks up.

With all of the media attention to this problem, and OSHA fighting back, it may be a good time to take a minute to look at the problem and OSHA's response.

What Is the Problem?

First, there is no doubt, whatever the trends in specific nationalities, that, as the AP investigation states, there is a worsening epidemic of workplace death among immigrants in this country. (I have posted recent items based on media reports here, here, here, here, here and here. And The Weekly Toll is always filled with stories of immigrant worker deaths.)

Most of the causes are also well known.

Lack of Knowledge About Safety and Health Hazards: The jobs that many immigrants do are new and they are not familiar with the hazards of the jobs. Furthermore, they generally do not know about OSHA or their right to request an inspection and have their name kept secret

Language Barrier: This goes deeper than inability to speak or understand English. Many immigrant workers are illiterate in their native language. Spanish language fact sheets don't help in that situation.

Exploitation: Immigrant workers are frequently sent to do the most dangerous work.

Intimidation: This is closely related to exploitation. Immigrant workers are much less likely to call OSHA -- assuming they know about their rights -- than American citizens. If they are illegal, in addition, they often fear government officials, even those who are there to help them. This stems not only from the fears imported from their own country, but also fear of the "migra."  
What Has OSHA Been Doing? Is It Effective?

How has OSHA been addressing these issues? OSHA Director John Henshaw takes credit for any improvement in the working conditions of Hispanic workers

We launched a three-prong attack combining vigorous enforcement of health and safety standards, outreach to the Latino community and effective education.

A Departmental Hispanic Workers Task Force was created to coordinate this effort, and it is working, as evidenced by the 2002 drop in workplace fatalities among Hispanic workers generally and Mexican-born workers specifically.

Truth? Stretching the truth? LiesDistortions? Let's explore.

First, Henshaw points out that OSHA and other DOL agencies have been forming alliances with Hispanic organizations, including Mexican consulates, across the nation. And this is true. Some regional offices have initiated and joined into broad-based innovative coalitions designed to reach out to Hispanic workers. I wrote last October about the Justice and Equality in the Workplace, a coalition organized in July 2001 to help inform Hispanic immigrants about their rights as workers and to uncover illegal employment practices and discrimination.

The coalition is made up of the U.S. Department of Labor's Office of Federal Contract Compliance and Wage and Hour Division, Equal Employment Opportunity Commission, the Mexican, Colombian, Guatemalan and El Salvadorian consulates, the City of Houston, the Harris County AFL-CIO, the Catholic Diocese of Galveston-Houston, the Mexican American Legal Defense and Educational Fund, the Hispanic Contractor's Association in Houston, the Associated General Contractors of America's Houston chapter, the Houston Chamber of Latino Business Owners as well as OSHA. On the whole, it seems to be doing good work and spawning similar programs elsewhere.

Second, Henshaw claims that "More information than ever before is now available in Spanish about job safety and health via the Web, in publications and through specialized training courses." Umm, I have some serious problems with this assertion. First, technically, it is true that "more" information is available than ever before in Spanish. But that's not saying much. Check out the OSHA's Spanish language publications. There are about a dozen publications, many of which were published in previous administrations, some as far back as the 1980. There is also a new set of ten fact sheets that seem to be targeted at employers, including one on health and safety precautions for your new business, as well as fact sheets on asbestos, workplace violence and other topics. The Personal Protective Equipment fact sheet has no mention of who is supposed to pay for the PPE, a contentious issue for the agency. A standard has been on hold since the Clinton administration that would have required employers to pay for most PPE.

And it's true that there is more Spanish language material on the web, although I have serious reservations about how accessible this information is to the average immigrant worker.

Even written materials have their problems

<http://www.indystar.com/articles/8/137085-4738-031.html>

"We are talking about a community that prefers to stay in the shadows," said Jenny Sarabia, executive director of the Indiana Commission on Hispanic/Latino Affairs.

"Translating brochures and signs into Spanish is not enough," she added, because many of the new Hispanic arrivals in Indiana are unable to read English or Spanish.

I have no idea what Henshaw means by "specialized training courses" in Spanish. There is not one Spanish language training course listed on the OSHA Training Institute Course Schedule. The only Spanish language training that I know of is being conducted by grantees under the Susan Harwood Training Grant Program which the Bush administration has been attempting to eliminate since it came into office. The \$11.2 million Harwood program was refocused on immigrant worker outreach in 2000 during the Clinton Administration. The grants were extended from 1-2 year programs to 5 year programs.

The current administration cancelled the second round of 5-year grants, attempted unsuccessfully (thanks to Congress) to cut the first 5-year round (which concludes this year) and has proposed to eliminate the \$11 million Harwood grants and replace them with a \$4 million program that would depend on electronic (internet and CD-Rom) training instead of actually having classes with an instructor. Referring to the proposed training cuts, Henshaw argued "I would not use the word 'cutting'," Henshaw said referring to the proposed \$6 million decrease in the training grant program. "We do not feel the training program should be based on one-on-one training. We are developing materials and technology to get information out to more people."

How all of this amounts to "effective education" I'm not sure.

There is another troubling aspect to OSHA training. Ultimately, it is not OSHA, but the employer who is responsible for training its workers. Tom O'Connor, director of the National Council on Occupational Safety and Health, wrote a letter to the editor of the Raleigh News and Observer, responding to a article about two Hispanic workers that were killed in separate construction

accidents less than an hour apart in North Carolina notes that Your report stated that some fatalities have involved Hispanic workers who "worked for companies that did not have the resources to provide training in Spanish." That is not good enough. It is a law, not an option. There are resources in the private sector, among nonprofit organizations and within OSHA to assist employers with this critical training. Those employers who fail to provide such training and whose workers die as a result should be prosecuted criminally.

Third Henshaw claims that "More Spanish-speaking inspectors and outreach staff are being hired." More than what? Pritchard's research does not validate Henshaw's contention: Safety experts inside and outside OSHA say the agency's outreach efforts are well intentioned, but beset by limited funding and a lack of Spanish-speaking staffers.

Even California is having problems hiring Spanish speaking OSHA employees.

The non-English speaking workforce of California is estimated to be more than 6 million workers, over one-third of the working population. Yet CalOSHA has only 29 inspectors (or 16% of the total) who are fluent in a language other than English. Twenty of these speak Spanish. North Carolina is having similar problems.

The state office charged with enforcing safety in North Carolina workplaces is fighting an uphill battle trying to find and keep employees who speak Spanish -- a key asset in the effort to educate and train more workers. The Labor Department's division of occupational safety and health has only seven bilingual training and compliance officers in a staff of 240. Many times, Spanish speakers are lured to private-industry jobs that pay better. To alleviate the problem, the agency recently sent two people to immersion courses in Costa Rica and Mexico.

And federal OSHA is in sadder shape:

Even some of OSHA's own Hispanic outreach officers say they need to do more. Marilyn Velez, OSHA's sole Spanish-speaking outreach worker in the eight-state Southeastern region, isn't sure what caused the drop from 28 to 8 Mexican-born worker deaths in Georgia in 2002. But she doesn't think workers were taking fewer risks, or that bosses were more insistent on safety.

"We knew that it was not just because it was outreach," said Velez.

More troubling, she said, is that Hispanic worker deaths appear to have risen in Georgia again in 2003.

Finally, in addition to outreach, Henshaw argues that "More inspections are being targeted to industries with high injury rates that employ large numbers of Hispanic workers, such as construction and landscaping." I don't have the statistics with me at the moment, but I think OSHA is generally trying to target these areas. The question is how effective that targeting will be if immigrant workers are not aware of what OSHA is, how it works or if they can be protected against retaliation by employers.

A recent study of immigrant workers in California, *Voices From the Margins: Immigrant Workers: Perceptions of Health and Safety in the Workplace*, by the UCLA Labor Occupational Safety and Health Program (LOSH) found that Hispanic workers were not familiar with governmental agencies which could assist them. Less than 10 percent had ever heard of Cal-OSHA and no workers surveyed had contacted CalOSHA for assistance. Some of the workers did not contact governmental agencies because of their immigration status and also

because of experiences in some of their home countries which led them to perceive government as "unfriendly" to workers.

Finally, even if immigrant workers are aware of what OSHA is and what rights they have, how secure are they that OSHA will not turn them into "la migra," or that OSHA will be able to do anything to help them if their employer retaliates against them for exercising their health and safety rights?

And then there is the effect of the Supreme Court's 2002 Hoffman Plastics decision which held that undocumented immigrants were not entitled to back wages - even after being illegally fired for union activity - because their job was "obtained in the first instance by a criminal fraud." The Department of Labor has stated that it will still enforce the Fair Labor Standards Act, even for undocumented workers, because the FLSA addresses wages for time actually worked, whereas the Hoffman Plastics decision addresses time that would have been worked had the employee not been illegally fired. Secretary of Labor Elaine Chao has stated that

Regardless of a worker's immigration status, the Labor Department remains committed to the enforcement of all protections offered by the Fair Labor Standards Act, the Mine and Safety and Health Act, and the Department's other core labor statutes. Safety has no nationality-and every worker in this country deserves a safe workplace.

How states handle the Hoffman Plastics decision and how it affects workers' OSHA rights is not clear, according to the National Employment Law Project.

The California Department of Industrial Relations recently posted a statement on its website clarifying that it will "Investigate retaliation complaints and file court actions to collect back pay owed to any worker who was the victim of retaliation for having complained about wages or workplace safety and health, without regard to the worker's immigration status."

This all sounds good on paper, but what about the real world? First, there is nothing on the OSHA webpage, and no announcement or interpretation that I am aware of that clarifies what effect the Hoffman decision has on OSHA's willingness to investigate retaliation against undocumented immigrant workers. I have heard reports that some OSHA regions take these cases, while others do not. And how does the federal government force an employer to re-hire an undocumented worker? What if the employer's next action is to call immigration? Is OSHA going to rule that calling immigration is an illegal form of retaliation and demand that Immigration allow the worker to be rehired? It doesn't make much sense. Nor does President Bush's immigration proposal make workers more secure about exercising their health and safety rights because the proposal requires workers to be "sponsored" by their employer. What's to keep an employer from suddenly deciding that he has a few less openings to sponsor if a worker complains about safety and health conditions?

Can OSHA Take Credit?

So is John Henshaw right? Is the 2002 improvement in Mexican worker deaths due to OSHA's efforts?

Probably not. (But it was a great letter, John. Thanks for playing.) First, OSHA's Hispanic worker initiative wasn't announced until the end of February 2002. An 8% drop in fatalities as a result of

a 10 month-old program would be impressive, indeed.

Pritchard reports that experts at the federal Centers for Disease Control (NIOSH) and the National Safety Council are skeptical whether any improvements can be credited to OSHA's recent outreach initiative:

Workplace safety experts at the federal Centers for Disease Control and the National Safety Council, a nonprofit public service organization, said no research substantiates a link between OSHA's fledgling outreach and the drop in Mexican worker deaths.

"It's not something that you throw a small amount of money at and issue some pamphlets and you're going to see dramatic changes," said David Richardson, a University of North Carolina-Chapel Hill professor of epidemiology who tracks worker deaths in the South. "It's a slow battle."

So why the decline in Mexican worker deaths in 2002?

According to work safety specialists, statisticians and even some federal outreach workers, there's no evidence any one effort is responsible for the improvement in 2002. Possible factors include the economic recession that followed the September 2001 terror attacks and changes in immigration and border security. Mexican-born workers have stayed longer in the United States, gaining experience and perhaps decreasing their willingness to take risks.

"It's good that they're doing outreach," says Dr. Sherry Baron, a lead CDC researcher on immigrant workers. However, "a change in one year, it's hard to conclude anything. Part of it is, we need more time."

So what is to be done?

What can OSHA and others do to improve the plight of immigrant workers in this country.

The UCLA/LOSH study had four recommendations. The first recommendation was to Establish a multi-year capacity building grants program for community-based organizations, clinics, and worker advocacy groups that work with, or provide services to, immigrants. This will allow them to provide training and educational materials for immigrant workers and also serve as an extension of governmental workplace health and safety agencies by reporting possible labor law violations and injury/illness cases.

The main reason is trust:

When asked where they went for assistance or advice on health and safety issues, most responded that they consulted with co-workers and immigrant worker advocacy groups or labor unions. They seldom turned to employers for such assistance. Workers in each of the industries turned to the worker centers or unions for information on how to work more safely, personal protective equipment, or legal assistance when injured. They trusted these organizations and felt comfortable going to them because their staff spoke the workers' language and they felt secure that these organizations would not turn them into the Immigration and Naturalization Service ("la migra") if they did not have legal immigration or working papers.

Funding these organizations that immigrant workers trust and who can effectively reach out is essentially what OSHA's Susan Harwood Grant program was beginning to focus on. The clear lesson is that OSHA's Susan Harwood training grant program should be significantly expanded in

both funding and scope, not eliminated. And the program needs to provide much more funding to labor organizations, COSH groups and other community organizations. Unfortunately, OSHA's grant program is increasingly ignoring these groups.

LOSH also recommended more research, public hearings, and the establishment of a Clearinghouse/Resource Center for immigrant worker health and safety education and information....that could provide education and information on workplace health and safety for these community based organizations, clinics and worker advocacy groups that work with immigrants.

While community based organizations clearly provide the most bang for the buck, federal and state OSHA's need to hire more compliance officers and other staff who come from immigrant communities, or who at least speak their languages. Over the past several years, OSH has hired over 70 "Compliance Assistance Specialists" in each of its area offices. Unfortunately, most of these positions were filled with current OSHA employees rather than recruiting from immigrant communities. OSHA should also work with other federal and local agencies and community organizations to expand its Justice and Equality in the Workplace coalitions.

The toughest nut to crack is the problem of preventing or punishing retaliation against immigrant workers who attempt to use their OSHA rights. OSHA needs to find creative ways to work through labor unions, COSH groups, churches and other trusted organizations to send a strong message to employers that it is not acceptable to take advantage of immigrant workers or to retaliate against them when they complain about health and safety problems or when they report injuries or illnesses. Fines need to be raised for health and safety violations and criminal prosecutions more aggressively pursued.

The bottom line, of course, is the bottom line. If OSHA and Congress want to get serious about addressing the deadly health and safety problems faced by immigrant workers, it will take some innovative programs, and more money. Significantly more training grant money should be allocated and funding should be dedicated for federal and state OSHA programs to hire more employees from immigrant communities.

As the Indianapolis Star argued

State and federal agencies have tried to counter that assessment with Hispanic outreach services, literature and Web sites. Some employers have seized the moment on their own, providing Spanish training and otherwise making sure no worker is left at risk by language or culture differences. More assistance is needed, and budgets must be adjusted to make more of it face to face. To say the money isn't there is to ignore the wealth-producing sweat of this generation of America's builders.