

BUILD A BETTER TEXAS



CONSTRUCTION WORKING CONDITIONS IN THE LONE STAR STATE

A Report from Workers Defense Project

*in collaboration with the Division of Diversity and
Community Engagement at the University of Texas at Austin*

Dedicated to the Texan families who have lost a loved one to the construction industry and to the hardworking men and women who build our state.

EXECUTIVE SUMMARY

Build a Better Texas is the result of over a year of research conducted by a team of researchers from Workers Defense Project, faculty from the University of Texas at Austin, and faculty from the University of Illinois at Chicago. The study examines the working conditions faced by construction workers in five of Texas' largest and fastest-growing cities: Austin, Dallas, Houston, San Antonio, and El Paso. The report examines data collected from primary and secondary sources, including surveys with 1,194 construction workers, 20 in-depth worker interviews, 15 in-depth interviews with industry leaders, and existing government data. Taken together, the primary and secondary data collected for *Build a Better Texas* provide key insights into construction working conditions in Texas.

This report combines perspectives of workers and industry leaders to create the most comprehensive study on one of the nation's most important construction markets. Findings indicate that the Texas construction industry is characterized by dangerous working conditions, low wages, and legal violations that hurt working families and undercut honest businesses. *Build a Better Texas* reveals that while the industry plays an important role in the state's economy, construction workers have not been rewarded for their honest work. Furthermore, this study provides concrete solutions to ensure a safe, healthy, and productive workforce that can meet the needs of a vibrant and growing economy.

Texas Construction: Vital to Texas and the National Economy

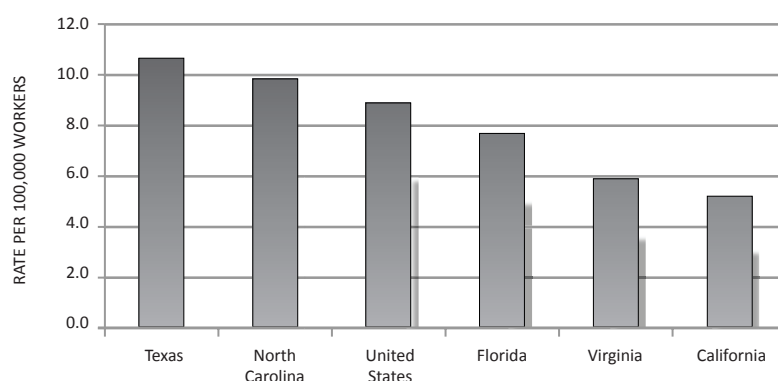
Construction is big business in Texas. Texas is one of the largest and most important construction markets at both the regional and national level, driving construction nationally at a time when most of the country is still reeling from the recession. While the Texas construction industry did experience a 13% decrease in employment between 2007 and 2010, it fared significantly better than the U.S. construction industry as a whole, which saw a 27% decrease in employment.¹

Between 1997 and 2010, population in the state increased by nearly 25%, twice the percentage growth the U.S. experienced during that same period, creating demand for housing, infrastructure, and industry needs in the state.² Construction accounts for one out of every \$20 generated by the Texas economy and over 10% of all construction output in the U.S.^{3;4} In 2011, Texas single-handedly accounted for 16% of all new housing construction permits in the US, more than both Florida and California combined.⁵

Texas is also a national leader in green building, a rapidly growing subsector of U.S. construction. Green building emphasizes the "triple bottom line" of environment, economy, and equity (the "three E's") to incorporate social and environmental sustainability into the construction process.⁶ As green building becomes standard practice in the Texas construction industry, however, equity remains the "forgotten E" of sustainability.

The 2010 U.S. Census shows that over 950,000 workers labor in the Texas construction industry.⁷ The Texas construction workforce is predominantly comprised of Latino workers, many of whom were born in a foreign country. Texas workers are primarily male and younger on average than workers nationally. Few have completed vocational training or obtained a college degree. Although approximately one in every thirteen people in the Texas workforce labors in construction, construction workers have not benefited from the relative stability in the Texas construction industry.⁸ Low wages, lack of training, and dangerous working conditions remain as hurdles to building a truly sustainable construction industry.

FIGURE 1
Fatality Rate Comparison by State, 2010



Dangerous, Low-Wage Jobs

While construction workers make vital contributions to the Texas economy, they have not been rewarded for their hard work. Construction work in Texas is dangerous, and workers labor long hours for low pay. They frequently face violations of their rights as employees, and inadequate enforcement mechanisms leave many workers with no recourse when they encounter workplace abuses. *Build a Better Texas* survey results indicated that workers experience a wide array of workplace issues including:

- **Dangerous and deadly working conditions.** More construction workers die in Texas than in any other state. One in every five workers surveyed reported suffering a workplace injury that required medical attention. Sixty percent of workers have never received basic safety training, and researchers discovered numerous safety violations on almost every worksite they visited.
- **Poverty level wages.** More than half of surveyed workers reported earning poverty-level wages. Half of workers also reported having insufficient financial resources to support their families. Additionally, workers earning low wages were more likely to lack health insurance or workers' compensation coverage.
- **Failure to be paid.** More than one in five workers (22%) reported being denied payment for their construction work in Texas. Fifty percent reported not being paid overtime, despite working as many as eighty hours per week.
- **Few employment benefits.** Seventy-one percent of surveyed construction workers reported receiving no benefits in their employment. Seventy-eight percent lacked health insurance. Other workplace benefits, such as paid leave and pensions, were even less common.
- **Denied legal protections.** An estimated 41% of construction workers were found to be victims of payroll fraud, misclassified as independent contractors or paid off the books in cash.
- **Lack of opportunities to obtain training or build rewarding careers in the industry.** Texas construction workers have limited access to training opportunities, though 67% of workers without formal training said they would enroll if it were available.

Contributing to these conditions, researchers found that state and federal agencies charged with enforcing safety and wage standards have inadequate resources to effectively investigate violations on all Texas worksites. Survey data reveals that the majority of Texas construction workers had never heard of the US Department of Labor's (DOL) Wage and Hour Division or the Texas Workforce Commission, making it unlikely that they would report violations to these agencies.

Good for Workers, Good for the Industry

Interviews with construction company representatives revealed that businesses of all sizes recognize that the success of their business depends on the ability of their workforce to produce a high quality product that guarantees them return business. Interviewees described ways they have invested in their workforce and implemented best practices, but acknowledged that many companies break the rules, creating challenges to building an industry that is sustainable in the long term.

Employers who cut corners with respect to safety, providing workers' compensation, and properly paying their workforce are driving a "race to the bottom" that makes it hard for responsible business owners to compete. This race to the bottom not only hurts good employers' ability to compete in the market, but dangerous jobs with low pay and no benefits make it difficult to attract a skilled workforce. Interviewees indicated that property owners and developers must set the standards they expect to be followed on their worksites. If they prioritize safety, compliance with wage and tax laws, and expect better pay for workers, general contractors and subcontractors will meet those standards.

Two Workers Die When Company Fails to Ensure Safety

In July 2012, ironworkers Terry Weaver and Thomas Fairbrother, Jr. fell more than 150 feet to their deaths when the crane they were dismantling collapsed on a University of Texas at Dallas construction site. The workers were dismantling the crane in winds gusting up to 45 miles per hour.⁹ Terry and Thomas are survived by siblings, spouses, children, and grandchildren.

OSHA found that the crane contractor on the site did not address the hazards associated with wind and weather and failed to minimize the workers' exposure to hazardous conditions. In addition, the crane contractor had not provided adequate crane safety training to its employees.¹⁰ OSHA levied nearly \$30,000 in penalties and cited the company with six serious safety violations.¹¹

Terry's widow and son are now suing the crane company and the general contractor for negligence for failing to take necessary steps to provide the workers with a safe workplace.¹²



The Social Costs of Breaking the Rules

Dangerous working conditions, low wages, and illegal practices have implications that extend far beyond the individual workers who experience them. When employers cut costs by failing to provide workers' compensation, health insurance, or living wages to their employees, they are passing the costs of taking care of workers and their families on to taxpayers and public institutions. These poor standards in construction cost Texans tens of millions of dollars each year. *Build a Better Texas* researchers found that:

- **Wage theft results in lost tax revenue:** at least \$117 million in lost wages and \$8.8 million in lost sales tax revenue impact cash-strapped state and local governments.¹³
- **Texas construction workers are forced to fall back on public safety nets** to support their families. Low wages and wage theft contribute to economic instability for construction workers and their families. Fifty-two percent of Texas construction workers report that they were unable to meet the basic needs of their family at some point.
- **Injured construction workers account for a disproportionate share of uncompensated care costs in Texas hospitals.** While construction workers make up roughly 6% of the workforce, hospital data suggest that they account for nearly 20% of work-related uncompensated care costs in Texas emergency rooms.¹⁴
- **Rampant payroll fraud results in an estimated \$54.5 million in lost unemployment insurance tax revenue** and hundreds of millions more in federal income tax. With over 40% of the construction workforce misclassified as independent contractors or paid under the table, Texas – and the federal government – lose out on critical revenue.¹⁵

Wage Theft Costs Family Their Home

Eduardo Soto, a heavy-machinery operator in Houston, worked for a demolition company for one year. His employer frequently paid him and his coworkers with bad checks, which would bounce when the workers attempted to cash them. Eventually, Eduardo's employer owed him \$7,000 in back wages. When Eduardo asked his employer for his wages, he promised again and again he would pay, but the money never came.

The ordeal cost Eduardo more than his paycheck. "I felt horrible because the money [my wife and I] made was not enough and we were losing our home – we lost the place where my children got married. It was a very painful thing to go through."

He finally quit and took his employer to court. A judge ruled in favor of Eduardo, who is still waiting for his employer to pay. "He took advantage of my trust," Eduardo said, "But I will get my money."



Policy and Best Practice Recommendations

Workers Defense Project has created a series of recommendations for policymakers and industry leaders to improve working conditions and ensure the economic prosperity of an industry so vital to Texas and the nation.

Policymakers, Investing in Texas Construction Workers

Policymakers at the local, state, and federal level are uniquely positioned to ensure safe, fair, and equitable working conditions for construction workers. Policymakers should focus on the following areas to ensure good job creation:

Guarantee Safe Working Conditions. More must be done to address the disproportionately high fatality and injury rate in the Texas construction industry. Government agencies can partner with workers' rights organizations, unions, and responsible businesses to conduct targeted safety sweeps at construction sites to ensure a safe working environment. Furthermore, policymakers should enact policies guaranteeing rest breaks, workers' compensation, basic safety training, and medical care for construction workers.

Ensure Honest Pay for Honest Work. Wage theft, payroll tax fraud, and low wages threaten the construction industry by hurting working families and undercutting honest construction businesses. In addition to strong enforcement of existing wage and hour laws, policymakers can take important steps to reward good business practices. Employers who pay a living wage, provide medical insurance, career advancement, and retirement benefits for their workers should be rewarded for their smart business strategies. Investigative agencies should enforce employment laws governing wages and payroll tax fraud and provide protection from retaliation for workers who report violations.

Create Good Jobs. Most construction jobs do not lead to a career path, and today, few young people see the industry as a desirable place to seek employment. For Texas' long-term economic prosperity policymakers must ensure that these construction jobs provide a pathway into the middle class. Policymakers at the local level can encourage training for construction workers on government funded projects and on tax incentive deals with developers, thus, promoting a career track for workers in the industry. Access to training opportunities and good jobs must also be secured for more vulnerable worker populations such as women, individuals with a criminal record, and those without a high school diploma. Additionally, the state of Texas must do more to invest in workforce development and bilingual training programs to ensure a well-trained workforce and avoid a shortage of skilled workers in a sector that is vital to the state's economy.

Make Green Jobs, Good Jobs. As green building becomes an increasingly important sector in the construction industry and local governments push for more green building, it is crucial that policymakers ensure these jobs are good jobs for workers as well. Good jobs pay living wages, provide benefits, and ensure safe working environments. Policymakers must ensure that green jobs are sustainable for the environment, workers, and their families that depend on them.

Pass Immigration Reform. The construction industry is highly dependent on a foreign-born workforce. Immigration reform at the federal level must be enacted to ensure a pathway to citizenship for undocumented workers in the industry. Immigration reform is necessary to protect the rights of *all* workers by ensuring that they are afforded equal protections and are not afraid to step forward when facing dangerous and illegal working conditions. Furthermore, construction companies must be able to hire their workforce legally to ensure that all companies are operating on a level playing field.

Industry Leaders: Ensuring a Sustainable Workforce

Business leaders in construction have the opportunity to create good construction jobs by ensuring safe and fair working conditions for the workforce. These industry leaders can develop profitable business models that invest in their workforce and local communities, taking corporate responsibility to the next level. Additionally, developers are uniquely positioned to set standards for all contractors and subcontractors on their worksites.

Prioritize Safety. Employers should provide OSHA 10-hour safety training for all employees and provide ongoing health and safety training throughout the year. Contractors should also ensure that all workers receive proper safety equipment, rest breaks, and workers' compensation. Workers should also have an anonymous system to address safety concerns with their direct employer, general contract, and developer without fear of retaliation.

Invest in Training. Employers must see training as a necessary investment that helps ensure workers are able to produce a quality finished product, prevent accidents, and provide opportunities to advance in the industry. Construction is skilled work, and employers must ensure their employees have access to training programs that couple classroom instruction with on-the-job training. Additionally, developers can set targets to promote training and reward employers that invest in workforce development. Formal training can play a key role in improving the quality of construction jobs, and set Texas on the track to build a strong economy that benefits builders, workers, and the state.

Subcontract for Quality. Developers and general contractors should take into account working conditions, including safety, breaks, wages, training, and benefits when hiring subcontractors. Rather than simply considering price, developers should give preferential status to bidders that demonstrate a track record in providing fair pay and benefits and a strong safety program. General contractors should ensure safe and dignified working conditions on their sites and address employment violations that arise. For developers, the bottom line must also include the human cost.



ENDNOTES

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- ³ “Gross Domestic Product by State [Texas],” Bureau of Economic Analysis (BEA), June 2012, accessed October 12, 2012, <http://www.bea.gov/>.
- ⁴ “Construction Industry Top 10 States by GDP,” EconPost, accessed November 10, 2012, <http://econpost.com/industry/construction-industry-top-10-states-gdp>.
- ⁵ “Permits by State – Annual,” U.S. Census Bureau, accessed October 12, 2012, <http://www.census.gov/const/www/permitsindex.html>. Percent changes are computed from unrounded data. Prepared by Economics Department, NAHB.
- ⁶ “Guiding Principles,” USGBC, August 15, 2006, accessed November 5, 2012, http://communicate.usgbc.org/usgbc/2006/08.15.06_guiding_principles/guidingPrinciples/.
- ⁷ 2010 United States Census, 5% sample, United States Census Bureau.
- ⁸ According to the U.S. Census, there were 952,875 construction workers in Texas in 2010. The overall size of the Texas workforce is approximately 12.6 million workers, making construction workers 7.6% of, or slightly more than one out of every 13, workers.
- ⁹ “US Department of Labor’s OSHA cites Harrison Hoist following tower crane collapse at UT Dallas that killed 2 workers [Region 6 press release],” US Department of Labor (DOL), Occupational Safety and Health Administration (OSHA), November 20, 2012, accessed December 10, 2012, http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=23289.
- ¹⁰ Sarah Ann McCay, “OSHA fines operator for fatal accident,” *International Cranes and Specialized Transport* [magazine], KHL Group, November 26, 2012, accessed December 10, 2012, <http://www.khl.com/magazines/international-cranes-and-specialized-transport/detail/item81002/OSHA-fines-operator-for-fatal-accident>.
- ¹¹ “US Department of Labor’s OSHA cites Harrison Hoist,” US DOL, OSHA.
- ¹² Robert Wilonsky, “Wife and son of construction worker killed in UT-Dallas crane collapse file suit in Dallas County,” *The Dallas Morning News* [DallasNews.com, The Scoop Blog], October 3, 2012, accessed December 10, 2012, <http://thescoopblog.dallasnews.com/2012/10/wife-and-son-of-construction-worker-killed-in-ut-dallas-crane-collapse-files-suit-in-dallas-county.html/>.
- ¹³ Estimate calculated using Build a Better Texas survey data and average sales tax rate: “City Rates [sales tax calculator],” Texas Comptroller of Public Accounts, accessed November 8, 2012, <http://www.window.state.tx.us/taxinfo/local/index.html>.
- ¹⁴ “Work-related accidents – fiscal year 2008 [data request],” John Peter Smith (JPS) Hospital, November 3, 2010.
- ¹⁵ Estimated lost tax amount calculated with Build a Better Texas survey data and number of misclassified workers estimated from Texas Workforce Commission data: “State Occupational Employment and Wage Estimates [May 2011, Texas],” BLS, accessed November 12, 2012, <http://www.bls.gov/oes/current/oesstx.htm>. Researchers calculated the total number of workers employed in the construction of buildings as defined by their trades; “Tax Rates [unemployment tax, experience tax rates],” TWC, December 10, 2012, accessed December 14, 2012, <http://www.twc.state.tx.us/ui/tax/unemployment-tax-rates.html>. The 1.96% rate used in the unemployment insurance calculation is the average employer tax rate for 2012.

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Workers Defense Project is a statewide non-profit organization that promotes fair working conditions for Texas construction workers by educating them about their employment rights and ensuring they are treated fairly and humanely at work. Workers Defense Project provides direct services and organizes low-wage workers to advocate for stronger protections at the state and local level. Workers Defense Project believes that by ensuring safe, fair working conditions for all workers, Texas can build a strong and sustainable construction industry that works for all Texans.

INTRODUCTION

Build a Better Texas provides valuable information and analyses of the status, problems, and potential of the Texas construction industry, one of the state's most important industries. Based on an extensive survey of Texas construction workers and employers, supplemented by data from experts and official sources, this comprehensive report is an invaluable contribution to documenting the conditions faced by Texas workers, as well as the challenges Texas faces in addressing the needs of this vital workforce.

The Texas construction industry is critically important not only to Texas but to the nation. According to *Build a Better Texas*, in 2011 Texas construction accounted for 40% of U.S. construction employment growth and 10% of the Texas workforce, both of which have contributed to making the Texas economy one of the most resilient in the nation.

Despite its importance, Texas construction has some serious employment problems that restrict its future growth and shift important costs to workers and the public. Ninety-nine percent of the jobs created between 2005 and 2010 paid wages at or below the federal poverty level for a family of four and 52% of the workers surveyed had wages below federal poverty guidelines. Forty-one percent of the construction workers surveyed experienced payroll fraud. Texas construction workers likewise receive relatively few non-wage benefits; medical insurance (22%); vacation (15%); sick leave (12%); retirement or pension benefits (9%); and workers' compensation (40%).

In addition, Texas has the most dangerous construction industry in the United States. Between 2007 and 2011, 585 Texas construction workers died from workplace injuries, compared with 299 in California, which had a larger construction workforce. And between 2003 and 2010, construction accounted for about 6% of the Texas work force, but 26% of workplace fatalities. Given these hazards, it is surprising that Texas is the only state that does not require employers to provide workers' compensation for on-the-job injuries. Texas also lacks a state OSHA law to supplement the federal OSHA program and provides only one OSHA inspector per 103,899 workers, compared with 1 per 52,416 in California, which (along with 20 other states and Puerto Rico) does have a state OSHA law.

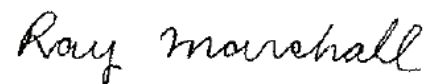
Despite the high proportion of workers whose first language is not English and their low levels of formal education and training, Texas is one of only two states that spends no money on adult education beyond the minimum required for federal funding.

Low wages, hazardous work, and payroll fraud inflict high costs on Texas residents, taxpayers, and responsible employers. Companies that do not pay a living wage are being subsidized by workers, their families, and the public. The costs of injuries, illness and death of uninsured workers are borne by their families, medical providers, and employers who do provide health insurance. In the absence of administrative remedies and effective employee protections, workers are forced to seek relief through litigation, which can be uncertain, time consuming, and expensive.

The low-wage, low-benefits competition being followed by the Texas construction industry causes many qualified workers to avoid these jobs, generates a "race to the bottom" on wages and benefits, and neglects productivity, quality, and value added, which requires internalizing all costs of production to firms, an emphasis on human resource development, and high-performance management systems. Highly motivated workers and long-run profitable value-added competitiveness clearly is more sustainable and compatible with democratic institutions than direct wage and cost competition.

State and local governments have major responsibility for improving construction wages, working conditions, training, and value-added competitiveness. Individual employers have limited ability to improve working conditions, the cost of which could put them at a competitive disadvantage. The most effective way to deal with these problems is to internalize them to firms, which have the greatest ability to address them. In best practice conditions, this is done through strong employer associations or collective bargaining reinforced by smart regulations, none of which are very extensive in Texas. Governments therefore must act to protect and promote workers' interests and the economic health of important infrastructure industries like construction. They also should provide adult education and workforce training, which are critical for value-added economic growth.

These state functions are most effective when they are done in partnership with employers, workers and community-based organizations like the Workers Defense Project, which produced *Build a Better Texas*. This report is a call to action for local policy advocates and construction industry leaders to take steps to ensure the long-term sustainability of an industry that is critical to Texas and to the nation.



Ray Marshall

Former U.S. Secretary of Labor

GLOSSARY

- **Developer** – a developer designs, creates, and funds commercial construction projects. Usually the developer is the owner of the property.
- **General contractor** – the general contractor oversees the scheduling and completion of each phase of the construction project and hires subcontractors of different trades/specialties, such as concrete or carpentry, to complete a project.
- **Homebuilder** – homebuilders own residential housing construction projects, but also take on the role of the general contractor to oversee the building of the homes. Homebuilders can range in size from small custom builders to national companies that build entire subdivisions.
- **Subcontractor** – subcontractors are companies that specialize in one construction trade (such as electric work). Subcontractors may directly hire workers to complete the work on the site, or may hire other subcontractors to complete the work.
- **Trade** – a trade is the occupation of a construction worker requiring a specialized skill, such as carpentry.
- **Workers' compensation** – a state-administered insurance system that pays for medical bills and lost wages when a worker is injured on the job. Employers can choose to subscribe to workers' compensation to protect their workers in the event of a workplace injury.
- **Prevailing wage** – construction workers earn a prevailing wage when working on publicly funded construction sites. The federal or state government sets the prevailing wage for each trade based on the going pay rate for the trade in a certain geographic region.
- **Wage theft** – wage theft is the practice of employers refusing to pay the legal minimum wage, paying less than the wage they had promised, or, most cited, not paying their workers at all.
- **Payroll fraud** – employers commit payroll fraud when they keep their workers off of formal payrolls, usually by paying them in cash, personal check or by misclassifying them as independent contractors.
- **Unemployment insurance tax** – employers must pay an unemployment insurance tax on the first \$9,000 earned by their employees each year. This tax funds the unemployment insurance fund, which supports workers who become unemployed.
- **Apprenticeship program** – apprenticeship programs provide formal training to workers and allow them to increase their wages as they increase their skill level. Apprenticeship programs typically take three to five years to complete, depending on the trade.
- **National Labor Relations Board (NLRB)** – the NLRB is the federal agency that investigates employers who violate the rights of workers to organize to improve working conditions and form unions.
- **Texas Workforce Commission (TWC)** – TWC is the state agency that investigates wage theft cases and also aids in job placement, resolves discrimination cases, and distributes unemployment benefits.
- **US Department of Labor (DOL), Occupational Health and Safety Administration (OSHA)** – OSHA is the federal agency that investigates violations of workplace health and safety regulations. OSHA also offers certified health and safety trainings.
- **US Department of Labor (DOL), Wage and Hour Division** – Wage and Hour is the federal agency that investigates minimum wage and overtime violations.

METHODOLOGY

Build a Better Texas draws on data from nearly 1200 surveys and 35 interviews documenting working conditions in the previously unstudied Texas construction industry.

Build a Better Texas is the result of over a year of research conducted by a team of researchers from Workers Defense Project, faculty from the University of Texas at Austin, University of Texas School of Public Health in Houston, and the University of Illinois at Chicago. *Build a Better Texas* examines working conditions in the Texas construction industry using primary and secondary data sources. Incorporating the perspectives of workers and businesses, this study seeks to build an understanding of how the industry functions with regard to the broader impacts of current employment practices.

Data on the industry's economic impact, employment, and workforce demographics were gathered from secondary sources, including the US Census Bureau, the US Department of Labor (DOL), and the Texas Workforce Commission (TWC), among others. Primary data were collected from surveys with construction workers, worksite hazard observations, and in-depth interviews with workers and employers, which capture conditions not documented by state and federal agencies.

From May to July of 2012, *Build a Better Texas* researchers surveyed a total of 1,194 construction workers in Austin, Dallas, El Paso, Houston, and San Antonio about wages, benefits, training, and workplace health and safety. Together, these regions employ roughly 70% of Texas' construction workforce.ⁱ To ensure a representative sample of construction workers, researchers randomly selected construction sites from lists available through each city's construction permitting office and other publicly available sources and conducted surveys with workers at their worksites. Eligible construction sites were limited to new, vertical construction projects.ⁱ Trained surveyor teams conducted oral surveys with workers in their native languages.

Survey respondents represent working conditions on a diverse range of sites in terms of size, value, ownership, and final use. Single-family homes and duplexes are classified as residential sites, and multi-family apartments, condominiums, offices, institutional buildings, and retail outlets are classified as commercial sites. Each survey was assigned a proportional weight based on the city in which it was given to account for differences in the size of the construction workforces in each city and to give each response equal weight in describing the overall population of workers.ⁱⁱ

Researchers also underwent a hazard recognition training with a certified OSHA safety trainer and performed site observations at construction sites where workers were surveyed, noting identifiable worksite safety violations. These data help to illustrate the dangerous working conditions and explain the high injury and death rates construction workers face in Texas.ⁱⁱⁱ

From August to November 2012, researchers interviewed 20 construction workers and 15 construction project developers, general contractors, and subcontractors to obtain a better understanding of the working conditions and company practices within the industry.

Worker interview candidates were selected from previously surveyed workers and through worker organizations in each of the five cities. Interviewees were asked to describe their experiences in the industry, focusing on topics of workplace safety, wages and benefits, and training. While the survey statistics indicated widespread abuse in the industry, workers' individual experiences captured the personal and social impact of these abuses on construction workers and their families.

Interviews with developers, contractors, and subcontractors focused on the oversight and maintenance of workplace standards on construction sites, training for employees, and developing a broader understanding of industry practices as they relate to workers. Interviewees were also asked to describe their perspectives on the challenges facing the Texas construction industry.

i New construction excludes remodeling, additions, and interior renovation. Vertical construction is defined as the construction of buildings, and is differentiated from construction of roads and bridges and construction of industrial facilities, such as oil processing facilities.

ii See Appendix A for proportional weights used in this study.

iii See Appendix E for presentation of site observation data.

About the Research Team

The *Build a Better Texas* study was conceived by Workers Defense Project (WDP) to better understand working conditions in Texas' construction industry. WDP is a nonprofit community organization that promotes fair working conditions for Texas' low-wage workers.

To undertake this analysis, WDP partnered with faculty from the geography, anthropology, history, and sociology departments at the University of Texas (UT) at Austin; faculty from the UT School of Law; UT's Division of Diversity and Community Engagement, UT's Ray Marshall Center, and the UT School of Public Health in Houston. WDP also collaborated with Dr. Nik Theodore, Associate Professor in the Department of Urban Planning and Policy at the University of Illinois at Chicago and co-author of the national study, *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities*.

A team of more than seventy-five researchers carried out surveys and interviews and assisted in collecting secondary data from government agencies. Worker advocacy organizations, service providers, and contractors' associations provided assistance in identifying candidates for interviews and in conducting field research in the five Texas cities. A list of these partners is included in the acknowledgements. National, state, and local policy experts interpreted primary and secondary data to develop policy and best practice recommendations for state and local policymakers and construction industry leaders.

INDUSTRY OVERVIEW



The economic impact of the Texas construction industry extends far beyond the state, as one of the largest and most important at both the regional and national level.

Construction is big business in Texas. The economic impact of the Texas construction industry extends far beyond the state, as one the largest and most important markets at both the regional and national level. However, poor working conditions undermine its long-term economic sustainability. Using data collected from government and industry sources, this section provides a brief overview of the Texas construction industry and provides context for the results of the *Build a Better Texas* report. Key findings from government and industry sources show:

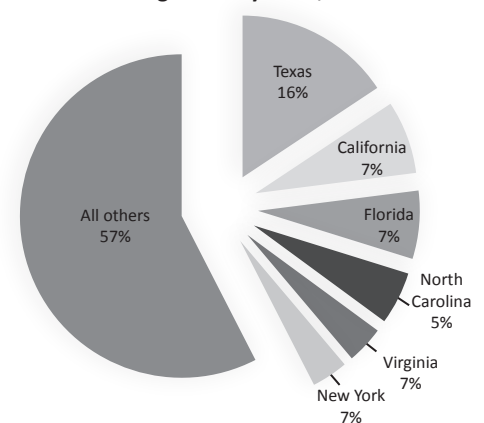
- **Texas is home to the fastest growing cities in the nation**, with Austin, Dallas, Houston, and San Antonio ranked in the top ten and expected to continue growing.²
- **Construction is vital to the Texas economy**, accounting for over 5% of the state's output³ and employing nearly one million construction workers.⁴
- **The Texas construction industry is driving construction nationally**, at a time when most of the country is still reeling from the recession. There were more new housing starts in Texas than California and Florida combined in 2011.⁵
- **Texas construction workers are not benefitting from the strength of the Texas construction industry**. They earn less than their national counterparts and nearly all job growth in the industry has been in jobs paying poverty-level wages.⁶
- **Building in Texas is dangerous work**. Texas workers are at a greater risk for injuries and fatal accidents than their national counterparts.⁷
- **The Texas construction workforce** is predominantly comprised of Latino workers, many of whom were born in a foreign country. Texas workers are primarily male and younger on average than workers nationally. Few have completed vocational training or obtained a college degree.⁸

Construction: Vital to the Texas and National Economy

Between 1997 and 2007 the Texas construction industry grew at an average rate of 7.6% annually to meet burgeoning housing, infrastructure, and industry needs in the state.⁹ By 2006, a high point for Texas construction, the industry accounted for 5.3% of the state's economy, making construction one of the most important industries in Texas.¹⁰ Population in the state increased by nearly 25%, twice the percentage growth the US experienced during that same period.¹¹

In 2008, Texas accounted for over 10% of all construction in the US, second only to California.¹² Census data show that eight of the fifteen fastest growing large cities between 2010 and 2011 were in Texas, with Austin, Dallas, Houston, and San Antonio in the top 10.¹³ In 2011, Texas single-handedly accounted for 16% of all new housing construction permits in the US, more than both Florida and California combined (see figure 1).¹⁴

FIGURE 1
Housing Starts by State, 2011



Construction accounts for one out of every \$20 dollars generated by the Texas economy¹⁵ and over 10% of all construction output in the US.¹⁶ Approximately one in every 13 people in the Texas workforce labors in construction.¹⁷ While the industry has thrived, however, construction workers have not shared equitably in its prosperity.

Texas Continues to Grow Despite Recession

When the recession hit in 2007, the national construction industry went into a steep decline. When housing prices plummeted and the foreclosures skyrocketed, one of the first industries to be impacted was construction.¹⁸ While the Texas construction industry still experienced a 13% decrease in employment between 2007 and 2010, it fared significantly better than the US construction industry as a whole, which saw a 27% decrease in employment.¹⁹ The Texas recession was shorter than the national recession, and today Texas is the fastest growing state in the US.

Texas is driving construction nationally. According to the Texas comptroller, “Without the growth in Texas construction jobs in 2011, the national construction industry would have seen another year of job declines.”²² During the month of October 2012, Texas added a record 13,600 construction jobs – more than in any single month in its history.²³ However, the jobs that have been added to the Texas economy have not necessarily been good jobs.

Construction Wages: Leaving Workers Behind

Compared to their national counterparts, Texas workers earn a lower median wage (see table 1). Furthermore, growth in the construction industry has primarily been in the low-wage sector. Data from the US Census Bureau show that of the nearly 38,000 construction jobs created between 2005 and 2010, fewer than 400 paid above the federal poverty line.²⁴ In total, 99% of net employment growth in construction between 2005 and 2010 paid poverty-level wages (see table 2). Though construction workers have strengthened Texas’ economy and contributed considerably to its growth over the years, their hard work has not been rewarded. In addition to low wages, construction in Texas is more deadly than in other states with large construction output.

Green Building: An Emerging Industry

Green building is a rapidly growing subsector of the Texas construction industry. Multiple Texas cities have already undertaken initiatives to increase green building locally, and Texas is ranked second in terms of LEED-certified activity.²⁰ The US Green Building Council (USGBC) estimates that by 2015, nearly half of all new construction will be green. This important industry strives to incorporate the three “E’s” of sustainability into new construction projects: environment, economy and equity. The USGBC, which administers LEED certification programs, supports development solutions that balance “environmental, social, and economic prosperity.”²¹ Low wages, lack of training, and dangerous working conditions prevalent in Texas construction are hurdles to building a truly green construction industry. Incorporating measures to improve equity for workers into its green building standards would position Texas as a national model for sustainability in construction.



Subcontracting: How Business is Done

Central to the structure of the construction industry is the use of subcontracting. While general contractors and homebuilders are responsible for overseeing the completion of a construction project, they hire subcontractors who focus in a specific construction trade, such as carpentry or electrical work, to perform the specialized aspects of the project. Subcontractors in turn hire the individual construction workers, often resulting in a complicated web of subcontracted companies and workers on the same construction site. General contractors estimated that 90-95% of workers on their worksites were employed by their subcontractors. While subcontracting is essential to the construction industry, it may in some cases hamper accountability for working conditions on construction sites.

Characteristics of the Construction Workforce

According to data from the US Census Bureau, the Texas construction workforce has remained relatively similar between 2005 and 2010 (see table 3). Workers are predominantly Latino, with the Census estimating that nearly half are foreign-born.²⁹ The financial firm Bear Stearns estimates that the US Census undercounts the number of foreign-born residents living in the US by as much as 60%, which would also likely contribute to an underestimation of the Latino population, especially in states like Texas with large immigrant and Latino populations.³⁰

TABLE 1 Median Wage, Selected Occupations, 2011		
	Texas	United States
All workers	\$15.87	\$21.46
Plumbers, pipefitters, and steamfitters	\$20.79	\$24.92
Electricians	\$20.08	\$25.44
Painters, construction, and maintenance	\$14.39	\$18.67
Carpenters	\$15.01	\$21.31
Construction laborers	\$11.59	\$16.43

Source: Bureau of Labor Statistics, Occupational Employment Statistics

TABLE 2 Growth in Poverty-Level Jobs Between 2005 and 2010, State of Texas			
	Workers at poverty level or below	Workers above poverty level	Total workers
Net change in employment	+37,390	+393	+37,783
Percent of net new employment	99%	1%	100%

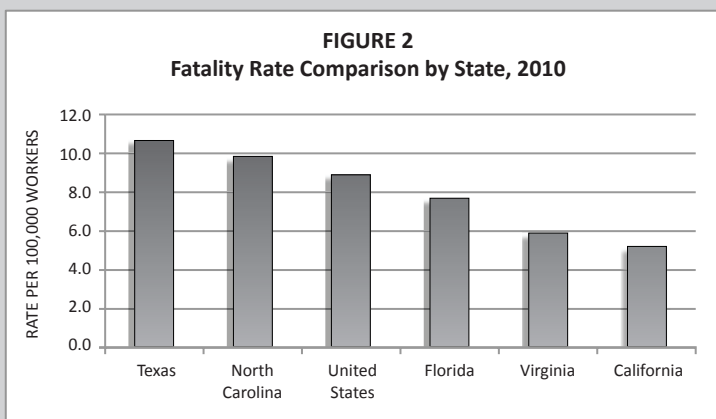
Source: US Census Bureau: 2005 American Community Survey and 2010 US Census, 5% estimates

A Deadly Industry

Construction is a dangerous industry. Texas outpaces the nation and other state construction industries in its fatality rate, making the Lone Star state the most dangerous place to build.²⁵ Figure 2 compares construction fatality rates in the five states with the most housing starts.

Nationally, the most common causes of deaths in construction, called the "Fatal Four," are falls, electrocutions, being struck by an object, and being caught in or between something.²⁶

OSHA estimates that these four hazards cause nearly 60% of construction worker fatalities.²⁷ Falls alone accounted for 35% of construction deaths in 2011.²⁸



Seventy-seven percent of construction workers have a high school diploma or less. Only 3% of workers had completed vocational school, evidence that most construction workers learned their trade on the job. More formal training programs are needed within the industry, both to give workers an opportunity to advance in construction jobs and to build a high-quality workforce that can meet Texas' growing demand for skilled workers.

Types of Construction Jobs

This report focuses on the experiences of construction workers employed in vertical construction, a term that refers to the construction of buildings, including homes, apartments and condominiums, offices, stores, and mixed-use properties. In Texas, nearly one million construction workers earn their livelihoods in vertical construction.³¹ These construction workers perform specialized labor in a variety of trades (see table 4). The construction trade with the largest employment share is construction laborers, who are among the lowest paid and make up nearly a quarter of the workforce.

TABLE 3
Demographic Profile of Texas' Construction Workers
2005 and 2010

		2005	2010	Change, 2005- 2010
Sex	Male	97%	97%	-
	Female	3%	3%	-
Age group	16-20	6%	4%	-2%
	21-30	28%	24%	-4%
	31-40	24%	27%	3%
	41-50	22%	22%	-
	51-60	12%	15%	3%
	61 and older	6%	6%	-
Race/ethnicity	Non-Hispanic white	35%	34%	-1%
	Non-Hispanic black	4%	5%	1%
	Native American	0%	0%	-
	Asian	0%	1%	1%
	Other	1%	1%	-
	Hispanic or Latino, any race	60%	60%	-
Nativity	Native to US	55%	56%	1%
	Foreign born	45%	44%	-1%
Educational attainment	None	3%	3%	-
	Less than high school diploma	44%	41%	-3%
	High school degree	33%	33%	-
	Vocational school	3%	3%	-
	Some college	14%	17%	3%
	College degree or higher	4%	4%	-
Poverty status	Below poverty level	19%	22%	3%
	Above poverty to twice poverty level	30%	28%	-2%
	More than twice poverty level	51%	50%	-1%

Source: 2005 American Community Survey and 2010 US Census, 5% samples, US Census Bureau.

TABLE 4
Trades and Employment Share, Texas
Construction, 2010

Trade	Share
First line supervisors/managers	11.18%
Boilermakers	0.55%
Brick, block & stone masons	1.70%
Carpenters	16.20%
Carpet, floor & tile workers	2.97%
Cement masons & finishers & terrazzo	1.03%
Construction and building inspectors	0.75%
Construction laborers	23.51%
Drywall & ceiling tile installers	2.62%
Electricians	8.27%
Elevator installers and repairers	0.12%
Fence erectors	0.62%
Glaziers	0.37%
Hazardous materials removal workers	0.31%
Helpers & construction trades	2.12%
Insulation workers	0.97%
Other construction equipment operators	4.29%
Painters, construction & maintenance	8.79%
Paperhangers	0.05%
Paving, surfacing & tamping operators	0.07%
Pipe workers, plumbers & steamfitters	6.95%
Plasterers & stucco masons	0.40%
Reinforcing iron and rebar workers	0.22%
Roofers	3.25%
Sheet metal workers	1.40%
Structured iron and steel workers	0.67%
Miscellaneous construction workers	0.62%
Total	100%

Source: US Census 2010

Texas Fails to Protect its Workforce

All construction workers, regardless of race, age, gender, sexual orientation, or immigration status are protected by federal labor laws such as the right to receive a minimum wage, the right to a safe worksite, and the right to receive overtime pay. However, construction workers in Texas face much higher hurdles in receiving those protections due to weak state labor laws to cover the workers who are not covered by federal law. Unlike other states, Texas has failed to ensure basic protections for its workforce. Table 5 below compares Texas protections to those in other states.

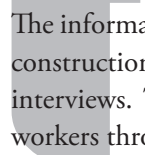
TABLE 5 Worker Protections in Five States				
State	Workers' compensation ³²	Rest breaks ³³	Payroll fraud enforcement	Ratio of OSHA investigators to workers ³⁴
Texas	Not required	No rest breaks	No program	1 per 103,899
California	Required by state law	Paid 10-minute rest period for every 4 hours worked; 30 minutes after 5 hours	Interdepartmental enforcement task force ³⁵	1 per 52,416
Florida	Required by state law	Provisions to ensure minors receive rest breaks	Levies penalties for payroll fraud ³⁶	1 per 111,088
North Carolina	Required by state law	Provisions to ensure minors receive rest breaks	Created enforcement task force ³⁷	1 per 31,054
Virginia	Required by state law	Provisions to ensure minors receive rest breaks	Created audit/review commission ³⁸	1 per 58,945
New York	Required by state law	30 minutes for shifts longer than 6 hours, additional breaks during evening hours	Interdepartmental enforcement task force ³⁹	1 per 72,528

Conclusion

Texas is one of the fastest growing states, and requires new housing, infrastructure, and commercial and industrial facilities to keep up with growing demand. Construction supports all other economic growth in Texas and plays an important role in the national construction industry. Despite the importance of the construction industry to the future of the state, construction workers have not shared equitably in its prosperity. Texas construction jobs are dangerous, low-paying, dead-end jobs for many workers. Ensuring that these blue-collar jobs are good ones is critical to the state's long-term economic health, and to the nearly one million workers who labor under these conditions.

WORKING CONDITIONS

Texas is the most deadly state to work in the construction industry.



The information presented in this section is the result of 1,194 individual worker surveys conducted at randomly selected construction sites in Austin, Dallas, El Paso, Houston, and San Antonio, as well as twenty in-depth construction worker interviews. The data present a comprehensive picture of the working conditions faced by thousands of construction workers throughout the state. Results showed widespread workplace abuses in the construction industry, including:

- **Dangerous and deadly working conditions.** More construction workers die in Texas than any other state. One in five surveyed construction workers reported suffering a workplace injury that required medical attention. Sixty percent of workers were found to be lacking basic health and safety training, and dangerous conditions were aggravated by numerous safety violations.
- **Poverty level wages.** Fifty-two percent of surveyed workers were found to be earning poverty-level wages.^{iv} Half of survey respondents reported not having enough financial resources to support their families.
- **Failure to be paid.** More than one in five workers (22%) reported being denied payment for their construction work in Texas. Fifty percent reported not being paid overtime, despite working as many as eighty hours per week.
- **Few employment benefits.** Seventy-one percent of surveyed construction workers reported receiving no benefits in their employment. Seventy-eight percent lacked health insurance and only 40% reported that their employer provided workers' compensation. Other workplace benefits, such as paid leave and pensions, were even less common.
- **Denied legal protections.** An estimated 41% of construction workers were victims of payroll fraud, misclassified as independent contractors or paid off the books in cash or with personal checks.
- **Lack of opportunities to obtain training or build rewarding careers in the industry.** Only 18% of respondents reported having received formal training. Texas construction workers have limited access to training opportunities, though 67% of workers who have not completed formal training said they would enroll if it were available.

Survey responses describe violations of federal and state employment laws that are standard practice in the Texas construction industry. These violations have far-reaching repercussions for workers and their families. Researchers found that workers earning low wages were more likely to be denied their rights to safe workplaces and proper payment for their work, putting hardworking families at even greater risk for economic hardship.

^{iv} Poverty wage of \$11.08 calculated from 2012 Federal Poverty Guidelines for a family of four of \$23,050 per year.



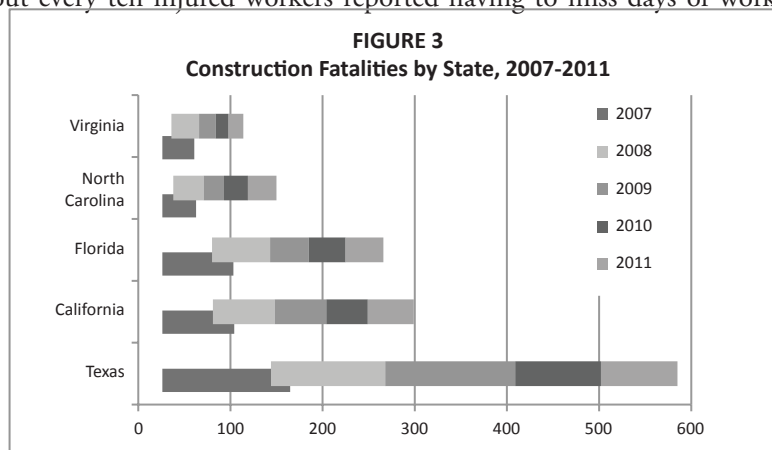
However, some employers do create good jobs and safe working environments. Workers who earned living wages were more likely to be covered by health insurance and workers' compensation and were less likely to suffer from the many workplace abuses experienced by their lower-paid counterparts.

A Deadly and Dangerous Industry

"That day they didn't have any yellow tape [to mark the danger zone around a rebar drill], and probably tape costs \$10. Without the tape, [the worker] didn't realize he was too close to the machine. He was cleaning his shovel, and the machine turned and hit the guy in the back of the head. When they got to him, he was already dead. They killed him, all because of \$10." – Adrian Magallanes, Dallas ironworker

More construction workers are killed on the job in Texas than in any other state.⁴⁰ Between 2007 and 2011, 585 construction workers died in Texas, compared to 299 in California, which had a larger construction population (see figure 3).⁴¹ Between 2003 and 2010, construction accounted for an average of 6% of the Texas workforce,⁴² but 26% of total workplace fatalities.⁴³ In other words, a Texas construction worker is 4.5 times more likely to be killed on the job than the average Texas worker.

Construction injuries cause economic, health, and personal problems for workers and their families. Seven out every ten injured workers reported having to miss days of work, foregoing wages they needed to support themselves and their families. In fact, construction injuries on average force workers to miss more days of work than other workplace injuries because they are often more severe.⁴⁸



Source: Bureau of Labor Statistics, Census of Fatal Occupational Injuries 2007-2011.

A Texas construction worker is 4.5 times more likely to be killed on the job than the average Texas worker.

1 out of every 5 construction workers is injured on the job.

Two Workers Die When Company Fails to Ensure Safety

In July 2012, ironworkers Terry Weaver and Thomas Fairbrother, Jr. fell more than 150 feet to their deaths when the crane they were dismantling collapsed on a University of Texas at Dallas construction site. The workers were dismantling the crane in winds gusting up to 45 miles per hour.⁴⁴ Terry and Thomas are survived by siblings, spouses, children, and grandchildren.

OSHA found that the crane contractor on the site did not address the hazards associated with wind and weather and failed to minimize the workers' exposure to hazardous conditions. In addition, the crane contractor had not provided adequate crane safety training to its employees.⁴⁵ OSHA levied nearly \$30,000 in penalties and cited the company with six serious safety violations.⁴⁶

Terry's widow and son are now suing the crane company and the general contractor for negligence for failing to take necessary steps to provide the workers with a safe workplace.⁴⁷



Injured with Nowhere to Turn

In 2006, painter José Alfredo Villegas was hired to repaint houses for a Dallas real estate agency. José Alfredo's employer provided him with a pressurized paint sprayer, but it was defective. Despite José Alfredo's efforts to repair the tool, it malfunctioned while he was using it. The sprayer fired paint into his left hand, ripping off the skin and causing severe damage to the muscles and nerves. When he called his employer to tell her what had happened, "She never picked up. She never answered my phone calls."

José Alfredo was left without workers' compensation or personal health insurance to pay for his injury. When he visited Dallas' Parkland Memorial Hospital, the news wasn't good. "The doctor said there was a possibility that they would need to amputate my hand," he recalled.

Fortunately, José Alfredo did not lose his hand. To this day, however, "I [still] don't have much strength in that hand. I can't close it completely." José Alfredo's injury has had a lasting impact on his health, as he was unable to afford the second surgery that he needed to restore his hand.



Workers' Compensation Protects Injured Workers

Despite the high incidence of work-related injuries in construction, Texas remains the only state that allows employers to choose not to carry workers' compensation coverage, even in a dangerous industry like construction.^v Workers' compensation provides workers with lifetime medical care for a workplace injury and rehabilitation they need to get back to work. It also provides them with a wage supplement to support their family while they are unable to work. Because so few construction workers have health insurance, workers' compensation may be the only coverage they have in the event of a workplace accident.

While one in five workers has suffered a workplace injury requiring medical attention, only 40% of surveyed workers reported that their employer provided workers' compensation insurance and 2% are covered by an alternate plan. Further, employers are required by law to inform employees if they do not carry workers' compensation, but 94% of survey respondents indicated that their employers failed to do so.⁴⁹

Build a Better Texas survey data showed that when employers failed to provide workers' compensation, workers or hospitals were left to pay for expensive medical costs of work-related injuries (discussed in Social Cost section). Still more surveyed workers indicated that they did not seek needed medical attention because they were worried about cost, and many are still experiencing health problems as a result.

TABLE 6
Construction Workers and Workers'
Compensation Coverage

Covered by workers' compensation	40%
Covered by an alternate plan	2%
Not covered by workers' compensation	32%
Worker unsure if he or she has coverage	26%

Source: Build a Better Texas survey data

^v Under the Texas Labor Code any employer can choose to opt out of workers compensation coverage. Employers who opt out are required to provide notice to their employees that they do not provide workers' compensation. While many employers who opt out choose to provide no benefits to their employees, some may provide an alternative "non-subscriber" plan that provides some sort of coverage for their employees in the event of an injury. The state of Texas does not set standards or collect data on these "non-subscriber" plans, so employers have a great deal of latitude in what benefits they provide. These plans are extremely rare in the construction industry. Less than 2% of construction workers report that their employers provide these plans. Instead it is much more common for construction employers who opt out of workers compensation to provide nothing at all.

Prevention

“It’s definitely less safe [in Texas] than in Washington State. There are a lot of trip hazards left out, rebar that has been left uncapped. Things left without a kick guard so they can just get kicked off of high ledges and hit somebody. I know what I’m looking out for and that’s the only reason I feel safe, but a lot of other people don’t. I see a lot of injuries out here.” – Jason Bartos, Austin carpenter

Construction is dangerous work, and OSHA requires employers to provide their employees with the safety equipment needed for the type of work they are performing. Hardhats, work boots, safety harnesses for working at heights, and safety glasses are a few of the items that workers may be required to use on the job. *Build a Better Texas* survey results show that despite the federal law that employers provide necessary safety equipment, nearly 30% of workers are forced to provide their own – or to go without. Survey results also show that workers are far more likely to use the necessary safety equipment when employers provide it, suggesting that employers can create expectations for safe work practices on their sites and workers will meet those expectations (see figure 4).

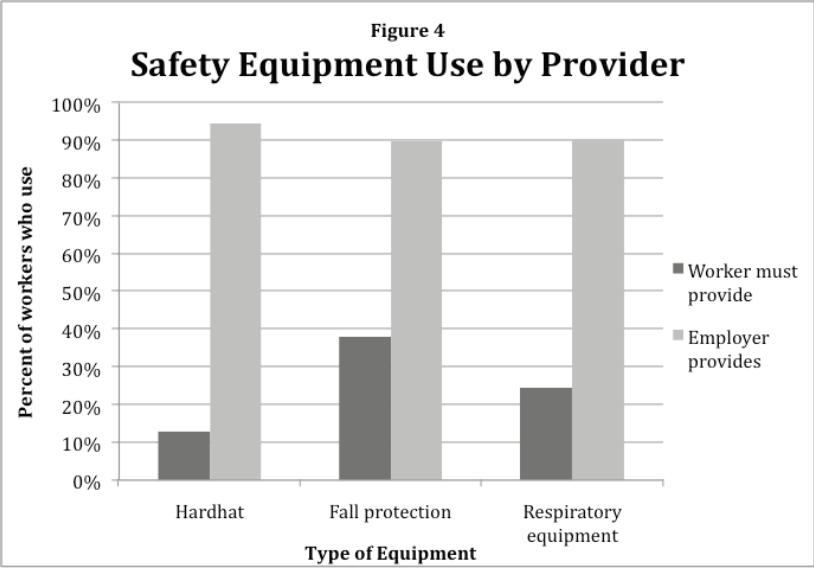
Heat Safety: Rest Breaks and Water

“Right now [in the summer], it goes up to 110 degrees. People are working outside on concrete, demolition; the heat causes fatigue... and the bosses simply say, ‘Work, work.’” – Houston drywall worker

OSHA recommends that workers laboring in the heat, especially during the summer, be granted frequent rest breaks and each worker provided with clean drinking water throughout the workday.⁵⁰ Although federal law requires employers to provide drinking water, 59% of respondents said that their employers failed to do so. Many workers were expected to bring their own water or go without.

Thirty-nine percent of workers surveyed reported receiving no rest breaks during their workdays besides lunch. In construction, work must be completed on a set timeline in order to keep projects on budget. Employers rushing to meet deadlines may require workers to labor without rest breaks. Eduardo Soto, a machine operator working in Houston, described the pressure to work without resting: “[The employer] would set a specific deadline for us to finish and he wanted it done in certain days. He would say, ‘Do it fast and if you can’t keep up, there are other people who can.’”

TABLE 7 Working Conditions reported by Construction Workers	
Receive no rest breaks	39%
Employer doesn’t provide drinking water	59%
Witnessed a coworker faint due to heat exhaustion	15%
Source: Build a Better Texas survey data	



“It’s definitely less safe (in Texas) than in Washington State...I see a lot of injuries out here.”

– Jason Bartos
AUSTIN CARPENTER

Long Hours, No Rest

In June 2012, Luis Rodriguez was pouring concrete on a large commercial construction project in Austin. "It was over 100 degrees working on the concrete. We were out there for ten hours a day with no shade, no water, no breaks," he recalled. Luis and several coworkers complained to their supervisors that they were not receiving rest breaks and drinking water in violation of an Austin city ordinance and federal OSHA requirements.

After Luis' employer failed to address the problem, he filed a complaint with OSHA, and inspectors mandated that the company put up shade, provide water, and allow the workers to take rest breaks in accordance with city policy. "After OSHA came, we were able to work better because we weren't overheating, but when we got close to our deadline, the company started making us work through our breaks again. It made the last few weeks of the job unbearable."



Lack of Safety Training

A lack of safety knowledge further compounds safety conditions on construction sites. An astounding 60% of surveyed workers had never received an OSHA-certified safety training class that covers basic safety issues workers may encounter on construction sites. OSHA recommends that all construction workers receive this basic training to prevent injury on the job. Additionally, only 26% of workers reported receiving first aid and CPR training.

TABLE 8
Workers lack knowledge of basic worksite safety

Workers lacking OSHA 10-hour safety training	61%
Workers lacking CPR/first aid training	74%

Source: Build a Better Texas survey data

City of Austin: Safety Training Pays Off

In 2010, the City of Austin implemented a requirement that all workers on publicly funded construction sites complete an OSHA-certified 10-hour safety training (called an OSHA-10) after a study found that only 36% of workers in Austin had completed one.⁵¹ Three years later, *Build a Better Texas* has found that 50% of Austin workers indicated they have received this safety training, a 14% increase.

"Since we put the OSHA-10 initiative in place, I can't think of the last time we had an accident resulting in a serious injury on a public works project," said City of Austin Public Works Director Howard Lazarus, discussing the merits of the program. Lazarus says that the training requirement has not driven up costs or slowed Austin's growth. In fact, it has had positive ripple effects, as the majority of the companies who build public works projects also operate in the private sector. He explained, "Safety training has become more prevalent throughout Austin; contractors just expect to do it these days."



Retaliation

For many workers, reporting worksite hazards or even being injured can lead to retaliation. Seventy-one percent of workers reported seeing unsafe conditions on their worksites, such as poorly constructed scaffolds, unstable ladders, and workers using tools or machinery improperly. Of these workers, however, more than three-quarters did not report the hazard, frequently citing fear of retaliation as their reason. One drywall worker from Houston recalled witnessing retaliation against a coworker:

“I remember one person who fell and hurt himself pretty bad, but he came to work the next day because the boss told him that if he didn’t make it, he would get fired... People have families to take care of— they can’t risk it.”

It’s up to construction employers to create a culture of safety on their worksites. For dangerous working conditions to be corrected, workers must not only be trained to recognize worksite hazards, but also be confident that they can report unsafe conditions without retaliation. When employers cut corners with safety, don’t provide drinking water and rest breaks, or fail to ensure workers have safety training, they expose workers to avoidable hazards that result in high rates of injuries and fatalities.

Honest Pay for Honest Work

The Texas construction industry is the strongest in the nation, but construction wages do not ensure economic stability for working families. Fifty-two percent of workers surveyed were found to be earning wages that placed them below the federal poverty line. The most common wage was found to be \$10.00 per hour, and workers were even found to be earning wages below the legal minimum wage of \$7.25 per hour. Only 25% of workers reported earning a living wage that would allow them to support their families.

“Right now [I’m making] \$11 per hour, only \$420 per week. \$100 for gas, then insurance, rent, electricity, water – you’re left with nothing. You’re working to barely get by... There are times that by Wednesday there are no groceries because what you earn is so little and everything is so expensive.” – Luis Rodriguez, Austin concrete worker

Texas construction workers reported an inability keep up with living expenses. Eighty-eight percent of survey respondents were the sole or primary economic contributors to their households, and 85% supported families with their jobs in construction. Only 25% of workers surveyed reported earning a living wage, leaving the majority of construction workers to face economic hardship. Adrian Magallanes, a Dallas ironworker, understands the difficult choices families often have to make: “The families of the workers, they are the ones that suffer... [A lot of workers] don’t have money to even buy Christmas presents for their kids.”

TABLE 9
Hourly Wage Description of Construction Workers

Less than the federal minimum wage (<\$7.25/hr)	2%
Below poverty line (\$7.25-11.08/hr)	50%
Low-wage (\$11.09-13.99/hr)	23%
Living wage (\$14.00/hr or more) ^{vi}	25%
Source: Build a Better Texas survey data	

^{vi} Living wage varies by location. For the purposes of this report, a living wage is defined as \$14.00 per hour, calculated using the CPPP family budget estimator.

“If you tell [the foreman] something is unsafe, they tell you to still do it. If you don’t do it, you’re fired.”

– Adrian Magallanes
DALLAS IRONWORKER

TABLE 10 Hourly Wage Description of Construction Workers^{vii}	
Average hourly wage earned	\$12.24
Most common hourly wage earned	\$10.00
Highest hourly wage earned	\$38.75
Lowest hourly wage earned	\$5.00
Source: Build a Better Texas survey data	

Researchers found a strong association between workers' wages, benefits, and health and safety. Workers earning poverty level wages were:

- **More likely to lack workplace benefits.** The number of workers who were not provided with insurance by an employer dropped by 31% between poverty jobs and living wage jobs.
- **Less likely to be covered by a workers' compensation policy.** Few poverty wage jobs carry workers' compensation insurance. Workers earning poverty wages are 33% more likely to lack coverage than workers earning a living wage.
- **More likely to labor under unsafe conditions.** Employers paying poverty level wages or below were less likely to provide rest breaks and drinking water for their employees. Workers earning below the minimum wage were particularly vulnerable to these abuses.
- **More likely to be a victim of payroll fraud.** Workers earning a poverty-level wage were found to be twice as likely to report that their employers failed to deduct taxes as workers earning a living wage, though a significant problem with payroll fraud still exists among higher-paid workers.

TABLE 11 Working Conditions Reported by Construction Workers, by Wage Level				
	Less than minimum wage	Below poverty level	Low-wage	Living wage
Employer does not provide health insurance	100%	87%	80%	56%
Employer does not provide workers' compensation	94%	68%	65%	35%
Employer does not provide rest breaks besides lunch	65%	45%	40%	38%
Employer does not provide drinking water at worksite as required by law	75%	47%	44%	40%
Employer fails to deduct taxes	71%	48%	42%	24%

^{vii} While official reports of wages in construction place the average hourly wage for Texas construction workers at \$15.87 (see Industry Overview), they likely overestimate actual earnings in the industry. Government estimates of wages only include workers who are registered as employees, leaving out thousands who are paid under the table (addressed later in this section). *Build a Better Texas* found that workers paid off the books earned significantly less than those whose employers followed payroll laws.

What Does it Mean to Live on a Construction Worker's Earnings?

Housing costs an average of just under \$900 per month for a family of four in Texas. Texas construction workers earning the most common wage of \$10.00 per hour can spend as much of half of their monthly income on rent, leaving only \$700 for all other expenses.

The Center for Public Policy Priorities (CPPP) estimated the total monthly expenses for a family of four living in Texas to be more than \$5,000. To meet the needs of his or her family, a worker earning \$10.00 per hour would have to work 17 hours per day, seven days a week. Even if a worker goes without buying medical insurance, he would still need to work 13 hours a day, every day to cover housing, food, childcare, and transportation costs.

TABLE 12
CPPP Family Budget Estimates for Texas Families⁵²

Budgets for families (two parents, two children) without employer-sponsored health insurance.	
Expenses	
Housing	\$893
Food	\$731
Child Care	\$763
Medical Insurance	\$1,202
Medical Out-of-Pocket	\$113
Transportation	\$558
Other necessities	\$384
Base Monthly Expenses	\$4,644
Federal Taxes	
Payroll Tax	\$283
Income Tax	\$351
Earned Income Tax Credit*	\$0
Child Tax Credit*	\$167
Child and Dependent Care Credit	\$100
Base Tax Payments and Credits	\$367
Necessary Monthly Income	\$5,011
Necessary Hourly Wage	\$28
Necessary Annual Income	\$60,130
2012 Poverty Thresholds	\$23,050
Income as Percent of Federal Poverty Guidelines	261%
*When eligible, tax credits are received on an annual basis with the filing of a federal tax return. Credit presented has been divided by 12 to obtain monthly equivalent of an annual credit.	

Workplace Benefits

Even though construction work is dangerous, 78% of surveyed workers reported that they are not covered by employer-based medical insurance. CPPP estimated the cost of a health insurance policy for a family of four to be about \$1,200 per month, or 60% of a worker's monthly earnings when he or she makes the median wage of \$11.00 per hour. When employers fail to provide health insurance for their employees, the prohibitive out-of-pocket costs force workers to make difficult choices surrounding the health and security of their families.

Other types of job benefits were found to be even less common than medical insurance: 88% of workers surveyed reported they did not receive paid sick days, and 85% did not receive paid vacation days (see table 13).

TABLE 13 Job Benefits Reported by Construction Workers	
Do not receive medical insurance	78%
Do not receive paid vacation days	85%
Do not receive paid sick days	88%
Do not receive a retirement or pension	91%
Do not receive severance pay	96%
<i>Source: Build a Better Texas survey data</i>	

TABLE 14 Hours Worked by Construction Workers	
Work more than 40 hours per week	80%
Work more than 8 hours per day	46%
Work more than 5 days per week	42%
<i>Source: Build a Better Texas survey data</i>	

More Work, Less Pay

In addition to low pay and minimum wage violations, survey data showed that workers routinely worked over 40 hours per week without receiving overtime pay. Eighty percent of survey respondents said they worked more than 40 hours per week, and of those, nearly half (47%) reported that they did not receive overtime pay. Austin concrete worker Luis Rodriguez noted, “We break our backs working to make a beautiful city, and [employers] don’t value that. They pay us the same wage if we’ve put in 40 hours or 70 hours.”

More than half of workers surveyed reported experiencing economic difficulties in the past year, even among workers who regularly worked more than full time. “It shouldn’t be possible, not being able to feed your kids, when you put in 65 hours a week,” Austin concrete mason Guadalupe Torres said.

“It shouldn’t be possible, not being able to feed your kids, when you put in 65 hours a week.”

— Guadalupe Torres AUSTIN CONCRETE MASON



An Industry Built on Wage Theft

“[Wage theft] is something that affects everyone and it’s happening a lot right now. There are a lot of employers not paying.”

– John Jackson, Houston tile and framing worker

While construction is a \$54 billion industry in Texas, researchers found this it was common practice for employers to refuse to pay their workers for their work.⁵³ Researchers found that more than one in five Texas construction workers has experienced wage theft while working in the Texas construction industry. Wage theft occurs when an employer refuses to pay his or her employee for services performed, and includes paying below the legal minimum wage of \$7.25 per hour. Wage theft is a violation of state and federal employment law, and employers who engage in wage theft may face criminal charges punishable by prison time.

Many workers indicated that they had suffered wage theft multiple times. Gilberto Arciñega, a carpenter working in El Paso, explained the prevalence of wage theft:

“Lots of people that work in construction at one point have had their wages stolen. The problem is so serious because the state of Texas doesn’t have good enforcement in terms of labor. It’s very easy for the boss steal to the salary of his employees.”

The effects of wage theft on construction workers and those who depend on their income can be devastating. Seven in ten workers who have experienced wage theft reported also experiencing economic difficulty, including insufficient funds to pay bills, obtain necessary medical treatment, and pay the rent or mortgage on their homes. “Two weeks without pay – it was a lot of stress and a lot of panic. I had to go out and take a job that was paying five dollars less an hour that I wouldn’t have taken otherwise,” said Jason Bartos, a carpenter working in Austin.

Workers who indicated that they had experienced wage theft reported being owed a median amount of \$960.50 per incident, an amount equivalent to more than two weeks of work for a worker earning \$11.00 per hour. For families that are already living paycheck-to-paycheck, wage theft leaves many unprepared for sudden economic hardship.

Wage Theft Costs Family Their Home

Eduardo Soto, a heavy-machinery operator in Houston, worked for a demolition company for one year. His employer frequently paid him and his coworkers with bad checks, which would bounce when the workers attempted to cash them. Eventually, Eduardo’s employer owed him \$7,000 in back wages. When Eduardo asked his employer for his wages, he promised again and again he would pay, but the money never came.

The ordeal cost Eduardo more than his paycheck. “I felt horrible because the money [my wife and I] made was not enough and we were losing our home – we lost the place where my children got married. It was a very painful thing to go through.”

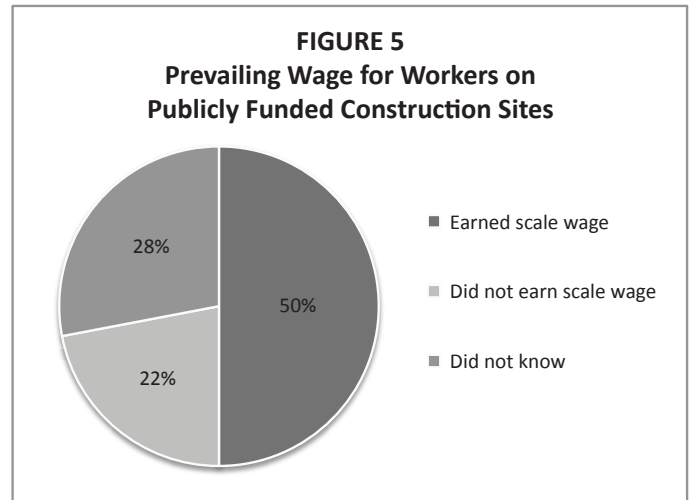
He finally quit and took his employer to court. A judge ruled in favor of Eduardo, who is still waiting for his employer to pay. “He took advantage of my trust,” Eduardo said, “But I will get my money.”



Pocketing Tax Dollars

The government mandates that construction workers laboring on publicly funded sites, such as schools, libraries, or government buildings, receive a certain rate of pay for their work called the prevailing wage.⁵⁴ The prevailing wage is determined by the average wage rate for a specific trade in a given geographic region.⁵⁵ Prevailing wage is often higher than wages paid in the private sector.⁵⁶ Only half of survey respondents working on these publicly funded worksites indicated that they were receiving the prevailing wage, which is a violation of state and federal laws. Moreover, 28% of workers surveyed on public sites said they were unsure if they were receiving the prevailing wage, even though federal law requires this wage to be clearly posted on worksites where it applies.⁵⁷

The prevailing wage was established to benefit both the public and individual workers. The Economic Policy Institute found that “prevailing wage laws can enhance state tax revenues, industry income, and non-wage benefits for workers; lower future maintenance and repair costs; reduce occupational injuries and fatalities; and increase the pool of skilled construction workers—to the benefit of both the public and the construction industry.”⁵⁸ When employers working on publicly funded construction sites refuse to pay workers the prevailing wage, they not only violate their employees’ rights, but also the public trust as they pocket tax dollars designed to create better-paying jobs.



Company Pockets \$65,000 of Workers’ Wages

In October 2011, carpenter Valentin Hernandez and twenty coworkers were hired by Bomax Constructors to work on various city- and state-level public construction projects around Austin. After several months, the workers stopped receiving payment for their work. When they opened a wage claim case against their employer, they were surprised to learn that they were entitled to receive a higher wage than what their employer was paying because they were working on public sites. For the five months that the workers were paid below the correct wage rate, their employer owed them \$65,000.

Workers Defense Project filed complaints with the appropriate agencies and the workers received payments from the general contractors on several sites. When Valentin received his check he said, “In a way it’s a good thing that I wasn’t paid my wages.” Had his employer not committed wage theft, Valentin would never have known he and his coworkers were not receiving the wage they deserved.



Retaliation

Retaliation for reporting wage theft is common in construction: 32% of workers surveyed reported experiencing some form of retaliation for trying to reclaim their wages. Workers reported being fired or having employers threaten to call immigration for demanding they be paid properly. When a Dallas worker was paid significantly less than his employer had promised him for a job, he brought the issue up with him. His employer threatened to fire him and then, “he left me at home for four days because I went and told him to pay me what he owed me.” Given that only 11% of workers indicated that they were able to recover their wages when they tried, workers face a great risk with little payoff when they speak up to demand their hard-earned wages.

Payroll Fraud: Stripping Workers of Their Rights

“[I wanted to get paid by] check... [My employer] said he couldn’t do that – that he could only pay me cash, because that way he wasn’t going to be paying taxes.” – John Jackson, Houston tile worker

Employers commit payroll fraud when they keep their workers off of formal payrolls to avoid paying unemployment insurance and federal income taxes, usually by paying them in cash, personal check or by misclassifying them as independent contractors by giving them an IRS Form 1099 instead of the legally required W-2 for employees. Payroll fraud is a common practice in the construction industry – and it’s illegal.

Payroll fraud strips workers of their legal rights to minimum wage and overtime pay, workers’ compensation coverage, health insurance benefits, and unemployment insurance. At least 41% of construction workers are victims of payroll fraud in Texas, making this serious problem one that affects more than 300,000 construction workers in construction of buildings alone.^{viii}

While payroll fraud reduces tax revenue to state and federal coffers, workers who attempt to pay their income taxes at the end of the year may find the entire tax burden has been shifted to them because they must pay both their share and the employer share.⁵⁹ Given that so many construction workers earn poverty wages, many are not prepared to pay this hefty tax burden at the end of the year.

Employer Cheats, Worker Picks up the Tab

Juan Girón, a drywall worker in Houston, has worked in construction for nine years. He has consistently been misclassified as an independent contractor. Juan explained:

“I have not been able to do my taxes because I have worked with employers that did not classify me correctly. In the end when I want to do my taxes, [the government] asks that I pay too much... I have been told that I will owe about \$6,000-\$7,000 and it’s money I don’t have.”

Although he provided his employer with his ID and social security card, his employer continued to pay him as an independent contractor. Even though he knows he will be stuck with a large tax bill eventually, Juan explains why he sticks with the job:

“Well, this job is stable. You’re receiving money week after week. What happens if you lose your job, and then two, three, four weeks pass without getting another job? That’s why I decided to stay quiet about it in the end.”

In the end, Juan – and his family – will be held responsible for his taxes, while his employer gets away without paying a cent. Additionally, if Juan were to be laid off, he would not have access to benefits from the Texas unemployment insurance fund because he wouldn’t have the documentation of his wage earnings necessary to receive benefits from the fund.



^{viii} See Appendix B for calculation of the number of construction workers who are victims of payroll fraud.

Workers lose when employers don't play by the rules

Workers who are misclassified as independent contractors by their employers may find that they lose more than fair taxes. Many employers engage in payroll fraud to avoid paying workers' compensation premiums. Nearly 25% of workers who reported that they were covered by a workers' compensation policy were also found to be victims of payroll fraud. Workers who are injured on the job may discover they don't have access to the medical care they need.

Gilberto Arciñega, an El Paso carpenter, was not paid for work he had done with an employer. Gilberto discovered that his employer had improperly classified him as an independent contractor upon filing a wage claim. "[My employer] didn't pay me. And so legally defending myself was very hard because before the law I appeared as a subcontractor even though I was an employee." Gilberto was told he had no recourse because he was not an employee, and never recovered the income he was legally owed.

When employers try to save money by cutting corners, workers face undue burdens that can mean disaster for already struggling families. Payroll fraud forces workers into an underground economy, makes it possible for employers to deny them their legal rights, and is often accompanied by other workplace abuses. As discussed later in this report, payroll fraud also negatively impacts honest businesses and Texas taxpayers.

TABLE 15
Payroll fraud connected to other workplace abuses^{ix}

	Victims of payroll fraud	Properly classified employees
Required to provide own drinking water	57%	33%
Not granted rest breaks during workday	47%	34%
Not compensated for overtime	75%	22%
Earn poverty-level wages	62%	42%
Median hourly wage	\$10.00	\$12.00
Source: Build a Better Texas survey data		

Craft Training and Career Advancement

"It's beneficial to get training. You do the work faster; it's more professional work – a job well done. You do an excellent job where [your employer] will earn more money. It's better on both ends." – Juan Girón, Houston drywall worker

Construction jobs were once good blue-collar jobs that allowed workers to earn a decent wage, plan for retirement, and support their families. Traditionally construction jobs gave workers a career track, letting them advance in the industry. Formal training programs played a crucial role in providing employers and workers with the necessary skills to ensure a well-trained and safe workforce. Today, researchers found that few Texas construction workers have received training for their trade: only 18% of construction workers surveyed indicated that they had some type of formal training. Most workers have had to learn informally on jobs that provide limited opportunities for career advancement.

^{ix} All results are statistically significant at the $\alpha = 0.01$ level, meaning it is extremely unlikely that these results are due to chance. There is strong evidence that employers who engage in payroll fraud are likely to cut corners in other ways that hurt workers.

Low Wages and Dead-End Jobs

Jason Bartos has worked as a skilled carpenter for over ten years, mostly in commercial building. He completed a four-year apprenticeship program in Washington and moved to Texas after working around the Northwest. He moved for what he thought were better job opportunities. “I heard that work was staying strong down here. Where I was, it was slowing down a little bit,” Jason explained. When he arrived, Jason found that Texas employers rarely offered benefits, and “the emphasis on safety is not always there. The majority of jobs down here, there hasn’t been very much emphasis on making sure everybody was working safely.”

Jason notes that low wages go hand in hand with lower quality workmanship: “I’ve noticed the quality of work here is definitely lacking compared to the Northwest. You get what you pay for, and if you pay someone half of what they deserve, they’re going to give you that sort of effort.”

To make matters worse, while he was working on a federal courthouse being built in Austin, Jason’s employer failed to pay him and fifteen coworkers for two weeks of work. Jason has taken steps to recover his wages, but six months later, “I still haven’t seen any of that money.”



The fact that the majority of construction workers have never received formal training has resulted in a shortage of skilled workers. Additionally, workers who are not properly trained in their trade may not know how to safely perform their jobs. John Jackson, a Houston tile worker explained, “If you don’t know how to use the equipment, you can get hurt – you can get really hurt.”

TABLE 16
Craft Training by Type

Type of training	Percent of workers who have completed craft training
Community college	17%
Private vocational program	17%
Union	16%
Military	5%
Contractors’ association	15%
Employer-provided program	55%

Source: Build a Better Texas survey data

How Formal Training Works

Construction is technical, skilled work, and training is organized among nearly 500 different specialty trades such as carpentry, electrical, concrete, and plumbing. Department of Labor (DOL)-accredited training programs require that classroom instruction be coupled with on the job training. Formal training programs also include basic and specialized safety training as part of the curriculum, so workers who have received formal training are more likely to have received basic safety training.

Most DOL-accredited programs allow workers to increase their wage as they increase their skill level. These training programs usually take three to five years to complete, depending on the trade. DOL recommends that apprenticeship programs last at least one year, or give workers 2,000 hours of on the job training and 144 hours of construction classroom related experience.

Formal training programs are usually offered through union apprenticeship programs, community colleges, private vocational/technical schools, military programs, or construction associations. Among surveyed workers that indicated that they had completed formal training, 55% received training through an employer-provided program (see table 16), few of which were accredited. The median employer-provided formal training program provided only ten hours of classroom training and twenty hours of on the job training, significantly below the amount of training DOL and other agencies recommend.

A Young and Inexperienced Workforce

Texas construction workers tend to be younger than their national counterparts. Whereas 40% of construction workers nationally are expected to retire in the next decade, 40% of surveyed Texas workers were under the age of 30.⁶⁰ Because younger workers are less experienced, they need training even more than their older coworkers to prevent accidents and perform their job duties. Survey results showed, however, that younger workers are the least likely to have completed formal training.

Barriers to Building a Trained Workforce

Of workers who indicated that they had not completed formal training, 67% said they would enroll if they had the opportunity. Few workers in the current workforce, however, have access to the limited training opportunities that exist, creating barriers to building a highly skilled workforce in Texas.

- **Lack of Funding for Training Programs**

According to a recent *Austin American-Statesman* article, “Texas is one of only two states that spend no money on adult education beyond the minimum required to get federal funding for their programs, according to US Department of Education Data.”⁶¹ A formally trained workforce is important for ensuring better and safer workplaces. In other states, unions play an important role in educating and training workers. In Texas, where union presence is limited, state funding for formal training is necessary to fill the skills gaps in the industry. With so little funding available for workforce development programs, this important training need is not being met.

- **Lack of Access to Existing Programs**

Foreign-born workers and non-native English speakers seeking to advance in the industry face an additional hurdle in receiving training. In Texas, 75% of the surveyed construction workers reported their first language as Spanish. An inadequate number of training programs, however, are offered in Spanish, which leaves hundreds of thousands of Spanish-speaking workers with no opportunity to receive formal training.

Further, only 10% of surveyed construction workers in Texas reported having some post-secondary education, and 58% of surveyed Texas construction workers report not having received a high school diploma (see table 17). As high school or GED completion is a prerequisite for entering most formal training programs, less than half of the current workforce has access to valuable training opportunities. Further, most training programs require proof of citizenship, creating an additional barrier for a large portion of the current Texas construction workforce.

- **Lack of Investment by Employers**

For training to become the norm in the Texas construction industry, employers must invest in training and address barriers that keep workers from accessing these programs. Employers must see formal training as a necessary investment that helps ensure workers are able to produce a quality finished product, prevent accidents, and give opportunities to advance in the industry. Small employers make up 76% of Texas construction companies, and are often not equipped to run their own in-house training programs. To improve access to training, these small businesses must partner with unions or trade associations to offer training to their employees.

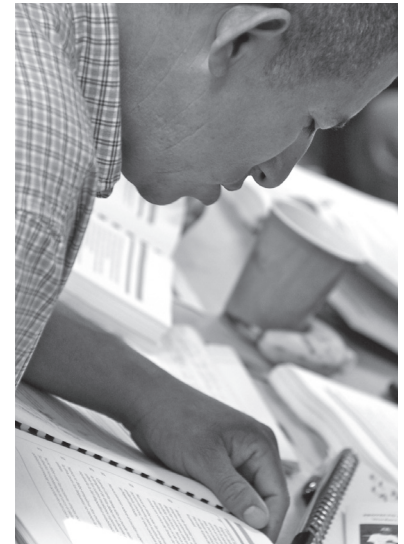


TABLE 17
Highest Level of Education Completed

Less than high school	58%
High school diploma	33%
Associate's degree	6%
Bachelor's degree	3%
Master's or doctorate	<1%

Source: Build a Better Texas survey data

- ***Tarnished Reputation of Construction Jobs***

The construction industry has faced an ongoing image problem that is impacting its ability to recruit highly skilled candidates to work in construction. In a DOL report, business leaders noted one of the top workforce challenges was the industry's tarnished image due the decreasing number of good jobs in the industry coupled with the high injury rate that has led to fewer qualified candidates wishing to enter the workforce. In fact, construction has been ranked as the least desirable occupation for young people who have graduated from high school.⁶² As one residential general contractor that was interviewed noted, "There's a bunch of trades that have no benefits, typically carpentry jobs and tile jobs and sheet rock, and so it's hard to attract [quality] people because there are no benefits."

Texas has many young workers who could choose to work in construction, but low wages, dangerous conditions, few benefits, and lack of training make it a less desirable career path than other sectors. Many industry leaders agree that Texas needs to act fast to increase the level of skill that workers bring to construction sites. There are nearly one million construction workers in Texas, many who have important informal experience that could readily be enhanced with formal training. To meet the needs of the state as it grows, Texas cannot wait to build a new workforce: it must train the workers it has.

Women and Training

In the US, jobs available to workers lacking formal education are often sharply divided by gender. According to the most recent Census data, only 3% of Texas construction workers are women. Women, meanwhile, make up large majorities working in childcare, beauty, retail, and domestic work where wages are even lower than construction wages.⁶³

Training plays a fundamental role in giving women the ability to access good construction jobs and address barriers, such as sexual harassment and a lack of recruitment by employers. The construction industry has the potential to provide good blue-collar jobs to women in Texas and help close the wage gap between men and women in the state through the help of training opportunities that funnel formally trained women into good construction jobs.

To increase the number of women working in the construction industry, government and industry leaders must work together to make sure new jobs in the construction sector are good jobs with fair pay and benefits and training opportunities and that these positions are extended to women. Training and hiring goals for women in the construction industry work best when set by developers and government officials. Local, state, and federal government account for 25% of all new construction. Additionally, various local and state entities are engaged in the construction process by granting tax-incentives to developers when they build in their localities. Policymakers partnering with developers or managing their own government projects can set target goals to train and hire women. Because so few women enter the construction workforce currently, including training as part of hiring goals is a must, if goals are to be met. Similarly, developers can also set their own project goals for training and hiring requirements for female construction workers.



Hiring Goals Bring Women into Construction

In 2000, when the developer Forest City Ratner Companies was building The *New York Times*' expanded offices, it set a goal for hiring women construction workers. To ensure compliance with its target, the developer hired an outside agency to assist with recruitment of qualified women and monitoring, and was successful at ensuring that 15% of the construction work was completed by women.⁶⁴

Access to Resources

“[Employers] are exploiting a lot of people where English is a second language and they feel they can get away with it because they don’t know the resources that they have, and it’s hard for them to find resources to help them out.” – Jason Bartos, Austin carpenter

State and federal agencies play a critical role in enforcing protections for workers. However, the majority of workers surveyed indicated that they were not familiar with either the US Department of Labor (DOL) or the Texas Workforce Commission (TWC), the two entities charged with investigating and enforcing labor law violations (see table 18). This lack of familiarity indicates that when workers experience workplace abuses, few are able to report them. As a result, violations go unchecked for the majority of construction workers.

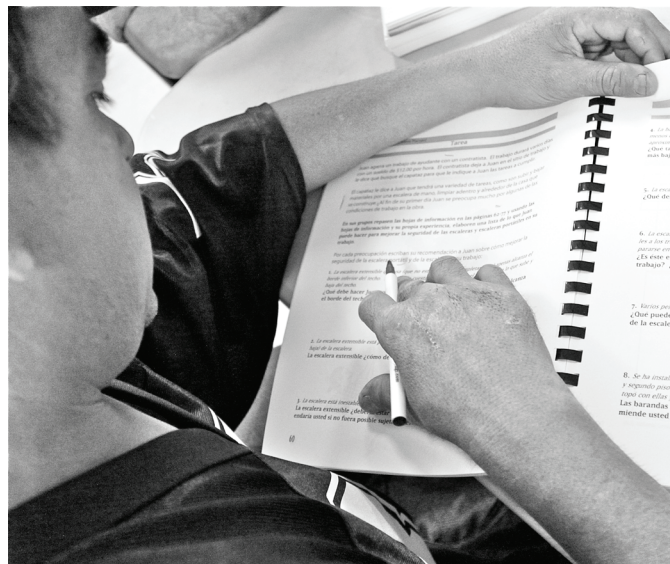


TABLE 18
Knowledge of Workers’ Rights Protection Organizations

Has not heard of Occupational Safety and Health Administration (OSHA)	21%
Has not heard of Department of Labor (DOL)	63%
Has not heard of Workers’ Compensation Division, Texas Department of Insurance (TDI)	70%
Has not heard of National Labor Relations Board (NLRB)	89%
Has not heard of Texas Workforce Commission (TWC)	77%
<i>Source: Build a Better Texas survey data</i>	

Workers were more likely to be familiar with OSHA, but rarely reported violations to the agency. Many workers lacked knowledge of how to make a complaint with OSHA, and others feared they would be retaliated against if their employer knew they had made the report. In Texas, 98 OSHA inspectors are charged with monitoring workplace safety for a workforce of over ten million employees. It is estimated that in order to effectively perform their enforcement duties, OSHA would require 1,018 inspectors – eleven times more than Texas currently has.⁶⁵ With the current number of inspectors, it would take OSHA an estimated 137 years to visit every workplace once. *Build a Better Texas* researchers found numerous health and safety violations on nearly every construction site they visited.^x Many construction sites never see inspectors, and the unsafe conditions found by researchers remain the norm on worksites around the state.

^x See Appendix E for safety violation data.

Workers' lack of awareness of the agencies that protect their rights is a symptom of the weak regulation present in the construction industry. Texas lags behind the country in worker protections for health and safety, wage violations, and payroll fraud. TWC, the state agency charged with investigating wage violations, does not perform field investigations, nor does it go beyond an individual worker's complaint to determine if similar abuses are happening to that employee's coworkers or other workers on the worksite. TWC's reliance on complaints to begin investigations is inadequate as an enforcement mechanism if widespread violations within the industry are to be addressed.

Because 77% of workers have not heard of TWC, few workers who experience violations are able to report them. TWC has the power to levy fines of up to \$1,000 against employers who fail to pay their workers. However, this penalty has rarely been enforced in the past. In ten years, Workers Defense Project has only seen two penalties issued on the hundreds of cases they file with TWC each year. With few penalties and inadequate resources to enforce payment by violating employers, there is little incentive for abusive employers to operate their businesses legitimately.

Texas is also a right-to-work state, which has severely reduced the presence of unions in the construction industry.^{xi} The union workers surveyed were significantly more likely to be knowledgeable about the resources available to them (see table 19). Further, union workers have additional assistance from their union representatives if a workplace issue arises. All surveyed workers who indicated that they were union members had heard of OSHA; 97% had heard of the DOL, and 89% had heard of TWC. Union workers, therefore, are in a better position to defend their workplace rights than other workers.

TABLE 19 Knowledge of Workers' Rights Protections by Union Status		
Agency	Nonunion	Union
Has heard of Occupational Safety and Health Administration (OSHA)	78%	100%
Has heard of Department of Labor (DOL)	35%	97%
Has heard of Texas Department of Insurance, Division of Workers' Compensation (TDI, DWC)	28%	83%
Has heard of National Labor Relations Board (NLRB)	9%	51%
Has heard of Texas Workforce Commission (TWC)	31%	89%
<i>Source: Build a Better Texas survey data</i>		

^{xi} So-called "right to work" laws weaken unions and collective bargaining. Such laws prevent unions from forming agreements with employers so that their new hires become union members, even though unions are required to represent the interests of these new workers. If new employees do not join the union (employers often encourage them not to), the union could eventually lose the majority that they need in order to collectively bargain for the workforce. Unionized worksites tend to improve working conditions for all workers, raising wages and winning more benefits for employees. The Bureau of Labor Statistics found that workplace fatalities rates are highest in right to work states. According to the Census of Fatal Occupational Injuries in 2008, 19 of the top 25 states for worker fatality rates were right to work states, while only three of the bottom 25 were. Despite the name, "right to work" really means "right to work for less."

Conclusion

The Texas construction industry is the strongest in the nation, but construction jobs do not provide workers with safe conditions, fair pay, and access to a career path. Texas is the most dangerous state to work in. Few workers receive safety trainings or have access to healthcare in the event of a workplace injury. The majority of construction workers have jobs that don't provide benefits or pay wages that allow them to sustain their families. Payroll fraud strips workers of their rights and leaves them without recourse when workplace abuses occur. Without adequate training opportunities, workers are stuck in dead-end jobs without career paths. The poor working conditions researchers uncovered indicate that industry leaders and policymakers can do more to build a better Texas.

INDUSTRY PERSPECTIVES



“

We need our workers to be successful so that we can be successful. It's a very people-oriented business, construction is. Without the people, you couldn't do it.”

— STATE-LEVEL GENERAL CONTRACTOR

“It’s hard to overcome [competition that cuts corners] - if they’re not paying unemployment, social security, workman’s comp. No matter how much you train someone and how productive you become, you can’t overcome that [company] that’s not doing it properly.” - National-level commercial general contractor

Build a Better Texas researchers conducted 15 in-depth interviews with construction companies that operate in Texas. Interview respondents include local and state level sub-contractors, general contractors, developers and owners, and homebuilders. Interviews reveal that construction companies of all sizes recognize that the success of their industry depends on the ability of their workforce to produce a high quality product that guarantees them return business, but they describe current challenges to the long-term sustainability of the industry. Interviews describe how:

- **Worksite injuries cause costly delays and work stoppages.** Injuries have a high cost for everyone on the worksite. However, safety training is often left to the responsibility of small subcontractors.
- **Responsible contractors can’t compete.** Companies that provide workers’ compensation and pay their payroll taxes can’t compete with companies who cut corners when it comes to paying their workforce properly and providing a safe workplace.
- **The industry is facing a shortage of skilled workers.** Even though contractors and builders recognize the value of their workers, interview respondents describe that the industry has failed to invest in training for the current workforce.
- **The industry faces challenges in attracting a qualified workforce** because of its tarnished reputation due to common industry practices like payroll fraud, low pay and few benefits, as well as high injury rates and short-term employment.
- **Property owners and developers set the standard** for working conditions on construction sites; if they prioritize safety, compliance with wage and tax laws, and better pay for workers, general contractors and subs will meet those standards.

Overall, interviews revealed that companies at all levels are negatively impacted by the race-to-the-bottom practices that have given the construction industry a bad reputation. Many respondents described best practices in safety and training, but in the current environment, employers who prioritize safety, create career pathways for their workforce, and follow the law are at a competitive disadvantage. Not only is it difficult for responsible employers to compete, but these conditions also threaten the long-term sustainability of an industry that is critically important to Texas.

Emerging from the Economic Downturn

The Texas construction industry was not immune to the effects of the recession, despite weathering it better than the US industry as a whole. The unwillingness of banks to lend money to anyone from developers down to end-users for the past few years has forced companies to cut costs in order to do more with less.



Terry Mitchell, an Austin developer specializing in mixed-use multifamily and commercial development, described the effect of the recession on his business: “In 2008 I had nine projects that were going to go into production. Over the next twelve months, all of them stopped because the capital sources all went away.” The residential sector was even harder hit: as one Houston-based residential developer explained, “We lost subcontractors and suppliers who could no longer stay in business...a lot of companies laid off a large number of people.”

A state-level general contractor based in Austin described increasing competition due to the relative strength of the Texas construction industry: “Unfortunately a lot of other places have slowed down a lot, so a lot of [construction companies] have moved to Texas. So we’ve seen that competition grow.” A national-level general contractor operating in Houston highlights the risks that companies take in a highly competitive environment: “It’s crazy right now. People are taking things way too cheap, taking on too much risk for not enough reward. We’re going to see some subcontractors that will probably fail because they can’t keep up.” Wage theft, payroll fraud and other illegal practices flourish as companies struggle to cut their costs and remain competitive in this unsustainable environment.

General contractors, subcontractors and developers alike see that the industry is at a critical moment as it emerges from the recession. As construction work expands again, subcontractors and contractors will need to address the illegal practices, low pay, and few benefits that will impede the industry from attracting a skilled workforce and invest in safety and craft training for the existing workforce. Failing to do so may have long-lasting implications for the quality of work being produced by the construction industry.

“

No matter how much you train someone and how productive you become, you can’t overcome that [company] that’s not doing it properly.”

- NATIONAL-LEVEL COMMERCIAL
GENERAL CONTRACTOR

Transferring Risk and Responsibility: Subcontracting

“In the general building market, 90-95% [of the work] can be subcontracted out.”

– National-level commercial general contractor operating in Houston

Developers, homebuilders, and general contractors hire subcontractors to perform a specialized portion of work on a construction project. Those subcontractors, in turn, may hire subcontractors as well. For example, a general contractor would hire an electrical subcontractor and then that electrical subcontractor might subcontract the installation of a fire alarm to a company specializing in fire alarms.

Cutting Costs, Cutting Corners

“[Up to] 50% of the cost to do the project is in labor... With the cost of the payroll, taxes, insurance, and fringe benefits, it generally adds another 50% on top of the cost of labor. So those are big costs.” – Graham Moore, Houston President for TD Industries, National-level plumbing and A/C subcontractor

Because construction work is so labor-intensive, payroll costs are often one of the largest expenses for a construction company. Subcontracting allows companies to cut costs on payroll and to transfer responsibility for specialized craft training to subcontractors. Competitive bidding allows general contractors to select the lowest bid that meets the requirements for a job, although they can take into account other factors like the safety record or financial security of a company.

However, cost often becomes the primary consideration for contractors because they must stay within their budget for the project. Because the lowest bid is prioritized, subcontractors are encouraged to lower their costs in order to be most competitive, which they often do by subcontracting out the work to even smaller companies, who may be ill equipped to provide workers with the safety and craft training they need.

The Bottom Line: Owners Drive Standards on Worksites

“We like to think that owners take into account quality and safety, but in a down market, 99.5% of the time it’s price. So instead of the quality of your staff or how safe you are or the quality of your product, most of the time today it’s price-driven.” – National-level commercial general contractor operating in Houston

While a competitive bid process might drive down short-term costs for developers and owners, the practice also creates a race to the bottom among subcontractors. The power to establish standards lies with owners. As one national-level general contractor explains: “The owners have to be the ones that drive the change. It’s got to be owner-driven because it’s their projects. Contractors don’t have projects; specialty contractors don’t have projects. It’s owners that have the projects, and they’ve got to set the standards.”

If price-driven competition spurs a race to the bottom, then owner demand for high quality workmanship, a trained workforce, and safety can drive a race to meet those high standards in the industry.

The Costs of Workplace Injuries

“We all have to be safety conscious, not only to prevent lawsuits, but the bigger thing is we’re dealing with people and their families, and you don’t want to see someone get hurt. That would affect their families for the rest of their lives.”

- Jimmy Schmidt, owner of JS Electric, an Austin-based electrical subcontractor

Construction work in Texas is dangerous, with one in five workers suffering a serious workplace injury. Subcontractors and general contractors agree that there are high costs to their businesses due to workplace injuries because of both direct costs, such as medical bills, and indirect costs, like lost productivity and administrative costs when an accident occurs.^{xi} For example, a single worksite injury such as a laceration could result in a direct cost of \$17,368 (the medical care for the worker) and an additional \$19,104 in indirect costs to the company. Assuming the direct costs are paid by insurance, a firm with a standard 3% profit margin would have to do an additional \$600,000 of business to cover the indirect cost of a single workplace injury.⁶⁶

In addition to the immediate costs of the injury, construction companies may be subject to fines for worksite accidents. OSHA has the power to fine not only the employer of the injured worker, but also to hold the contractors above the employer responsible for the injury.^{xii} General contractors who push the responsibility for safety onto their subcontractors do so at their own risk: they may be subject to a hefty fine for the failures of subcontractors to ensure a safe worksite. One Dallas-based national drywall subcontractor explains: “The [OSHA] penalties are huge. Not only are the fines huge, but they affect the way you can bid jobs.”

“We all have to be safety conscious... we’re dealing with people and their families, and you don’t want to see someone get hurt.”

– Jimmy Schmidt
JS ELECTRIC

^{xi} Indirect costs may be based on the National Council on Compensation Insurance and may include costs such as wage costs related to time lost through work stoppages, administrative time spent by supervisors and clerical workers after an accident, training costs for a replacement worker, lost productivity, clean-up and repair after an accident etc. For more information see www.osha.gov/dcsp/smallbusiness/safetypays/background.html

^{xii} OSHA began enforcing its multi-employer policy, which enables them to hold contractors responsible for safety violations of their subcontractors in the Texas region in 2009. Previously, the policy had not been enforced since 1991.

If a company has many accidents on their safety record, it may disqualify them from bidding certain projects. Additionally, a high injury rate can also drive up the rates they pay on liability insurance or workers' compensation, increasing their overhead costs in the long run.

Safety Training Pays Off

"It's clearly an issue that everyone on that job site needs to be trained because construction on these big complicated buildings is very hazardous work." – Graham Moore, TD Industries

Construction employers know that accidents and injuries can be prevented with basic safety training, providing proper equipment, and by developing a strong culture of safety that is promoted from the level of the developer down to the smallest subcontractor. Several interview respondents described an emphasis on worksite safety as an important company value. Some subcontractors and general contractors described best practices to improve safety outcomes (see Industry Innovations box).

Construction Industry Innovations

While many jobs in the construction industry are characterized by low wages and dangerous working conditions, there are companies that demonstrate a commitment to their workers with regards to the benefits they provide, fair wages, and innovative skill and safety training programs, including:

- Providing all employees with an OSHA 10 hour safety training
- Employing third party safety auditors to inspect the site regularly
- Holding weekly safety meetings on worksites
- Requiring safety orientation before workers are allowed to enter a worksite
- Enforcing a zero tolerance rule for noncompliance with personal protective equipment usage
- Giving workers incentives and rewards for exceeding safety expectations
- Providing additional training for specialized equipment use
- Paying for continuing education in topics relevant to a worker's trade or other elements of the construction business

In addition to the efforts of individual companies, there are several recent initiatives by industry leaders that attempt to address problems plaguing the industry:

- *Premiere Community Builder Program*, an initiative of Workers Defense Project in Austin, TX, certifies developers who meet established standards in safety, fair wages and payroll practices, and training for workers on their construction sites.^{xiv}
- *The Construction Career Center*, based in Austin, TX, offers a fully bilingual training curriculum and recruits local residents for hands-on training to develop the workforce, and works with industry partners to provide formal training and skilled workers for upcoming projects.^{xv}
- *The Construction Career Collaborative (C3)* is an initiative of owners and contractors in the greater Houston area designed to halt the erosion of good jobs through standards for hourly and overtime payment and addressing payroll fraud.^{xvi}

^{xiv} For more information, see <http://www.buildaustin.org>.

^{xv} For more information, see <http://www.cccaus.org>.

^{xvi} For more information, see <http://www.constructioncareercollaborative.org>.

However, the innovations described here are not the standard for the industry. Few employers invest in providing safety training for their employees. Even general contractors that have in-house safety programs stop short of requiring safety training or provision of safety equipment for employees of their subcontractors. One Austin-based state-level general contractor explained: “We recommend hardhats and safety glasses and all those types of things... But we don’t require the OSHA-10 [for our subcontractors].” Since subcontractors employ 90 to 95% of the workers on a commercial site, if the developer or general contractor doesn’t implement safety standards, subcontractors have little incentive to provide training for their workforce.

Safety starts at the level of the developer or owner on a worksite. By setting the standard, owners and general contractors can ensure safety becomes the responsibility of each company on the worksite to minimize hazards to all workers. One subcontractor, who provides all of his employees with an OSHA-10 training explained:

“The accident that we had in the last couple of years was when somebody else on the site didn’t properly install the scaffold... The scaffold fell over and our guys were working next to it and it fell on one of our workers. Obviously, we’re all connected and we all have to understand the risk.” – Graham Moore, TD Industries

21 Rio: The Cost of Deadly Working Conditions

In June 2009, three construction workers fell eleven stories to their deaths when a faulty scaffold broke while they were working on a luxury student apartment complex in Austin. Although a specialty subcontractor employed the workers, OSHA found 25 violations and fined four different companies, levying more than \$160,000 in penalties. In this case, subcontracting did not protect the general contractor and several other companies from being held responsible for the deaths of these three workers.

Maxum Development, the project developer, had assumed that conditions were safe on the worksite. “I thought the workers were safe on my site. I feel terrible for the families of those workers and I want to do whatever it takes to ensure that there is never another fatal accident on any of my sites,” said Maxum President Gary Perkins of the incident. In addition to OSHA fines, the general contractor, and subcontractors also faced lawsuits for the wrongful deaths of the three workers. Developers, general contractors, and subs can’t afford not to invest in safety.

“

It blows my mind that you would have the option not to provide workman’s comp. I mean, this is hazardous work.”

– HOUSTON
SPECIALTY
SUBCONTRACTOR

Workers’ Compensation: Protecting Business and Workers

Workers’ compensation protects both workers and companies by providing a safety net for an injured worker and protecting an employer from costly lawsuits. Jimmy Schmidt, owner of JS Electric in Austin explained: “The benefit is that if someone gets hurt on the job, there’s an insurance company to back you up. They can go to workman’s comp, receive the benefits they need for medical care and being off work, and it keeps you from being sued. And it’s important to the people you’re doing the work for also, for the customer.”

However, Texas is the *only* state that allows employers to opt out of workers’ compensation coverage. Many construction companies choose not to provide workers’ compensation in order to cut their overhead costs to make themselves more competitive.^{xvii} When they do, they force working families, Texas hospitals, and responsible businesses to shoulder the burden of paying for workplace injuries.

^{xvii} While some employers in Texas provide alternative non-subscriber plans, these are extremely rare in the construction industry. Most companies who opt out of workers’ compensation provide no coverage for their workers.

An individual contractor who opts out of providing workers' compensation may enjoy short-term cost savings, but responsible employers inevitably pick up the cost. Without workers' compensation, uninsured workers are often unable to pay their bills, which result in high uncompensated care costs for Texas hospitals. In order to make up for these costs, Texas hospitals pass the costs on to insurers through higher charges for services. These charges are then passed on to working families and responsible businesses through higher premiums for insurance policies.^{xviii}

Researchers estimate that only around 40% of construction companies in Texas have registered workers' compensation policies.⁶⁷ With higher overhead costs, responsible businesses are at a competitive disadvantage: "We were struggling to get contracts, and we were being beat out by people and we found out the overhead cost of providing workers' compensation was one the reasons," stated a painting and trim subcontractor operating in Central Texas. Several companies even suggested that the state should require workers' compensation for construction employers. As one subcontractor put it: "It blows my mind that you would have the option not to provide workman's comp. I mean, this is hazardous work."

Responsible Businesses Can't Compete

When construction companies fail to pay their employees their promised wages or avoid paying taxes on their employees, they gain a competitive advantage over responsible construction businesses that play by the rules.

Wage Theft Undermines Honest Companies

In a competitive bidding environment, construction companies may underestimate the costs of a project in order to submit the lowest bid. When companies submit unreasonably low bids, they create a situation where they may run out of money before the end of a project, leaving them unable to pay their employees. Wage theft harms honest subcontractors who make bids that reflect their real labor costs because they can't compete against firms that lower their costs by denying payment to their workers. Wage theft can also cause work delays and negatively impact the final quality of a project. General contractors can also find themselves responsible for paying the wages owed to the employees of a subcontractor. A national-level commercial general contractor operating in Houston described his this problem:

"We've had [a subcontractor] fall off a job where they couldn't pay, and we stepped in and took over the work. We've had jobs that we've paid their payroll for them to get them through."

In addition to the inconveniences of work delays and poor quality workmanship, construction companies described how wage theft could be bad for business when unpaid employees have the legal right to place a property lien on the worksite or to file a lawsuit against the general contractor as a joint-employer. A lien attaches a debt for unpaid wages to the property and holds the owner liable for the bill. For builders and developers, a lien can hinder their ability to sell or rent a property and may also negatively impact their reputation with clients.

General contractors may also be held liable for wage theft. In many cases, the general contractor is equally responsible as the worker's direct employer for ensuring that workers are paid in accordance with state and federal laws.⁶⁸ If general contractors turn a blind eye to these problems they may be opening themselves up to legal problems, poor workmanship, additional labor costs, and a tarnished reputation.

Contractors can avoid some of these problems by subcontracting for quality. The lowest bidder is not the best value when they have underestimated the real costs of a project. As Stan Marek, owner of Houston-based Marek Brothers Systems, a commercial specialty subcontractor, explained: "A lot of contractors just take the lowest price and what they get is the low price, low quality, low everything else."

^{xviii} See Appendix C for detailed information.

Xavier v. Belfor Group USA

Belfor Group USA, a major disaster relief and reconstruction firm, hired subcontractor Xavier to help restore services to Tulane Hospital and Tulane University in the aftermath of hurricane Katrina. The workers sometimes worked seven days a week, 12 hours a day, but were not paid the overtime wages they were owed. The workers filed a lawsuit against Belfor as being jointly responsible for their unpaid overtime wages. The courts found that the general contractor was in fact a joint employer as defined by federal employment law, and ordered the company to pay \$22,500 in back wages owed to the workers.

General contractors can avoid time-consuming labor disputes if they closely monitor the employment practices of their subcontractors. If general contractors fail to take responsibility for ensuring that their worksites are free from employment law violations, they may be vulnerable to lawsuits when violations do occur. By setting strong standards for subcontractors and making sure they live up to those standards, contractors can avoid such legal issues.

Payroll Fraud: Hidden Tax for Honest Businesses

“If everyone played by the same rules, it would be competitive but it would be fair competition. When everybody is playing by different rules... you start with one or two people doing it, cheating, and in an environment like we’ve had since ’08, now everybody’s doing it.” – Stan Marek, Marek Brothers Systems

The *Build a Better Texas* survey revealed the widespread practice of payroll fraud, where over 40% of construction employees were misclassified as independent subcontractors, usually when an employer provides them with a 1099 instead of a W2 or pays them under the table in cash without withholding taxes. When employers engage in payroll fraud, they avoid paying federal payroll and state unemployment taxes, and they strip workers of their rights. According to many construction employers, the practice of payroll fraud is one of the biggest challenges facing the construction industry. Steve Baker, CEO of the Dallas-based specialty interior subcontracting company Baker Triangle, described how common payroll fraud is:

“We hire someone from another company and they show us their checks and no taxes were taken out. We’ve got some very unscrupulous competition. I would say 20% of our competitors are underground: no taxes, no workers’ comp, no employment verification.”

Michael White, Vice President for Government Affairs for the Texas Contractors Association, estimates that companies that pay required taxes and provide workers’ compensation and employee benefits are routinely underbid by 15-25% against companies who don’t.⁶⁹ Responsible companies can’t compete with companies that cheat. This creates a race to the bottom as more and more companies adopt these practices in order to maximize profit. One frustrated subcontractor explained that:

“The problem with [payroll fraud] is that it just pushes the market lower, and lower, and lower... If it doesn’t change we’ll have to do things like eliminate medical benefits, maybe cut wages, maybe stop their 401k. If this doesn’t stop, we will have to make very, very hard choices, and if it doesn’t stop in two or three years, we may have to join them, if the government can’t curtail all the cheating.”

“

I would say 20% of our competitors are underground: no taxes, no workers’ comp, no employment verification.”

– Steve Baker
BAKER TRIANGLE

In addition to being underbid by companies who cut costs by avoiding payroll taxes, responsible construction companies have to pay a “hidden tax”: the unemployment insurance tax rate has increased significantly to pay down the nearly \$5 billion in federal bonds that Texas received between 2009 and 2011 to replenish its depleted unemployment insurance tax fund.⁷⁰ Payroll fraud in the construction industry results at least \$54.5 million in lost unemployment insurance taxes each year (discussed in-depth in Social Cost section).^{xix} As the tax rate goes up, and law-abiding employers pay more for each of their employees, and the contractors who avoid taxes get an even greater advantage.

Linden Steel Fights Back

Andy Anderson is the owner of Linden Steel, a rebar subcontracting company in Dallas. Linden Steel lost a bid to perform work on a public school to a construction company that underbid him by misclassifying its employees as independent contractors. Andy complained to the school district about the suspiciously low bid that they awarded the contract to, but the school district refused to investigate. Andy decided to fight back, bringing his complaint to the Texas Workforce Commission (TWC). “I have some sympathy as to what TWC is facing in this overwhelming new wave of doing business,” he said. But with so many companies breaking the law, “you can’t compete if you don’t 1099 your workers, too.”

Linden Steel, which has been in the industry for 18 years, prides itself not only on following the law by paying payroll taxes, but also provides benefits and workers’ compensation coverage. Andy is proud of the value he can offer to general contractors in terms of price, quality of work, and professionalism, he is worried that he will be unable to remain competitive in the long run if the state doesn’t address the problem of payroll fraud. For now, Andy is fighting to strengthen laws that would protect workers and businesses alike from payroll fraud. “I have been able to make some differences,” he said of working to curb rampant payroll fraud, but “[the problem] is huge.” Reducing the payroll fraud in the Texas construction industry will require the commitment of the state government, which must take steps to ensure laws are being followed.



Building a Skilled Workforce for the Future

“If we’re going to have a sustainable labor force, we have to pay a good wage, have a career path, provide benefits, and if workers get hurt we need to take care of them.” – Stan Marek, Marek Brothers Systems

When *Build a Better Texas* researchers asked construction companies at all levels about the biggest challenges facing the industry, a common theme was concern about a shortage of skilled workers to fill the needs of the growing construction industry. Graham Moore of TD Industries explained the challenge specialty subcontractors will face: “There is going to be a severe shortage of workers, especially in the licensed trades.”

Skilled craftsmen, such as plumbers and electricians, traditionally come to mind when considering the shortage of labor. However, as an Austin-based residential contractor explained, skilled workers within the unlicensed trades are also becoming scarce:

“My opinion on young workers, craftsmen coming up: there aren’t any. I don’t see today’s kids wanting to be a craftsman and build homes. I just feel like in ten years, that it’s going to be real tough to find quality carpenters, and quality tile layers, and things like that.”

^{xix} See Appendix B for unemployment insurance tax calculation.

Lack of Training

“They [the workforce] are not as highly trained as they used to be.” - Jimmy Schmidt, JS Electric

One Austin based electrical contractor whose family has been in the construction industry for over 50 years, recalled that when he joined the family business, most workers entered the industry through training programs, usually through a union apprenticeship program. Now, with limited union presence concentrated only in the licensed trades (electrical, plumbing, and HVAC) in Texas, there has been little investment in qualified training programs for unlicensed trades. The majority of the workforce is not receiving any formal training at all. As training in the industry has declined, the quality of construction jobs has also declined, becoming characterized by low pay, dangerous conditions, and few benefits. Construction companies have seen that as the quality of construction jobs has fallen, it has become more difficult for them to recruit talented new workers to jobs that don't lead to a career path.

The Role of Unions in Training

“We have managed to maintain a skilled workforce because we pay into the [union] training fund. All our guys come through the union apprenticeship school. It's a 5 year program of skills training.” - Shayne Stevens, KST Electric

Programs run jointly by unions and employers make up the largest share of training programs in the country, comprising 70% of those registered with the DOL.⁷¹ Labor unions and employers most frequently share the costs associated with union apprenticeship programs.⁷² Where there is a stronger union presence, there are more training programs for workers. Furthermore, union programs boast a 14% higher graduation rate from their training programs than their non-union counterparts.⁷³

While construction workers belonging to a union make up 15% of the workforce nationally and in some states is as much as 24%, Texas ranks as one of the states with the lowest share: only 3% of the surveyed workers reported belonging to a union.⁷⁴ The low rate of unionization in Texas may explain why so few construction workers have received formal training in the industry, given the important role that unions play in training workers at the national level. A national-level commercial general contractor who operates non-union in Texas but union in other parts of the country described the big difference between union and non-union subcontractors:

“In the Midwest we're a union contractor, so the trades come up through unions, learning the trade, and so forth. In Texas, we're a non-union group, and so we get a little bit different employee-base that may not have the same skills as probably we're used to in other parts of the country.”

“

*If people aren't trained,
if they're not supervised,
then they're going to do
shoddy work.”*

– Stan Marek
MAREK BROTHERS
SYSTEMS

Training Needs to Fit the Current Workforce

There are very few construction training programs given in Spanish. With 75% of surveyed Texas construction workers listing Spanish as their first language, there are not enough accessible training opportunities that meet the current workforce's needs. Additionally, the low education level of the current workforce raises other limitations of traditional training programs.

“It's very hard to translate [training materials] to begin with, but there are some people that might not be able to read no matter what language you translate it to. So we have to change. It can't just be all written, it all has to be verbal and visual.” - National-level commercial general contractor

Training and Quality Construction

The costs of an untrained workforce are high not only for contractors and subcontractors, but also for developers and end-users. Pulte Homes, a national homebuilder that builds large subdivisions in central Texas, received negative media attention in San Antonio when homeowners in a new subdivision demanded that Pulte buy back their homes after their foundations separated, roof tiles peeled off, and walls cracked within one year of construction.⁷⁵ Nationally, Pulte's reputation was harmed by these problems, and homeowners found that their investments had turned into liabilities.

Builders know that the quality of a construction project is only as good as the workforce building it. As Stan Marek put it: "If people aren't trained, if they're not supervised, then they're going to do shoddy work." In order for the industry to be successful, companies need workers to be successful, which will require a commitment from the industry, from the level of developers and owners down to subcontractors to mandate high standards and formal training. A real investment in training for the current workforce is critical for the Texas construction industry to avoid a skilled worker shortage and build a sustainable workforce that can produce a high quality product in the long run.

Foundation Communities: Investing in Good, Green Jobs

In 2012, **Foundation Communities**, Austin's largest affordable housing developer, signed on to the Premier Community Builders Program (PCB), which works with developers to ensure good working conditions on their construction projects.^{xx} The program certifies developers who meet established standards in safety, fair wages and payroll practices, and training for workers on their construction sites. Foundation Communities sees promoting safe and fair working conditions on their construction sites as part of their mission of moving families out of poverty. Jennifer Hicks, Director of Housing Finance for Foundation Communities, explains:



"Our mission is to help families succeed. So I think that [PCB] is part of our mission. One of our major lines of business is housing development. So for me it makes sense that if we're helping folks gain a higher wage and become more employable and move up, that's a really good thing."

Foundation Communities is proud of its green building credentials (one of its most recent projects was five-star Austin Energy Green Building and LEED Platinum-rated) and sees the PCB Program as contributing to their commitment to the "three E's" of sustainability: environment, economy, and equity. Jennifer also explains: "From the perspective of a developer that's doing a lot of development, to have that skilled workforce is a good thing – just to have a more quality product, and a smoother timeline, and have people that know what they're doing on site."

Many for-profit developers describe that they are far removed from what actually happens on a worksite, sometimes with high costs (for example the fatal accident at 21 Rio). Foundation Communities found that there was an added benefit to having third party PCB inspectors on site:

"There was oversight and an understanding of what was taking place on the job site. I think that exercise worked out to the benefit of everyone, and I think it's something we'd like to do at more of our projects."


The example of Foundation Communities shows that when developers and owners set high standards for training, wages, and safety on their construction sites, they can help contribute to the development of a sustainable workforce for the construction industry.

^{xx} An initiative of Workers Defense Project

Conclusion

The pressures of a competitive bidding environment create incentives for construction companies to prioritize cutting their costs over investing in the long-term development of a skilled workforce. Furthermore, responsible businesses can't compete in an environment that prioritizes low prices over quality and safety. The costs are high for not only contractors and workers, but also for developers and owners who may share liability for illegal practices and costly workplace accidents. Owners and developers must set high standards for their worksites by demanding a trained workforce and safe working conditions. General contractors and subcontractors will meet those expectations. By providing training and ensuring fair pay, construction companies can help build a strong industry. In the end, what is good for workers is good for business.

SOCIAL COSTS



Low wages, dangerous conditions, and frequent legal violations like wage theft and payroll fraud have a high cost for Texas.

The Texas construction industry is characterized by legal violations and deadly working conditions. While the costs of these conditions for construction workers and construction companies are apparent, there is an additional cost to Texas taxpayers and social service providers.

When employers cut costs by failing to provide workers' compensation, health insurance, or living wages to their employees, they are passing the costs of taking care of workers and their families on to taxpayers and public institutions. These poor standards in construction cost Texans tens of millions of dollars each year. *Build a Better Texas* researchers found that:

- **Wage theft results in lost tax revenue:** an estimated \$117 million in lost wages and \$8.8 million in lost sales tax impact cash-strapped state and local governments.^{xxi}
- **Texas construction workers are forced to fall back on public safety nets** to support their families. Low wages and wage theft contribute to economic instability for construction workers and their families. Fifty-two percent of Texas construction workers report that they were unable to meet the basic needs of their family at some point.
- **Injured construction workers account for a disproportionate share of uncompensated care costs in Texas hospitals.** While construction workers make up roughly 6% of the workforce, they account for nearly 20% of work-related uncompensated care costs in Texas emergency rooms.⁷⁶
- **Rampant payroll fraud results in an estimated \$54.5 million in lost unemployment insurance tax revenue** and hundreds of millions more in federal income tax. With over 40% of the construction workforce misclassified as independent contractors or paid under the table, Texas – and the Federal government – lose out on critical revenue.^{xxii}

Low Pay and Wage Theft: Bad for Texas

Widespread practices in the construction industry such as low pay and wage theft deprive Texas of critical revenue needed to address budget shortages affecting Texas' public institutions over the past two years. In 2011, Texas faced an unprecedented revenue shortfall and was forced to slash \$12 billion from its biennial budget.⁷⁷ These cuts drastically reduced the funding available to state agencies and service providers by shocking rates: Health and Human Services saw a 26% general revenue shortfall; education a 15% shortfall.⁷⁸ At the same time, workers who experience wage theft, poverty wages, or suffer a debilitating workplace injury are forced to fall back on social service providers – creating increased demand for a shrinking pool of public services.

^{xxi} See Appendix B for calculation of unpaid wages and lost sales tax revenue.

^{xxii} See Appendix B for calculation of lost state unemployment insurance taxes.



Wage theft: Robbing Texas of Vital Income

As Texas emerges from the economic recession, consumer spending on goods and services has played a critical role in stimulating the local economy and generating sales tax revenue. *Build a Better Texas* survey data indicates that workers who experienced wage theft (1 out of every 5) reported that they were owed a median of \$960.50, more than two weeks worth of pay for the average Texas construction worker. When construction workers experience wage theft, they cut back on spending and are forced to rely on public safety nets to make ends meet. Workers who are not paid for their work aren't able to contribute to the local economy and to Texas tax revenues.

Because Texas doesn't have an income tax, sales tax is one of the largest sources of revenue to the state making up 27% of state's general revenue.⁷⁹ *Build a Better Texas* researchers estimate that Texas construction workers lose at least \$117 million in wages due to wage theft each year. When workers don't have those wages to spend, Texas loses out on an estimated \$8.8 million in annual tax revenue, at a time when sales tax is critically important to plugging the gap in the state budget.^{xxiii}

No Pathway to Prosperity

Even when construction workers are paid their promised wages, they frequently are not earning enough to meet the basic needs of their families. Fifty-two percent of workers surveyed reported earning wages below the federal poverty line.^{xxiv} Not surprisingly, over half of workers surveyed also reported experiencing some type of economic difficulty during the last year.

Eighty-eight percent of workers reported that they were the sole or primary provider for their households, meaning low wages affect not just workers, but entire families. When families face hardships, they depend on the support of public safety nets in order to meet their basic needs. A broad array of social services provided by federal, state, and local government and non-profit organizations keep construction families afloat, essentially subsidizing the low pay and lack of benefits that characterize jobs in the industry. When low pay forces construction workers to live paycheck to paycheck, they don't have the assets to sustain their families through a period of reduced earnings or nonpayment of wages.

Payroll Fraud: Bad for Texas

The state of Texas and the federal government lose tens of millions of dollars in much-needed tax revenue every year due to payroll fraud. Lax enforcement and few penalties in Texas create a strong incentive for employers to cut their overhead by not paying these taxes.⁸⁰ *Build a Better Texas* researchers estimate that there are more than 300,000 employees working in the construction of buildings in Texas whose employers illegally fail to report them as employees.^{xxv} These improperly classified Texas construction workers earn at least \$7.05 billion in wages that go unreported each year,^{xxvi} resulting in at least \$1.06 billion in lost federal income taxes.^{xxvii} Lost unemployment insurance taxes alone due to payroll fraud in the industry stand at an estimated \$54.5 million each year.

^{xxiii} See Appendix B for calculation of unpaid wages and lost sales tax revenue.

^{xxiv} The Federal Poverty Index for a family of four for 2012 is \$23,050 per year, or \$11.08 per hour.

^{xxv} See Appendix B for calculation of the total number of employees and improperly classified workers.

^{xxvi} See Appendix B for calculation of unreported wages.

^{xxvii} See Appendix B for calculation of lost federal income tax revenue.

TABLE 19
Economic Hardship Experienced by Construction Workers

Did not have enough money to pay for groceries	40%
Did not have enough money to pay for utilities	40%
Did not have enough money to receive medical care	20%
Did not have enough money to afford rent	34%
Workers experiencing some type of economic difficulty	52%
Source: Build a Better Texas survey data	

Shifting the Burden to All Texans

When employers engage in payroll fraud, they not only cheat the state, but they cheat their workers out of the critical financial support provided by unemployment insurance. Without unemployment insurance to help them make ends meet until they are able to find a new job, construction workers are forced to fall back on social safety nets. However, this lost revenue has a cost for all workers, not just the employees of companies who avoid paying unemployment taxes. The fund exists for the benefit of any eligible Texas worker that is laid off, and when fewer employers pay in, there are fewer funds available.

Texas Taxpayers pick up the Tab for Injured Workers

Construction is dangerous work, and thousands of workers are injured on the job each year requiring medical attention. Yet, Texas stands as the only state in the nation that allows any employer to opt out of providing workers' compensation coverage, even in a dangerous industry like construction.⁸¹ Only 40% of surveyed construction workers reported that their employer provided workers' compensation, leaving hundreds of thousands of workers to labor at their own risk. Hospital emergency rooms and free clinics are left to pick up the tab for care for these workers, and inevitably pass the cost along to Texas taxpayers.



Many construction employers choose not to provide workers' compensation in order to lower their overhead costs. Coverage costs between \$800 and \$2000 per employee depending on their salary and the type of work they perform.⁸² But when companies opt out, it ends up costing Texas more than it saves companies. Public hospitals are forced to absorb the costs of paying uncompensated care costs for injured workers. They recoup the costs by charging more to insurance companies, who pass the costs on to their customers. Additionally, local health care districts may increase property taxes to make up for the increased charges (see figure 6).



The TRUE COST of not carrying workers' compensation

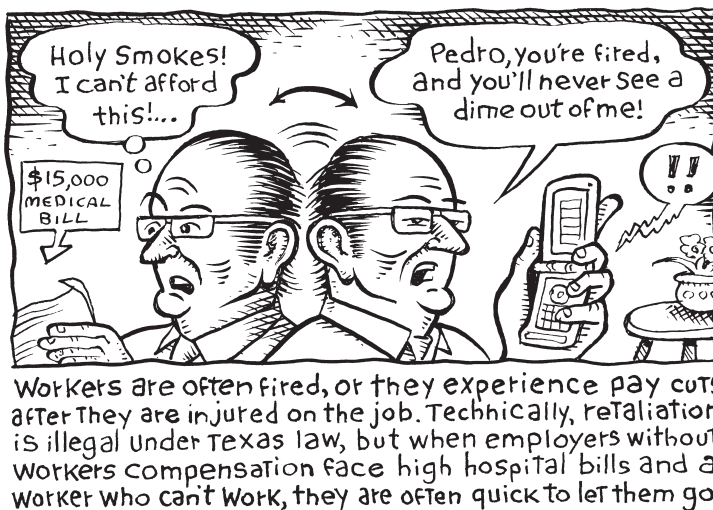
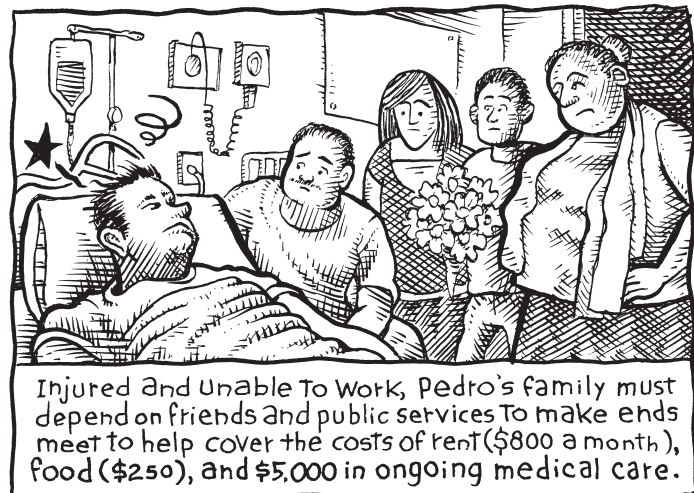
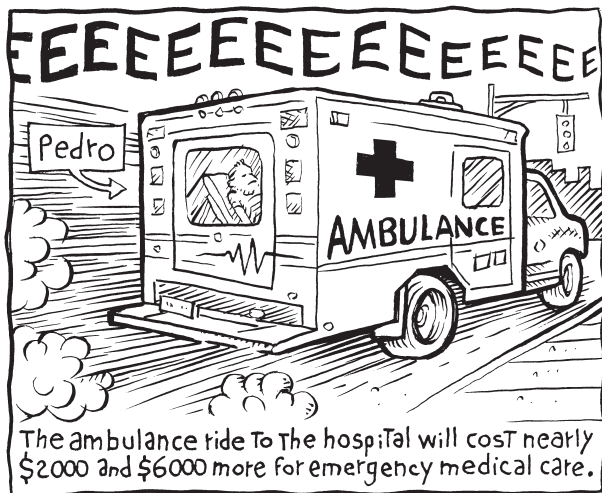
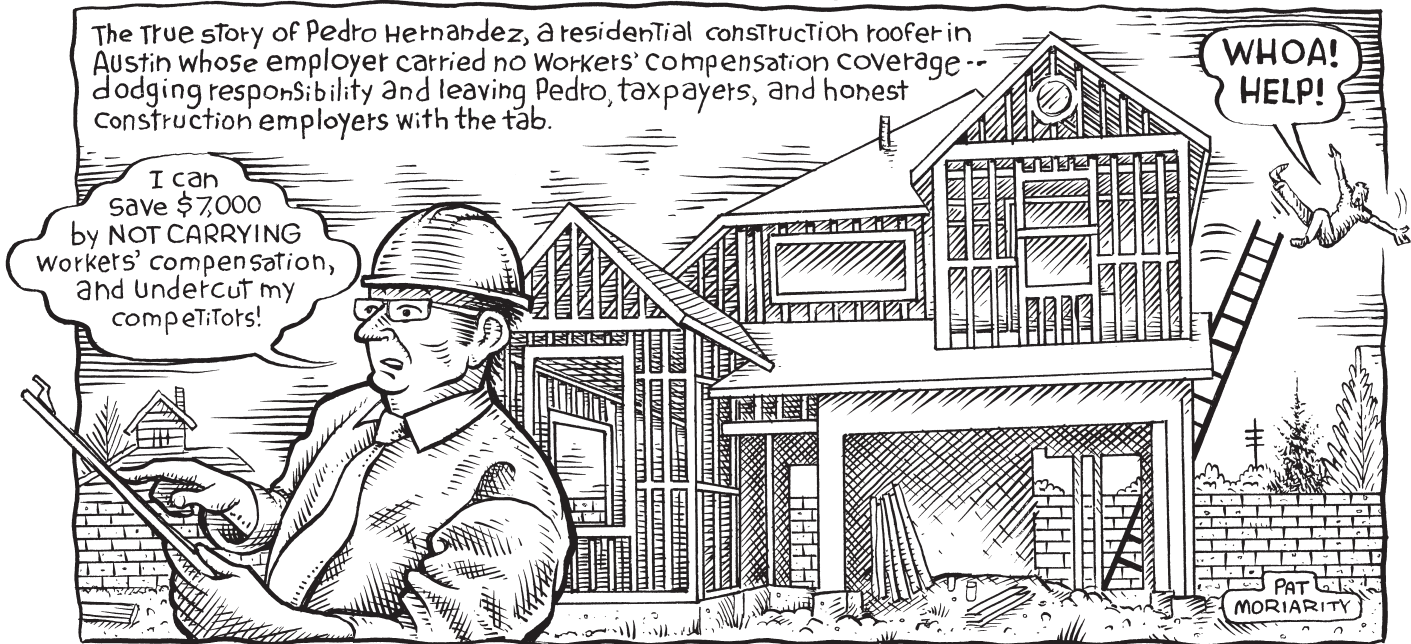


TABLE 20
Uncompensated Care Costs by Industry*, JPS Hospital

Industry	Percent of workforce ⁸⁶	Percent of uncompensated care costs
Construction	6%	18%
Trade, transport, and utilities	20%	12%
Mining and logging	2%	7%
Financial activities	6%	5%
Professional and business services	13%	5%
<small>*Top five industries for uncompensated care costs are shown. Source: John Peter Smith Hospital uncompensated care cost data request.</small>		

Construction Workers Place a Disproportionate Burden on Hospitals

Build a Better Texas researchers collected data from Texas hospitals that suggest that construction injuries generate a disproportionate amount of uncompensated care costs relative to their workforce share.^{xxviii} Construction workers make up less than 6% of the Texas workforce, yet at one Fort Worth hospital, they account for 18% of work-related uncompensated care costs. This is a significantly larger discrepancy than exists in other industries (see table 20).⁸⁴ Furthermore, construction workers accounted for more work-related injuries than any other industry.⁸⁵



According to Farmers Insurance Company, a leading workers' compensation provider in Texas, the average cost of medical care for an injured construction worker is \$10,000 – double the average cost of care for a workplace injury.⁸⁷ Construction injuries require more days away from work on average than injuries in other industries. Furthermore, construction workers are the most likely of workers in any industry to not be able to return to work after an accident, highlighting the long-term healthcare needs they will often face after an injury.⁸⁸

^{xxviii} Researchers believe that trauma registry and billing data on the costs of injured construction workers are underreported because workers frequently don't report that their accidents are work-related because of fear of retaliation from an employer.

Construction workers make up 6% of the Texas workforce, yet they account for 18% of work-related uncompensated care costs.

Hospital bills account for a small portion of the true costs of workplace injuries to the state of Texas. In addition to these direct costs, there are also indirect costs to the economy such as lost productivity of the injured worker, administrative costs associated with the accident, and the cost to social safety nets that support workers and their families. Finally there are quality of life costs for the pain and suffering of injured workers and their families. When construction companies fail to provide health insurance or workers' compensation, they leave Texas hospitals, taxpayers, and responsible employers to pick up the tab. With millions of dollars at stake, Texas needs to do more to protect construction workers and take care of them and their families in the event of workplace injury.

Taxpayers Pick Up the Tab: Santiago Arias

In 2010, Santiago Arias was working on a Houston commercial construction site installing insulation systems. He recalled: "There were no precautions there, nothing. We were working on a roof. There were stones on the ground... there were no harnesses or nothing. It was dangerous work... When I fell, I wasn't so lucky. I fell on top of some iron planks. I landed on my back." Santiago was paralyzed from the neck down.

Santiago's employer didn't have workers' compensation. Without benefits to make up for his lost income, his family was devastated. His daughter, who had been studying to go to college, was forced to drop out of school in order to support the family and help pay for Santiago's medical bills. Santiago's wife had to give up her job in order to stay home and take care of him. Because he doesn't have workers' compensation to pay for rehabilitative services, Santiago has not received the full level of therapy he needs to improve. He found an attorney to take his case, but to date, Santiago and his family have not received compensation from Santiago's employer, a small company with few assets.



Conclusion

Low wages, dangerous conditions, and frequent legal violations like wage theft and payroll fraud have a high cost for Texas. The state loses out on much needed tax revenue; hospitals must draw on already stretched charity resources to cover uninsured workers; and working families are forced to fall back on public charities and government support. Policymakers can take steps to avoid these costs through policies that ensure that construction companies play by the rules and provide wages and benefits that will allow Texas construction workers and their families to achieve economic security. By addressing these poor workplace standards in the construction industry, Texas can build a stronger economy and level the playing field for honest businesses.



Contributing writer: James Galbraith

What's Good for Workers is Good For Texas

What is the relationship of wage standards, workplace benefits and retirement security to economic performance? In the real world, with fixed equipment and complex technologies, higher wage standards mean a steadier, better-trained, more stable workforce, fewer vacancies and higher productivity as well as living standards. Economists call this phenomenon “efficiency wages,” the basic idea is that when a work-force is well- paid it is also more capable, better motivated, and less wary of new technologies. Workplace safety means fewer injuries and, therefore, also leads to higher productivity over time, as better practices are enforced and become standard. And a secure retirement means young people are freer to take economic risks when they have a little money stored up so you get more entrepreneurship. Minimum wages, collective bargaining, health and safety enforcement, and social insurance: these are winning programs not only for workers, but for the country as a whole.

James Galbraith, The University of Texas at Austin and author, Inequality and Instability (Oxford University Press, 2012).

BEST PRACTICE RECOMMENDATIONS



*Together
we can
build
a better
Texas.*



Building a Better Texas

The *Build a Better Texas* report is the most comprehensive study undertaken about construction working conditions in the state. As one of the top ten employers in Texas, the construction industry plays a crucial role in the state's economy. Employers who cut corners on safety and wages to gain an unfair advantage over their competitors pose a threat to the industry's long-term sustainability. Policymakers and industry leaders have not taken steps to reward construction workers for their hard work. Industry leaders and policymakers can improve the long-term prosperity of the construction industry by ensuring workers are paid fairly, have safe worksites, and receive the training they need to fulfill their job duties.

Workers Defense Project has created a series of recommendations for policymakers and best practices for industry leaders to improve working conditions and ensure the economic prosperity in an industry so vital to Texas and the nation.

Policymakers, Investing in Texas Construction Workers

Policymakers at the local, state, and federal level are positioned to ensure safe, fair, and equitable working conditions for construction workers. At each level they can implement policies to improve working conditions, reward good business practices, and enforce the law. Government bodies at the state and local level also have the opportunity to ensure the creation of good jobs in exchange for tax incentives to companies to build in their communities. Policymakers should focus on the following areas to ensure good job creation:

Guarantee Safe Working Conditions. More must be done to address the disproportionately high fatality and injury rate in the Texas construction industry. Government agencies can partner with workers' rights organizations, unions, and responsible businesses to conduct targeted safety sweeps at construction sites to ensure a safe working environment. Furthermore, policymakers should enact policies guaranteeing rest breaks, workers' compensation, basic safety training, and medical care for construction workers.

Ensure Honest Pay for Honest Work. Wage theft, payroll tax fraud, and low wages threaten the construction industry by hurting working families and undercutting honest construction businesses. In addition to strong enforcement of existing wage and hour laws, policymakers can take important steps to reward good business practices. Employers who pay a living wage, provide medical insurance, career advancement, and retirement benefits for their workers should be rewarded for their smart business strategies. Investigative agencies should enforce employment laws governing wages and payroll tax fraud and provide protection from retaliation for workers who report violations.

Create Good Jobs. Most construction jobs are dead-end, and today, few young people see the industry as a desirable place to seek employment. For Texas' long-term economic prosperity policymakers must ensure that these blue-collar jobs are a gateway into the middle class. Policymakers at the local level can encourage training for construction workers on government funded projects and on tax incentive deals with developers, thus, promoting a career track for workers in the industry. Access to training opportunities and good jobs must also be secured for more vulnerable worker populations such as women, individuals with a criminal record, and those without a high school diploma. Additionally, the state of Texas must do more to invest in workforce development and bilingual training programs to ensure a well-trained workforce and avoid a shortage of skilled workers in a sector that is vital to the state's economy.



Make Green Jobs, Good Jobs. As green building becomes an increasingly important sector in the construction industry and local governments push for more green building, it is crucial that policymakers ensure these jobs are good jobs for workers as well. Good jobs pay living wages, provide benefits, and ensure safe working environments. Policymakers must ensure that green jobs are sustainable for the environment, workers, and their families that depend on them.

Pass Immigration Reform. The construction industry is highly dependent on a foreign-born workforce. Immigration reform at the federal level must be enacted to ensure a pathway to citizenship for undocumented workers in the industry. Immigration reform is necessary to protect the rights of *all* workers by ensuring that they are afforded equal protections and are not afraid to step forward when facing dangerous and illegal working conditions. Furthermore, construction companies must be able to hire their workforce legally to ensure that all companies are operating on a level playing field.

Industry Leaders: Ensuring a Sustainable Workforce of the Future

Business leaders in construction have the opportunity to create good construction jobs by ensuring safe and fair working conditions for the workforce. These industry leaders can develop profitable business models that invest in their workforce and local communities, taking corporate responsibility to the next level. Additionally, developers are uniquely positioned to set standards for all contractors and subcontractors on their worksites.

Prioritize Safety. Employers should provide OSHA 10-hour safety training for all employees and provide on-going health and safety training throughout the year. Contractors should also ensure that all workers receive proper safety equipment, rest breaks, and workers' compensation. Workers should also have an anonymous system to address safety concerns with their direct employer, general contract, and developer without fear of retaliation.

Invest in Training. Employers must see training as a necessary investment that helps ensure workers are able to produce a quality finished product, prevent accidents, and provide opportunities to advance in the industry. Construction is skilled work, and employers must ensure their employees have access to training programs that couple classroom instruction with on-the-job training. Additionally, developers can set targets to promote training and reward employers that invest in workforce development. Formal training can play a key role in improving the quality of construction jobs, and set Texas on the track to build a strong economy that benefits builders, workers, and the state.

Subcontract for Quality. Developers and general contractors should take into account working conditions, including safety, breaks, wages, training, and benefits when hiring subcontractors. Rather than simply considering price, developers should give preferential status to bidders that demonstrate a track record in providing fair pay and benefits and a strong safety program. General contractors should ensure safe and dignified working conditions on their sites and address employment violations that arise. For developers, the bottom line must also include the human cost.

APPENDIX A

Proportional Weights Used

A total of 1,194 surveys were completed in Austin, Dallas, El Paso, Houston, and San Antonio. Because each city is a different size and has a different number of construction workers employed there, proportional weights were created to analyze survey data. Surveys in cities with more workers were assigned a greater weight than surveys in cities with fewer workers to account for population differences and ensure equal representation of conditions that may vary by city.

		Austin	Dallas	El Paso	Houston	San Antonio	5 Cities
Total number of workers⁸⁹		66,988	224,674	16,715	270,964	90,224	669,746
% of total, 5 cities		10.0%	33.5%	2.5%	40.5%	13.5%	100.0%
Surveys	Num.	200	325	160	325	184	1,194
	% of total	16.8%	27.2%	13.4%	27.2%	15.4%	100.0%

City	Number of workers, 2010 Census	Proportional weight^{xxxix}	Number of cases	Proportional number of cases^{xxx}
Austin	66,988	0.60	200	120
Dallas	224,674	1.23	325	399.8
El Paso	16,715	0.19	160	30.4
Houston	270,964	1.49	325	484.3
San Antonio	90,224	0.88	184	161.9
Total	669,746	-----	1,194	1196.3 ^{xxxi}

^{xxxix} Proportional weight = (% of total workers)/(% of total surveyed workers)

^{xxx} Weighted number of cases = (Proportional weight)*(Number of cases)

^{xxxi} Difference due to rounding

APPENDIX B: CALCULATIONS

Calculation for Number of Employees and Number of Workers Experiencing Payroll Fraud in the Texas Construction Industry

Data collected from the Bureau of Labor Statistics indicated that there were 444,360 reported vertical construction employees in Texas. ⁹⁰	444,360
<i>Build a Better Texas</i> researchers estimate that at least 41% of construction workers are victims of payroll fraud. These workers will thus not appear on payroll records. The payroll data thus represent 59% of actual construction employees.	$0.59(w) = 444,360$
Let w = the actual number of construction employees in Texas.	$w = 444,360/0.59$
The actual number of construction employees is 753,153.	$w = 753,153$
41% of the total number of employees are estimated to be victims of payroll fraud. Let p = the number of workers whose employers do not properly classify them as employees.	$p = (w)(0.41)$ $= (753,153)(0.41)$
The total number of employees experiencing payroll fraud is 308,793.	$p = 308,793$

Calculation of Lost State Unemployment Insurance Taxes

The first \$9,000 of each employee's income is taxable, and is taxed at a rate of 1.96%. ⁹¹ Let t = the amount of taxes owed per worker by an employer.	$t = (\$9,000)(0.0196)$ $t = \$176.40$
For each worker who is not classified properly by his or her employer, \$176.40 is not put into the unemployment insurance (UI) fund. Let u = the total amount of money lost to the UI fund each year.	$u = (t)(308,793)$ $= (\$176.40)(308,793)$
Each year, payroll fraud in the Texas construction industry shortchanges the UI fund by \$54.5 million.	$u = \\$54,471,085$

Calculation of Unpaid Wages and Lost Sales Tax Revenue

According to <i>Build a Better Texas</i> survey data, 7.6% of construction workers experienced wage theft within the past year.	7.46%
There are an estimated 753,153 employees in the Texas construction industry. Let e = the number of workers who experienced wage theft.	$e = (0.076)(753,153)$ $= 57,240$
The average amount of wage theft for employees who had experienced wage theft during the last year was \$2,051.47. Let q = the total amount of wage theft annually.	$s = (e)(\$2,051.47)$ $= (57,240)(\$2,051.47)$
The total amount of wage theft annually for Texas construction workers laboring in vertical construction is \$117 million.	$q = \\$117,425,380$
The average sales tax rate for the five Texas cities where surveys were conducted is 7.46%. ⁹² Let s = sales tax lost due to wage theft.	$s = (t)(0.0746)$ $= (\$117,425,380)$ (0.0746)
The total amount of lost sales tax annually from Texas construction workers experiencing wage theft is \$8.8 million.	$s = \\$8,759,933$

Calculation of Unreported Wages

<i>Build a Better Texas</i> survey data showed that the mean wage for workers experiencing payroll fraud was found to be \$11.19 per hour.	\$11.19
Annual earnings for a worker earning \$11.19 per hour working full time for one year are estimated to be \$22,827.60. Let a = annual earnings for an average worker.	$a = (\$11.19)(2,040 \text{ hours})$ $= \$22,827.60$
Let r = the total amount of wages that go unreported each year.	$r = (a)(308,793)$ $= (\$22,827.60)(308,793)$
\$7.05 billion of employees' wages go unreported each year in the Texas construction industry.	$r = \\$7,048,089,982.80$

Calculation of Lost Federal Tax Revenue

Annual earnings for a worker earning \$11.19 per hour working full time for one year are estimated to be \$22,827.60. Let a = annual earnings for an average worker.	$a = \$22,827.60$
When a worker is properly classified as an employee, he shares the federal tax burden with his employer. ^{xxxii} The total tax burden is between 15-30% of the worker's income. ⁹³ Let b = total federal taxes owed by an average worker.	$b = (a)(0.15)^{\text{xxxiii}}$ $= (\$22,827.60)(0.15)$
The total amount owed to the federal government (worker share plus employer share) per worker is \$3,424.14.	$b = \$3,424.14$
There are an estimated 308,793 workers experiencing payroll fraud. Let f = the estimated total amount of unpaid federal income taxes.	$f = (b)(308,793)$ $= (\$3,424.14)(308,793)$
Each year, payroll fraud in the Texas construction industry accounts for \$1.06 billion of lost federal income tax revenue.	$f = \\$1,057,350,463.02$

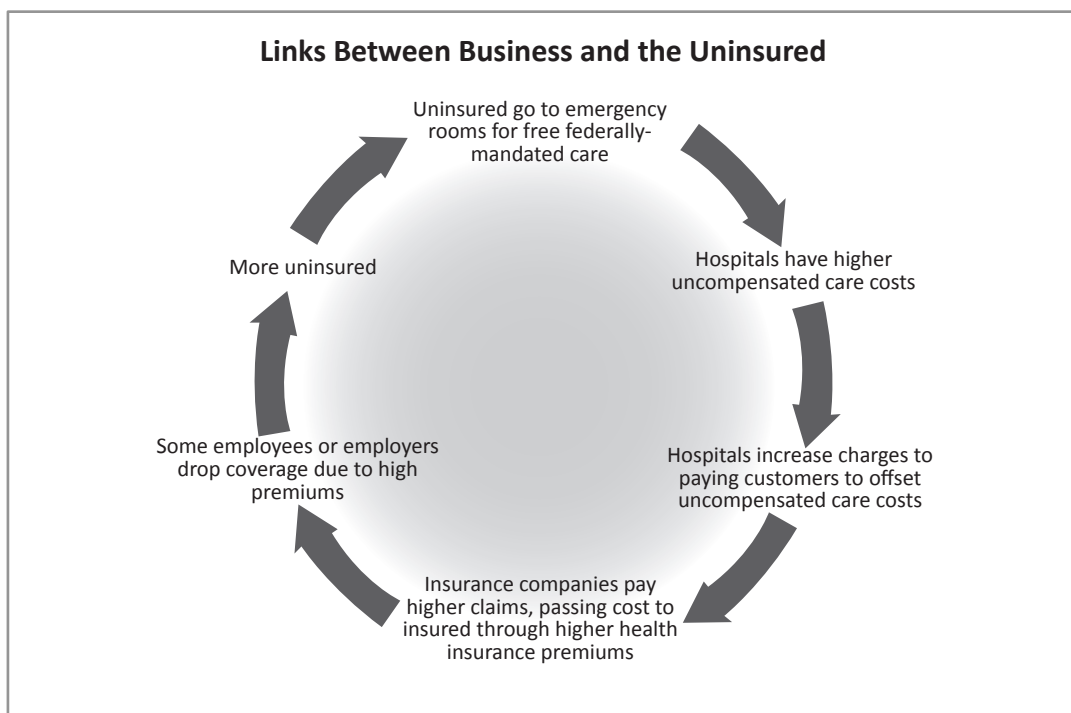
It is possible that many workers would receive a tax return at the end of the year for some or all of their withheld federal income taxes because of low incomes. Even assuming that all workers received their withholdings back, which is unlikely because half of the workforce is undocumented and thus ineligible for filing for a tax return, at least half of the \$1.06 billion – more than \$500 million – would remain in the coffers of the federal government each year.

^{xxxii} The employee pays his taxes by having part of his income withheld and automatically sent to the federal government throughout the year. The employer pays the other half of that employee's taxes through the Federal Insurance Contributions Act (FICA).

^{xxxiii} We assume the lowest level of tax burden of 15% to generate a conservative estimate of tax loss.

Uncompensated Care Costs Hurt Honest Employers

This graphic from the Texas comptroller's office shows how responsible businesses pay for uncompensated care costs. Construction, which contributes a disproportionate share of uncompensated care costs in Texas hospitals, contributes to the cycle that results in increased premiums for business owners.



Source: Texas State Comptroller's office

APPENDIX D

Build a Better Texas Survey Results

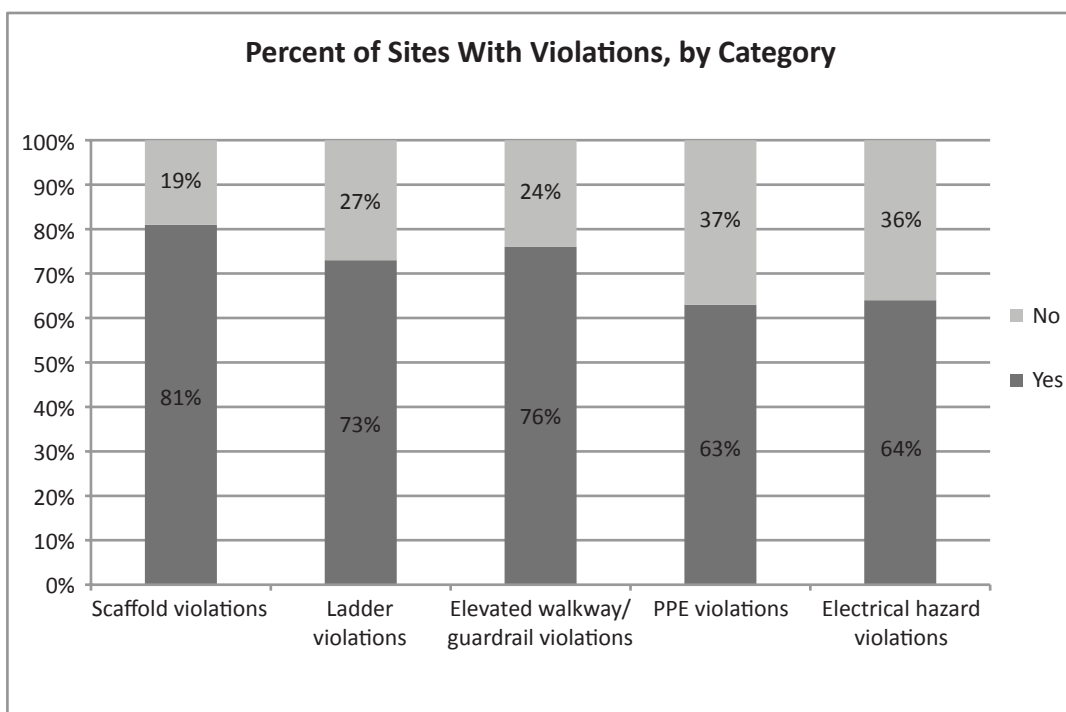
Demographic Profile of Texas' Construction Workers, Build a Better Texas Survey Data		
Survey Respondents for Five Cities*		
Sex	Male	99%
	Female	1%
Age group	20 and younger	4%
	21-30	36%
	31-40	33%
	41-50	18%
	51-60	8%
	61 and older	1%
Race/ethnicity	Non-Hispanic white	12%
	Non-Hispanic black	6%
	Native American	1%
	Asian	0%
	Other	0%
	Hispanic or Latino, any race	81%
Nativity	Native to U.S.	27%
	Foreign born	73%
Educational attainment	None	6%
	Less than high school diploma	52%
	High school degree	33%
	Vocational school/associate's degree	6%
	College degree or higher	3%
Poverty status	Below poverty to poverty level	52%
	Above poverty to twice poverty level	44%
	More than twice the poverty level	4%
*Not all categories total 100% due to rounding errors.		

APPENDIX E

Presentation of Site Observation Data

Build a Better Texas researchers conducted site observations in tandem with worker surveys to gather data on common construction safety violations. Researchers received a hazard recognition training with an OSHA-certified safety trainer. Data was gathered using a 32-item checklist that divided violations into five broader categories: scaffolds, ladders, walkways and guardrails, safety equipment, and electrical hazards.

Only 7% of the worksites that researchers visited were found to be violation-free, and the majority of those were in early stages of construction where fewer violations were possible (i.e., scaffolding or ladders were not yet needed). Researchers most commonly found scaffold violations, present on 81% of worksites where scaffolds were being used. The least common violations were electrical hazards, which were present on 64% of sites where cords, cables, or power sources were visible on worksites (see graph).



Note: Percentages are based on the total of sites where the hazard was visible to researchers.

ENDNOTES

- ¹ 2010 United States Census, 5% sample, United States Census Bureau. Researchers requested data by job category for trades in vertical construction.
- ² “America’s Fastest Growing Cities,” *Forbes.com*, April 2012, accessed October 24, 2012, <http://www.forbes.com/pictures/mlj45hdfd/1-austin-texas/>. Four Texas cities appeared in the top ten: Austin (1), Dallas-Fort Worth (2), Houston (4), and San Antonio (9).
- ³ “Construction Industry Top 10 States by GDP,” *EconPost*, accessed November 10, 2012, <http://econpost.com/industry/construction-industry-top-10-states-gdp>.
- ⁴ 2010 US Census.
- ⁵ “Permits by State – Annual,” US Census Bureau, accessed October 12, 2012, <http://www.census.gov/const/www/permitsindex.html>. Percent changes are computed from unrounded data. Prepared by Economics Department, NAHB.
- ⁶ Occupational Employment Statistics, Bureau of Labor Statistics (BLS).
- ⁷ “Census of Fatal Occupational Injuries – 2010 Fatal Injury Rates,” US Department of Labor, BLS, accessed October 12, 2012, <http://www.bls.gov/iif/oshstate.htm>.
- ⁸ 2010 US Census.
- ⁹ “Gross Domestic Product by State [Texas],” Bureau of Economic Analysis (BEA), June 2012, accessed October 12, 2012, <http://www.bea.gov/>.
- ¹⁰ “Gross Domestic Product by State [Texas],” BEA.
- ¹¹ Federal Reserve Bank of St. Louis (St. Louis Fed), “Texas Population and US Population [indexed to 1/1/1997 = 100],” accessed October 12, 2012, <http://research.stlouisfed.org/>.
- ¹² “Construction Industry Top 10 States by GDP,” *EconPost*.
- ¹³ “Bigger in Texas: State has many of US’ fastest growing cities,” *ABC News*, April 20, 2012, accessed October 15, 2012, http://bottomline.nbcnews.com/_news/2012/04/30/11430472-bigger-in-texas-state-has-many-of-us-fastest-growing-cities?lite.
- ¹⁴ “Permits by State – Annual,” US Census Bureau.
- ¹⁵ “Gross Domestic Product by State [Texas],” BEA.
- ¹⁶ “Construction Industry Top 10 States by GDP,” *EconPost*.
- ¹⁷ According to the US Census, there were 952,875 construction workers in Texas in 2010. The overall size of the Texas workforce is approximately 12.6 million workers, making construction workers 7.6% of, or slightly more than one out of every 13, workers.
- ¹⁸ Nicholas Johnson and Elizabeth McNichol, “The Texas Economic Model: Hard for Other States to Follow and Not All It Seems,” Center on Budget and Policy Priorities, April 2, 2012, accessed September 25, 2012, <http://www.cbpp.org/cms/index.cfm?fa=view&id=3739>.
- ¹⁹ “State and County Wages,” United States Department of Labor, Bureau of Labor Statistics (BLS), accessed October 15, 2012, <http://www.bls.gov/cew/data.htm>.
- ²⁰ “Green Building Facts,” United States Green Building Council (USGBC), 2012, accessed November 10, 2012, <https://www.usgbc.org/ShowFile.aspx?DocumentID=18693>.
- ²¹ “Guiding Principles,” USGBC, August 15, 2006, accessed November 5, 2012, http://communicate.usgbc.org/usgbc/2006/08.15.06_guiding_principles/guidingPrinciples/.
- ²² State of Texas Comptroller of Public Accounts, “Annual Cash Report 2011,” Office of the Comptroller, 6.
- ²³ Sheryl Jean, “Texas employers added 36,600 jobs in October, reflecting the housing rebound,” *Dallas Morning News*, November 16, 2012, accessed November 22, 2012, <http://www.dallasnews.com/business/headlines/20121116-texas-employers-added-36600-jobs-in-october-reflecting-the-housing-rebound.ece>.
- ²⁴ 2005 American Community Survey, 2010 Census, US Census Bureau.
- ²⁵ “Census of Fatal Occupational Injuries – 2010 Fatal Injury Rates,” US Department of Labor, BLS. Fatality rates retrieved for Texas, North Carolina, Florida, Virginia, California, and the US as a whole.
- ²⁶ “Commonly Used Statistics,” US Department of Labor, Occupational Safety and Health Administration (OSHA), accessed October 13, 2012, <http://www.osha.gov/oshstats/commonstats.html>.
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- ²⁹ 2005 American Community Survey (ACS) and 2010 US Census.
- ³⁰ Robert Justich and Betty Ng, “The Underground Labor Force is Rising to the Surface,” Bear Stearns Asset Management, Inc., January 3, 2005. Analysts examined remittances, housing permits, school enrollment data, and cross border flows to develop an estimate of the undocumented population in the United States. Analysts believe the undocumented population to be closer to 20 million people, as compared to the official estimate of approximately 12 million.
- ³¹ 2010 US Census.

- ³² Rick Levy (Legal Director, AFL-CIO) conversation with authors, December 3, 2012.
- ³³ “Minimum Rest Period” and “Minimum Length of Meal Requirements,” US Department of Labor, accessed November 20, 2012, <http://www.dol.gov/whd/state/state.htm#UMIboqVqt94>.
- ³⁴ “Death on the Job: The Toll of Neglect: A National and State-by-State Profile of Worker Safety and Health in the United States,” AFL-CIO, April 2012, 21st ed., 93-94.
- ³⁵ William Canak et. al., “2nd Annual Report to Employee Misclassification Advisory Task Force,” Appendix B: State Legislation and Executive Orders Regarding Misclassification/Payroll Fraud, November 30, 2012, accessed December 6, 2012, http://www.tn.gov/labor-wfd/EMEEF/2012CommitteeReports/2012ResearchandResourceReport_FINAL.pdf. California has a joint enforcement task force to ensure employers are properly paying into unemployment insurance by correctly classifying their employees that is composed of various state agencies. In 2009, the State passed a law stating that employers found without workers’ compensation coverage would be fined \$1,500 per employee.
- ³⁶ Florida Administrative Code, Rule 69L-6.018, stipulates that employers who misclassify employees as independent contractors shall owe penalties of up to \$5,000 per employee.
- ³⁷ Canak, “2nd Annual Report.” In 2012, the State of North Carolina created a task force (EO 125) to study the misclassification problem, determine prevalence and problem industries, educate stakeholders, and share information with law enforcement agencies to refer cases for prosecution.
- ³⁸ Canak, “2nd Annual Report.” In 2011, Virginia passed a joint resolution (SJR 345) to study misclassification of employees as independent contractors. The commission is tasked with reporting on the level of misclassification and its consequences, and recommending strategies to alleviate the problem.
- ³⁹ Canak, “2nd Annual Report.” Task force contains representatives from the labor department, attorney general, taxation and finance, workers’ compensation board, workers’ compensation fraud, and the New York City comptroller. A 2010 law created the requirement that any agency that finds tax violations must inform other agencies. Punishments for violators include civil penalties, criminal penalties, and debarment.
- ⁴⁰ “Census of Fatal Occupational Injuries [2007-2011, fatal injury counts by state],” US Department of Labor, BLS, accessed October 12, 2012, <http://www.bls.gov/iif/oshstate.htm>. Fatality counts retrieved for Texas, North Carolina, Florida, Virginia, California, and the US as a whole for the years 2007-2011.
- ⁴¹ US Department of Labor, BLS.
- ⁴² St. Louis Fed, “Federal Reserve Economic Data, 2003-2010,” accessed November 12, 2012, <http://research.stlouisfed.org/>.
- ⁴³ “Census of Fatal Occupational Injuries [Texas, 2003-2011],” US Department of Labor, BLS, accessed October 12, 2012, <http://www.bls.gov/iif/oshstate.htm>.
- ⁴⁴ “US Department of Labor’s OSHA cites Harrison Hoist following tower crane collapse at UT Dallas that killed 2 workers [Region 6 press release],” US Department of Labor (DOL), Occupational Safety and Health Administration (OSHA), November 20, 2012, accessed December 10, 2012, http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=23289.
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- ⁴⁷ Robert Wilonsky, “Wife and son of construction worker killed in UT-Dallas crane collapse file suit in Dallas County,” The Dallas Morning News [DallasNews.com, The Scoop Blog], October 3, 2012, accessed December 10, 2012, <http://thescoopblog.dallasnews.com/2012/10/wife-and-son-of-construction-worker-killed-in-ut-dallas-crane-collapse-files-suit-in-dallas-county.html/>.
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data collection by individual hospitals on work-related injuries, only JPS was able to provide accurate uncompensated care cost data by industry. Better data collection is needed to develop a complete understanding of the costs associated with work-related injuries.

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A Report from Workers Defense Project

*in collaboration with the Division of Diversity and
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