

# Memorandum



CITY OF DALLAS

DATE August 29, 2014

TO The Honorable Mayor and Members of the City Council

SUBJECT Rest Break Ordinance for Construction Workers

On Monday, June 23, 2014, the Quality of Life & Environment Committee was briefed on Rest Break Ordinance for Construction Workers from the Workers Defense Project. The committee recommended that the briefing be presented to the City Council.

At its meeting on Wednesday, August 20, 2014, the City Council recommended to have this item appear first on the September 3, 2014 Council Briefing agenda.

On Wednesday, September 3, 2014, the City Council will be briefed on Rest Break Ordinance for Construction Workers from the Workers Defense Project.

Please contact me if you have any questions or need additional information.

A handwritten signature in blue ink, appearing to read 'Joey Zapata'.

Joey Zapata  
Assistant City Manager

## Attachment

c: A.C. Gonzalez, City Manager  
Warren M.S. Ernst, City Attorney  
Craig D. Kinton, City Auditor  
Rosa A. Rios, City Secretary  
Daniel F. Solis, Administrative Judge  
Ryan S. Evans, First Assistant City Manager  
Jill A. Jordan, P.E., Assistant City Manager

Forest E. Turner, Assistant City Manager  
Charles M. Cato, Interim Assistant City Manager  
Theresa O'Donnell, Interim Assistant City Manager  
Jeanne Chipperfield, Chief Financial Officer  
Sana Syed, Public Information Officer  
Elsa Cantu, Assistant to the City Manager – Mayor & Council

# Rest Break Ordinance for Construction Workers



*Presented to the Dallas City Council,  
September 3, 2014*



**Workers Defense Project**  
*Proyecto Defensa Laboral*



# Dallas Needs a Rest Break Ordinance

**Table 1: Working Conditions Reported by Dallas Construction Workers<sup>1</sup>**

Receive no rest breaks	33%
Employer doesn't provide drinking water	66%
Witnessed a coworker faint due to heat exhaustion	12%

OSHA recommends that workers laboring in the heat, especially during the summer, be granted frequent rest breaks and that each worker be provided with clean drinking water throughout the workday.<sup>2</sup>

<sup>1</sup> Based on the findings of *Build a Better Texas: Construction Working Conditions in the Lone Star State*, University of Texas Division of Diversity and Community Engagement, January 2013.

<sup>2</sup> "OSHA's Campaign to Prevent Heat Stress in Outdoor Workers," US Department of Labor, OSHA, accessed June 19, 2014, <http://www.osha.gov/SLTC/heatillness/index.html>.

# Dallas Construction Workers Speak

*“I’ve seen people throw up, people fall, fainting because they wouldn’t get a rest break.”* – Modesto Suret

*“Your body feels like it’s suffocating. I felt dizzy, my eyes got blurry. I felt nauseous.”* – Billy Tirado

# Without frequent breaks, heat can be hazardous

- The body's usual cooling mechanisms – blood circulation and sweating – are not effective
- The body cannot get rid of excess heat, leading to increased heart rate and rise in body's core temperature;
- Symptoms of heat-related illness include headaches, nausea, dizziness, fainting or worse.
- **Between 2008 and 2012, at least 18 Texas workers died as the result of a heat-related illness – over 50% of which worked in construction.**<sup>3</sup>

<sup>3</sup> “OSHA’s Campaign to Prevent Heat Stress in Outdoor Workers,” US Department of Labor, OSHA, accessed June 19, 2014, <http://www.osha.gov/SLTC/heatillness/index.html>.

# Without frequent breaks, heat can be hazardous

**Table 2: Reported Heat Related Illness by Type, Dallas County<sup>4</sup>**

Week Ending	6/28	7/5	7/12	7/19	7/26	8/2	8/9	8/16	Total
MMWR Week	26	27	28	29	30	31	32	33	
Heat Cramps	2	1	8	5	14	4	17	3	66
Heat Exhaustion	2	4	9	3	16	2	13	7	83
Heat Stroke	1	0	4	1	5	0	2	2	20
Deaths*	0	0	0	0	0	0	0	0	0
<b>Total Heat-Related Illness Cases</b>	<b>5</b>	<b>5</b>	<b>21</b>	<b>9</b>	<b>35</b>	<b>6</b>	<b>32</b>	<b>12</b>	<b>169</b>

\*Includes only deaths which have been confirmed by Medical Examiner's office as heat-related.

Dallas County Health and Human Services reports 125 cases of heat-related illness since May 4, 2014.

<sup>4</sup> "Heat-Related Illness Surveillance Report: Week 31 ending August 2, 2014," Dallas County Health and Human Services, accessed August 12, 2014, [http://www.dallascounty.org/department/hhs/documents/Heat-relatedIllnessReportWeek318.2.14\\_000.pdf](http://www.dallascounty.org/department/hhs/documents/Heat-relatedIllnessReportWeek318.2.14_000.pdf).

# Lack of Rest Breaks Carries a Social Cost

In 2012 alone, there were 1,625 potentially preventable hospitalizations for dehydration in Dallas County. The estimated average charge per hospitalization exceeded \$20,000.

**Table 3: Potentially Preventable Dehydration Hospitalizations, Dallas County<sup>5</sup>**

<b># of Hospitalizations</b>		<b>2007-2012</b>	
<b>2012</b>	<b>2007-2012</b>	<b>Avg. Hospital Charge</b>	<b>Total Hospital Charges</b>
1,625	7,040	\$20,601	\$145,028,426

<sup>5</sup> "Dallas County: Potentially Preventable Hospitalizations," Texas Department of State Health Services, accessed August 12, 2014, <http://www.dshs.state.tx.us/ph/county.shtm>

# Dallas Workers Have No Right to a Break

- Neither federal law nor Texas law requires employers to provide rest breaks.
- Although OSHA recommends that workers be given short, frequent breaks to prevent heat-related illness, the agency does not require rest breaks.
- However, 8 states and 1 Texas city have passed rest break legislation.

# Basic Elements of a Rest Break Ordinance

- Minimum 10 minutes of rest for every four hours construction work performed.
- Flexibility to accommodate the ebb and flow of work.
- Signage in English and Spanish on all worksites about the ordinance.
- Mechanism for city officials to assess meaningful penalties for violations.
- Clear and concise definition of employees and employers covered by the ordinance.

# Reporting and Enforcement

## Lessons learned:

- Important for there to be a confidential means to report potential violations (3-1-1).
- Makes most sense for the city department that already inspects construction sites to be responsible for enforcement.



**ATTENTION  
CONSTRUCTION WORKERS**

**YOU HAVE THE RIGHT TO A  
REST BREAK IN AUSTIN**

**THE LAW:**  
You have the right to rest 10 minutes for every 4 hours worked. This does not include lunch breaks. Your construction sites must also have signs in Spanish and English that state this right in a conspicuous place.

**NO BREAKS? FILE A COMPLAINT:**

- File a complaint at the Municipal Court found at 700 E. 7th. St.; or go to their website for more information: <http://www.austintexas.gov/departments/filing-citizencomplaint>
- Call 3-1-1 and give the following information: (1) Name of the business, (2) the address of the construction site

**EMPLOYERS:**  
Anyone who continues to violate the requirements of this ordinance after being notified of the offense in writing by the City is subject to a civil penalty of not less than \$100 or more than \$500 for each day the violation occurs.

# Good for workers, good for business.

- Workers who receive frequent rest breaks are more efficient and less likely to experience injury.
- Rest breaks help prevent the costly work-stoppages and project delays that result from workplace accidents.
- Director of Austin's Public Works Department, reports that complying with city's rest break ordinance has not resulted in extra expense for his department.<sup>6</sup>

<sup>6</sup> Conversation with Howard Lazarus, Director of Public Works, City of Austin, July 29, 2014.

# Low cost, common sense solution

- Majority of construction employers already do provide rest breaks to their workforce, this law would have minimal impact on them.
- Benefits responsible businesses by ensuring that all construction employers are held to the same minimum standard.
- Addresses a core public health concern.
- Sends a clear message that all construction workers building this city have the basic right to rest.





# Ensuring Rest Breaks for Dallas Construction Workers

During the summer, the City of Dallas regularly experiences **average temperatures exceeding 100° F**. Workers laboring outside in such conditions are at great risk of injury and illness due to heat exhaustion or heat stroke. Between 2008 and 2012, at least 18 Texas workers died as the result of a heat-related illness, **over 50% of which were construction workers**.<sup>1</sup>

OSHA recommends that workers laboring in the heat, especially during the summer, be granted short, frequent rest breaks and that each worker be provided with clean drinking water throughout the workday.<sup>2</sup> However, neither federal law nor Texas law requires employers to provide rest breaks.

**Many Dallas construction workers currently go without rest breaks or water on the job:**

**33% of Dallas construction workers report receiving no rest breaks during their workday besides lunch;**

**66% of Dallas construction workers report that their employers fail to provide drinking water at their worksite; and**

**12% of Dallas construction workers report that they have witnessed a co-worker faint on the job due to heat exhaustion.**<sup>3</sup>

**A rest break ordinance in Dallas would benefit the city, its construction workers, and local construction employers.** Well-rested workers commit fewer accidents, resulting in fewer injuries and costly work-stoppages.

**Dallas needs a rest break ordinance that includes the following:**

- A minimum 10 minute rest break apart from lunch required for every 4 hours of construction work;
- Required signage on worksites so workers know of their rights under the ordinance and how to report violations;
- A mechanism for workers to report violations confidentially; and
- Meaningful penalties to incentivize compliance.

For more information, contact:  
Juan Cardoza-Oquendo  
[juan@workersdefense.org](mailto:juan@workersdefense.org)  
972-479-5080, x8038

<sup>1</sup>OSHA's Campaign to Prevent Heat Stress in Outdoor Workers: Map of Heat Fatalities," US Department of Labor, OSHA, accessed June 19, 2014, [https://www.osha.gov/SLTC/heatillness/map\\_text.html](https://www.osha.gov/SLTC/heatillness/map_text.html)

<sup>2</sup>OSHA's Campaign to Prevent Heat Stress in Outdoor Workers," US Department of Labor, OSHA, accessed June 19, 2014, <http://www.osha.gov/SLTC/heatillness/index.html>.

<sup>3</sup>Based on the findings of *Build a Better Texas: Construction Working Conditions in the Lone Star State*, University of Texas Division of Diversity and Community Engagement, January 2013.



## Dallas Rest Break Ordinance FAQs

### 1. Why does Dallas need a rest break ordinance for construction workers?

Too many Dallas construction workers are currently not receiving rest breaks on the job. Rest breaks are necessary to prevent heat-related illness, injuries, and accidents. For this reason, OSHA recommends that workers laboring in the heat be given short, frequent breaks throughout the workday to rest, cool off, and drink water. A study published by the University of Texas-Austin in 2013, however, found that only 33% of Dallas construction workers reported receiving rest breaks apart from lunch.<sup>1</sup> We need to put a law in place in order to guarantee this basic protection for workers.

### 2. What would a rest break ordinance require?

The ordinance would require that construction workers received a minimum rest break apart from lunch during their workday. It would also require employers to post signs at the worksite informing workers of their right to a break and letting workers know how they can anonymously report violations of the ordinance to city officials. It's up to City Council to determine the local solution that makes the most sense for Dallas, but most rest break legislation guarantees workers a minimum break of 10 minutes, apart from lunch, for every four hours of work.

### 3. Aren't rest breaks already guaranteed under federal or state law?

Dallas construction workers currently have no legal right to a rest break under either federal or state law. Although OSHA recommends that workers be given sufficient breaks to rest and drink water, OSHA regulations do not require that employers actually provide these breaks. If our city officials agree that the workers building our city deserve a guaranteed rest break, they have the full authority to give construction workers that right.

### 4. Why don't construction workers get rest breaks?

There are many model construction companies in Dallas who invest in their workforce, prioritize workplace safety, and already provide rest breaks to their employees. Too many contractors, however, choose to cut corners on safety when

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<sup>1</sup>Based on the findings of *Build a Better Texas: Construction Working Conditions in the Lone Star State*, University of Texas Division of Diversity and Community Engagement, January 2013.



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they are running up against a deadline. If a contractor is behind on a project, they should not be allowed to endanger workers' safety by forcing their employees to work without a break. A rest break ordinance would create a minimum standard for everyone, so that high-road employers who want to do right by their employees aren't placed at a disadvantage.

### **5. Won't this ordinance cost the city a lot of money to implement?**

City inspectors already visit construction sites regularly to ensure that construction companies comply with city permitting and code requirements. This ordinance would simply require those inspectors to check for one more sign and ask workers and the superintendent one additional question about whether rest breaks are being provided during their routine worksite visits.

### **6. Will requiring rest breaks be bad for business?**

A rest break ordinance supports the many responsible construction businesses that already provide rest breaks to their employees by making sure that all businesses are held to that same minimum standard. Moreover, workplace accidents and injuries cause costly work stoppages and delay projects. Well-rested workers commit fewer accidents, are less likely to be injured on the job, and are actually more productive. Projects are more likely to be completed on time when workers are given short, frequent breaks to rest.

### **7. Doesn't this issue only impact undocumented workers who don't know their rights?**

Currently, no construction workers in Dallas have the right to a rest break, so this problem has nothing to do with whether someone knows his or her rights. In addition, when contractors deny their workers rest breaks, they are most likely to deny rest breaks to their entire crew - documented and undocumented workers alike.

### **8. Won't this ordinance disrupt the completion of time-sensitive construction tasks, like pouring concrete?**

A rest break ordinance can be crafted to allow employers the discretion to determine when to grant their workers a rest break, so as to not interfere with the ebb and flow of work. The City of Austin ordinance, for example, requires that the rest break be provided any time within the first 3.5 hours of work. The



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ordinance does not require all workers on the site to take their break at the same time, so contractors can use tag-in/tag-out procedures during time-sensitive tasks like pouring concrete. Many contractors already use these procedures to accommodate workers' needs to use the restroom.

### **9. Why does the ordinance only impact construction workers and not other workers who work outdoors (lifeguards, landscapers, electrical/telecom installers, etc?)**

Sound policy comes from sound statistical data. Between 2008 and 2012, at least 18 Texas workers died as a result of a heat-related illness, over 50% of which were construction workers.<sup>2</sup> The 2013 study published by UT-Austin found that 33% of surveyed Dallas construction workers reported not receiving rest breaks.<sup>3</sup> We have reliable data showing that this issue impacts local construction workers, so we need to act to protect local construction workers.

### **10. Will this ordinance really have an impact?**

The UT-Austin conducted a study of Austin construction workers in 2009 and found that 41% of surveyed workers reported not receiving rest breaks.<sup>4</sup> When UT conducted a different survey in 2012, two years after the Austin rest break ordinance passed, researchers found that 21% of Austin workers reported not receiving rest breaks.<sup>5</sup> It is impossible for researchers to determine the full impact of policy measures like a rest break ordinance. That being said, passing such a law certainly sets a minimum standard, sending the message to workers and employers that providing rest breaks is both necessary and expected.

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<sup>2</sup> "OSHA's Campaign to Prevent Heat Stress in Outdoor Workers: Map of Heat Fatalities," U.S. Department of Labor, OSHA, accessed June 19, 2014, [https://www.osha.gov/SLTC/heatillness/map\\_text.html](https://www.osha.gov/SLTC/heatillness/map_text.html).

<sup>3</sup> Based on the findings of *Build a Better Texas: Construction Working Conditions in the Lone Star State*, University of Texas Division of Diversity and Community Engagement, January 2013.

<sup>4</sup> *Building Austin Building Injustice: Working Conditions in Austin's Construction Industry*, University of Texas Division of Diversity and Community Engagement, June 2009.

<sup>5</sup> Based on the findings of *Build a Better Texas: Construction Working Conditions in the Lone Star State*, University of Texas Division of Diversity and Community Engagement, January 2013.



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## How Dallas Measures Up<sup>1</sup>

**Texas construction is a deadly and dangerous industry. More construction workers are killed on the job in Texas than in any other state.<sup>i</sup> Between 2007 and 2011, 585 construction workers died in Texas, compared to 299 in California, which had a larger construction population.<sup>ii</sup> Between 2003 and 2010, construction accounted for an average of 6% of the Texas workforce,<sup>iii</sup> but 26% of total workplace fatalities.<sup>iv</sup> In other words, a Texas construction worker is 4.5 times more likely to be killed on the job than the average Texas worker.**

**Workplace abuses faced by construction workers are often even more widespread in Dallas than they are in other Texas cities.**

### Heat Safety: Rest Breaks and Water

OSHA recommends that workers laboring in the heat, especially during the summer, be granted frequent rest breaks and that each worker be provided with clean drinking water throughout the workday.<sup>v</sup> **Although federal law requires employers to provide their workers drinking water, 66% of Dallas respondents said that their employers failed to do so.** Many workers were expected to bring their own water or go without. **Thirty-three percent of Dallas workers surveyed reported receiving no rest breaks during their workdays besides lunch.**

Table 1: Working Conditions Reported by Dallas Construction Workers

Receive no rest breaks	33%
Employer doesn't provide drinking water	66%
Witnessed a coworker faint due to heat exhaustion	12%

### Lack of Safety Training

A lack of safety knowledge further compounds safety conditions on construction sites. **An astounding 66% of surveyed Dallas 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 17% of workers reported receiving first aid and CPR training.

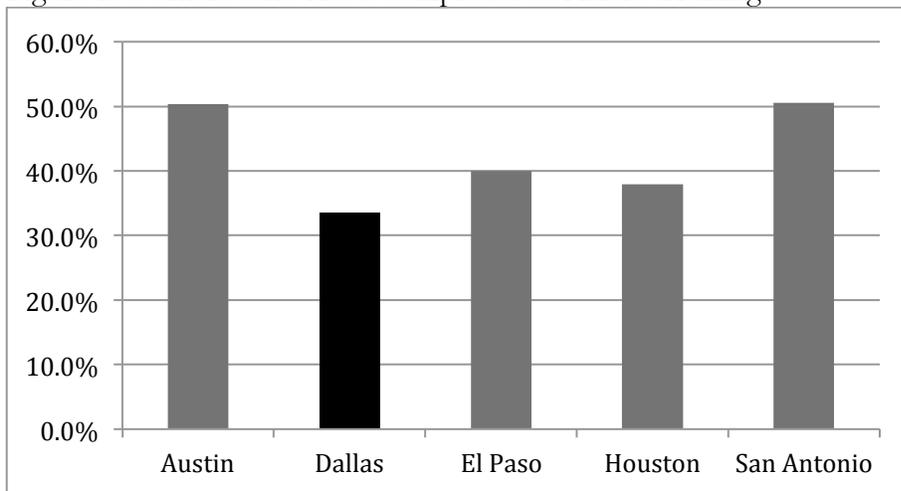
Table 2: Dallas Workers Lack Knowledge of Basic Worksite Safety

Workers lacking OSHA 10-hour safety training	66%
Workers lacking CPR/first aid training	83%

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<sup>1</sup> *How Dallas Measures Up* is based on the findings of *Build a Better Texas: Construction Working Conditions in the Lone Star State*, University of Texas Division of Diversity and Community Engagement, January 2013. *Build a Better Texas* presented 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 report examined data collected from primary and secondary sources, including surveys with 1,194 construction workers in Austin, Dallas, Houston, and San Antonio, 35 interviews with construction workers, construction employers, contractors, and developers, and data from state and federal government agencies. Findings focused on conditions in the vertical construction industry (the construction of buildings). All data presented is from the *Build a Better Texas* data set unless otherwise noted.

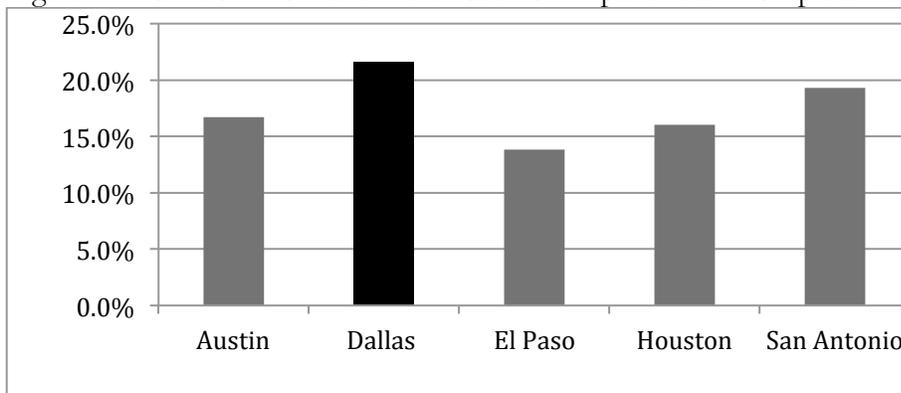
Figure 1: Workers Who Have Completed OSHA-10 Training



### Retaliation

For many workers, reporting worksite hazards or even being injured can lead to retaliation. **Sixty-four percent of Dallas workers reported seeing unsafe conditions on their worksites**, such as poorly constructed scaffolds, unstable ladders, and workers using tools or machinery improperly. Of the workers surveyed, more than three-quarters did not report the hazard, frequently citing fear of retaliation as their reason.

Figure 2: Workers Who Have Either Seen or Experienced Workplace Retaliation



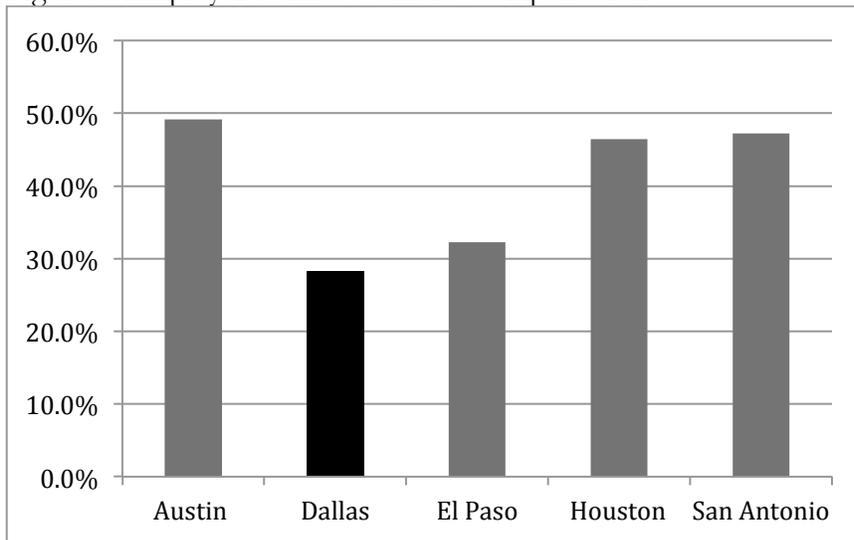
It is up to construction employers to create a culture of safety on their worksites. For dangerous working conditions to be corrected, workers must not only be trained to recognize worksite hazards, but also be confident that they can report unsafe conditions without retaliation. **When employers cut corners with safety, do not 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.**

### Few Employers Provide Workers' Compensation or Medical Insurance

Despite the high incidence of work-related injuries in construction, Texas law allows employers to choose not to carry workers' compensation coverage, even in a dangerous industry like construction.

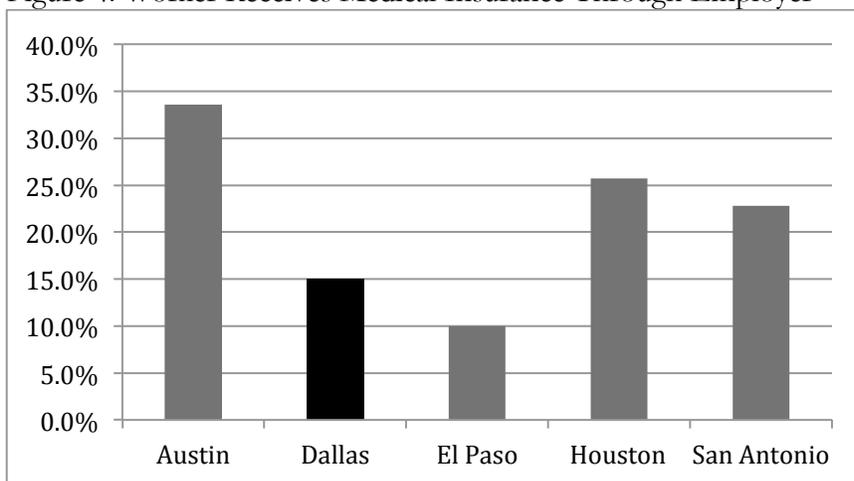
While **nearly one in five Dallas workers has suffered a workplace injury requiring medical attention, only 28% of surveyed workers reported that their employer provided workers' compensation insurance or an alternate plan.** Furthermore, although employers are required by law to inform employees if they do not carry workers' compensation, 97% of survey respondents indicated that their employers failed to do so.<sup>vi</sup>

Figure 3: Employer Carries Workers' Compensation



Employers are even less likely to provide health insurance to Dallas construction workers than they are workers' compensation. **Only 15% of surveyed Dallas workers reported that they are covered by employer-based medical insurance.**

Figure 4: Worker Receives Medical Insurance Through Employer



When employers fail to provide health insurance or workers compensation for their employees, workers or hospitals are left to pay for expensive medical costs of work-related injuries. Prohibitive out-of-pocket medical expenses force workers to make difficult choices surrounding the health and security of their families. Many surveyed workers indicated that they did not seek needed medical

attention following a workplace injury because they were worried about cost, and many are still experiencing health problems as a result.

### **Access to Resources**

State and federal agencies play a critical role in enforcing protections for workers. However, the majority of Dallas workers surveyed indicated that they were not familiar with either the U.S. Department of Labor (DOL) or the Texas Workforce Commission (TWC), the two entities charged with investigating and enforcing labor law violations. 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 3: Dallas Workers' Knowledge of Worker Protection Agencies

Has not heard of Occupational Safety and Health Administration (OSHA)	37%
Has not heard of Department of Labor (DOL)	73%
Has not heard of Workers' Compensation Division (WCD) or Texas Department of Insurance (TDI)	76%
Has not heard of Texas Workforce Commission (TWC)	68%

Workers were more likely to be familiar with OSHA than other agencies, but rarely reported violations to any 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.

Table 4: Worker Has Heard of Worker Protection Agencies

	<i>OSHA</i>	<i>DOL</i>	<i>TDI/WCD</i>	<i>TWC</i>
<i>Austin</i>	90.8%	26.5%	27.5%	36.7%
<i>Dallas</i>	62.7%	26.5%	24.2%	32.2%
<i>El Paso</i>	86.7%	38.7%	26.7%	45.2%
<i>Houston</i>	85.5%	40.6%	30.8%	25.8%
<i>San Antonio</i>	78.5%	47.8%	40.1%	50.0%

***Build a Better Texas* researchers found numerous health and safety violations on nearly every Dallas construction site they visited.** <sup>vii</sup> Many construction sites never see inspectors, and the unsafe conditions found by researchers remain the norm on worksites throughout the city.

<sup>i</sup> "Census of Fatal Occupational Injuries [2007-2011, fatal injury counts by state]," US Department of Labor, BLS, accessed October 12, 2012,

<sup>ii</sup> US Department of Labor, BLS.

<sup>iii</sup> St. Louis Fed, "Federal Reserve Economic Data, 2003-2010," accessed November 12, 2012, <http://research.stlouisfed.org/>.

<sup>iv</sup> "Census of Fatal Occupational Injuries [Texas, 2003-2011]," US Department of Labor, BLS, accessed October 12, 2012,

<http://www.bls.gov/iif/oshstate.htm>.

<sup>v</sup> "OSHA's Campaign to Prevent Heat Stress in Outdoor Workers: Map of Heat Fatalities," US Department of Labor, OSHA, accessed October 15, 2012, <http://www.osha.gov/SLTC/heatillness/index.html>.

<sup>vi</sup> Texas Administrative Title Code, Title 28: Insurance, chapter 110.1 and 110.101.

<sup>vii</sup> See Appendix E of *Build a Better Texas* for safety violation data.

# Dallas County Health and Human Services Heat-Related Illness Surveillance Report

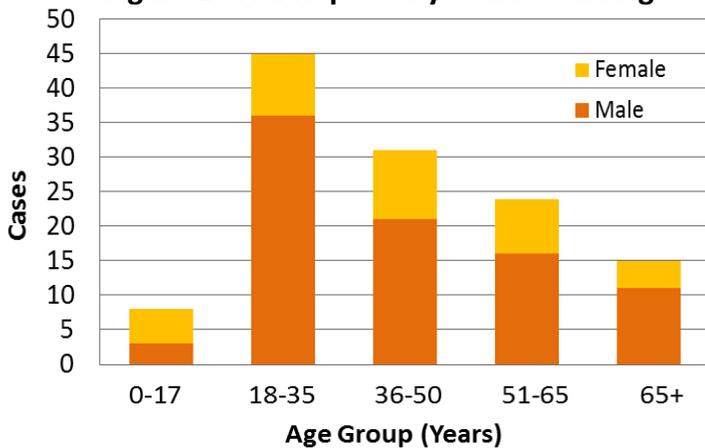


Week 31 ending August 2, 2014

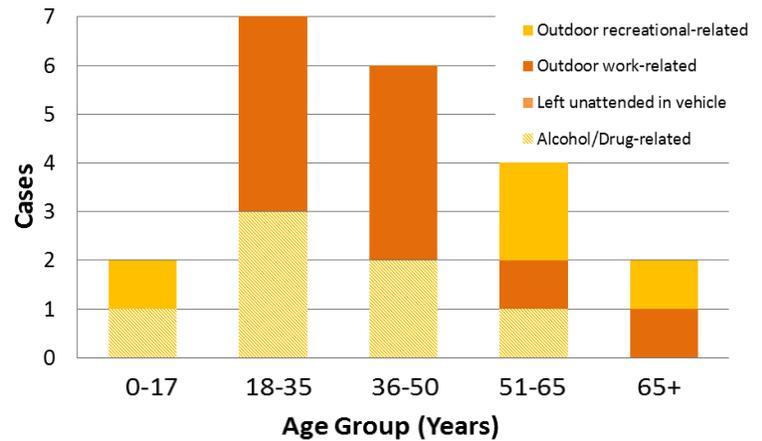
**Figure 1. Reported Heat-Related Illness (HRI) by Type**

Week Ending	6/14	6/21	6/28	7/5	7/12	7/19	7/26	8/2	Total
MMWR Week	24	25	26	27	28	29	30	31	
Heat Cramps	0	5	2	1	8	5	14	4	38
Heat Exhaustion	2	15	2	4	9	3	16	2	58
Heat Stroke	1	2	1	0	4	1	5	0	16
Deaths*	0	0	0	0	0	0	0	0	0
<b>Total Heat-Related Illness Cases</b>	<b>3</b>	<b>22</b>	<b>5</b>	<b>5</b>	<b>21</b>	<b>9</b>	<b>35</b>	<b>6</b>	<b>125</b>

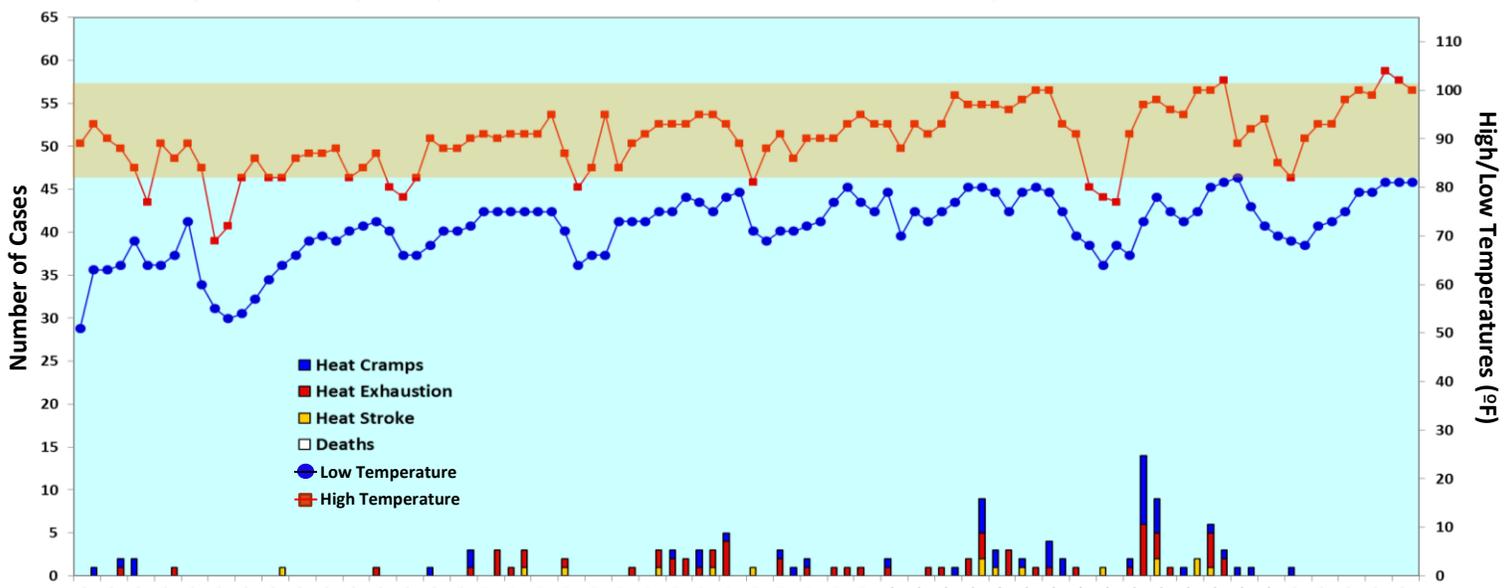
**Figure 2. HRI Reports by Gender and Age**



**Figure 3. HRI Reports by Contributing Factors**



**Figure 4. Daily Temperatures versus Heat-Related Illness Reports in Dallas, 2014**



Peak temperatures forecasted for this weekend are in the upper 90s°F with overnight lows predicted to be in the upper 70s°F.

Data obtained from hospitals participating in the Electronic Surveillance System for the Early Notification of Community-based Epidemics (ESSENCE) from May 4, 2014 through the present. Depicted are the numbers of patients presenting to Emergency Departments in Dallas County hospitals with heat-related chief complaints. Data also obtained from reports received from Dallas County Medical Examiner's Office.

**RESOLUTION NO. 20100624-087**

**WHEREAS**, the City Council of the City of Austin passed a resolution in October 2009 related to construction worker safety that began a series of efforts to improve construction site safety; and

**WHEREAS**, rest breaks and provision of drinking water for construction workers are necessary for the health and safety of workers; and

**WHEREAS**, federal regulations under the Occupational Safety and Health Act include a requirement that drinking water be provided to workers on construction sites; and

**WHEREAS**, the Occupational Safety and Health Administration currently enforces laws related to construction site safety, including the provision of drinking water; **NOW, THEREFORE**,

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

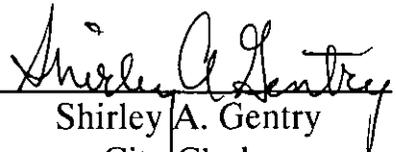
The City Manager is directed to work with the City's Legal Department to develop an ordinance requiring (1) rest breaks at regular intervals for construction workers at construction sites within the City, and (2) provision of drinking water for construction workers at construction sites within the City, provided the City has the legal authority to require it.

**BE IT FURTHER RESOLVED:**

The City Manager is hereby directed to place the ordinance on the City Council agenda for July 29, 2010, with the provision that it should be immediately effective upon passage.

**ADOPTED:** June 24,, 2010

**ATTEST:**

  
Shirley A. Gentry  
City Clerk

**ORDINANCE NO. 20100729-047**

**AN ORDINANCE AMENDING TITLE 4 OF THE CITY CODE TO ADD A NEW CHAPTER 4-5 RELATING TO WORKING CONDITIONS AT CONSTRUCTION SITES; CREATING AN OFFENSE AND IMPOSING A MAXIMUM PENALTY OF \$500 FOR EACH OFFENSE; AND DECLARING AN EMERGENCY.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1.** Title 4 (*Business Regulation and Permit Requirements*) of the City Code is amended to add a new Chapter 4-5 to read:

**CHAPTER 4-5. WORKING CONDITIONS AT CONSTRUCTION SITES.**

**§ 4-5-1 DEFINITIONS.**

- (1) **CONSTRUCTION SITE** means a site or structure for which a building permit or site plan has been issued under Title 25 (*Land Development Code*) for an existing or proposed use.
- (2) **CONSTRUCTION ACTIVITY** means all work associated with construction, including but not limited to work involving the alteration, demolition, building, excavation, maintenance, and renovation of structures or sites.
- (3) **DEPARTMENT** means the department designated by the city manager.
- (4) **EMPLOYEE** means any person employed by the employer.
- (5) **EMPLOYER** means an individual, partnership, association, corporation, business trust, or any person or group of persons who directly or indirectly, through an agent, or any other person or employee, exercises control over the wages, hours or working conditions of any person.
- (6) **ESTABLISHMENT** means a single physical location to which employees report each day.
- (7) **HOURS WORKED** means the time during which an employee is subject to the control of an employer and includes all the time the employee is required or permitted to work, whether or not required to do so.
- (8) **REST BREAK** means a break from work within working hours, during which an employee may not work. The term excludes any regular meal period provided by the employer.

**§ 4-5-2 REST BREAK REQUIRED.**

- (A) Except as provided in Subsection (B), an employee performing construction activity at a construction site is entitled to a rest break of not less than ten (10) minutes for every four (4) hours worked. No employee may be required to work more than 3.5 hours without a rest break.
- (B) An employee is not entitled to rest breaks under Subsection (A) of this section on any day that the employee works less than 3.5 hours or spends more than half of his or her work time engaged in non-strenuous labor in a climate-controlled environment.
- (C) An employer shall provide rest breaks in accordance with the requirements of this section. A rest break shall be scheduled as near as possible to the midpoint of the work period.

**§ 4-5-3 SIGNAGE REQUIRED.**

- (A) A sign describing the requirements of Section 4-5-2 (*Rest Break Required*) in English and Spanish shall be posted by the employer in each establishment subject to Section 4-5-2 in a conspicuous place or places where notices to employees are customarily posted.
- (B) The department shall prescribe by rule the size, content, and location of signs required under Subsection (A) of this section.

**§ 4-5-4 CRIMINAL PENALTY.**

- (A) A person commits a Class C misdemeanor if the person:
  - (1) fails to provide a rest break as required under Section 4-5-2 (*Rest Break Required*); or
  - (2) fails to post signage required under Section 4-5-3 (*Signage Requirements*).
- (B) Proof of a culpable mental state is not required to prove an offense under this chapter.
- (C) Each day that a violation occurs or continues is a separate offense.

**§ 4-5-5 CIVIL REMEDIES.**

- (A) The city council has determined that this chapter is necessary to protect health, life, and property and to preserve the good government, order, and security of the City and its inhabitants.



# ATTENTION CONSTRUCTION WORKERS



## YOU HAVE THE RIGHT TO A REST BREAK IN AUSTIN

### ***THE LAW:***

You have the right to rest 10 minutes for every 4 hours worked. This does not include lunch breaks.

Your construction sites must also have signs in Spanish and English that state this right in a conspicuous place.

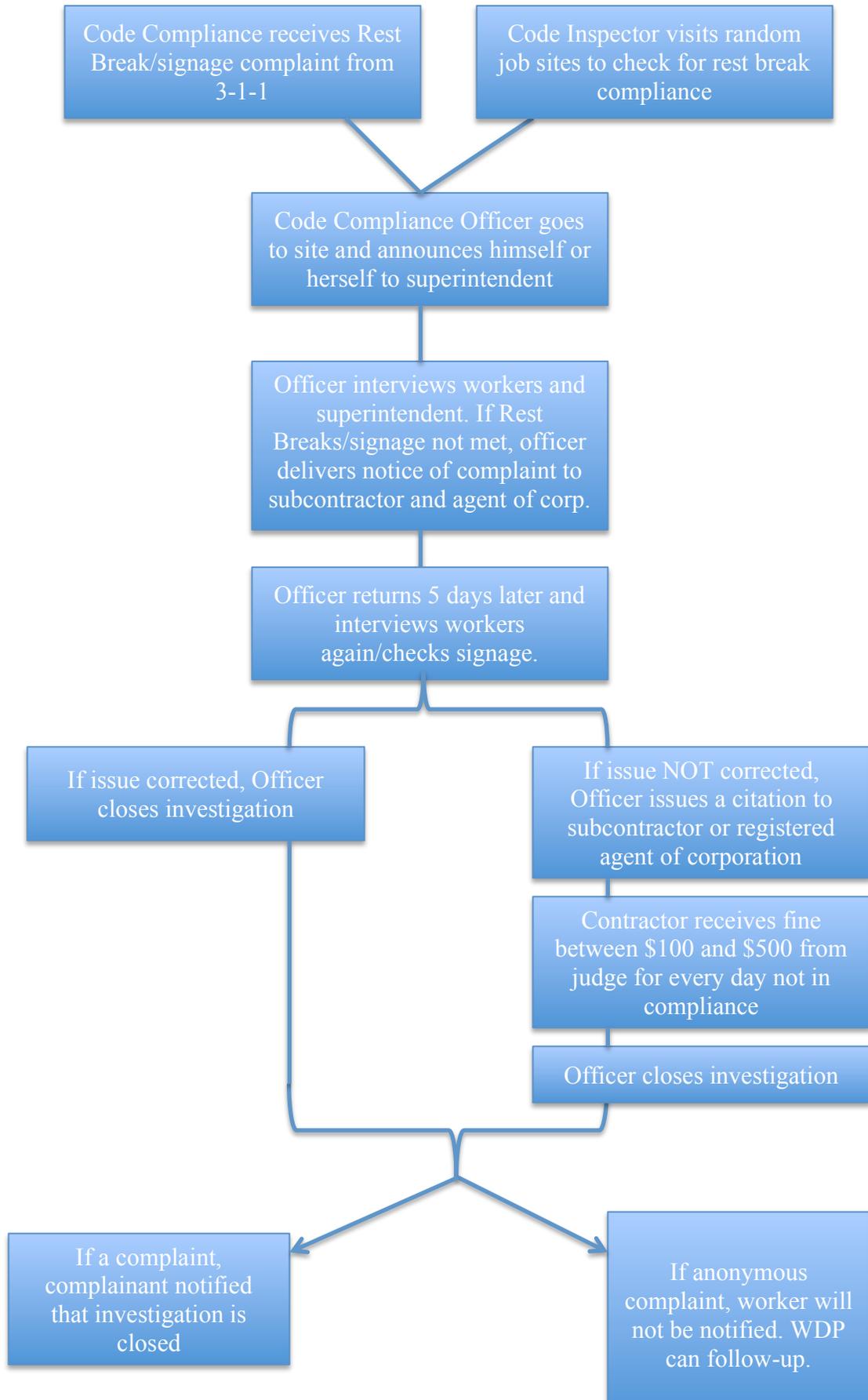
### ***NO BREAKS? FILE A COMPLAINT:***

- File a complaint at the Municipal Court found at 700 E. 7th. St.; or go to their website for more information: <http://www.austintexas.gov/department/filing-citizencomplaint>
- Call 3-1-1 and give the following information: (1) Name of the business, (2) the address of the construction site

### ***EMPLOYERS:***

Anyone who continues to violate the requirements of this ordinance after being notified of the offense in writing by the City is subject to a civil penalty of not less than \$100 or more than \$500 for each day the violation occurs.

# Austin Code Compliance Rest Break Investigation Protocol



## RESEARCH BRIEF:

### *The impact of rest breaks on worker health, safety, and productivity*

This brief summarizes significant research on impact of rest breaks on worker health, safety, and productivity covering a range of industries and occupations that carry different physical and mental strains for workers. The studies examined in this brief employ a variety of methodologies, including analysis of injury records, interviews with injured workers, empirical studies, and statistical analysis. Though they differed greatly in their methodology, researchers consistently found that rest breaks are key to counteracting the effects of continuous exertion during the workday, especially in tasks that involve significant manual labor.

### EFFECTS ON WORKER HEALTH AND SAFETY

- One study examining the trends in risk at a large manufacturing plant found that “an accident was more than twice as likely to occur” after two hours of continuous work (Tucker, 2003). The same study found that “risk immediately following a break was reduced to a level close to that observed at the start of the preceding period of work.”
- A study investigating the relationship between rest breaks and time to injury using a nationally representative sample of injured workers from US emergency room departments found that “Workers without rest breaks worked a median 3.0 hours before the injury... whereas workers with longer total rest break time were able to work significantly longer into their workday without an injury (Wirtz, 2011).” This study shows is that workers face an increasing risk of injury throughout the workday, but they are likely to be injured much earlier in the day if they do not receive rest breaks. The study concluded that “accumulated work-related fatigue can be at least partially reversed by rest breaks.”
- Lilley et al., in a study of forestry workers’ self-reported fatigue and its relationship to workplace accidents, found there to be a significant association between “self-reported near-misses [near-accidents on the job] in the previous 12 months and the level of fatigue experienced at work (2002).” Further, the study confirmed “that reporting of fatigue was significantly associated with... the number of breaks [workers received during their shifts].” Lilley’s study concluded that “impairment due to increased fatigue may constitute a significant risk factor for accidents and injuries.”
- According to Lilley et al., “Although workers appear to be aware of fatigue, they apparently underestimate its potential impact on their safety (Lilley, 2002).” While data from the study demonstrated a strong relationship between fatigue and accident occurrence, respondents [forestry workers] rarely “reported that they believed fatigue played a role in more serious adverse outcomes.” These results indicate that workers should be granted regularly scheduled rest breaks, as they may be unaware of the effect fatigue is having on their ability to remain safe while working.



## EFFECTS ON PRODUCTIVITY

- A study comparing workers in a processing plant receiving additional rest breaks and those using the plant's usual rest break schedule found that "production improved significantly (25-30%)" later in the work shift over workers who had received fewer rest breaks (Dababneh, 2001). The study went on to explain that "workers will tolerate certain levels of fatigue and will protect their output from declining by investing more resources and working harder. This behavior will hold until fatigue reaches a level at which workers cannot work any harder; then their output will drop significantly."
- Another study, analyzing the impact of rest breaks on workers' fatigue, discomfort, and productivity using provision of regular rest breaks as an intervention, found that symptoms of fatigue and discomfort were lessened for workers receiving rest breaks, while similar levels of productivity were maintained between the two groups (Faucett, 2005).
- Wen Yi and Albert P. Chan used biometric data from nearly three hundred construction workers to calculate the average heat tolerance time for construction workers (2013). Using this index, the researchers calculated that, to remain safely within their heat tolerance limits and maximize productivity, construction workers should receive a 15-minute break roughly every two hours.

## CITATIONS

Dababneh, Awwad J. et al, "Impact of added rest breaks on the productivity and well being of workers," *Ergonomics [journal]*, 44 no. 2 (2001) 164-174.

Faucett, Julia, et al, "Rest break interventions in stoop labor tasks," *Applied Ergonomics [journal]*, 38, (2007) 219-226.

Lilley, Rebecca, et al, "A survey of forest workers in New Zealand: Do hours of work, rest, and recovery play a role in accidents and injury?" *Journal of Safety Research*, 33 (2002) 53-71, accepted 1 August 2001.

Tucker, Philip, "The impact of rest breaks upon accident risk, fatigue and performance: a review," *Work and Stress [journal]*, vol. 17 (April-June 2003) 123-137.

Wirtz, Anna, et al, "The effect of rest breaks on time to injury - a study on work-related ladder-fall injuries in the United States," *Scandinavian Journal of Work, Environment & Health*, vol. 32 (2006) 75-84; vol. 37 (2011) 173-185.

Yi, Wen and Albert Chan, "Optimizing work-rest schedule for construction rebar workers in hot and humid environment," *Building and Environment [journal]*, 61 (2013) 104-113.



## Sample Rest Break Legislation

State/City	Rest Break Law	Enforcing Agency
<b>California</b>	In addition to a lunch break, employees receive a paid 10-minute rest period for each 4 hours worked. Workers have a right to penalty pay of 1-2 hours' pay each day that they do not get their breaks	California Division of Labor Standards Enforcement
<b>Colorado</b>	In addition to a lunch break, employees receive a paid 10-minute rest period for each 4-hour work period.	Colorado Department of Labor and Employment
<b>Kentucky</b>	In addition to a lunch break, employees receive a paid 10-minute rest period for each 4-hour work period. Law also provides for a private right of action.	Kentucky Department of Labor Division of Employment Standards
<b>Nevada</b>	In addition to a lunch break, employees receive a paid 10-minute rest period for each 4 hours worked.	Nevada Office of the Labor Commissioner
<b>Oregon</b>	In addition to a lunch break, employees receive a paid 10-minute rest period for every 4-hours worked. Rest break must be uninterrupted	Oregon Bureau of Labor and Industries
<b>Washington</b>	In addition to a lunch break, employees receive a paid 10-minute rest period for each 4-hour work period. Workers can take several mini-breaks (totaling 10 minutes) during 4 hours of work instead of one ten-minute rest break.	Washington State Department of Labor and Industries, Employment Standards Office
<b>Austin, Texas</b>	Employees performing construction activity at a construction site are entitled to a rest break of not less than 10 minutes for every four hours worked.	Code Compliance Department