

# A Conversation With OSHA

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**Larry Johnson – Columbus Area Office**

**Gaye Johnson – Cincinnati Area Office**

**Howie Eberts - Cleveland Area Office**

# Secretary of Labor



Marty Walsh

# Principle Deputy Assistant Secretary of Labor - OSHA



James (Jim) Frederick

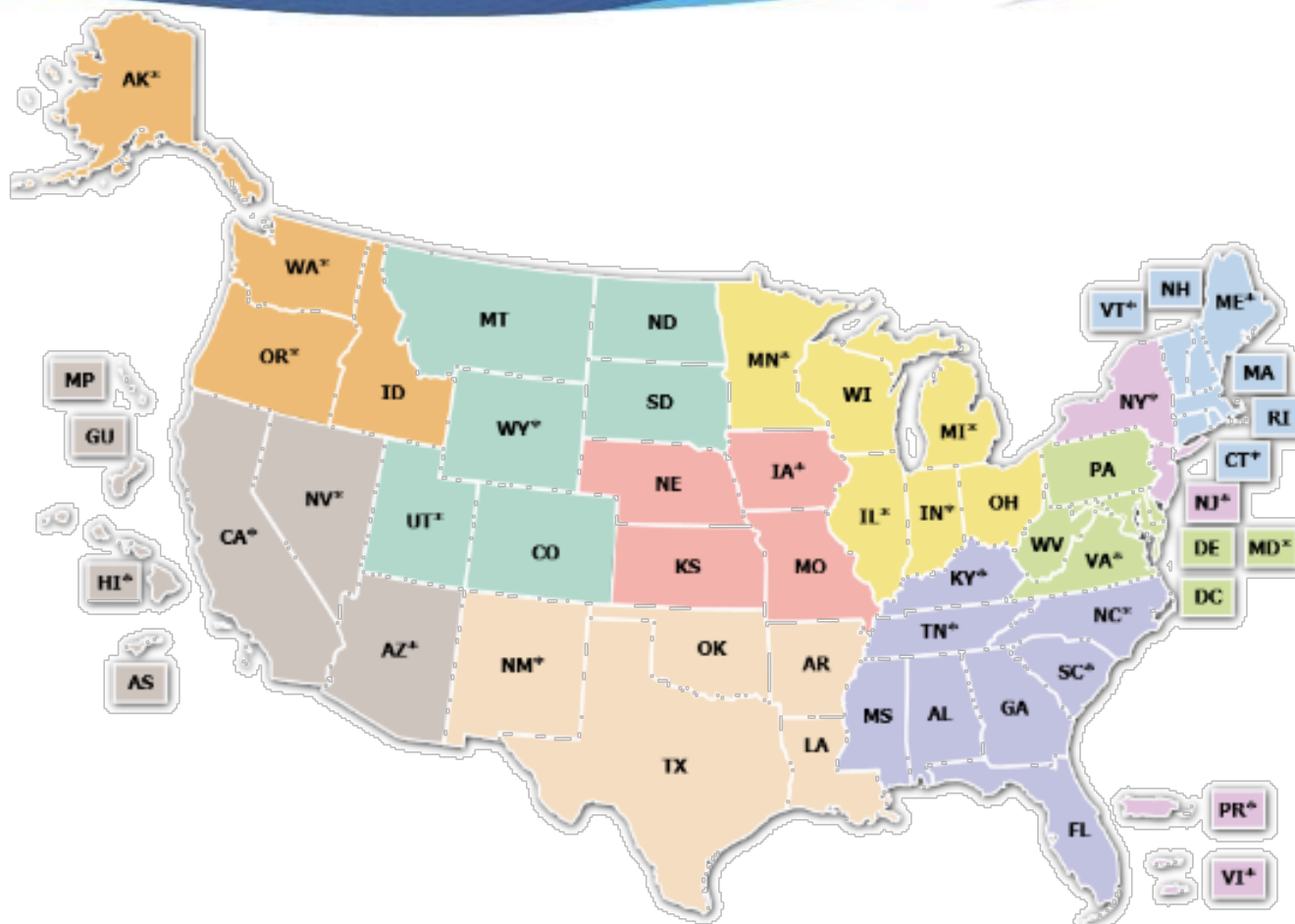
# Assistant Secretary of Labor – OSHA



Doug Parker  
Chief of Cal/OSHA



# How OSHA is Organized

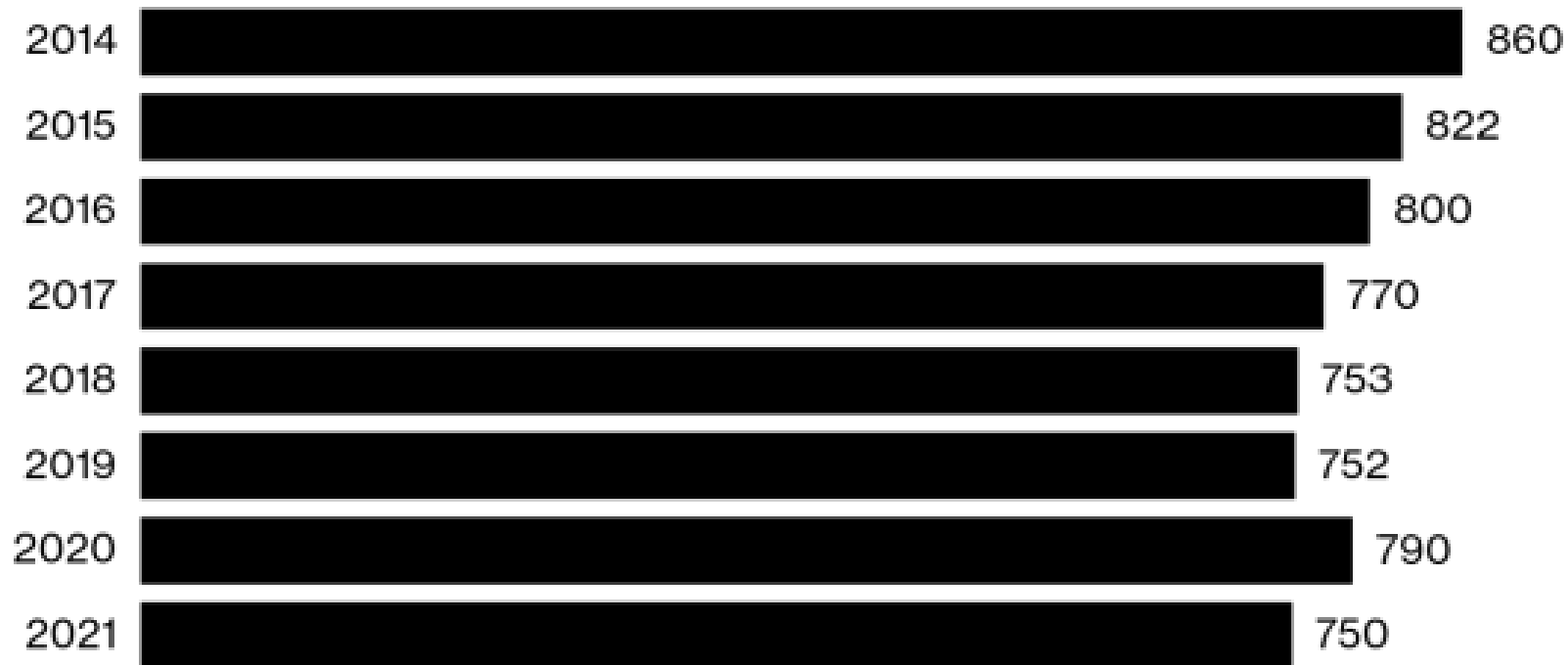


- Region 1: Boston
- Region 2: New York
- Region 3: Philadelphia
- Region 4: Atlanta
- Region 5: Chicago
- Region 6: Dallas
- Region 7: Kansas City
- Region 8: Denver
- Region 9: San Francisco
- Region 10: Seattle

# Number of OSHA Inspectors FY 2014-2021

Fewer inspectors for 2021 continues trend

■ Inspectors



Source: OSHA

Bloomberg Law

**OSHA is Hiring!**  
**Apply Here**

# Ohio OSHA Offices

**Toledo Area  
Office  
(419) 259 - 7542**



**Cleveland Area  
Office  
(216) 447-4194**

**Cincinnati Area  
Office  
(513) 841- 4132**

**Columbus Area  
Office  
(614) 469 - 5582**

# Targeting High Risk Hazards

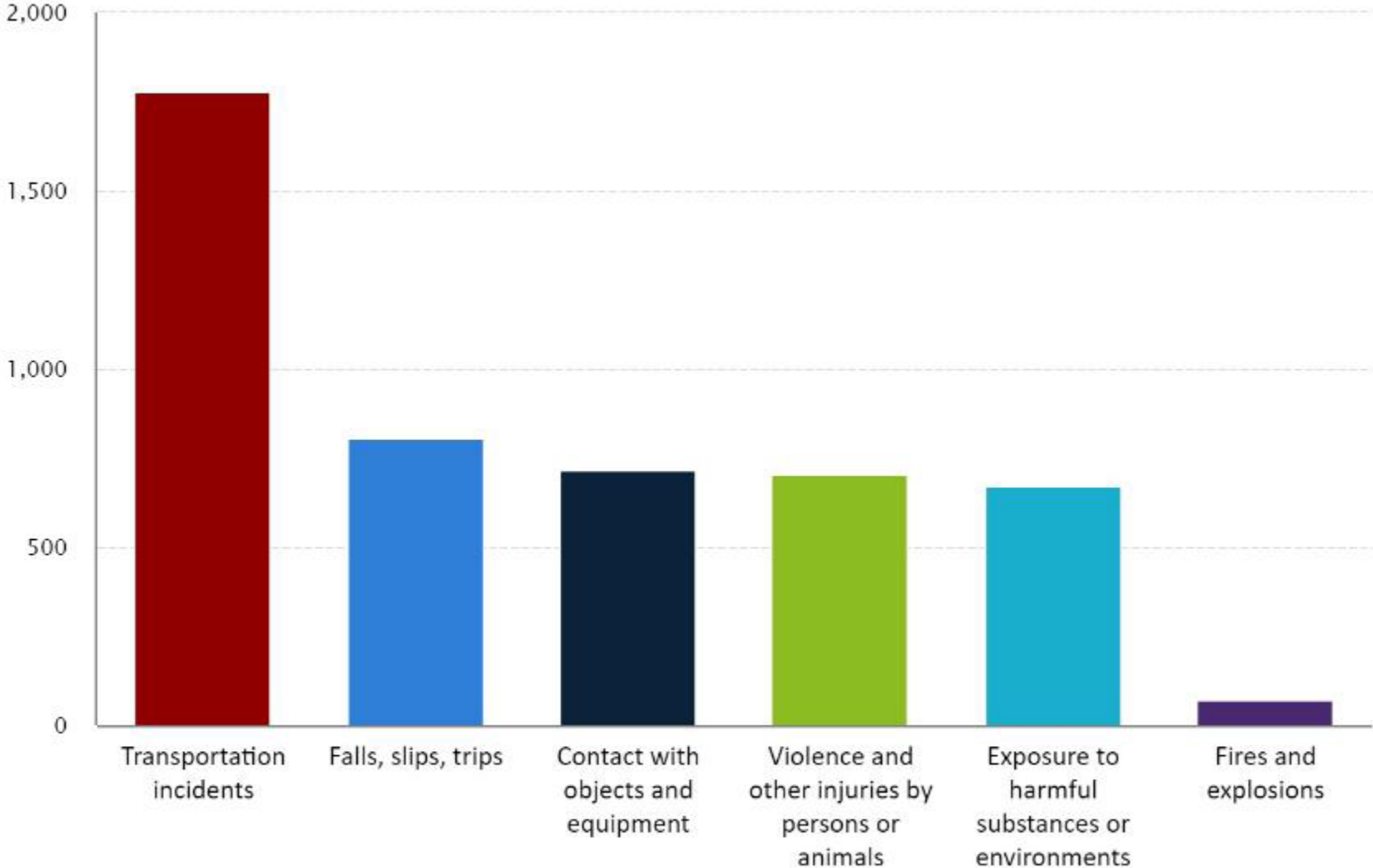
Workplace Fatality Data

Fatality Charts  
US Bureau of Labor Statistics  
**2020**



# Fatal occupational injuries by event, 2020

## Major categories

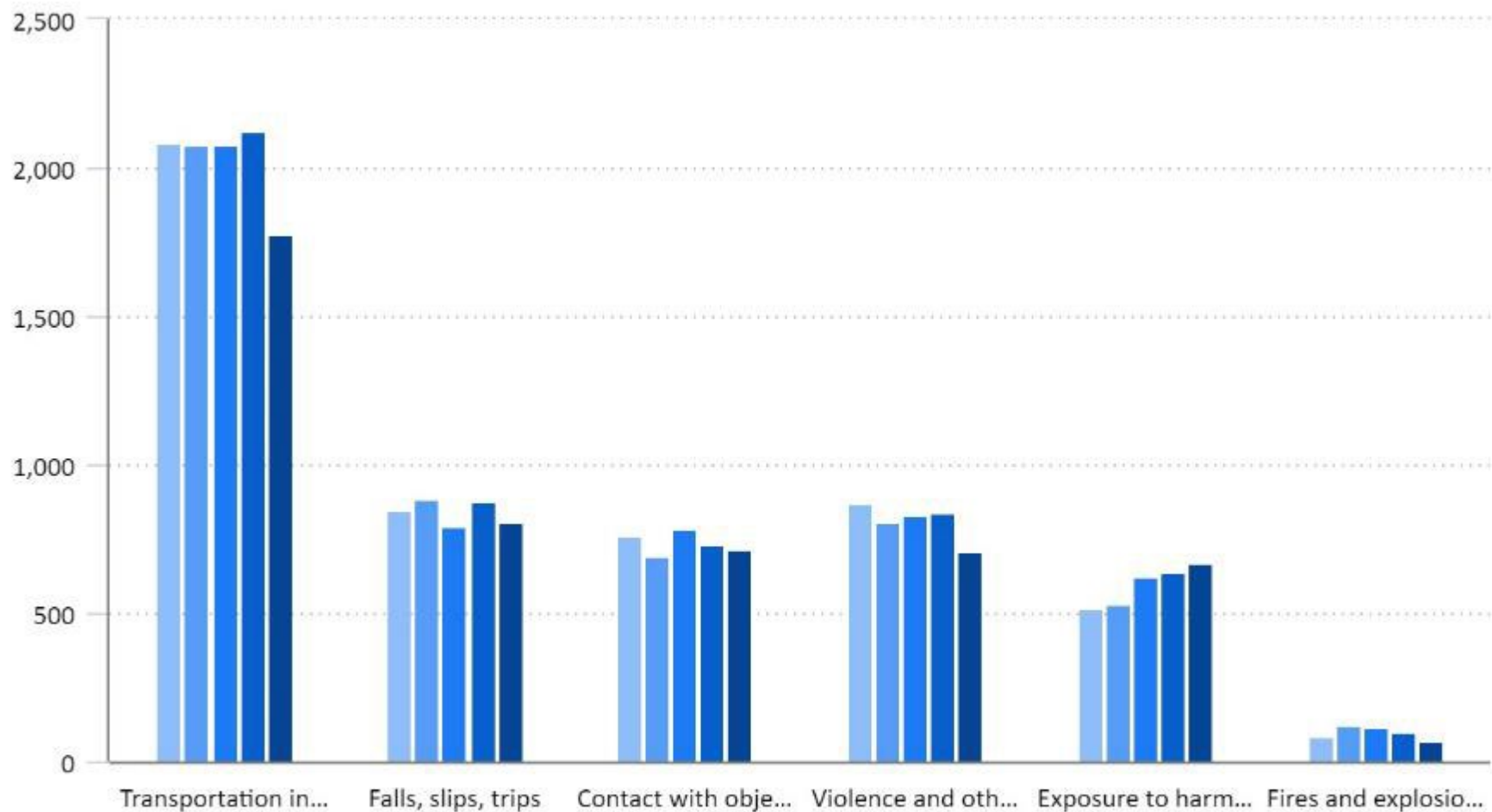


Click columns to drill down. Hover over chart to view data.  
Source: U.S. Bureau of Labor Statistics.



## Fatal work injury counts by event

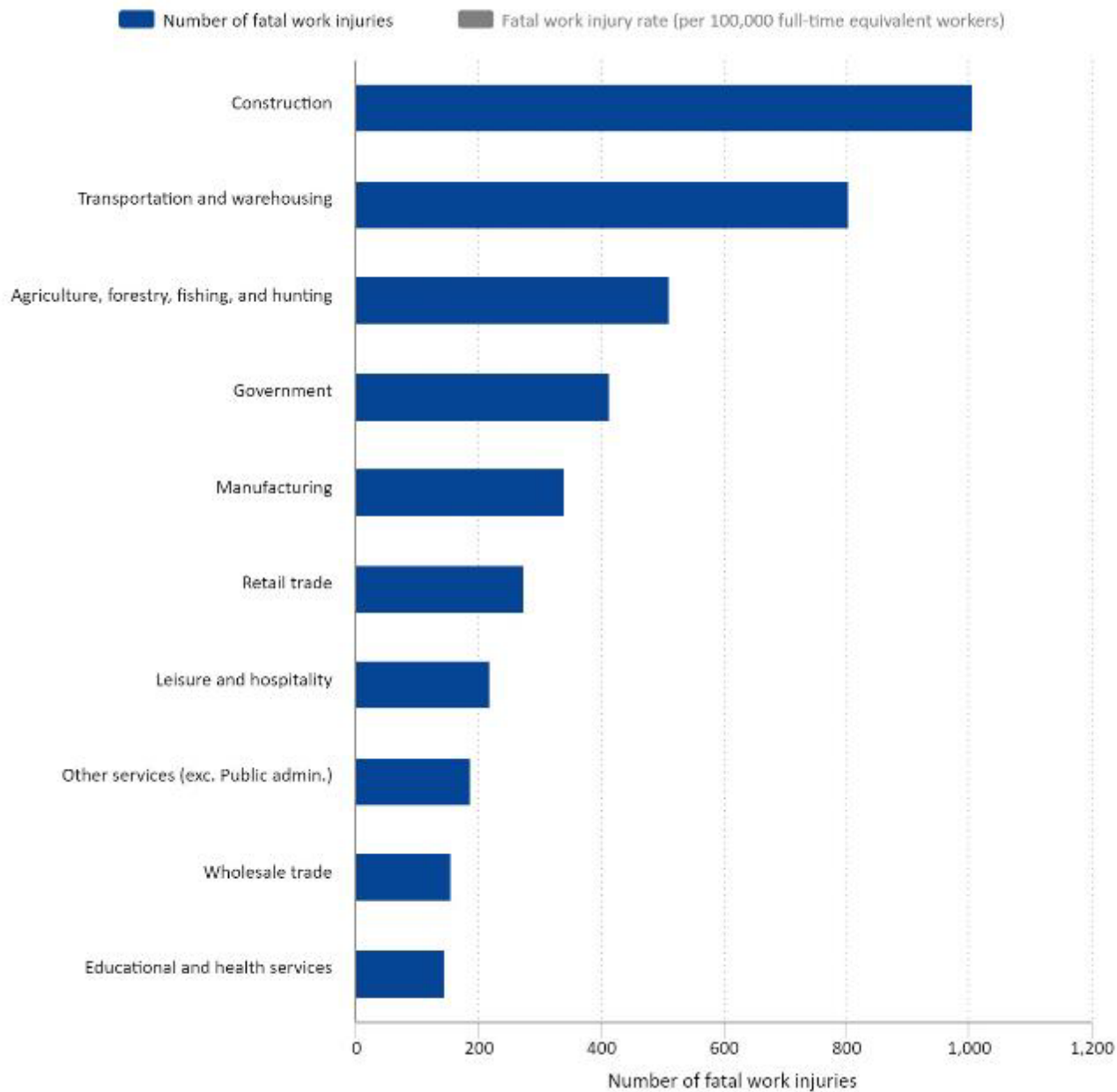
2016 2017 2018 2019 2020



Hover over chart to view data. Click legend items to change data display.  
Source: U.S. Bureau of Labor Statistics.



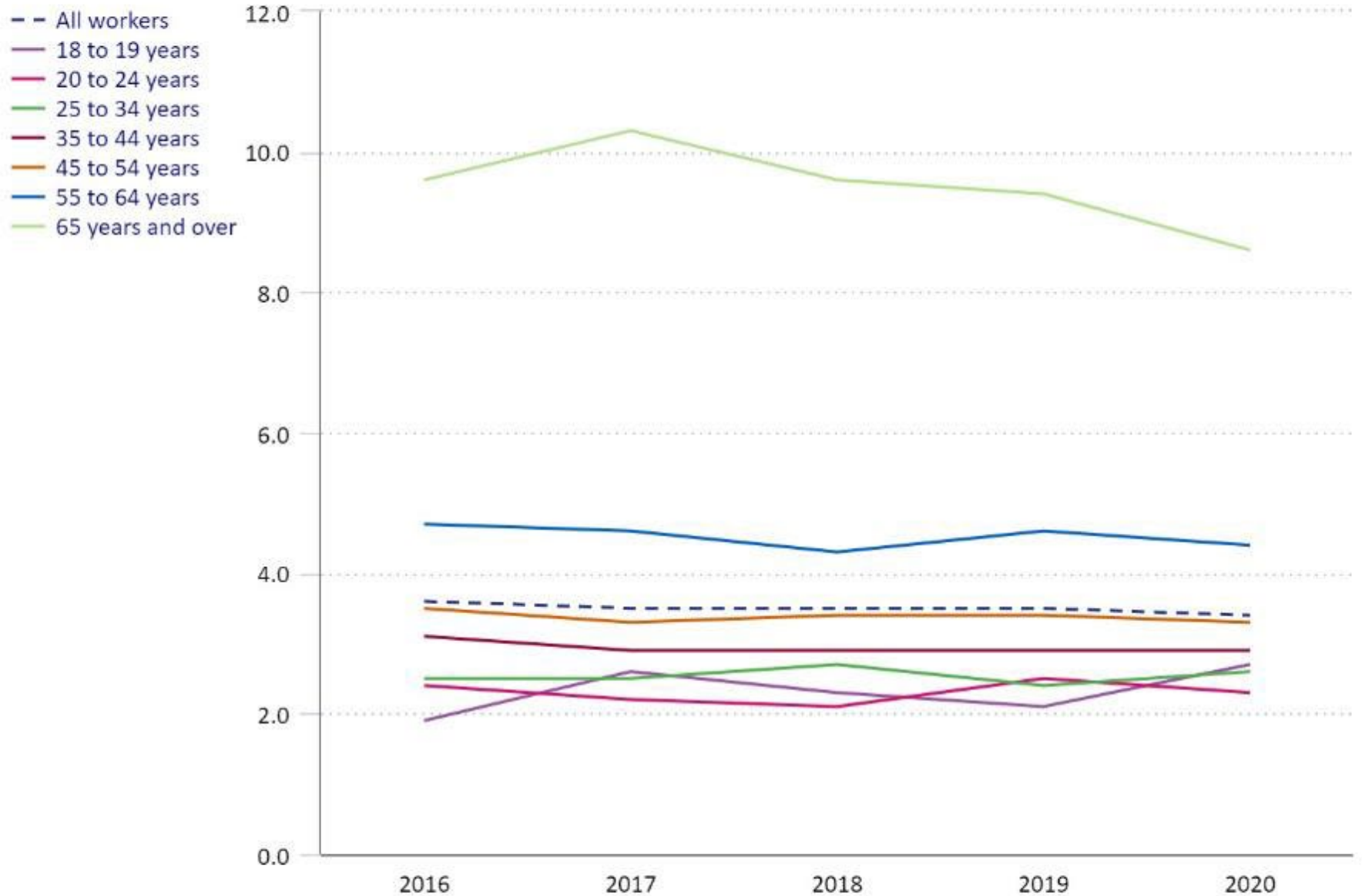
## Number and rate of fatal work injuries, by industry sector, 2020



Hover over chart to view data. Click legend to change data display.  
Source: U.S. Bureau of Labor Statistics.



## Rate of fatal work injuries per 100,000 full-time equivalent workers by age group



Hover over chart to view data. Click legend items to change data display.

Source: U.S. Bureau of Labor Statistics.



# REGION V FATALITY STATISTICS

Fatalities under OSHA's jurisdiction in Region V

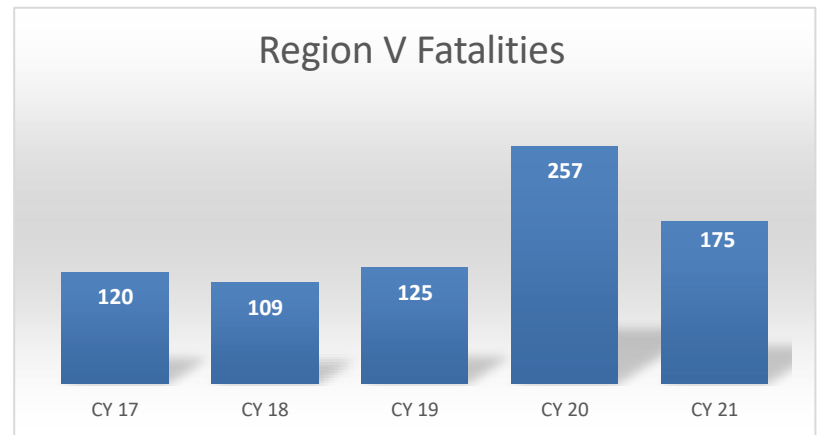
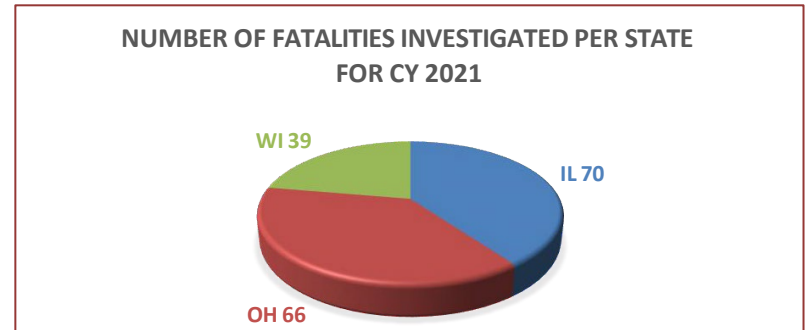
Calendar Year 2021	Calendar Year 2020
End Date: December 31st	End Date: December 31st
175	257

Immigrant Language Fatalities CY 2021	
Immigrant Language Fatality Inspections	9
Hispanic	8



FATALITIES BY EVENT AND INDUSTRY SECTOR			
	CY 2021		
	Construction NAICS 23*	Manufacturing NAICS 31* - 33*	Other
Caught	3	15	10
Electrocution	2	1	4
Exposure	0	10	64
Fall	17	6	12
Fire & Explosion	1	1	0
Other / Pending	1	1	6
Struck	4	3	14
Trench Cave-In*	0	0	0
COVID**	0	8	61
<b>Total</b>	<b>28</b>	<b>37</b>	<b>110</b>

\* Included in Caught \*\* Included in Exposure

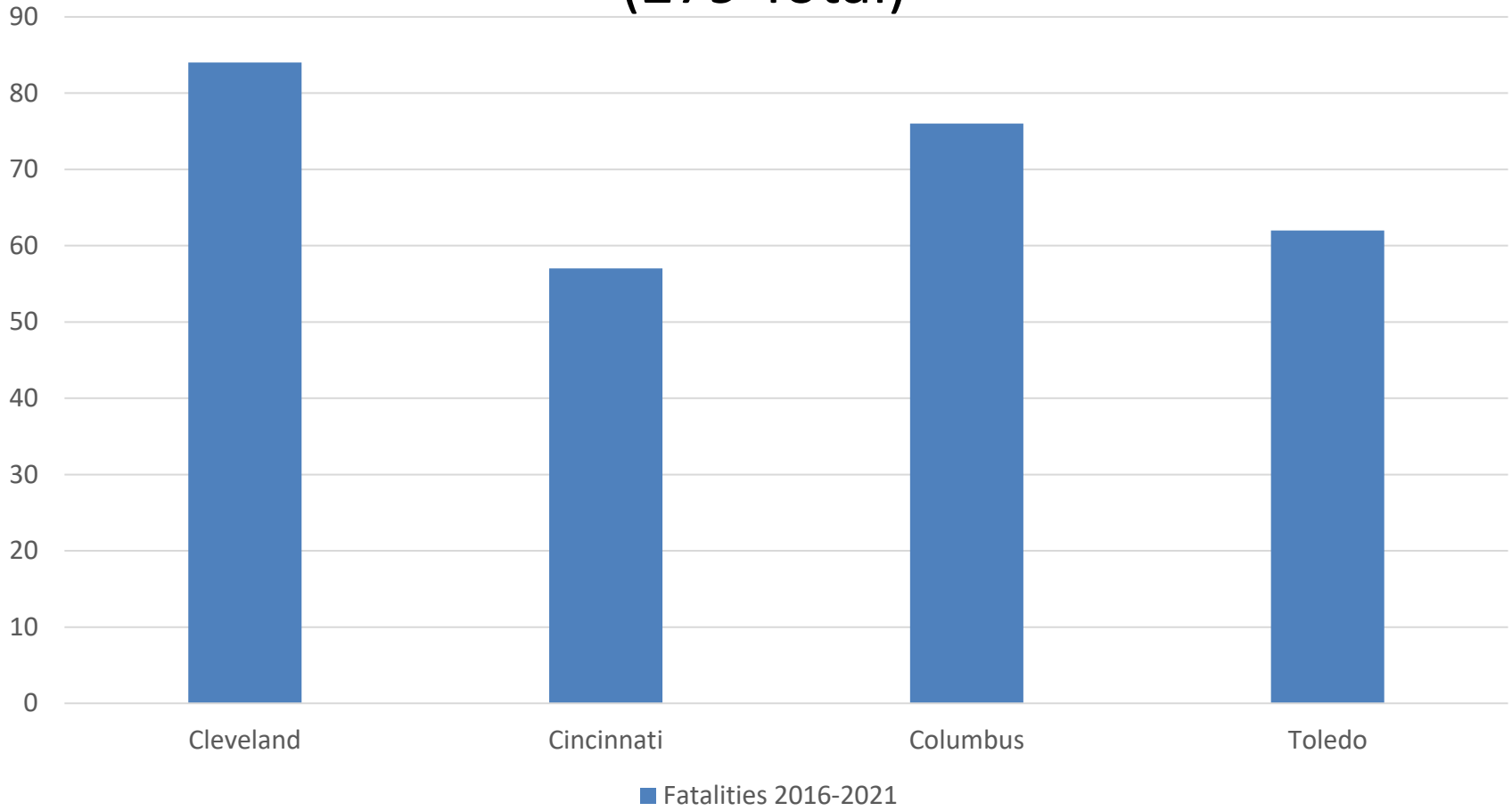


Produced by the Administrative Programs Unit on 1/3/22. **NOTE: Data subject to change upon completion of investigations.**

# Ohio Fatalities Inspected

2016-2021

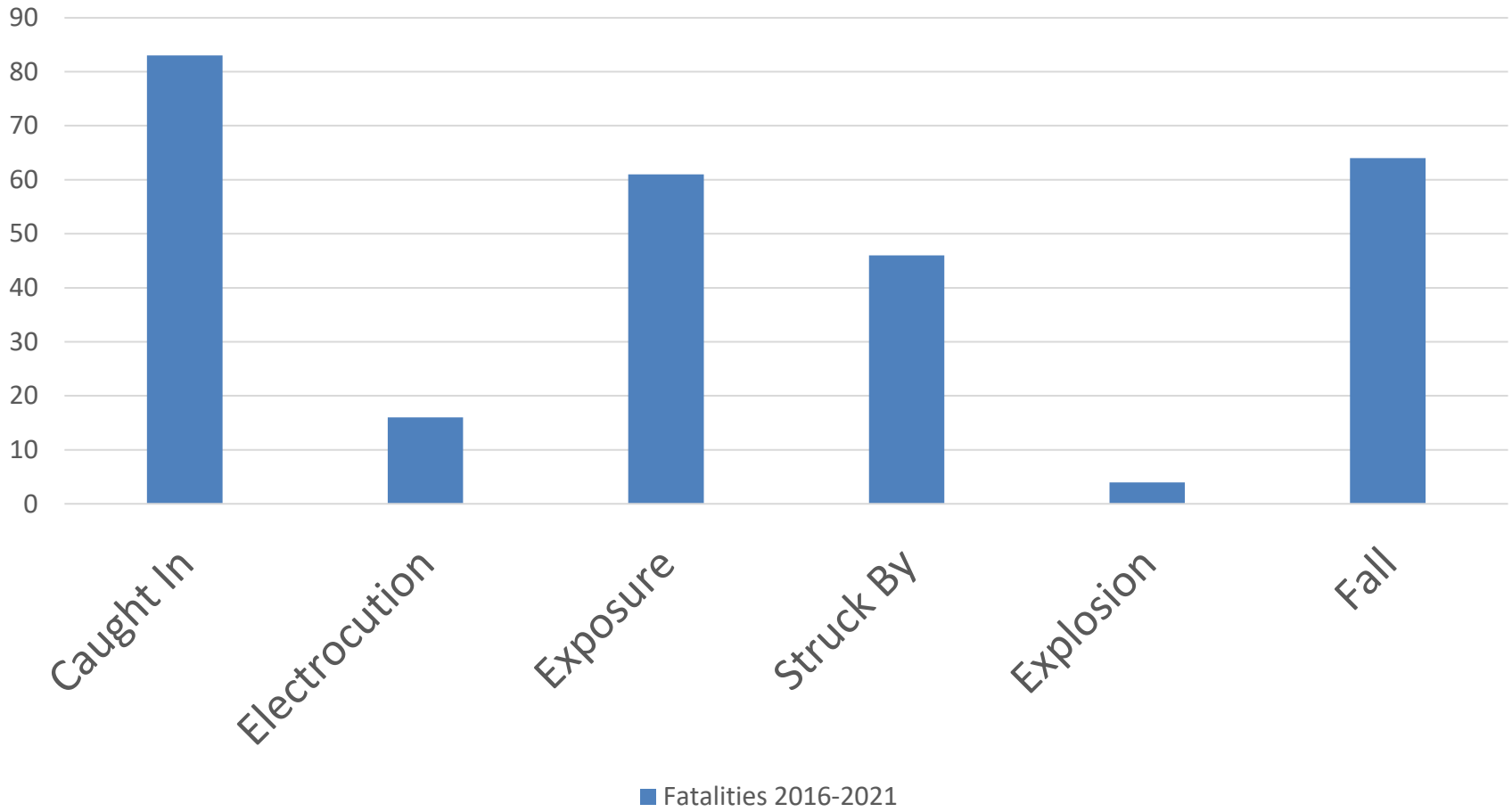
(279 Total)





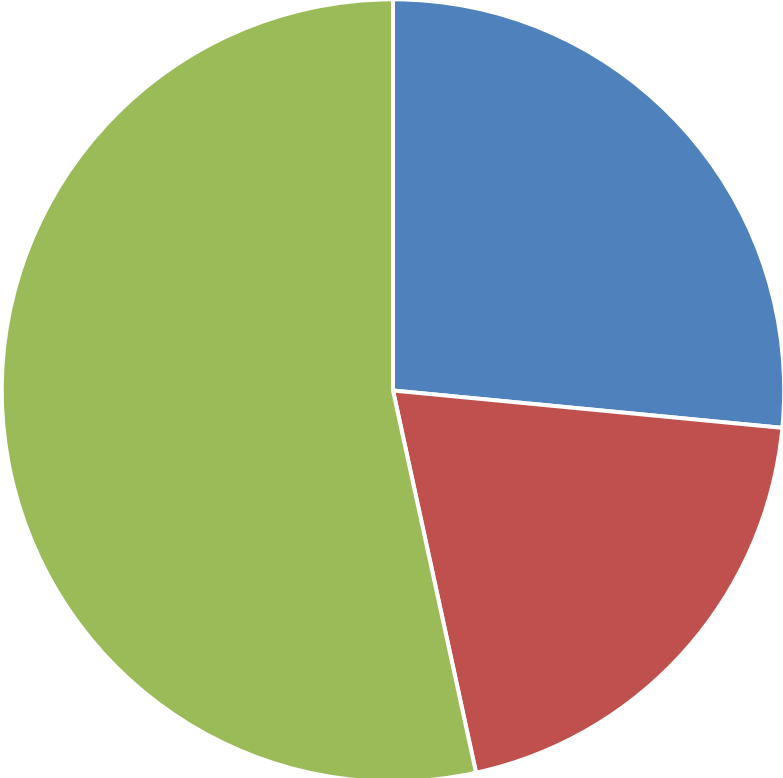
# Fatality Causes

## 2016-2021



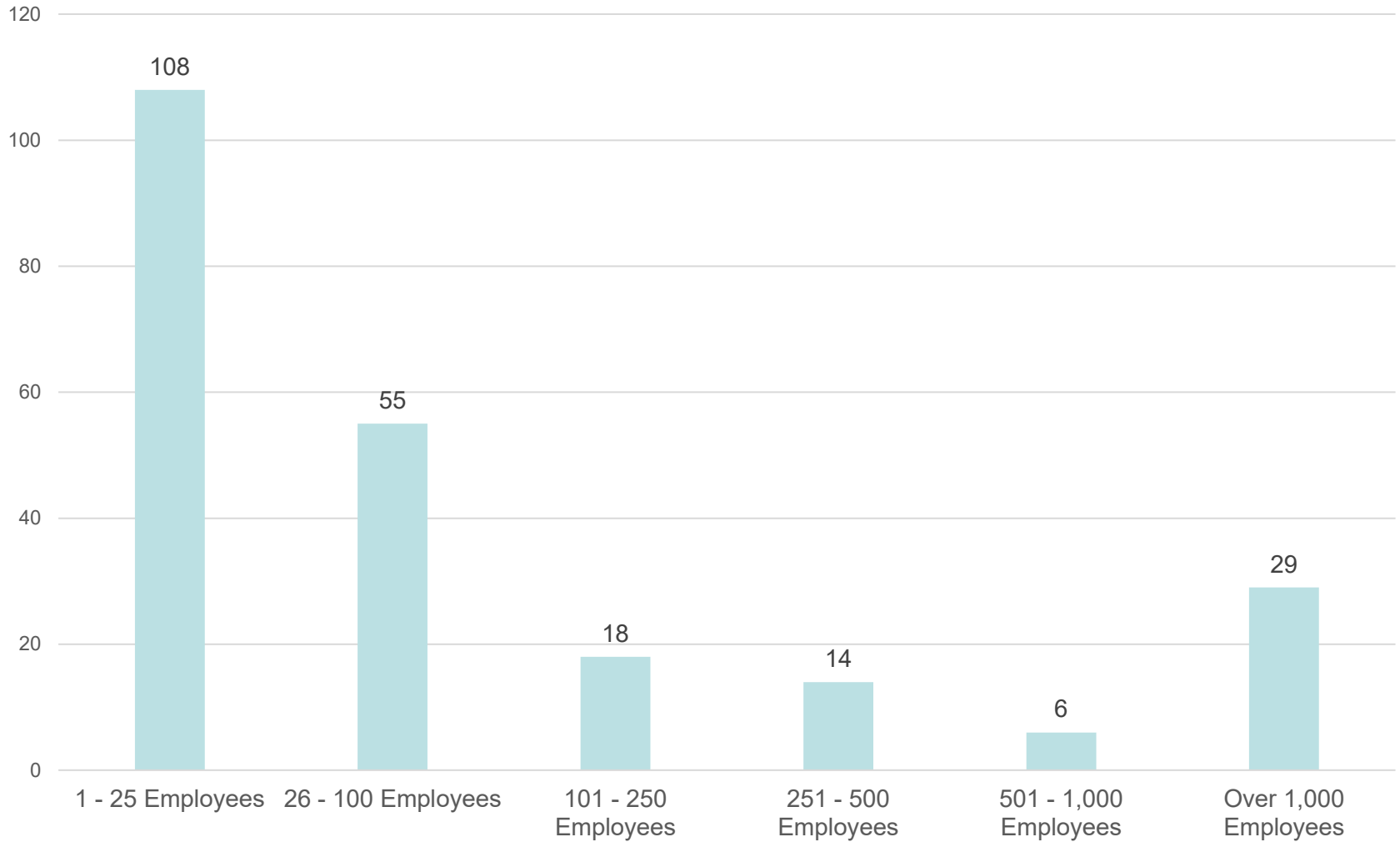
# Ohio Fatalities by Industry

## 2016-2021

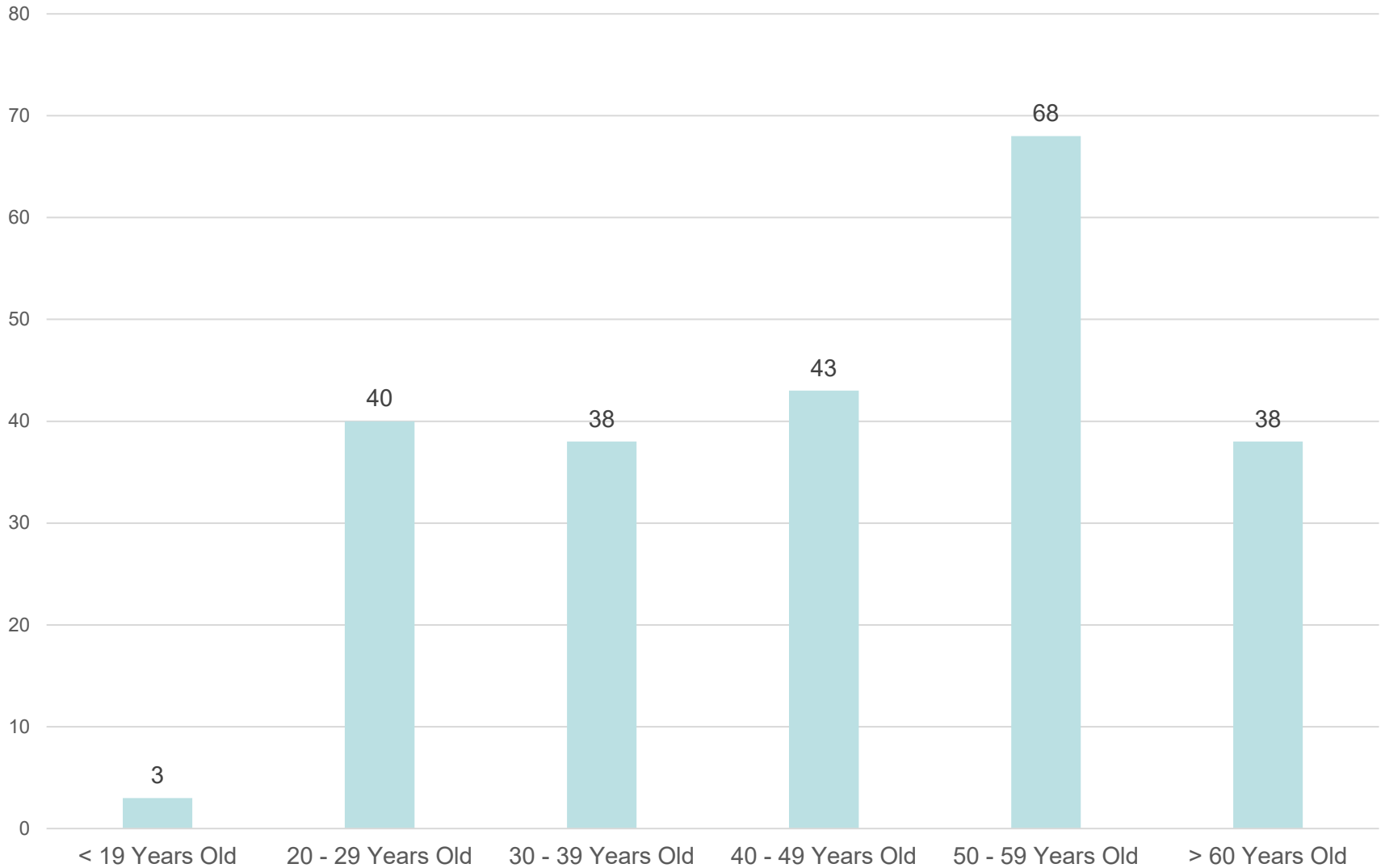


■ Construction   ■ Manufacturing   ■ Other

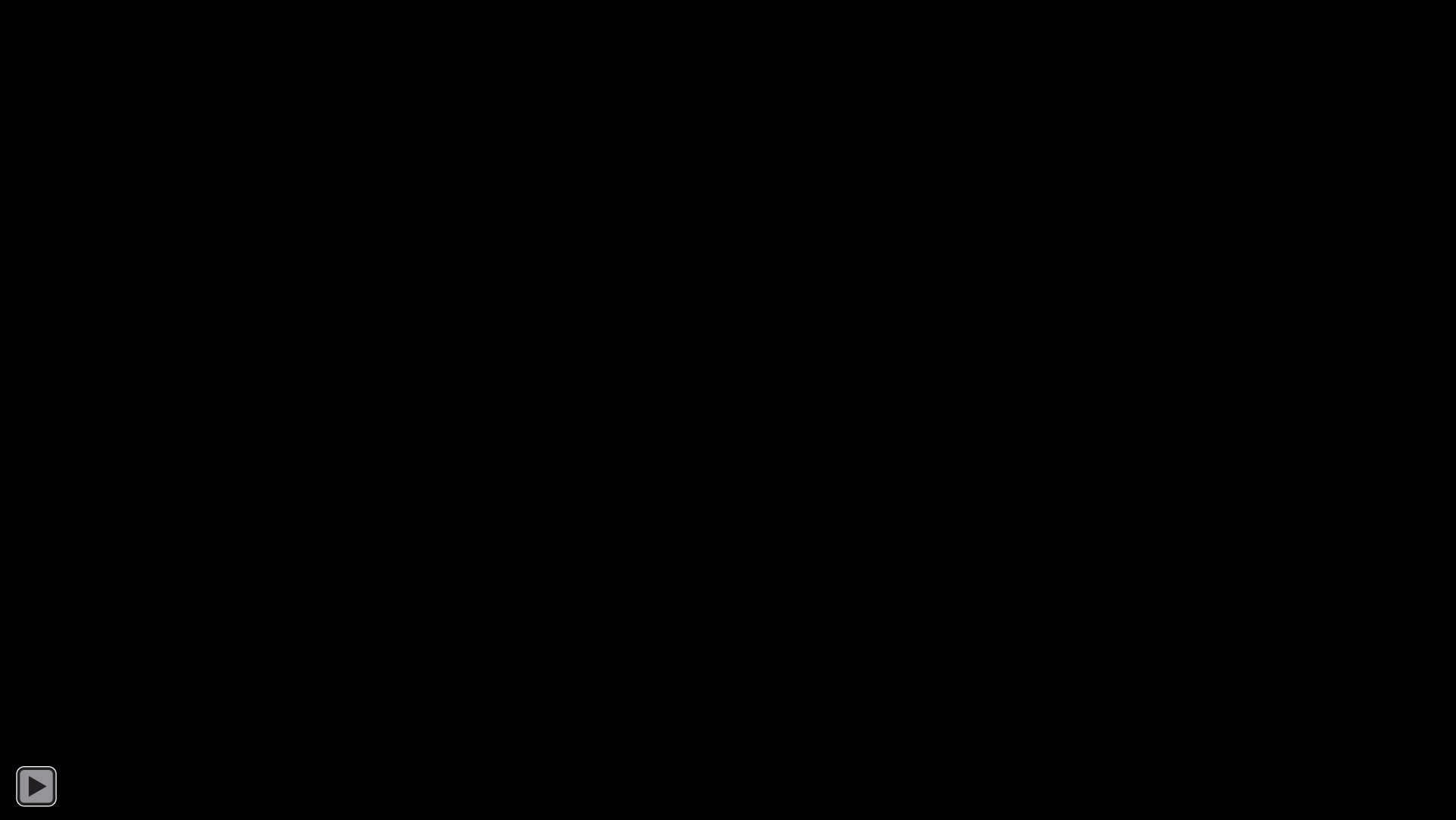
# Region V Fatalities by Establishment Size - Ohio



# Region V Fatalities by Age - Ohio









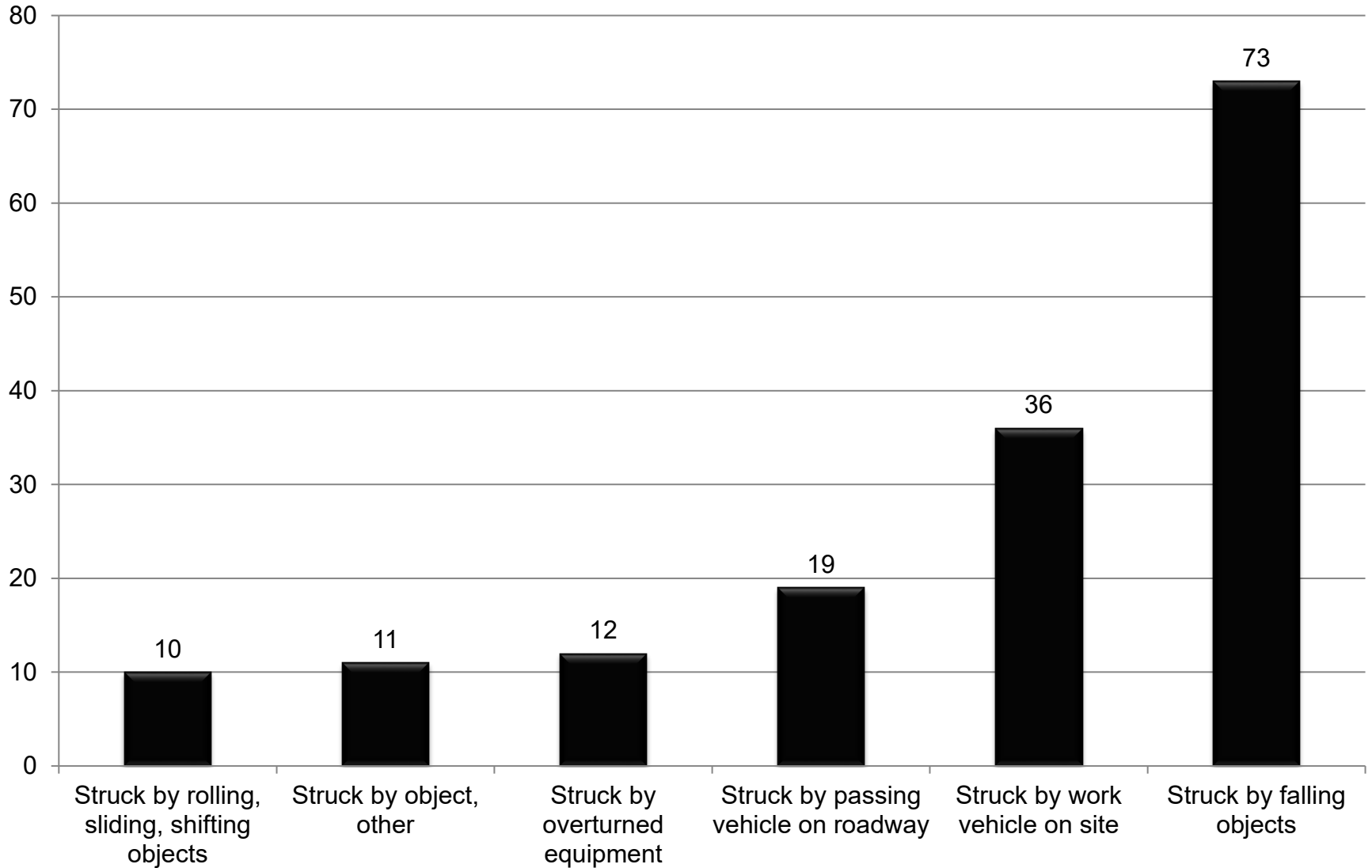


# Region V Fatality Trends - Struck By Falling Objects

- Material Handling Equipment – Improper Use/Overloading



# Struck by Top Events



# Region V Fatality Trends - Caught In Equipment

- **Lack of Machine Guarding**
- **No Lockout/Tagout Procedures**







# Top 10 Violations: FY 2021

## Most frequently cited OSHA standards during FY 2021 inspections:\*

1. Fall Protection – General Requirements (1926.501)
2. Respiratory Protection (1910.134)
3. Ladders (1926.1053)
4. Scaffolding (1926.451)
5. Hazard Communication (1910.1200)
6. Lockout/Tagout (1910.147)
7. Fall Protection – Training Requirements (1926.503)
8. Eye and Face Protection (1926.102)
9. Powered Industrial Trucks (1910.178)
10. Machine Guarding (1910.212)

\*Based on preliminary data. OSHA does not finalize this list until April following the previous fiscal year.

# HOW DOES OSHA PICK THE COMPANIES TO BE INSPECTED?





# Inspection Priorities

- Imminent Danger
- Fatality/Catastrophe
- Complaints/Referrals
- Programmed Inspections
- Follow-ups



# OSHA INSPECTIONS

- Inspection stages
  - Inspector's Credentials
  - Opening Conference
  - Walkaround
  - Closing Conference
  - Citations
  - Review Process
  - Abatement Verification
  - Can happen anytime including Saturdays

# Inspector's Credentials

- Inspector displays credentials
- Asks to meet an appropriate employer representative
  - Be sure all employees know who is in charge at the job site
  - CSHO usually will wait a reasonable amount of time. Depending on amount of time, reason for delay & type of inspection
  - OSHA will get a warrant if necessary



# Inspector's Credentials (Cont.)

- Employers should always ask
  - There are individuals that will say they are OSHA to get on the jobsite for various reasons (competitors, vendors, attorneys, etc.)
- Employer can call local OSHA office to verify

# Opening Conference

- Inspector:
  - Explains how worksite was selected
  - Explains scope of inspection
  - Provides copy of complaint (if applicable)
    - You will not be told who filed the complaint
    - Employers cannot discriminate against an employee for filing a complaint

# Opening Conference (Cont.)

- Inspector:
  - Asks for employer representative to accompany them during the inspection
    - Important to have representation during inspection
    - Answer questions, offer explanations, etc.
  - Asks for an authorized employee representative (union) to accompany them during an inspection

# The Walkaround

Inspector:

- Proceeds through the establishment to identify safety and health hazards
  - A company representative should be present
  - Cooperative and respectful
  - A second employee to abate minor violation
- Determines route and duration of the inspection
- Talks privately with employees

# The Walkaround (cont.)

Inspector:

- Takes photos/videotapes
  - Company Rep. should take pictures of same angle and other if apply
- Reviews records, programs
  - Be sure your records are in order. Last minute is no time to put them in order
- Conducts monitoring (if applicable)



# The Closing Conference

- All observed unsafe and unhealthful conditions are discussed
- Violations for which a citation and penalty may be issued are indicated
- Inspector will not indicate any specific penalty but informs employer of appeal rights
- Abatement times are discussed
- Appeals processes are discussed
- Separate closing conference if employee representative does not participate
- Good time to ask questions about the process if you have any

# Post Closing Conference



- Inspector reports findings
- Area Director determines whether citations will be issued and whether penalties will be proposed
- Site employer representative should compile his notes to create a report to be filed with management
- During this time get field and Mgt. personnel together, review all notes and documents and determine what steps need to be taken next
- Remove employees from hazards! Interim protection where necessary

# Citations

- Employer will receive citations and notices by certified mail
- Employer must post a copy of each citation at or near the place the violation occurred for 3 days or until it is abated – whichever is longer
- Inform the employer and employees of the regulations and standards alleged to have been violated
- Inform the employer and employees of the proposed abatement date
- Appeals process is explained

# Citations: Types of Violations

- Violations
  - other-than-serious
  - serious
  - willful
  - repeat
  - failure-to-abate

# OSHA Penalty Levels: 2022

Type of Violation	New Maximum
<ul style="list-style-type: none"><li>• Serious and</li><li>• Other-Than-Serious</li><li>• Posting Requirements</li></ul>	<b>\$14,502</b> <del>\$13,653</del> per violation
Willful or Repeated	<b>\$145,027</b> <del>\$136,532</del> per violation
Failure to Abate	<b>\$14,502</b> <del>\$13,653</del> per day beyond the abatement date

# Citations

- Once an employer receives a citation notice a copy of each citation must be posted at or near the place the violation occurred for 3 days or until it is abated (which ever is longer) even if you contest the citation.
- If employer agrees to the citation and penalties
  - Correct the conditions by the date set
  - Notify the Area Director by Certified Mail of the corrective action
  - Pay any penalties within 15 working days of receipt of notice

# Citations (Continued)

- Informal Settlement Agreement
  - Before filing a Notice of Intent to Contest
  - Request an Informal Conference with the Area Director

# Citations (Continued)

- Informal Settlement Agreement
  - At the Informal Conference you may be able to get a:
    - Better explanation of violation(s)
    - Better understanding of standard cited
    - Negotiated agreement
    - A what to correct violation
    - Discussion on problems with abatement date
    - Discussion on employee safe work practices
    - Resolution the disputed citation and penalties



# Citations (Continued)

- If employer does NOT agree the employer has 15 working days from the date of receiving the citation to contest in writing the citation, proposed penalty and/or abatement date.
  - Penalties and/or abatement dates will be suspended until Review Commission's final order
  - Contest must be made in good faith
  - If only penalty or some items are contested the remainder must be abated or paid by the date on the citation.
  - Penalties and/or citations properly contested will not have to be abated or paid until resolved

# Citations (Continued)

- The Employer can try to settle with OSHA's attorney
- IF not, a hearing (trial) will be scheduled
- You may represent yourself or have council
- The judge can affirm, modify or eliminate any contested items
- Either party can request a review of the full Review Commission
- The Commission's ruling can be appealed to the U.S. Court of Appeals

# Can we beat an OSHA citation?

- Employee Misconduct
- Must prove all four of these:
  - Work rule
  - Rule is communicated
  - Monitor compliance
  - Discipline

# Best Lines

- “That’s not me in your photo.”
- “I conduct surprise inspections all the time and I have never seen my folks without fall protection.”
- “My foreman told me that OSHA didn’t find anything wrong.”
- “I trust my son and your compliance officer is full of sh\$#!”



# Howie's Tips For Employers

- **Have a plan to inform top managers of OSHA's arrival and results**
- **Take notes and photos**
- **Ask Compliance Officer questions to help you understand hazards and corrective actions**
- **Provide documents as soon as possible**
- **Make sure you understand what is being requested**
- **Be respectful**
- **Don't impede Compliance Officer**

# Worker Rights

Employees have the right to:

- Report **unsafe conditions and injuries** to management or OSHA
- Assist an **OSHA investigation**
- Request **Training**
- Request **PPE**





# Whistleblower Protections

Employers cannot retaliate against workers who exercise their [rights](#).

## Retaliation includes:

- Reduction in pay or hours
- Being fired, laid off, or suspended
- Reassignment, discipline, or demotion
- Threats, harassment, and intimidation
- Blacklisting from hiring

# Perspective?!



FUO = Foshan Shadi Airport  
SHA = Shanghai Airport







[www.osha.gov](http://www.osha.gov)

800-321-OSHA (6742)



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**LICENSURE** OH  
**EDUCATION** J.D. Capital University

Known as a fervent advocate for her clients, Nelva Smith is a labor and employment attorney whose wide-ranging experience makes her an extremely effective advisor for her clients. From general day-to-day counseling, to litigation, workers' compensation, and safety and health issues, employers of all sizes rely on Nelva to guide them through the myriad challenges of labor and employment law. Nelva is diligent and aggressive in defending her clients' interests and is experienced assisting clients in the automotive, aviation, construction, and manufacturing industries.

As a member of the firm's Workplace Safety Team, she has defended employers in front of the Industrial Commission on a variety of issues that arise out of Ohio workers' compensation matters, and she also has extensive experience in safety and health issues, with an emphasis on OSHA. She has presented on several occasions nationally on OSHA topics, and she has twice been a contributing editor to the national treatise on Occupational Safety and Health Law.

Nelva has experience defending employers in general employment litigation, charges before the Equal Employment Opportunity Commission, charges before the Ohio Civil Rights Commission, charges before the National Labor Relations Board, and defending OSHA citations, and she has also successfully handled wage and hour audits before a state government agency.

In addition, to her employment experience, Nelva is also on the firm's Higher Education Team and actively represents several universities and colleges in the region against Title IX litigation. Nelva is a member of the Environment, Social, Governance ("ESG") group, a group of attorneys with experience and knowledge about how ESG impacts all aspects of business.

## REPRESENTATIVE EXPERIENCE

Defended OSHA violations for manufacturing clients in the aircraft and automotive industries resulting in reduced penalties and vacated citations

Defended a manufacturer in the rubber mixing industry in Ohio in one of the first sets of citations under the combustible dust OSHA National Emphasis Program (NEP)

Successfully represented rubber tire manufacturer in multiple OSHA citations involving combustible dust

Represented a large automotive component manufacturer in a workplace accident involving an extremity injury caused by hydraulic press, resulting in the OSHA citation being fully vacated

Represented a Missouri-based rubber mixing plant in multiple OSHA citations involving both machine guarding and combustible dust

Successfully negotiated multiple reduced penalties and vacated citations for an Alabama based chemical and large-scale rubber processing plant in matters involving hazard communication and personal protective equipment

Experienced in OSHA investigations and defense of OSHA citations throughout the nation

Advised financial services institution on “back to school” issues related to COVID-19

Advised national call center client on EFMLEA issues related to COVID-19 and employee leave

Represented higher education institution in claims in front of the Ohio Civil Rights Commission in defense of alleged racial and gender discrimination

Assisted healthcare client in matters involving alleged disability discrimination resulting in employee termination

Defended higher education institution against student filed racial discrimination complaint at the United States Department of Education Office for Civil Rights

Successfully defended accusation of willful citations for national restoration/construction company in Ohio for lead exposure

Regularly counsel clients on personnel matters involving hiring and firing, business organization, employee discipline, and civil rights

Defended North Dakota construction company in workplace safety matter involving fatality

Successfully defeated unsubstantiated unemployment claims for national call center

Advised Ohio based steel fabrication company on best practices to avoid OSHA violations

Counseled employers throughout Ohio in revising and updating employee handbooks in compliance with federal and state law

Investigated and prepared Position Statements in defense of unemployment claims

Assist employers throughout the state in revising and updating employee handbooks in compliance with federal and state law

Assisted in defense of an appeal to the Supreme Court of Ohio for a voluntary abandonment issue in the workers’ compensation field and was successful in providing a good result for the employer

Attended workers’ compensation hearings at the Industrial Commission throughout the state of Ohio

## WORK EXPERIENCE

2015 Steptoe & Johnson PLLC

2008-2015 Scott, Scriven & Wahoff LLP

2005-2008 Legal Assistant, Scott, Scriven & Wahoff LLP

## MEMBERSHIPS AND AWARDS

### PROFESSIONAL

Columbus Bar Association

Ohio State Bar Association

American Bar Association

Certified, OSHA 10 Hour General Industry

## Biographical Information

**Howard Eberts, Area Director**  
**U.S. Dept. of Labor OSHA**  
**6393 Oak Tree Blvd., Suite 203, Independence, OH 44131**  
**216-447-4194      Eberts.Howard@dol.gov**

Mr. Eberts started with the Occupational Safety and Health Administration (OSHA) as a compliance officer in the Columbus area office in 1988. He has worked in various positions including Compliance Assistance Specialist and Assistant Regional Administrator in the Chicago Regional Office. He moved to the Cleveland Area Office as the area director in January 2011. He has a Bachelor of Science degree in biology from the University of Notre Dame.

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**Todd Jensen, Area Director**  
**U.S. Dept. of Labor OSHA**  
**420 Madison Avenue, Suite 600, Toledo, OH 43604**  
**419-259-7542      Jensen.Todd@dol.gov**

Mr. Jensen has worked for OSHA for 24 years and was recently promoted to Area Director for the Toledo Area office in November 2021 covering 26 counties in Northwest Ohio. Todd specializes in foundries, steel mills, heavy manufacturing, and Process Safety Management.

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**Gaye Johnson, Assistant Area Director**  
**U.S. Dept. of Labor OSHA**  
**36 Triangle Park Drive, Cincinnati, OH 45246**  
**Johnson.Gaye@dol.gov**

Ms. Johnson began her career with the Occupational Safety and Health Administration in the Cincinnati Area Office in 1985. She was a safety specialist for 17 years and became a Compliance Assistance Specialist in 2007. In 2011, she became the Assistant Area Director for the Cincinnati OSHA office.

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**Larry M. Johnson, Area Director**  
**U.S. Dept. of Labor OSHA**  
**200 N. High St. Rm. 620, Columbus, OH 43215**  
**614-469-5582      Johnson.Larry.M@dol.gov**

Mr. Johnson began his career with the Occupational Safety and Health Administration (OSHA) in September 2000 as a safety specialist in the Columbus Area Office. He has more than 20 years of safety and health experience, with specialized knowledge of process safety management (PSM), machine guarding, and electrical Safety. He is a retired U.S. Navy veteran. He holds a Bachelor of Science in Microbiology from the University of Pittsburgh. In July 2011, he served as assistant area director in Peoria, IL. He then moved to Lansing, MI and served as area director in July 2013, before returning to Columbus in October 2016 as the Area Director.