BUILDING AUSTIN
BUILDING INJUSTICE

WORKING CONDITIONS IN AUSTIN'S CONSTRUCTION INDUSTRY

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 142 Texas construction workers who died on the job last year,
and to Austin's hard working construction men and women
whose contributions too frequently go unrecognized.

EXECUTIVE SUMMARY

The *Building Austin, Building Injustice* study was undertaken by Workers Defense Project to better understand working conditions in Austin's construction industry. Workers Defense Project is a non-profit community organization that promotes fair working conditions for Austin's low-wage workers. Workers Defense Project partnered with faculty from the University of Texas at Austin, the Division of Diversity & Community Engagement of The University of Texas at Austin, and faculty from the University of Illinois at Chicago, to carry out one of the most comprehensive studies on the industry in the country.

Building Austin, Building Injustice is the result of more than a year of research from data collected from primary and secondary sources, including surveys with 312 construction workers, 17 in-depth worker interviews, 20 in-depth interviews with industry leaders, and existing government data.

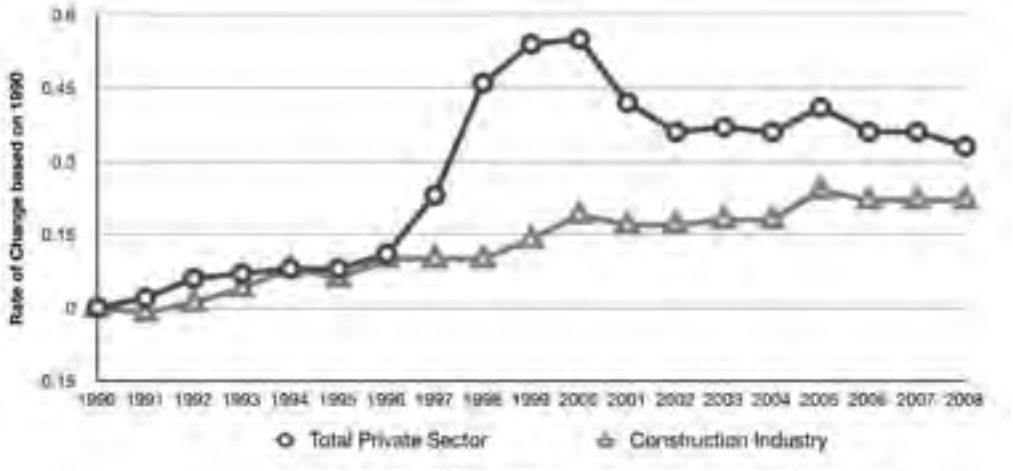
The City of Austin has quickly become the second fastest-growing urban area in the country, depending heavily on the construction workforce to meet the demands for new housing, commercial buildings, and the city's infrastructure system.[1] Though the construction industry plays an important role in the local economy, working conditions in the industry have not been studied previously. *Building Austin* provides an in-depth perspective on construction working conditions, revealing that while the industry plays a vital role in the city's economy, most of the jobs in the construction industry violate federal and state employment regulations. Furthermore, this study provides concrete solutions to ensure a safe, healthy, and productive workforce to meet changes in the new economic landscape.

A Resilient and Vital Industry

The construction industry is vital to maintaining Austin's high quality of life. Today, 50,000 Austin residents work in the construction industry, making it one of the top ten industry employers in the city.[2] Since 1990, the construction industry has outpaced job growth in the private sector in Austin.[3] While the private sector in the Austin area grew by 93% between 1990 and 2007, the construction industry grew by 219%.[4] The industry expanded from 16,280 jobs to 51,910 jobs, more than tripling its size.[5] In 2008 construction work in Austin generated more than $3.5 billion in wages, helping supply necessary revenue for the local economy.[6] Over the past 18 years the Austin private sector average earnings grew by 33%, but construction earnings only grew by 22% (see graph below). Texas construction workers earn two to three dollars less per hour than their counterparts in other states who performed the same skilled work.[7] While much of the nation has been devastated by the economic recession, Austin's construction industry

GRAPH 2

Growth in Average Annual Earnings by Industry
(Adjusted for Inflation), Austin, Texas, 1990-2008



Source: Quarterly Census of Employment and Wages, Texas Workforce Commission
Inflation Calculator: http://data.bls.gov/cgi-bin/cpicalc.pl

has fared better than its counterparts outside of Texas. As of 2009, the Austin area was ranked the second healthiest housing market in the country and is responsible for more residential housing starts than Chicago, a metropolitan area six times its size.[8]

Deadly and Low-Wage Jobs

Despite construction workers' valuable economic contributions to Austin, they have not prospered at the same rate as workers in other industries. Construction work in Austin is predominately low-wage work where jobs are characterized by long hours and dangerous working conditions. According to survey results, federal and state employment violations were a standard practice in the industry, having far-reaching repercussions on construction workers, including:

- **Poverty level wages.** Forty-five percent of surveyed construction workers earned poverty level wages.[i] In addition, nearly half of construction workers reported not having enough financial resources to support their families.
- **Failure to be paid.** One in five workers reported being denied payment for their construction work in Austin. Fifty percent of construction workers reported not being paid overtime, and for many this resulted in the inability to pay for food and housing.
- **Few employment benefits.** The large majority of construction workers lacked health insurance (76%), pensions (81%), sick days (87%) or vacation days (77%).
- **High rates of dangerous and unsafe working conditions**. One in five surveyed construction workers has suffered a workplace injury that required medical attention. Sixty-four percent of surveyed workers lacked basic health and safety training, and many were forced to provide their own safety equipment (47% of residential construction workers provided their own hard hats).
- **Death on the job.** In 2007, 142 construction workers died in Texas, more than any other state in the country. California ranked second highest with 81 – about half as many – deaths.[9] Subsequently, 15% of surveyed construction workers reported personally knowing someone who had died due to a construction work-related injury.
- **Denied legal protections.** Employers frequently misclassified workers as independent contractors instead of employees, thus stripping them of their rights to overtime pay, workers' compensation coverage, benefits, and shifting the burden of payroll taxes to the worker. Survey results showed that 38% of construction workers were misclassified as independent contractors.

Survey data showed that workers who earned poverty and low wages were more likely to lack health insurance, be denied payment for their work, and not be covered by workers' compensation insurance. *Building Austin* data also pointed to lax enforcement of employment laws by government agencies, including the U.S. Department of Labor (DOL) and the Texas Workforce Commission. Both the DOL Wage and Hour Division and Occupational Safety and Health Administration were found to be operating at a limited scale, having little impact on addressing workplace violations and improving working conditions in the industry.

Good for Workers, Good for Business

Employer interviews found that while many construction companies broke the rules, hurting workers and undercutting good businesses, there were also model employers who invested in workers as a road to profitability. Construction industry leaders interviewed often cited the challenges of finding and keeping a skilled workforce, yet most acknowledged that they failed to invest in technical training for its workforce. *Building Austin* researchers also

[i] Poverty wage of $10.56 calculated from Federal Department of Health and Human Services 2009 federal poverty line earnings for a family of 4 of $22,050 per year.

found that general contractors and developers have a particularly important role to play as industry trendsetters to ensure safe and humane working conditions on their worksites. Workers who earned living wages (35% of those surveyed) were more likely to be covered by health insurance, and workers' compensation, receive safety trainings, and report fewer cases of being denied payment for their work. At the same time, their employers saw ensuring safe and humane working conditions as an investment that guarantees quality workmanship and repeat business.

Social Costs of Breaking the Rules

Poor and illegal working conditions, inadequate safety protection, and few employment benefits have implications that range far beyond the individual workers who suffer them. Substandard working conditions in the construction industry have a direct impact on the local economy, taxpayers, charity organizations, and hospitals. Responsible employers help create necessary and good jobs; additionally, they have a positive impact on the local communities in which they operate. Unfortunately, *Building Austin* researchers found many employers break the rules, thus undercutting good construction businesses. Employers who attempt to cut costs by engaging in poor and illegal workplace practices do so at the expense of the public. *Building Austin* researchers found:

- When workers are not paid for their work, millions of dollars are lost to the local economy each year, resulting in lower sales for local businesses, and decreased sales tax revenue.
- Workers who earn low wages and experienced wage theft are increasingly forced to rely on local charities and government assistance to make ends meet. Nearly half of surveyed construction workers were unable to meet their basic needs.
- Millions of dollars in federal taxes and state unemployment insurance taxes are lost each year by employers misclassifying construction workers as independent contractors.
- Public hospitals are often forced to absorb the cost of treating injured construction workers who are denied workers' compensation coverage by their employers.

Injured with Nowhere to Turn

Julio Rojas has worked in the Austin construction industry since 1991. Several years ago, Julio was working as a residential roofer when he fell seven feet while carrying a heavy load of plywood. He injured his back so badly he could not move. He recalled:

> *They didn't give me a harness like they should have- I was working more than six feet above the ground and they were rushing us to finish the job. I was just learning how to do roofing work, and I tripped on materials that another worker had left on the roof. My back was really injured.*

Julio's employer did not have workers' compensation. Instead of helping Julio with his medical bills and paying him for the time he was unable to work, he fired him and stopped returning his telephone calls. Julio, who has two young daughters, had to shoulder the burden of paying off his medical bills and making ends meet while he was out of work for months. Julio never received the ongoing medical treatment he needed to fully recover from the injury, and still suffers back pain today.

Dangerous Work, Long Hours, Unfair Pay

Environmental Restoration Services, an asbestos removal company, hired Reiniery Telles in September of 2007. Reiniery worked in a ten-person work crew on a number of sites in the Austin area, removing dangerous asbestos from old buildings to prepare them for remodeling. When Reiniery was hired, he was told by his employer he would only work 40 hours a week and that there was no overtime pay. But as project deadlines approached, his employer began to rush the crew and insisted that they work nearly 70 hours a week.

Reiniery and his coworkers were not paid time and a half for overtime hours, and some weeks their employer only wrote them checks for 40 hours of work. After a month without overtime pay, Reiniery quit his job and came to Workers Defense Project to get help recovering $3,000 in unpaid wages. A year and a half later, Reiniery is still waiting for the payment that Environmental Restoration Services has been ordered to make by the Texas Workforce Commission.

Reiniery recalled, "We worked long hours and our pay didn't reflect it. When I wasn't getting paid for all my work, I had to depend a lot on friends and family to make rent and pay the bills. I usually help support my parents, but I wasn't able to do that. I'm still trying to pay back debts I have from when I didn't get paid right in 2007."

Best Practice Recommendations

Workers Defense Project recommends a series of best practices that can be implemented by industry leaders and policymakers to improve working conditions and ensure continued economic prosperity in an industry so important to Austin, Texas, and the country:

Policymakers

Ensure Safe Working Conditions: Policymakers must do more to decrease the unnecessarily high number of deaths in the Texas construction industry. With regular safety trainings, and proper safety equipment, injury and death on the job can be prevented. Health and safety regulations must be enforced, and government regulators should partner with workers' rights organizations, unions, and good construction businesses to carry out targeted investigations at construction sites. Additionally, policymakers must ensure all workers have access to workers' compensation coverage, medical care, rest breaks, and drinking water at work.

Ensure Honest Pay for Honest Work: Policymakers should ensure strict enforcement against wage theft. Additionally, they should reward good contractors who play by the rules and invest in local communities by paying living wages, providing medical insurance, paid sick days, pension and vacation benefits to its workers. Investigative agencies should perform targeted investigations of wage and hour violations in the construction industry and partner with workers' rights organizations, unions, and good businesses.

Green Jobs, Good Jobs: As policymakers push for increased investment in green building, it is also vital to ensure that these are good jobs. Good jobs pay living wages, provide good benefits, and ensure safe working environments. Access to these good jobs must also be secured for more vulnerable worker populations such as women, people of color and immigrants. Policymakers must ensure that green jobs are sustainable for the environment, workers, and their families that depend on them.

Give Workers the Right to Choose: Federal policymakers should pass the Employee Free Choice Act, giving workers the right to improve working conditions and address poor and illegal workplace practices. The Employee Free Choice Act gives construction workers the right to join a union, improve working conditions, and not fear retaliation from bad employers for doing so.

Policymakers at the local, state, and federal level have the ability to make important inroads to ensure safe, fair, and equitable working conditions for construction workers. At each level they can pass innovative policies to improve working conditions, reward good business practices, and strictly enforce workplace laws.

Employers

Employers, general contractors, and developers have a unique opportunity to ensure safe and humane working conditions for its workforce. These industry leaders can highlight profitable business models that invest in workers and local communities, taking corporate responsibility to a new level. General contractors and developers have a particularly important role to play as industry trendsetters by ensuring safe and humane working conditions on their worksites.

Invest in Workforce Development: Builders and contractors should invest in workforce development to make their businesses profitable and benefit construction workers. By working to ensure proper safety training, and technical skills development of all workers on a project, builders and contractors ensure quality finished projects for clients, and safe and dignified working conditions for workers. Builders and contractors should collaborate with their subcontractors on workforce development to create fair and safe working environments.

Prioritize Safety: Builders and contractors should provide paid monthly health and safety trainings for construction workers. Builders and contractors should ensure all workers receive proper safety equipment, rest breaks, and clean drinking water. They should create an anonymous system for workers to address safety concerns with their direct employer, general contractor, and developer without fear of retaliation.

Subcontract for Quality: When general contractors and developers hire subcontractors they should take into account working conditions, including safety, breaks, wages, and benefits. General contractors should ensure safe and dignified working conditions on their work sites and address any employment rights violations by using a bidding system that gives preferential status to subcontractors that demonstrate a track record in providing fair working conditions. For developers and general contractors, the bottom line must also include the human cost.

ENDNOTES

1 "Raleigh and Austin are Fastest-Growing Metro Areas," U.S. Census Bureau News, 19 March 2009, http://www.census.gov/Press-Release/www/releases/archives/population/013426.html, Accessed 30 March 2009).

2 Quarterly Employment and Wages for Third Quarter 2008, Texas Workforce Commission.

3 Quarterly Census of Employment and Wages. Produced by Texas Workforce Commission's LMCI Department on April 16, 2009.

4 ibid.

5 ibid.

6 ibid.

7 For welders, cutters, solderers, braziers, painters (construction and maintenance), States with Highest Employment in Selected Occupations and their Median Wage, 2008, Bureau of Labor Statistics.

8 Builder Magazine, 17 February 2009; " Annual Estimates of the Population of Metropolitan and Micropolitan Statistical Areas: April 1, 2000 to July 1, 2008 (CBSA-EST2008-01)" (CSV), United States Census Bureau, Population Division, 10 July 2008, http://www.census.gov/popest/metro/CBSA-est2008-annual.html, Accessed on 18 May 2009.

9 Census of Fatal Occupational Injuries, 2007, U.S. Department of Labor, Bureau of Labor Statistics, in cooperation with state and federal agencies.

GLOSSARY

- **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 the project.
- **Developer** – A developer designs, creates, and funds commercial construction projects. Usually the developer is the owner of the property.
- **Homebuilder** – Homeowners own residential housing construction projects, but also take on the role of the general contractor to oversee the building of their homes. Homebuilders can range in size from small companies that build custom homes to national companies that build entire subdivisions.
- **Lien –** A property lien attaches the debt of unpaid wages to the property and makes the owner liable for the bill.
- **National Labor Relations Board –** The National Labor Relations Board is a federal agency that investigates employers who violate the rights of workers to organize to improve working conditions and form unions.
- **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 rate of the trade in a certain geographic region.
- **Subcontractor** – Subcontractors are companies that specialize in one construction trade (such as electric work). Subcontractors complete their trade work on a project and directly oversee the workers that labor on the site or can hire other subcontractors to complete the work.
- **Subcontracting** – Subcontracting is the practice of hiring subcontractors to perform a specialized portion of work on a construction project.
- **Texas Workforce Commission** – The Texas Workforce Commission is the state agency that investigates wage theft cases, also aids in job placement, resolves discrimination cases, and distributes unemployment benefits.
- **Trade** – A trade is the occupation of a construction worker requiring a specialized skill, such as carpentry.
- **U.S. Department of Labor, Occupational Health and Safety Administration (OSHA)–** OSHA is a federal agency that investigates violations of healthy and safety regulations. OSHA also offers certified health and safety trainings.
- **U.S. Department of Labor, Wage and Hour Division** – Wage and Hour is the federal agency that investigates minimum wage and overtime violations.
- **Wage Theft** – Wage theft is the practice of employers refusing to pay the legal minimum wage, paying less than the promised wage, or, most commonly, not paying their workers anything at all.
- **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 subscribe to workers' compensation to protect their workers in the event of an injury on the job.

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Building Austin, Building Injustice:
Construction Working Conditions in Austin, Texas

Workers Defense Project is a non-profit community organization that promotes fair working conditions for Austin's low-wage 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 better protections for Austin's most vulnerable workers. Like Dr. Martin Luther King Jr., Workers Defense Project believes all workers deserve to be treated with dignity at work, regardless of the color of their skin, gender, or national origin.

INTRODUCTION

Austin, Texas, a vibrant and growing city known as the "Live Music Capital of the World" and the "Greenest City in America," is consistently ranked as one of the best places to live in the United States.[1] With its laid-back atmosphere and flourishing music scene, Austin has attracted scores of new residents in recent years, making the city the second fastest-growing urban area in the country.[2] The stability of Austin's economy, which is anchored by the University of Texas and the state capitol, has allowed Austin to weather the current economic downturn better than most U.S. cities, fueling Austin area's 2007 to 2008 population growth of 3.8%.[3]

The construction industry in Austin plays an important role in sustaining this growth by filling the steady demand for new housing, commercial building facilities, and the city's infrastructure system. Additionally, the construction industry contributes to the economic viability of the city by providing important employment opportunities to more than 50,000 Austin residents.[4]

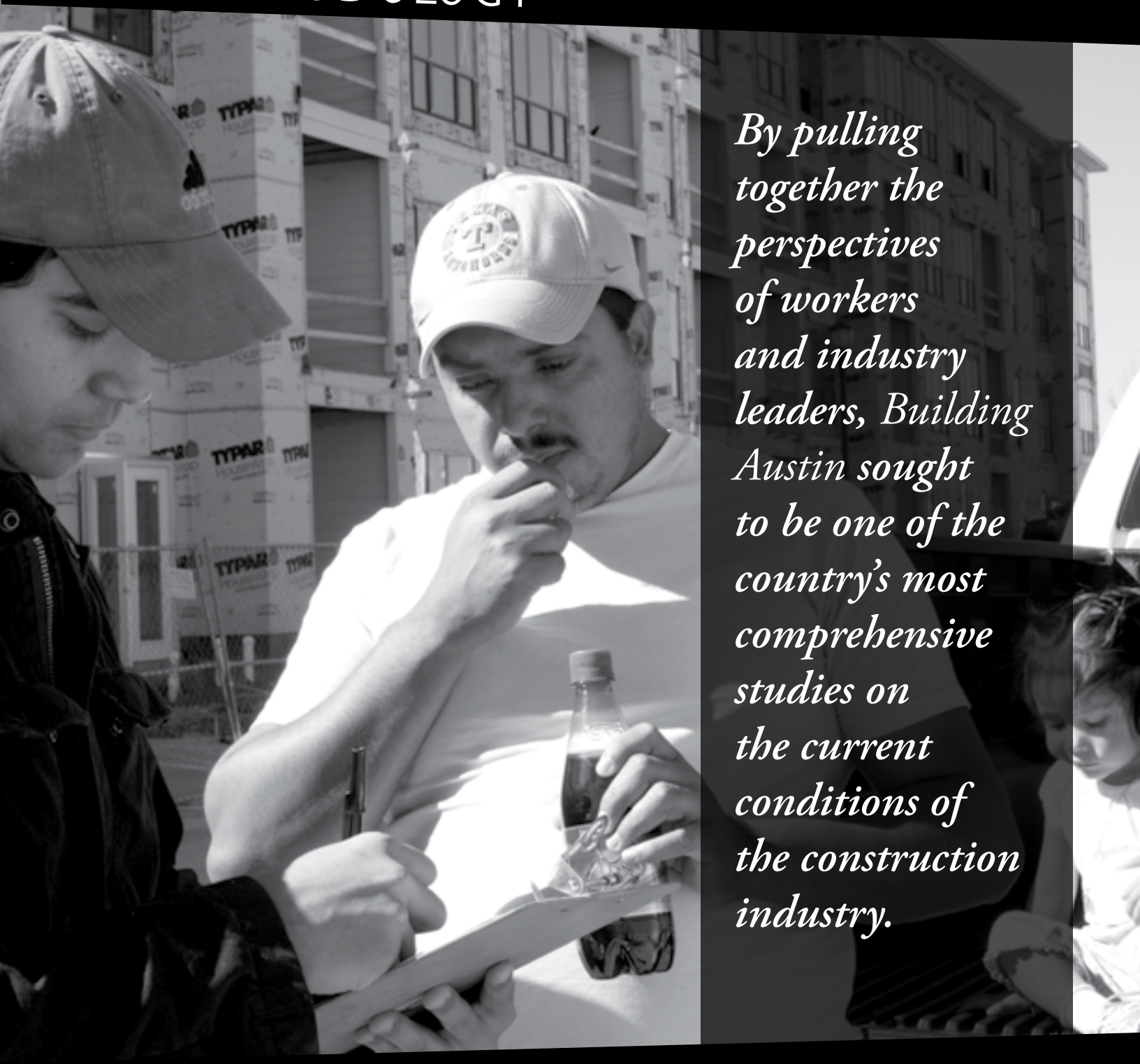
However, *Building Austin, Building Injustice*, an in-depth study of the construction industry in Austin, reveals that while the industry plays a vital role in the city's economy, most of the jobs in construction fail to meet the basic needs of its workers and their families. *Building Austin* survey data indicated that the construction industry is a predominately low-wage industry where jobs are characterized by long hours and dangerous working conditions. Furthermore, this study reveals that most construction workplace practices commonly violate federal and state employment regulations.

These irresponsible employer practices not only harm workers; they also undermine good businesses that operate according to the law. Construction companies that cut costs by violating workers' rights put other companies that prioritize good wages and safe working conditions at a competitive disadvantage. The resulting race to the bottom lowers safety and wage standards across the industry.

Employers who engage in poor and illegal working conditions do so at the expense of the workers and of the public. *Building Austin, Building Injustice* demonstrates that adverse working conditions have a direct social cost on the public, draining needed tax revenue, straining limited hospital resources, and forcing low-wage workers to depend heavily on charities and government support to make ends meet. On the other hand, good working conditions benefit all who are involved – the owner is guaranteed good quality workmanship, and construction workers are able to adequately provide for their families. Good working conditions help build a stable economy for everyone in Austin.

Workers Defense Project has created a comprehensive study on the construction industry, drawing on the first-hand experiences of construction workers and employers, as well as existing data from government and industry sources. *Building Austin, Building Injustice* offers Austin residents, builders, and policymakers an in-depth perspective on the important issues facing the city's construction workers. Although Austin has been a leader in promoting sustainable development through green building initiatives, it has failed to ensure safe, healthy, and equitable work environments for the construction workers building the city.[5] As the city invests in green building, it must ensure that these jobs are sustainable for the environment, workers, and their families that depend on them. This report recommends best practices for policymakers and construction industry leaders to create a stable construction industry that provides good quality jobs. By making these improvements, we can ensure that Austin is a great place to live for all of us and is a national leader in protecting the health of its workforce.

METHODOLOGY



By pulling together the perspectives of workers and industry leaders, Building Austin sought to be one of the country's most comprehensive studies on the current conditions of the construction industry.

METHOD

About the Research Team

The *Building Austin, Building Injustice* study was conceived by Workers Defense Project to better understand working conditions in Austin's construction industry. Workers Defense Project is a nonprofit community organization that promotes fair working conditions for Austin's low-wage workers.

To undertake this analysis, Workers Defense Project partnered with faculty from the geography, anthropology, history, and sociology departments of the University of Texas (UT) at Austin, faculty from the UT School of Law, and UT's Division of Diversity and Community Engagement. Workers Defense Project also collaborated with Dr. Nik Theodore, director of the Center for Urban Economic Development at the University of Illinois at Chicago and co-author of the national study "*On the Corner: Day Labor In the United States*." University of Texas faculty, students, Workers Defense Project, and IBEw520 organizers carried out surveys and interviews and collected secondary data from government agencies. National and local policy experts interpreted the construction industry data to develop best-practice recommendations for the industry.

METHODOLOGY

Building Austin, Building Injustice is the result of more than a year of research conducted by a team composed of Workers Defense Project, faculty from the University of Texas at Austin, and faculty from the University of Illinois at Chicago. To describe construction working conditions in Austin, Texas, the *Building Austin* team collected data from primary and secondary sources. Existing data on the industry's economic impact, employment, and workforce demographics were gathered from secondary sources including the American Community Survey of the U.S. Census, the U.S. Department of Labor (DOL) Wage and Hour Division and the Occupational Health and Safety Administration (OSHA), and the Texas Workforce Commission (TWC). Primary data from construction worker surveys and in-depth interviews with workers and employers in the construction industry documented workforce conditions not recorded by these state and federal agencies.

From October 2008 to January 2009, *Building Austin* researchers surveyed a total of 312 construction workers to collect data on wages, benefits, discrimination, and workplace health and safety. Surveyor teams conducted oral surveys with workers on construction sites in Austin. To ensure a representative sample of Austin construction workers, construction survey sites were randomly selected from a list of building permits obtained from the City of Austin for the second and third quarters of 2008. Construction sites were limited to permits for the construction of homes, apartments and condominiums, offices, and stores, but did not include site improvements or infrastructure projects.[i] To gather data on both the commercial and residential sectors within construction, *Building Austin* researchers aimed to perform an equal number of surveys with residential construction workers and commercial construction workers. Surveyors classified single-family home or duplex construction sites as residential sites, and multi-family apartments, condominiums, offices, and stores as commercial sites. They conducted 48% of surveys with residential construction workers and 52% of surveys with commercial construction workers. Surveying workers at different types of building sites allowed for researchers to capture a broader range of experiences.

Researchers also performed site observations while surveying construction workers, noting the type of safety equipment that most workers on the site used and estimating the number of workers on each construction site. Many of the photos included in this report resulted from site observations, and they visually document working conditions on site.

[i] *Building Austin* researchers focused on vertical construction, or the construction of buildings because the majority of Workers Defense Project's wage theft and injury cases come from vertical construction.

From February to April 2009, researchers interviewed 17 construction workers and 20 construction employers in order to obtain a better understanding of the working conditions and company practices within the industry. Researchers conducted in-depth interviews with workers who were selected from previously surveyed workers by the research team or who were members of Workers Defense Project. Interview questions asked them to describe their work experience in the industry including workplace safety, wages, and benefits. 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.

Researchers also interviewed contractors, builders, and developers from February to April 2009. The research team conducted four interviews with commercial developers, seven interviews with general contractors, five interviews with residential developers, and four interviews with subcontractors, thus talking with employers at all levels within the industry. Those businesses interviewed were randomly selected from the same list of permit sites used during surveying. Interview questions focused on the practice of subcontracting and the oversight and maintenance of workplace standards on the construction site. Contractors, builders, and developers were also asked to describe their perspectives on the needs of the construction industry, especially in the context of the current economic crisis, and the business strategies that strengthened their companies and improved their workforce.

Taken together, the primary and secondary data collected for *Building Austin, Building Injustice* provides key insights into working conditions in the construction industry. By pulling together the perspectives of workers and industry leaders, *Building Austin* sought to be one of the country's most comprehensive studies on the current conditions of the construction industry.

INDUSTRY OVERVIEW

Austin has become synonymous with a booming construction industry.

INDUSTRY

The independent weekly *Austin Chronicle* dubbed 2008 the "Year of the Crane" for the city because of the numerous construction cranes that towered over the downtown skyline. While most Austinites are aware of construction as it changes the face of the city, they often overlook the important economic contributions of the men and women who build the rapidly growing city.

Using data collected from government and industry sources, this section presents a brief introduction to the construction industry to provide context for the findings of *Building Austin, Building Injustice* and a backdrop for the experiences of construction workers in Austin. Key findings from government and industry sources indicated that:

- The construction industry in Austin is growing in terms of total number of workers employed, and since 1990 it has outpaced job growth in the private sector in Austin. In 2008, construction provided employment to over 50,000 workers and was one of the top ten industry employers in the Austin urban area.
- As of 2009, Austin is home to the second healthiest housing market in the country and is responsible for more residential housing starts than Chicago, a metropolitan area six times its size.
- Construction workers have not benefited from the same rate of wage growth as other workers in Austin. Over the past 18 years, increases in construction workers' earnings lagged behind increases in private sector workers' earnings by 11%.
- In 2008, Texas construction workers earned two to three dollars less per hour than their counterparts in other states who performed the same skilled labor.
- The construction workforce has changed in recent years to be increasingly comprised of Latino workers born in a foreign country. The workforce continues to be predominantly male, and most construction workers have not received a vocational or college degree.

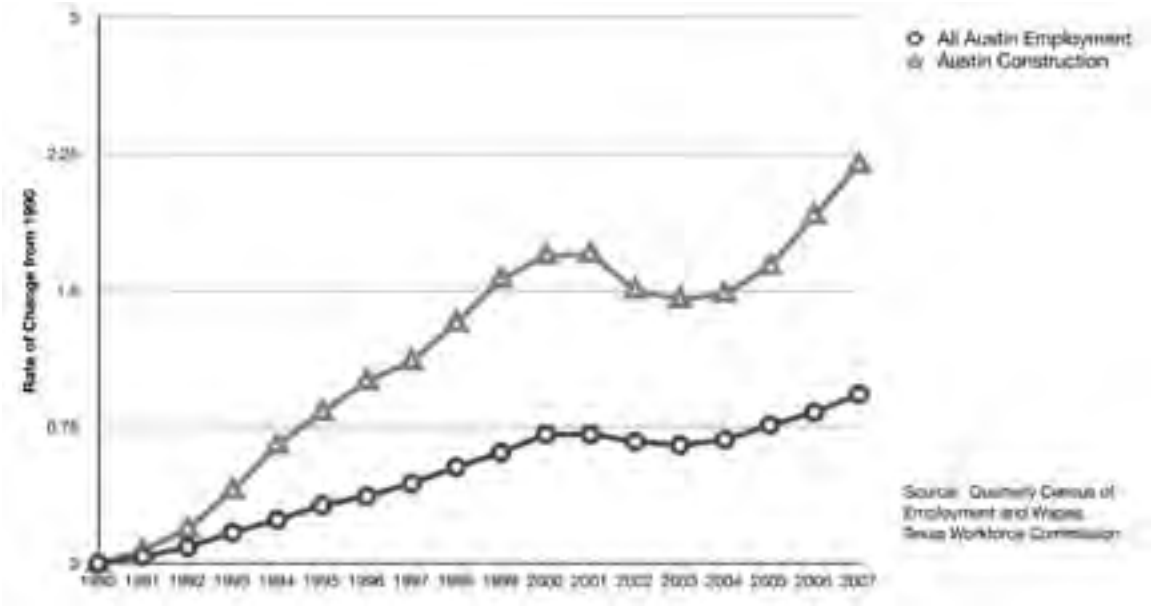
Construction, A Growing Industry

Between 2003 and 2007, annual job growth in the Texas construction industry was 9.4%, making it the third fastest growing industry in the state.[6] Construction is a significant industry to the Austin urban area as well, employing over 50,700 workers in the Austin-Round Rock metropolitan area, making it one of the top ten industry employers.[7] In fact, the long-term job growth in construction has outpaced overall job growth rate in the Austin area. Graph 1 shows the level of job growth in the construction industry from 1990 to 2007 compared to job growth citywide. While the private sector in the Austin area grew by 93% between 1990 and 2007, the construction industry grew by 219%. The industry expanded from 16,280 jobs to 51,910 jobs, more than tripling its size.[8]

In 2008, construction employed a larger share of workers in Austin than the industry as a whole does at the national level.[9] Not only did the construction industry offer many jobs to Austinites, but for every new job at a single-family home construction site, 1.81 jobs were added to the Travis County economy.[10; ii] These additional jobs ranged in scope from suppliers of construction materials to real estate agents selling the finished project.

[ii] For every job at the general contractor level on a single-family home site, 1.81 jobs are added to the Travis County economy.

GRAPH 1
Job Growth in the Construction Industry
and in Total Employment, Austin, Texas, 1990-2007



For its size, Austin's strength in residential homebuilding is remarkable: in 2008 it had the sixth largest homebuilding market, while only weighing in as the 36th largest metropolitan area in the country.[11] To put it in perspective, Austin is responsible for more housing construction activity than Chicago, which has six times the population.[12]

Weathering the Economic Downturn

While much of the nation has been devastated by the economic slowdown, Austin's construction industry has fared considerably better than its counterparts outside of Texas. In 2008, new home construction in Austin was down 34% from the previous year; however, home prices continued to rise into late 2008, and *Builder* magazine ranked Austin as the second healthiest housing market in the U.S. in 2009.[13] In the short term, it is likely that Austin's construction industry will experience a dip in employment as the market slows to await an economic recovery. As of the third quarter of 2008, construction jobs were down by 1,926 from the previous year.[14]

Despite the downturn, Austin continues to be a desirable place to build. Since Austin did not experience the same degree of price inflation as other large markets, it has not been hit by the level of foreclosures and price slashing that have immobilized other previously active markets.[15] Steady population growth, remaining at 3.8% from 2007 to 2008, ranked Austin-Round Rock as the second fastest-growing metro area in the nation.[16] During the same period, Austin added 17,400 jobs, compared to most U.S. cities that have lost jobs.[17] With a local economy stabilized by the University of Texas and the State Capitol, Austin is poised to withstand the economic downturn and eventually continue on a path of steady job growth.[18] As Austin grows, the construction industry will play a vital role in meeting the demand for new housing and new facilities for growing industries.

Finally, the City of Austin encourages new building in order to meet the goals of Austin's Smart Growth initiative, which aims to minimize "sprawl" and make central Austin more livable.[19; iii] New commercial construction in the urban core has skyrocketed in recent years with the city placing an emphasis on mixed-use residential retail develop-

[iii] "In general, smart growth invests time, attention, and resources in restoring community and vitality to center cities and older suburbs. New smart growth is more town-centered, is transit and pedestrian oriented, and has a greater mix of housing, commercial and retail uses. It also preserves open space and many other environmental amenities." (Smart Growth Network 2007) Additionally, Smart Growth has created concerns nationwide due to displacement of existing low-income communities, who often are unable to afford rapidly increasing rent or property tax costs.

Subcontracting: How Business is Done

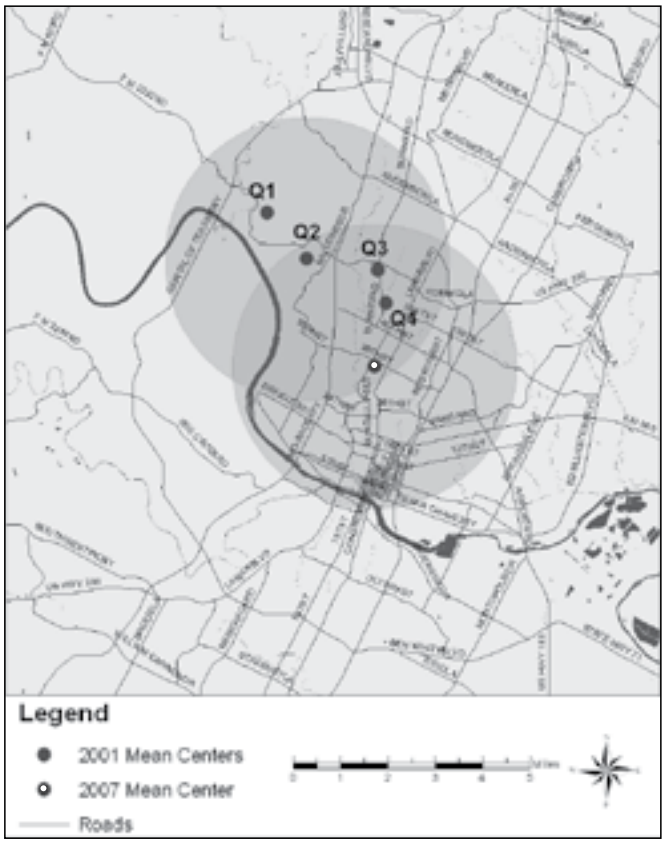
A key characteristic of the construction industry is the use of subcontracting. While general contractors and homebuilders are responsible for overseeing the completion of a construction project, they hire subcontractors who specialize in a specific construction trade, such as carpentry or concrete, to perform work on their site. Subcontractors hire the individual construction workers to complete the labor of the project. However, some subcontractors may hire other subcontractors to finish the job. The end result is often a complicated web of dozens of subcontractors that may be hired on one construction site. General contractors interviewed for *Building Austin, Building Injustice* estimated that 95% of workers on their worksites were employed by their subcontractors.

ments, moving thousands of Austinites into the downtown area. As Map 1 shows, commercial construction has shifted downtown in line with this initiative to set a more sustainable path for Austin's growth as a green city.

Construction Workers' Wages

While the Austin area's construction industry grew at a faster rate than the private sector between 1990 and 2007, construction workers' earnings lagged behind those of other private sector employees as indicated in Graph 2 on page 12. In 1990, average annual earnings for construction workers were $2,289 higher than the average annual earnings for Austin workers in the private sectors.[20; iv] In 2008, Austin construction workers no longer earned more than workers in the private sector. Instead, Austin construction workers' annual earnings dropped considerably to $497 less than other private sector workers' annual earnings.[21] Over the last 18 years, the Austin private sector average earnings grew by 33%, but the construction earnings only grew by 22%.[22] Workers in Austin's construction industry have not benefited at the same pace of growth as other private industry workers, and their increase in earnings has not matched the job growth of the construction industry as a whole.

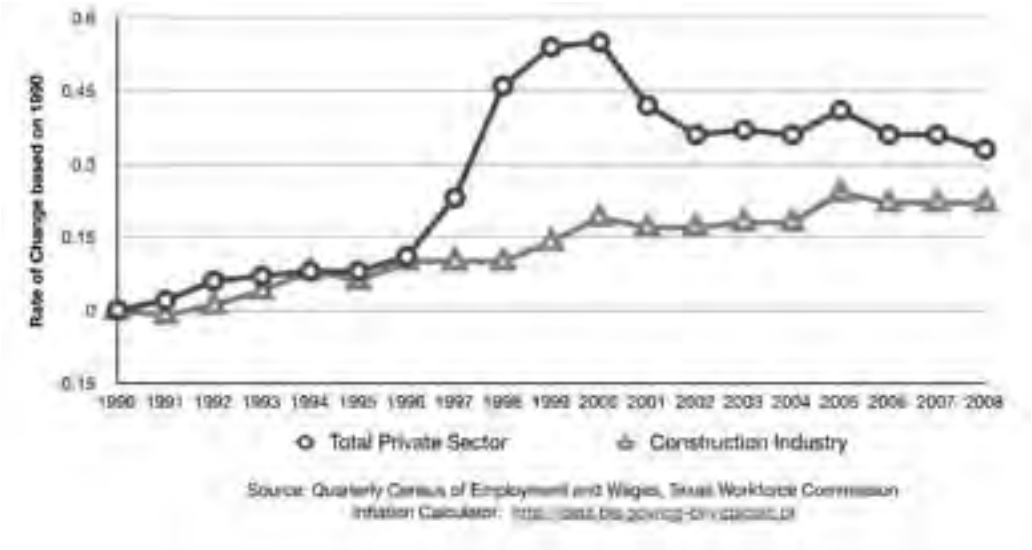
MAP 1
Commercial Mean Center 2001 & 2007



Source: City of Austin Building Permits, 2001 and 2007

[iv] Adjusted for inflation using http://data.bls.gov/cgi-bin/cpicalc.pl. Earnings in 2008 dollars.

GRAPH 2
Growth in Average Annual Earnings by Industry
(Adjusted for Inflation), Austin, Texas, 1990-2008



In 2008, the median wage of all construction workers in Travis County was $14.05 per hour.[23; v] However, construction laborers, the trade with the largest employment share (33.93%), earned a median wage of only $10.68 per hour.[24] Furthermore, hourly workers in Texas earned two to three dollars less per hour than their counterparts in other states with high employment numbers in construction (see Table 1).[25]

Characteristics of the Construction Workforce

The construction workforce in Austin has changed considerably between 2000 and 2006 (see Table 2). According to data from the U.S. Census and the American Community Survey, construction workers in Austin are increasingly Latino and more likely to be born in a foreign country. The increasing number of Latino workers in the construction industry was due in part to the number of jobs available in the industry between 2003 and 2007 when it experienced an explosion of job growth (9.4%) at the state level.[26] From 2000 to 2007, the Latino population in Austin grew by 45%.[27] These newcomers to Austin quickly filled the need for workers in the rapidly expanding construction industry; the proportion of the Latino workers in construction expanded by 13%.

The majority of workers in the construction industry did not receive a college degree, and only 3% of the workforce graduated from a technical or vocational school, indicating that construction workers gained expertise in their trade through on-the-job training. The number of workers earning degrees from vocational schools for their trades did not increase between 2000 and 2006, demonstrating a greater need for vocational and safety training on the job.

Types of Construction Jobs

This report focuses on jobs in vertical construction, a term that refers to the construction of buildings including homes, apartments and condominiums, offices, stores, and mixed-use properties.[vi] According to the Quarterly Employment and Wages Data in 2008, of the 50,700 construction workers in Austin, 9,243 workers were employed in the construction of buildings.[28] Of those, 4,675 worked in residential and 3,880 worked in commercial construction.[29] Table 3 on page 14 lists the different trades found in this sector of construction with their employment share.

[v] Median wage includes all construction trades, but omits first line supervisors and managers.
[vi] There are numerous types of construction including industrial, light industrial, horizontal (roads and bridges), and vertical construction (buildings). Vertical construction can be described as residential and commercial.

TABLE 1
States with Highest Employment in
Selected Occupations and their Median Wage, 2008

	Employment	Hourly Median Wage
Welders, cutters, solderers, brazers		
Texas	53,530	$15.82
California	28,340	$16.01
Illinois	16,810	$16.12
Pennsylvania	16,860	$16.42
Louisiana	15,540	$18.38
Painters, Construction & Maintenance		
Texas	18,400	$13.82
Florida	20,600	$14.48
California	37,000	$18.76
New York	14,370	$19.83
Illinois	9,890	$20.90

Source: Bureau of Labor Statistics

TABLE 2
Demographic Profile of Travis County's
Construction Workers, 2000 & 2006

		Construction Workers				Travis County Population
		2000	2006	Change 2006-2000		2006
Sex	Male	97%	96%	-1%		52%
	Female	3%	4%	1%		48%
Age Group	16-19	9%	7%	-2%		-
	20-29	35%	38%	3%		-
	30-39	28%	25%	-3%		-
	40-49	18%	22%	4%		-
	50-59	8%	6%	-2%		-
	60+	2%	2%	0%		-
Race/Ethnicity	Non-Hispanic White	31%	15%	-16%		52%
	Non-Hispanic Black	3%	5%	2%		8%
	Native American	0%	0%	0%		.23%
	Asian	0%	1%	1%		5%
	Other	1%	1%	0%		2%
	Hispanic, any race	65%	78%	13%		32%
Nativity	Native to U.S.	51%	30%	-21%		82%
	Foreign Born	49%	70%	21%		18%
Educational Attainment	None	5%	3%	-2%		-
	Less than High School Diploma	44%	42%	-2%		15%
	High School Degree	26%	35%	9%		20%
	Vocational School	3%	3%	0%		5%
	Some College	18%	9%	-9%		18%
	College Degree or higher	4%	8%	4%		42%

Source: Public Use Micro Sample from 2000 Census,
American Community Survey Data from 2006, U.S. Census Bureau.

Texas, Failing to Protect Its Workforce

All construction workers, regardless of race, age, gender, sexual orientation, or immigration status, are protected by state or 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 to which they are entitled. 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. Many states pass state laws to strengthen protections provided by federal laws. Unlike other states, Texas has failed to ensure basic protections for its workforce. See Table 4 below that compares Texas to other states.

TABLE 4
Worker Protections in Five States

State	Workers' Compensation	Breaks	Ratio of federal OSHA Investigators to Workers
Texas	Not required- employers can opt out of workers compensation	Workers in Texas are not entitled to rest breaks	1 per 132,882
Tennessee	Required by state law.	30 min. break every 6 hrs of work	1 per 66,954
North Carolina	Required by state law.	30 min. meal break after 5 hrs of work for children under 16 yrs	1 per 35,025
New York	Required by state law.	30 min meal break every 6 hrs of work	1 per 71,882
Nevada	Required by state law.	10 min break for every 3.5 hrs worked. 30 min. meal break in 8 hr shift	1 per 31,329

Source: Rick Levy, AFL-CIO of Texas, General Counsel, 2008; "Can my Boss Do That?" http://www.canmybossdothat.com, Accessed 6 May 2009; AFL-CIO, Death on the Job, 18th ed., 2009.

Conclusion

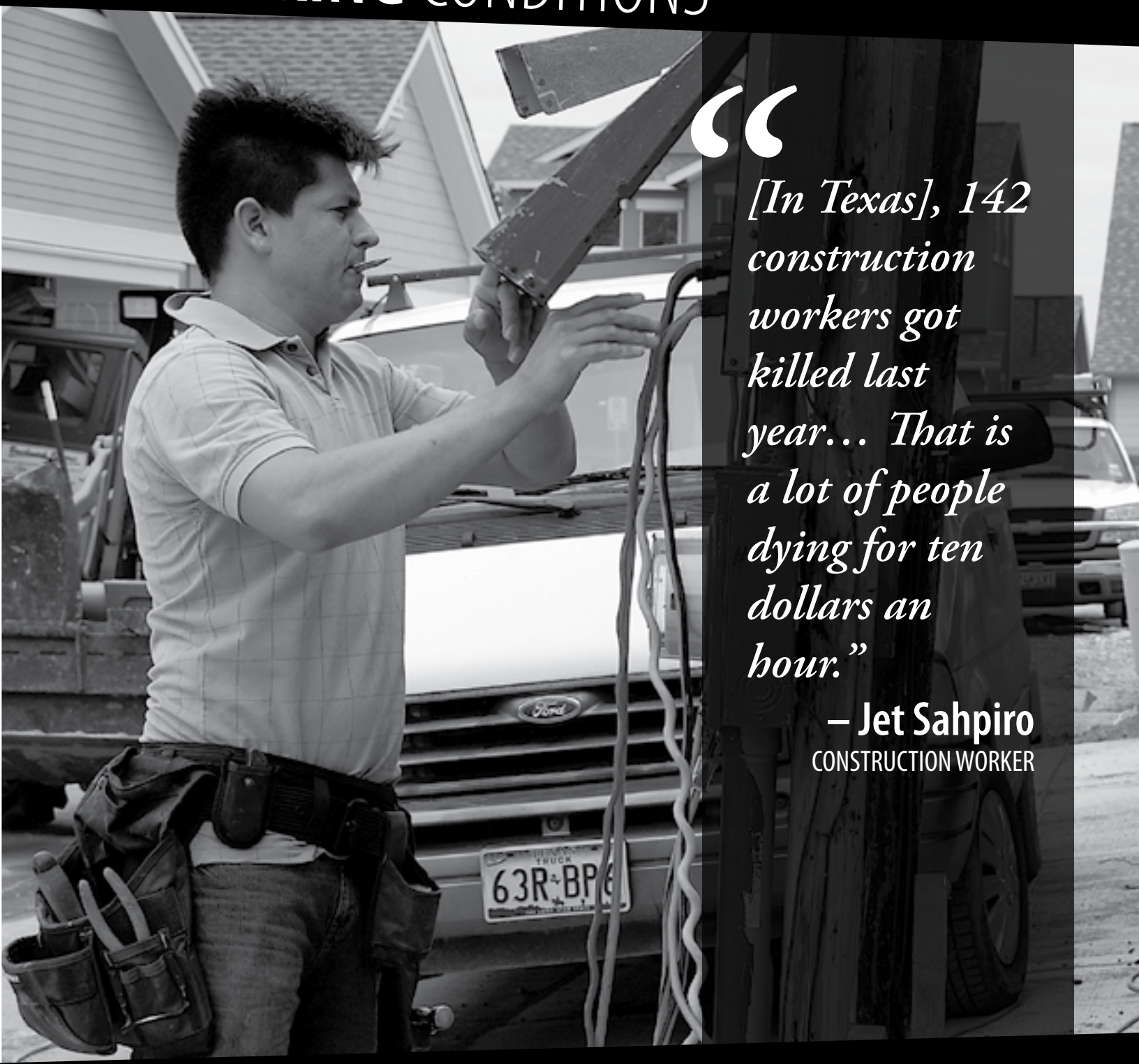
The construction industry in Austin is vitally important to the city's continued growth and prosperity. It provides thousands of Austinites with jobs and meets the demand for new housing due to Austin's population growth. Although construction has been impacted by the recent economic slow-down, Austin is ranked as the second healthiest housing market, and the industry is in a strong position to weather hard economic times. However, the construction workers who make the industry resilient do not enjoy the prosperity of the industry as a whole; many labor in illegal and dangerous working conditions for low pay and little regard for their safety.

TABLE 3
Trades and Employment Share for the Construction of Buildings, Austin, Texas, 2008

Title	Share
First-line Supervisors/Managers of Construction Trades & Extraction Workers	9.92%
Boilermakers	.16%
Brickmasons & blockmasons	1.04%
Stonemasons	.04%
Carpet, Floor & Tire Installers	.24%
Cement Masons & Concrete Finishers	4.05%
Carpenters	9.70%
Equipment Operator	8.49%
Drywall & Ceiling Tile Installers	2.06%
Tapers	.05%
Electricians	8.62%
Glaziers	.32%
Insulation Workers	.35%
Painters & Paperhangers	3.84%
Plumbers, Pipefitters, Pipelayers & Steamfitters	7.76%
Plasterers & Stucco Masons	1.28%
Iron & Metal Workers	1.74%
Roofers	1.20%
Sheet Metal Workers	1.67%
Laborers & Helpers	33.93%
Construction & Building Inspectors	2.64%
Elevator Installers & Repairers	.18%
Fence Erectors	.17%
Hazardous Materials Removal Workers	.45%
Construction & related workers, all other	.09%
Total	**100%**

Source: EMSI, CAPCOG

WORKING CONDITIONS



"[In Texas], 142 construction workers got killed last year… That is a lot of people dying for ten dollars an hour."

– Jet Sahpiro
CONSTRUCTION WORKER

WORKERS

Introduction

The information summarized in this section is the result of 312 individual worker surveys conducted at random construction sites throughout Austin and 17 in-depth construction worker interviews. The data collected gives a comprehensive picture of working conditions faced by thousands of construction workers in the city. Results showed widespread workplace abuse in the construction industry, including:

- **Poverty level wages.** Forty-five percent of surveyed construction workers earned poverty level wages.[vii] In addition, nearly half of construction workers reported not having enough financial resources to support their families.
- **Failure to be paid.** One in five workers reported being denied payment for their construction work in Austin. Fifty percent of construction workers reported not being paid overtime, and for many this resulted in the inability to pay for food and housing.
- **Few employment benefits.** The large majority of construction workers lacked health insurance (76%), pensions (81%), sick days (87%) or vacation days (77%).
- **High rates of dangerous and unsafe working conditions.** One in five surveyed construction workers has suffered a workplace injury that required medical attention. Sixty-four percent of surveyed workers lacked basic health and safety training, and many were forced to provide their own safety equipment.
- **Denied legal protections.** Employers frequently misclassified workers as independent contractors instead of employees, thus stripping them of their rights to overtime pay, workers' compensation coverage, and benefits, and shifting the burden of payroll taxes to the worker. Survey results showed that 38% of construction workers were misclassified as independent contractors.

According to survey results, federal and state employment violations were a standard practice in the industry, having far-reaching repercussions on construction workers. Data showed that workers who earned poverty and low wages were more likely to lack health insurance, be denied payment for their work, and not be covered by workers' compensation insurance.

However, research also found model work environments, where high rates of productivity were matched with fair working conditions. Workers who earned living wages (35% of those surveyed) were more likely to be covered by health insurance, and workers' compensation, receive safety trainings, and report fewer cases of wage theft change (defined as the practice of employers refusing to pay the legal minimum wage, paying less than the promised wage, or most commonly not paying anything at all to their workers).

[vii] Poverty wage of $10.56 calculated from Department of Health and Human Services 2009 federal poverty line earnings for a family of 4 of $22,050 per year.

Building Austin data also pointed to lax enforcement of workplace regulations by government agencies, including the U.S. Department of Labor (DOL) and the Texas Workforce Commission. Both the DOL Wage and Hour Division and Occupational Safety and Health Administration were found to be operating at a limited scale, having little impact on addressing workplace violations and improving working conditions in the industry. Thus, illegal and dangerous workplace practices were found on the majority of worksites throughout Austin.

Honest Work, Honest Pay

"You are getting $5.50, $6, $7 dollars [per hour at] the most, and they [contractors] are charging twenty-five dollars, thirty dollars [per hour], per man. It doesn't matter what you know... that's what you're getting paid." – Ramiro Mora, carpenter

While construction is a profitable industry in Austin, the industry has failed to ensure economic security for its workforce, as carpenter Ramiro Mora noted. Most construction workers earned low wages; 45% of surveyed construction workers earned wages that fell below the federal poverty line of $10.56 per hour. In fact, construction workers most commonly received a wage of $10 per hour. Several workers were found to be making well below the legal minimum wage, including one worker earning as little as $2 an hour.

TABLE 5

Hourly Wage Description of Construction Workers*	Hourly Wage Amount
Average hourly wage earned	$13.11
Most common hourly wage earned	$10.00
Highest hourly wage earned	$32.73
Lowest hourly wage earned	$2.00

Source: Building Austin, Building Injustice survey data
*Some surveyed workers preferred not to answer the hourly wage survey question, resulting in a sample of 240 workers.

TABLE 6

Hourly Wages Earned by Construction Workers*	Percent of Workers
Less than the Federal Minimum Wage (< $6.55)	1.3%
Below Poverty Line ($6.56-$10.56)	43.3%
Low Wage ($10.57-$13.49)	20.4%
Living Wage ($13.50+)	35%

Source: Building Austin, Building Injustice survey data
*Some surveyed workers preferred not to answer the hourly wage survey question, resulting in a sample of 240 workers.
Poverty Line taken from Department of Health and Human Services 2009 federal poverty line earnings for a family of 4 of $22,050 per year.
Living Wage level taken from the Center for Public Priorities Family Budget Estimator 2007 for a family of 4 of $48,537 per year without employer sponsored health insurance.

"You are getting $5.50, $6, $7 dollars [per hour at] the most, and they [contractors] are charging twenty-five dollars, thirty dollars [per hour], per man. It doesn't matter what you know... that's what you're getting paid."

– Ramiro Mora
CARPENTER

Survey results suggested lower actual earnings in the construction industry than reported by official data (see page 12), attributed to the fact that the largest source for wage data is from the state Unemployment Insurance system. Many construction workers were not accounted for by the Unemployment Insurance system because they were not properly registered as employees. Instead, employers considered them to be independent contractors and paid them by cash or by personal check as opposed to company paycheck with the appropriate payroll taxes (including unemployment) deducted. Thirty-eight percent of surveyed construction workers reported that their employers did not withhold their taxes, and these workers earned an average wage of $11.00 per hour. In contrast, workers whose employers withheld their taxes averaged $14.32 per hour, an amount closer to official reports.

Furthermore, 71% of workers surveyed were the primary providers in their household and depended on their work in the industry to provide for them and their families. One worker explained, "Look, in reality with [a construction worker's wage], someone that is paying rent, that is paying bills, and that has a responsibility for his home with his family… $10 per hour is not enough." Surveyed construction workers were found to have wages that did not cover minimum monthly expenses of housing and bills (see page 20). With only 35% of surveyed workers earning a living wage, the majority of jobs in the construction industry do not pay a sufficient amount to support construction workers and their families.

TABLE 7
Working Conditions Reported by Construction Workers, by Wage Group*

	Wage Earned by Worker			
	Below Minimum Wage	Under Poverty Line	Low Wage	Livable Wage
Do not have medical insurance	100%	81%	69%	30%
Have experienced wage theft	100%**	30%	12%	16%
Do not receive a break (other than lunch)	33%	59%	33%	25%
Did not receive OSHA 10 Hour Training	100%	73%	63%	44%
Employer had workers' compensation insurance	33%	29%	53%	79%

Source: Building Austin, Building Injustice survey data
*Some surveyed workers preferred not to answer the hourly wage survey question, resulting in a sample of 240 workers
**All experienced wage theft as defined by not being paid minimum wage

Analysis of our data demonstrated a strong association between workers' wages, benefits, and health and safety. Workers earning poverty-level wages were:

- **More vulnerable to the violation of their employment rights.** Poverty-wage workers were almost twice as likely to experience wage theft than workers earning a living wage.
- **More likely not to have workplace benefits.** Poverty-wage workers were 51% more likely not to have medical insurance than living-wage workers.
- **More likely to work under dangerous and unhealthy working conditions.** Poverty-wage workers were required to work without rest breaks and rarely received basic safety training.
- **Less likely to have an employer with workers' compensation insurance that would cover the cost of a work related injury.** Seventy-nine percent of living-wage workers were covered by workers' compensation insurance, but only 29% of poverty-wage workers had access to workers' compensation.

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

According to the Texas Department of Housing and Community Affairs, Austin has the highest rent costs in Texas. In 2008, the Fair-Market Rent for a two-bedroom unit in the Austin area was $935 per month. If most construction workers earned $10 per hour, their rent payment costs 58% of their monthly earnings, leaving only $665 to feed and provide for their family.

The Center for Public Policy Priorities estimated that the total monthly expenses for a family of four living in the Austin area was $4,423 in 2007. With 71% of construction workers as primary or sole providers to their families, they would have to work 14 hours a day, every day of the month in order to meet their needs. If workers go without medical insurance, they still must work for almost 11 hours a day, every day of the month to cover housing, food, child care, and transportation costs.

CPPP Family Budget Estimator for Austin-Round Rock Families (2007)
(Two Parents, Two Children)

Budgets for Families without Employer Sponsored Health Insurance (http://www.cppp.org/fbe/)

Housing[2]	$836.00
Food[3]	$490.93
Child Care[4]	$840.95
Medical Insurance[5]	$942.53
Medical out-of-pocket[6]	$117.94
Transportation[7]	$482.00
Other Necessities[8]	$334.40
Total Monthly Expenses	**$4,044.75**
Payroll Tax	$338.39
Income Tax	$306.83
Earned Income Tax Credit	$0.00
Child Tax Credit	($166.67)
Child and Dependent Care Credit	($100.00)
Monthly Tax Payments and Credits	$378.55
Necessary Monthly Income	$4,423
Household Hourly Wage[11]	$27
Necessary Annual Income	$53,080
Poverty Guidelines[12]	$20,650
Income as percent of Poverty Guidelines	257%

1. Where appropriate monthly expenses were adjusted to 2007 dollars.
2. Source: 2007 Fair Market Rents, U.S. Department of Housing and Urban Development
3. Source: June 2006 Thrifty Food Plan, U.S. Department of Agriculture.
4. Source: 2005 Texas Child Care Market Rate Survey, Texas Workforce Commission
5. Source: 2007 Full-time Employees Premium Rates, Texas Employees Retirement System
6. Source: 2004 Medical Expenditure Survey, Agency for Healthcare Research and Quality, U.S. Department of Health and Human Services
7. Source: 2001-2002 National Household Travel Survey, U.S. Bureau of Transportation Statistics, 2007 Internal Revenue Service Mileage Reimbursement
8. Source: 2004-2005 Consumer Expenditure Survey, U.S. Bureau of Labor Statistics
9. Credits are represented in parentheses.
10. When eligible, tax credits are only received on an annual basis when filing a federal tax return.
11. Represents the necessary combined hourly wages of all workers in household.
12. 2007 Poverty Guidelines, U.S. Department of Health and Human Services.

More Work, Less Pay

TABLE 8	
Overtime Hours Reported by 312 Construction Workers	**Percent of Workers**
Worked overtime hours (over 40 hours/week)	71%
Worked more than 8 hours a day	38%
Worked 6 days a week	29%
Source: Building Austin, Building Injustice survey data	

In addition to low pay and violations of minimum wage laws, survey data found widespread violations of construction workers' right to overtime pay. Workers put in long hours to meet construction deadlines. As one worker explained his work hours, "We're kind of behind right now, so we gotta go in tomorrow (Saturday)." As shown in Table 8, 71% of workers worked over 40 hours per week. Thirty-eight percent of workers regularly worked over eight hours a day, and 29% regularly worked at least 6 days per week.

While working overtime in the construction industry was extremely common, 50% of workers who worked more than 40 hours a week reported not receiving overtime pay. Interviewed workers described their employers paying them a flat rate, no matter how much work time they put in to complete a project. One ironworker said, "Well, I would work for him [my boss] seven days a week. At times from six in the morning until around eight or nine at night for… the same rate of pay. He never paid us overtime or any of that." Being denied overtime pay drastically reduced low-wage workers' earnings, particularly in this industry where the majority of workers commonly put in overtime. Employers, therefore, did not fulfill their end of the bargain, devalued workers' time and labor, and routinely broke the law.

Dangerous Work, Long Hours, But No Fair Pay

Environmental Restoration Services, an asbestos removal company, hired Reiniery Telles in September of 2007. Reiniery worked in a ten-person work crew on a number of sites in the Austin area, removing dangerous asbestos from old buildings to prepare them for remodeling. When Reiniery was hired he was told by his employer he would only work 40 hours a week and that there was no overtime pay. But as project deadlines approached, their employer began to rush the crew and insisted that they work nearly 70 hours a week.

Reiniery and his coworkers were not paid time and a half for overtime hours, and some weeks their employer only wrote them checks for 40 hours of work. After a month without overtime pay, Reiniery quit his job and came to Workers Defense Project to get help recovering $3,000 in unpaid wages. A year and a half later, Reiniery is still waiting for the payment that Environmental Restoration Services has been ordered to make by the Texas Workforce Commission.

Reiniery recalled, "We worked long hours and our pay didn't reflect it. When I wasn't getting paid for all my work, I had to depend a lot on friends and family to make rent and pay the bills. I usually help support my parents, but I wasn't able to do that. I'm still trying to pay back debts I have from when I didn't get paid right in 2007."

A City Built on Wage Theft

"It's happened so often [wage theft] that every time I go out on the job, I wonder if I'm even going to get paid."
– Nephi Chynoweth, construction worker

While it is estimated that construction work in Austin generates more than $3.5 billion in wages annually, survey data indicated that it was common practice for employers to refuse to pay their workers.[30] One in five workers reported

experiencing wage theft in the past three years on a construction site in Austin. Wage theft is a violation of state and federal employment law, and employers who engage in wage theft may face criminal charges under the Texas Penal Code and may be arrested by the Austin Police Department.[31; viii]

Workers can report violations of employment laws to state and federal agencies; however, most cases of wage theft go unreported. *None* of the surveyed workers that had experienced wage theft reported the crime to agencies such as the Texas Workforce Commission, the Department of Labor, or the Austin Police Department. Instead, many surveyed workers (35%) spoke with their employer or supervisor to try to recover their wages. Yet, when attempting to recover their wages by speaking to their bosses, interviewed workers described being threatened with retaliation including being fired, arrested, reported to immigration enforcement, or threatened with physical violence. For example, Mayra Reyes, a construction worker and mother of three, said, "My employer refused to pay me $900 she owed for my last two weeks of work on new condos in Austin. When I went to her house to complain, she fired me and threatened to call the police on me if I returned."

Only 11% of workers reported that they were able to recover their wages. The frequency of wage theft for construction workers suggests that it is not a rarely occurring anomaly, but a standard practice in the industry. This practice depicts an industry built on wage theft rather than an industry that rewards workers for their honest work.

> *"[Wage theft] happened so often that every time I go out on the job, I wonder if I'm even going to get paid."*
>
> **– Nephi Chynoweth**
> CONSTRUCTION WORKER

ONE in FIVE workers has experienced wage theft on a construction job in AUSTIN, TEXAS.

Although it is impossible to determine the total amount of lost wages in the construction industry in Austin, Workers Defense Project estimates that it receives $6,739,200 in wage theft complaints annually from construction workers.[ix] Though Workers Defense Project serves workers in all industries, 80% of Workers Defense Project's total wage theft cases result from the construction industry. Though Workers Defense Project assists workers in recovering lost wages, they are only able to recover a small fraction of that total amount of wage theft dollars.

[viii] Texas Statutes Penal Code Section 31.04 Theft of Service states "a person commits theft of service if, with intent to avoid payment for service that he knows is provided only for compensation, he intentionally or knowingly secures performance of the service by deception, threat, or false token."

[ix] This estimate was arrived at by multiplying the total amount of wage theft claims received in March 2009 by 12 months.

Working for Nothing

Margarito Rodriguez and seven coworkers were employed by a local contractor named Gerald Narvaez to remodel several luxury homes in central Austin in June 2006. They labored for long hours in the hot sun framing the homes, but when they finished, Mr. Narvaez refused to pay Margarito and his co-workers for their last two weeks of work.

Determined to recover the $7,500 owed to them, Margarito and his coworkers filed complaints with the Texas Workforce Commission. After many months of investigations and hearings, the commission ruled in favor of the workers and ordered Mr. Narvaez to pay. Mr. Narvaez refused to pay the workers their wages and ignored the Texas Workforce Commission ruling. Margarito even took his case to small claims court and won a decision from the judge. Despite reporting the violations to the appropriate agencies, Margarito and his co-workers have never received payment for their honest work.

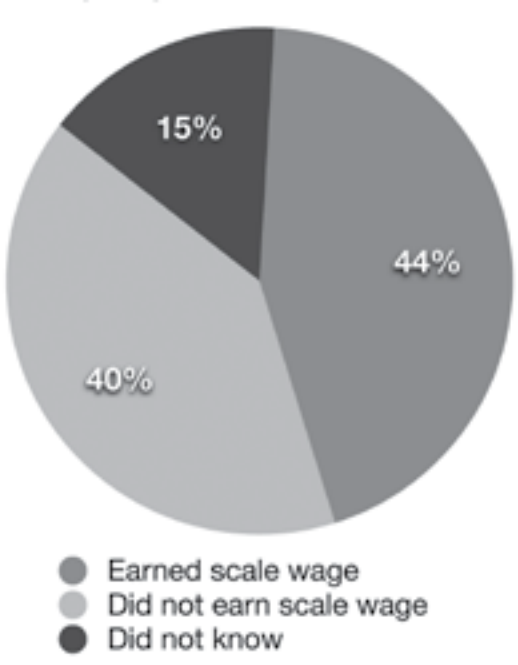
Margarito and his wife struggled to care for their small child and make ends meet when he was shorted thousands of dollars. Margarito explained, "How can we care for our families if they won't pay us? We work hard and do our part. Employers need to do theirs."

Pocketing Tax Dollars

On publicly funded construction sites, such as schools, hospitals or libraries, the government mandates that construction workers earn a government-determined prevailing wage.[32] The prevailing wage varies for each construction trade and is usually higher than wages received on other sites. The federal or state government establishes the prevailing wage based on the going rate for a certain trade in a certain geographic region.[33] Those working on publicly-funded projects are legally required to earn the prevailing wage. However, *Building Austin*'s survey data demonstrated that of the workers who worked on publicly-funded sites, 38% of them did not earn the prevailing wage. An additional 14% of workers were unsure if they earned the wage or not, even though the law requires this wage to be clearly posted on the worksite.[34]

Contractors that do not pay their workers the legal minimum on publicly funded projects not only violate the trust of their employees but also the public's trust as they pocket tax dollars that were set aside to create better-paying jobs. *Building Austin* researchers also found lax enforcement of the prevailing wage at the local level. Though the City of Austin can collect fines and debar contractors who violate the prevailing wage, it rarely does so. In the last five years, the City of Austin collected $0 in fines from the 83 contractors who were found in violation of prevailing wages, thus creating no penalties for employers who violate workers rights and no deterrence for future violators.[35]

GRAPH 3
Prevailing Wage for Construction Workers*



*For workers on publicly funded sites (52).

Workplace Benefits

"I have never heard of any construction companies that have health insurance …they are not going to do that because they know how dangerous the job is." – Jet Saphiro, construction worker

In spite of the fact that the construction industry is the most dangerous industry in Texas, 76% of workers surveyed were not covered by employer-based medical insurance (see Table 9). Workers explained that it was rare to find a construction company that offered health insurance; furthermore, the cost of health insurance prevented construction workers from purchasing it. The Center for Public Policy Priorities estimated the cost of health insurance for a family of four at $942.53 per month, or 59% of a worker's monthly earnings if he is making the most common wage of $10.00 an hour. Therefore, when companies failed to provide benefits such as health insurance, the cost of out-of-pocket insurance was prohibitively expensive to construction workers and their families.

Moreover, construction work was not bolstered with any other types of job benefits. Concrete worker Gustavo Martinez recognized the lack of benefits in construction jobs. "Every hour that you worked you would get paid, but we didn't get paid any vacation, we didn't get no sick days, we didn't get anything. Whatever you work, that's what you would get paid and no bonuses, no nothing; everything cash and that's it."

The *Building Austin* study found that 87% of workers did not receive paid sick days, and 77% of workers did not receive paid vacation days (see Table 9). Construction work was not only low paid, but also not rewarded with any benefits needed for a physically taxing job.

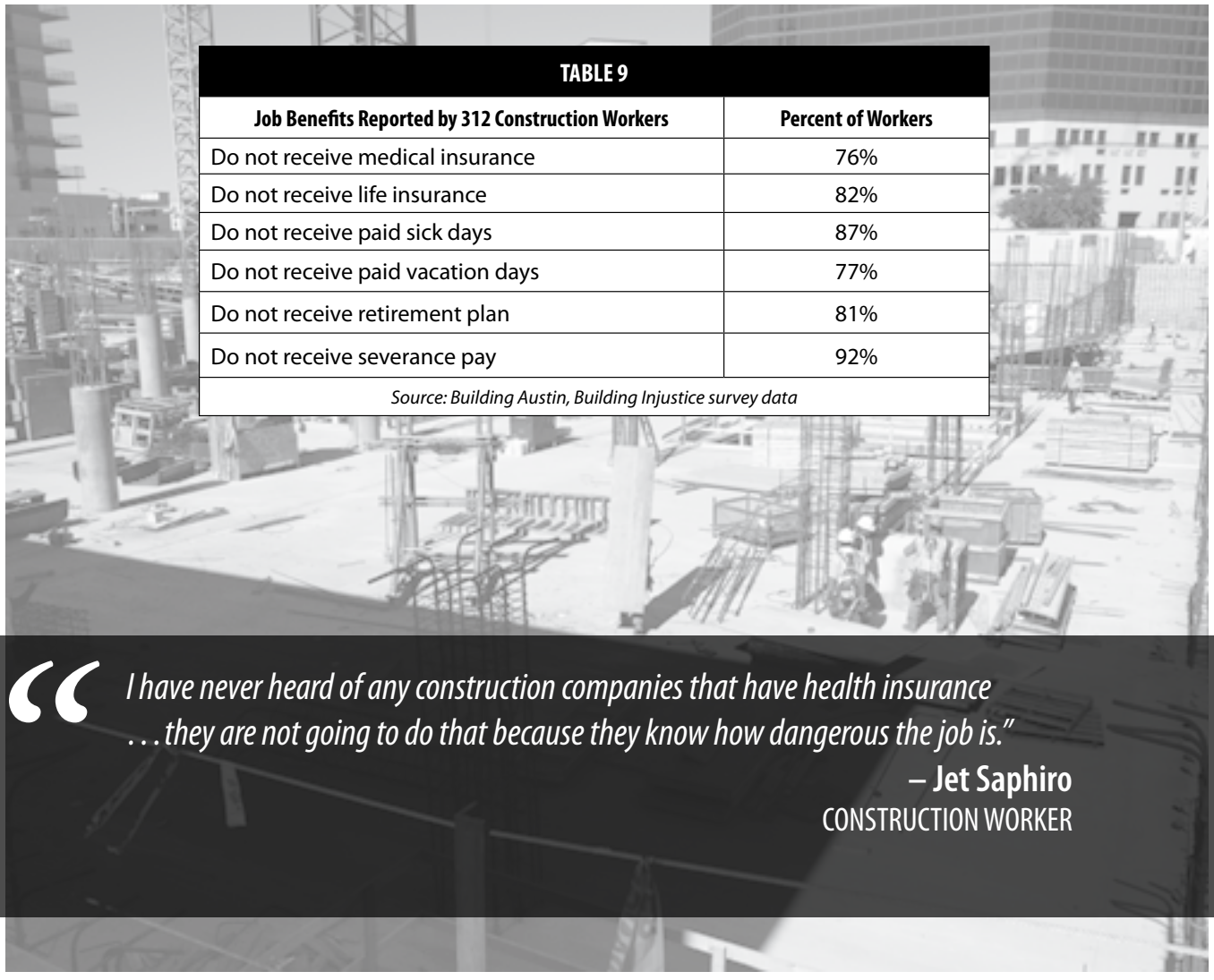


TABLE 9

Job Benefits Reported by 312 Construction Workers	Percent of Workers
Do not receive medical insurance	76%
Do not receive life insurance	82%
Do not receive paid sick days	87%
Do not receive paid vacation days	77%
Do not receive retirement plan	81%
Do not receive severance pay	92%

Source: Building Austin, Building Injustice survey data

"I have never heard of any construction companies that have health insurance …they are not going to do that because they know how dangerous the job is."

– Jet Saphiro
CONSTRUCTION WORKER

Unsafe Conditions, Unhealthy Workers

Injury and Death on the Job

According to the U.S. Department of Labor, construction had the highest number of fatalities of any industry in Texas.[36] In 2007, a construction worker was killed on the job every two and a half days.[37] Furthermore, no other state had so many construction workers die on the job; 61 more workers died in Texas than in California, the state with the second-highest number of construction fatalities.[38]

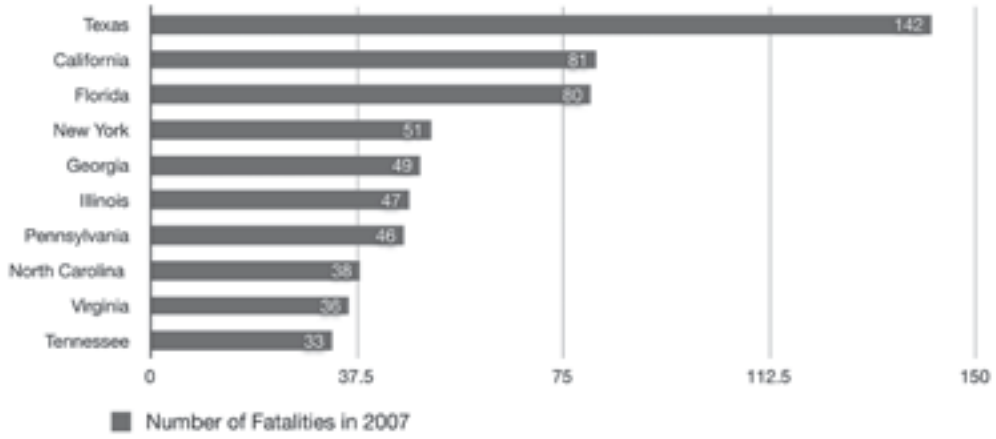
EVERY 2.5 days a construction worker dies in TEXAS.

ONE in FIVE workers has suffered a workplace injury that required medical ATTENTION.

The *Building Austin* survey data found that 15% of Austin construction workers personally knew someone who had died due to a construction accident. Construction worker Jet Sahpiro lamented the lack of concern for construction workers lives:

> *If a firefighter or a cop gets killed in the line of duty, his family is almost fed for life. If a construction worker gets killed on a construction site, he's lucky if they even put a ribbon on a cone for him. That's how sad it is… It's just as an important [job] as anything else. There wouldn't be any buildings to fight fire [in], if these construction workers are not building them.*

GRAPH 4
Construction Fatalities by State



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

> *"I have gone to work sick, even with a fever. Do you know what it feels like to have to work in the heat, moving 20 pound cement bags, when you are sick because you can't afford to go to the doctor and your boss won't give you a day off?"*
>
> **– Francisco Hernandez**
> CONSTRUCTION WORKER

Survey results showed that one in five construction workers (21%) has suffered a workplace injury that required medical attention. However, only 45% of workers reported that they were covered by workers' compensation coverage (see Table 10). By law, employers are required to inform employees upon hire if they carry workers' compensation coverage.[39] Thirty-seven percent of Austin construction workers reported not knowing if they were covered by workers' compensation, and given the legal requirements of disclosing workers' compensation coverage, it is probable that a significant number of these workers were not covered by workers' compensation insurance. Thus, nearly half of Austin's construction workforce may not receive compensation or adequate care if injured on the job.

Additionally, 20% of workers who had been injured on the job reported that their employer refused to pay their medical bills (see Social Cost for further detail). Complicating this matter is the fact that Texas is the *only* state in the country that makes workers' compensation insurance coverage optional for any employer. Texas ranked 50th in the nation for adult workers covered by workers compensation, with 23.5% of workers without workers' compensation coverage, as compared to the national average of 8.9%.[40] *Building Austin* survey data showed that when employers failed to provide workers' compensation, workers or hospitals were forced to take responsibility for the medical costs of work-related injuries (see Social Cost section for further detail).

> *"I watched someone get electrocuted, he was right next to me, and I kicked the wire out of his hand. It was gruesome, and I almost left the trade because of it. It was bad, it gave me nightmares."*
>
> **– Cody Clegg**
> ELECTRICIAN

TABLE 10

Workers Compensation Coverage Reported by 312 Construction Workers	Percent of Workers
Did not have employers with workers' compensation insurance	18%
Did not know if their employer had workers' compensation insurance	37%
Have employers with workers' compensation insurance	45%

Source: Building Austin, Building Injustice survey data

Injured with Nowhere to Turn

Julio Rojas has worked in the Austin construction industry since 1991. Several years ago, Julio was working as a residential roofer when he fell from a height of seven feet while carrying a heavy load of plywood. He injured his back so badly he could not move. He recalled:

> *They didn't give me a harness like they should have- I was working more than six feet above the ground and they were rushing us to finish the job. I was just learning how to do roofing work, and I tripped on materials that another worker had left on the roof. My back was really injured.*

Julio's employer did not have workers' compensation. Instead of helping Julio with his medical bills and paying him for the time he was unable to work, he fired him and stopped returning his telephone calls. Julio, who has two young daughters, had to shoulder the burden of paying off his medical bills and making ends meet while he was out of work for months. Julio never received the ongoing medical treatment he needed to fully recover from the injury, and still suffers back pain today.

Omar Puerto: Killed on the Job

Omar Puerto was only 20 years old when he was killed while painting a remodeled apartment complex in Austin in 2006. After Omar finished painting one wall, he moved his ladder to the next, brushing against a live electric wire connected to a 3,000 Volt distributor that his employer had failed to notify him about. Omar was electrocuted and died instantly. In Omar's case, the employer failed to guarantee that the worksite was safe and that the workers had adequate training to work around live electric wires.

Since the employer did not have workers' compensation, Omar's family engaged him in a lengthy legal battle, but to this day they have not received any compensation for Omar's tragic death.

Omar's sister, Martha, described how devastating the accident has been for their family. "We couldn't believe he was gone. He was so young, and it has been really hard for our family in so many ways- we all depended on him to support the family."

Prevention

Survey results indicated that employers could do more to prevent workplace injuries by providing training and adequate safety equipment. General contractors and developers have an important role to play by ensuring that worker safety is prioritized over rushing to meet deadlines. Recent studies have shown that workers who are under pressure to complete a project as quickly as possible and work overtime are 61% more likely to be injured on the job.[41] As one worker put it "they [contractors] will work you to the ground to get whatever project built on time," whether the deadline is realistic or not.

Forty-one percent of workers reported that their employer did not give them any rest breaks at work, and 27% were not provided with drinking water. Both rest breaks and drinking water are necessary health protections for extreme Austin weather conditions, with temperatures reaching up to 112°F in the summer months.[42]

> *Well sometimes you're scared to even get down to drink some water. A couple of years ago… we were doing some work at some apartments. [My boss] wouldn't let you get down to drink water and he would just stand there watching you. One time I was fainting because the sun was hitting very hard, and I told him I couldn't take it anymore. I told him if you're going to fire me, then fire me, and I got down. Everyone got down too… they were tired of it too so we left that job… we got down because we couldn't stand the sun anymore.*
>
> - Roberto Garza, Construction Worker

The National Institute for Occupational Safety and Health (NIOSH) of the Center for Disease Control recommends that special precautions be taken for construction workers working in hot weather conditions to avoid heat stroke and heat exhaustion, which can require hospitalization.[43] NIOSH recommends that workers exposed to extreme heat be provided with short, frequent rest breaks and each worker be provided with clean drinking water throughout the work day.[44]

Furthermore, the majority (64%) of construction workers reported that they received no OSHA health and safety training, although OSHA advises that all construction workers receive its Construction 10-hour Health and Safety Training to prevent injury on the job.[45] Employers can contract OSHA construction safety trainers to administer safety trainings to their employees (for more information on model employer health and safety practices see Builder and Contractor Perspectives section).

Additionally, Table 12 indicates that nearly one-third of workers reported providing their own safety equipment at work. Roofer Pedro Hernández's testimony highlights the health and safety repercussions of employers failing to meet their legal responsibility to provide necessary safety equipment to their employees.[46] He explained, "I've never had an employer that has given me a harness or hard hat for work, I've always had to bring my own or go without the right [safety] equipment… I once fell off of a roof and had to be hospitalized. If my employer had given me the harness I needed, I wouldn't have gotten hurt."

TABLE 11

Working Conditions Reported by 312 Construction Workers	Percent of Workers
Did not receive the OSHA 10 Hour Training	64%
Do not receive a break (other than lunch)	41%
Have employers that did not provide water on site	27%

Source: Building Austin, Building Injustice survey data

Building Austin researchers believe that an outcome of employers failing to provide safety equipment was that construction workers were less likely to use it, thus resulting in more injuries and casualties. Dr. Richard Heyman, *Building Austin* surveyor and professor at The University of Texas at Austin, observed, "It was rare to see residential construction roofers using safety harnesses, even when they were working on steep roof-tops and risked falling."

Site observations conducted by surveyors throughout Austin found residential construction workers tended to lack necessary safety gear more so than those working in commercial construction. For example, while all commercial construction workers wore hard hats on the job site and reported that they were a necessary piece of safety equipment, 17% of residential construction workers did not wear hard hats and stated that they were not necessary. However, of residential workers who wore a hard hat, 47% of workers provided it themselves. In contrast, only 15% of commercial construction workers provided their own hard hats. This suggests a correlation between safety equipment usage and employers providing the necessary equipment.

Throughout Austin, construction workers' safety and lives were put at risk. Many employers violated basic OSHA legal requirements, required construction workers to put in extensive overtime hours, and denied workers simple, but necessary, safety standards such as rest breaks and drinking water. Similar working conditions in Las Vegas' construction industry resulted in federal investigations

"It was rare to see residential construction roofers using safety harnesses, even when they were working on steep roof-tops and risked falling."

– Dr. Richard Heyman
BUILDING AUSTIN RESEARCHER
UNIVERSITY OF TEXAS AT AUSTIN

TABLE 12
Safety Equipment Provision

Type of Safety Equipment	Number of Workers in Need of Equipment	Percent of Workers Providing Equipment
Eye protection	251	29%
Hard hat	286	29%
Gloves	204	29%
Breathing Mask	181	18%

Source: Building Austin, Building Injustice survey data
Note: Safety equipment provision was only asked of workers who needed to wear the equipment

of working conditions in the industry, which forced industry leaders to sit down with state regulators and workers' rights advocates to make sweeping changes to ensure safe working conditions.[47]

Misclassification

Survey data indicated that 38% of construction workers reported being misclassified as independent contractors by their employers.[x] Employers misclassify their workers as independent contractors either by giving them an IRS Form 1099 required for contractors instead of the legally required W-2 for employees, or by paying their workers in cash or personal check and not withholding any taxes. Misclassifying workers has an immediate economic benefit to employers, decreasing their payroll costs by 9 to 15%.[48]

Misclassification of workers as independent contractors strips workers of their legal rights to minimum wage and overtime pay, workers' compensation coverage, unemployment and health insurance benefits, and shifts the tax burden to the worker instead of the employer. Misclassification lowers work standards, creating a race to the bottom, allowing employers to lower costs at the expense of their employees' basic legal protections. Moreover, the social impact of misclassification extends beyond the individual worker (see Social Cost section).

For construction workers, misclassification can result in owing the federal government thousands of dollars at the end of the tax year since federal withholdings have not been made and employers have not paid their share of the tax burden. Our findings also demonstrated that misclassified workers earned less ($11 per hour) than their counterparts who were properly registered as employees ($14.32 per hour), despite the standard practice in other industries of paying independent subcontractors more to allow them to cover the costs of their own benefits.

Employer Dodges Tax Responsibility, Worker Pays the Price

Saul Vela, Jr. was hired by Corbitt Concrete in January of 2008 to do foundation work. Corbitt paid him on a weekly basis in cash without taking out taxes but the owner told Saul he would set up payroll to fix it eventually.

Six months into his employment with Corbitt Concrete, they required Saul and all of the other employees to fill out W-9 forms, misclassifying them as independent contractors. Saul told him that he was an employee and that he wanted his taxes to be taken out so he would not owe taxes at the end of the year. Corbitt promised he would "help him out" with the taxes. Later Corbitt told him that since he was an independent contractor he had to take care of his taxes himself.

Saul has tried to find an attorney to help him straighten out his taxes, but no one is willing to take his case. He is still trying to fix his misclassification with the IRS and get Corbitt Concrete to pay the employer-side taxes. Saul, a father of two, is worried about how he will provide for his children and pay the extra money he now owes to the IRS, for taxes that his employer failed to deduct from his wages. He explains their current situation, saying, "It's put me in a big hole with bills, late fees. My wife's truck got repossessed. We got a foreclosure notice from my mortgage company because we were late with payments. I'm in a big bind financially."

[x] Percent of misclassified workers determined by the number of workers whose employers did not withhold taxes from their pay.

Resources and Knowledge

Most of us [construction workers] have never heard of government agencies that investigate mistreatment on the job. I know I have never seen any government agent on a [construction] worksite since I started working in construction 20 years ago.
–Francisco Hernández, construction worker

A fundamental concern in the construction industry is the absence of government agencies that enforce labor protections. The majority of workers surveyed were not familiar with the U.S. Department of Labor or Texas Workforce Commission, two entities that investigate and enforce labor law violations. Table 14 shows construction workers' level of knowledge of employment regulatory bodies. Their lack of familiarity indicated that they would be highly unlikely to report a workplace violation to these agencies, allowing violations to go unchecked for the majority of construction workers. Furthermore, recent studies by the Government Accountability Office (GAO), an arm of the federal government, showed that even when wage and hour violations were reported to the Department of Labor, they were often not investigated. According to the GAO, "the Department of Labor has left thousands of actual victims of wage theft who sought federal government assistance with nowhere to turn… far too often the result is unscrupulous employers taking advantage of our country's low wage workers."[49]

"Most of us [construction workers] have never heard of government agencies that investigate mistreatment on the job. I know I have never seen any government agent on a [construction] worksite since I started working in construction 20 years ago."

–**Francisco Hernández**
CONSTRUCTION WORKER

TABLE 14

Knowledge of Workers' Rights Protection Organizations by 312 Construction Workers	Percent of Workers
Has not heard of Occupational Safety and Health Administration (OSHA)	30%
Has not heard of Federal Department of Labor (DOL)	69%
Has not heard of Workers Compensation Division (Texas Department of Insurance)	71%
Has not heard of National Labor Relations Board (NLRB)	85%
Has not heard of Texas Workforce Commission (TWC)	71%

Source: *Building Austin, Building Injustice* survey data

Workers' lack of awareness of these agencies illustrates the weak regulation of the construction industry. Texas lags behind the country in worker protections, in health and safety, addressing issues of wage violations, and misclassification. For example, the United Nations' International Labor Organization recommends that 1,023 OSHA inspectors are needed to adequately investigate the number of worksites in Texas, yet in 2008 the state operated with only 77 inspectors to cover over 10,231,906 workers.[50]

The Texas Workforce Commission, the state agency charged with investigating wage and hour violations, carries out desk investigations of claims made by individual workers, but it does not perform field investigations, nor does the agency determine if other workers on the same site are suffering similar abuses. The TWC's investigations of reported abuses through telephone calls and mail correspondence fail to create an adequate enforcement mechanism to address widespread violations with an employer or industry. Furthermore, 71% of workers have not heard of the TWC, and without knowledge of the agency, workers cannot report violations.

The Texas Workforce Commission (TWC), the state agency charged with investigating wage and hour violations, carries out desk investigations by telephone and mail, but it has not performed field investigations since 1993. At that time, the State Legislature voted to cut funding to the agency, and consequently, all the satellite offices across the state were eliminated, the number of investigators reduced, and a single central office in Austin was opened to handle investigations for the entire state.[51] Currently, there are only 24 labor law investigators working from the Austin office to cover the entire state of Texas. According to monthly reports from the TWC's labor law division, workers who take their claims to the TWC can expect a wait of seven to eight months before their case is resolved.[52] TWC investigations by telephone and mail fail to create an adequate mechanism to address widespread violations and to deter other employers from breaking the law. Furthermore, 71% of workers have not heard of the TWC, and without knowledge of the agency, workers cannot report violations.

The TWC has the power to levy fines up to $1,000 against employers for failing to pay their workers.[53] However, the commission rarely levies fines against employers, reporting only __ fines levied in 2007, and is even less likely to collect on them, collecting on only __ of those fines.[54] 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] However, the union workers surveyed were 58% more likely to know about the U.S. Department of Labor than the non-unionized workforce. Union workers, therefore, are in a better position to defend their rights in the workforce than most other workers.

Gender Discrimination on the Job

Dominga Hurtado and her sister Martha have worked for five years as professional painters. Dominga, a single mother of five, recalled it has not been easy at times, being the only woman in a "man's profession." Dominga shared the experience of her sister who worked in a painting company and was sexually harassed by her supervisor.

> *My sister told me that he said he wanted to be her boyfriend. He started with letters. My sister told him 'No', that she was already married… then he told her in a letter, 'If you are not mine, you and your sister's and brother's jobs will disappear. All of them [your family members] will be out of a job. There won't be work for any of you.*

The harassment escalated to the point where the supervisor was always around Martha; he would try to touch her and even tried to attack her once. Dominga could not take it anymore. "Then, I got angry and I said to myself, "What's happening? If she tells you no, why do you need to fire us all? For that, NO!" Then I got on the phone and called the boss and I said, 'this manager is acting like this and doing this to my sister, he is sexually harassing her all the time'."

Dominga says that after the incident she and her siblings were marked as "complainers" and "as a result of that we stayed marked for those problems. Because they [the employers] felt that we wanted problems." As a small, but growing portion of the workforce, women in the industry face challenges to enjoying safe and equal working conditions. Dominga summed up the current situation, "If they treat a man badly, they treat a woman worse."

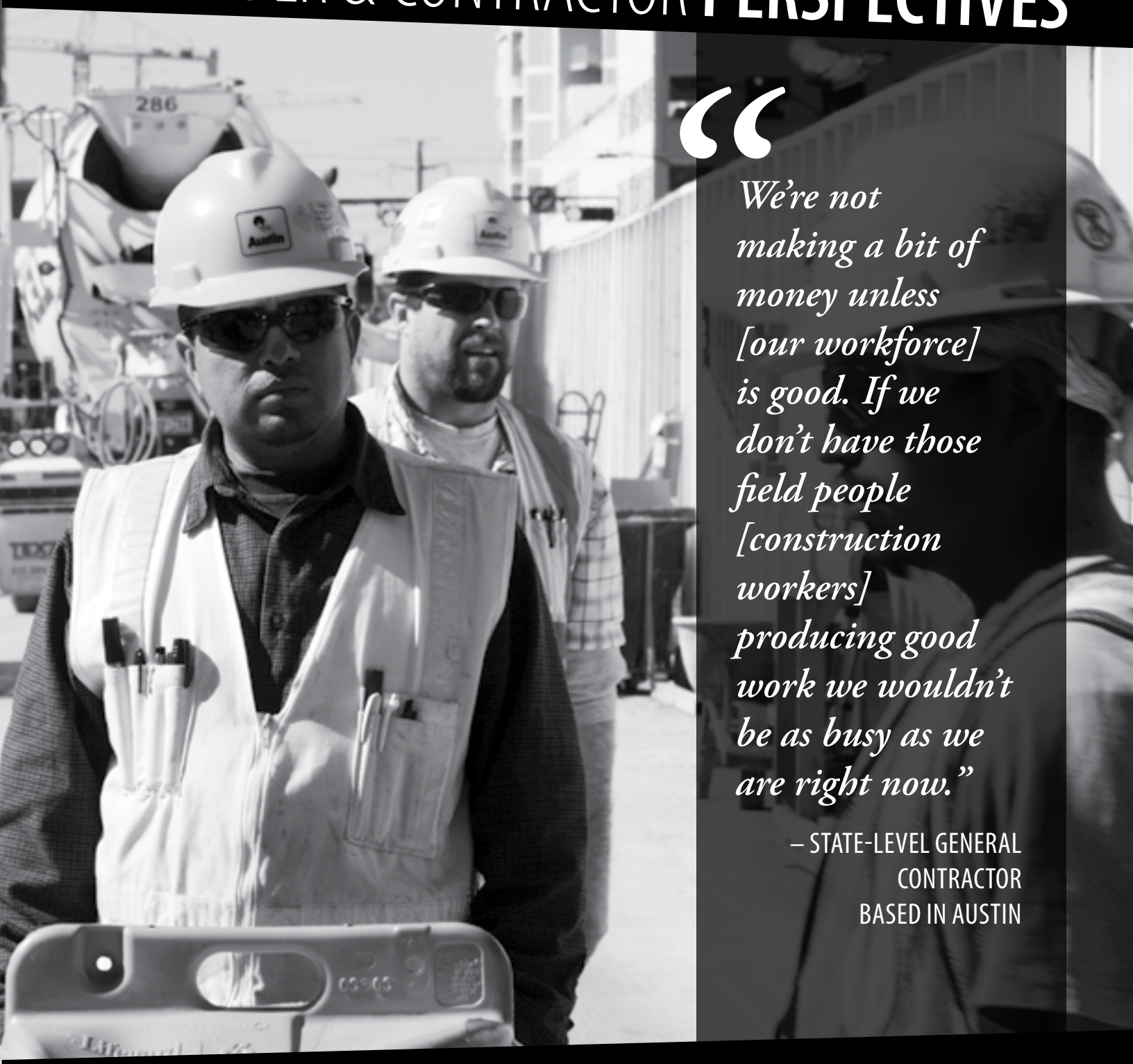
[xi] So-called "Right to Work" laws weaken unions and collective bargaining. Such laws prevent unions from forming agreements with employers so that their new hires become union members, even though unions are required to represent the interests of these new workers. If new employees do not join the union (which employers often encourage them not to do), 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. Bureau of Labor Statistics found that workplace fatalities rates per 100,000 workers 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 3 of the bottom 25 states were Right to Work states. Despite the name, "Right to Work," these laws are really the "Right to Work for less."

All construction workers, regardless of race, national origin, age, gender, sexual orientation, or immigration status, are protected by state or federal labor laws such as right to receive a minimum wage, the right to a safe worksite, and the right to receive overtime pay they are entitled to. Still, construction workers in Texas face much higher hurdles in receiving these basic workplace protections due to their lack of knowledge of regulatory agencies and these agencies' inability to proactively protect workers.

Conclusion

Austin's rapid expansion has come at the expense of construction workers' safety, health, wages, and quality of life. The widespread abuse uncovered in the *Building Austin, Building Injustice* study even surpassed original hypotheses of researchers and industry experts at the local and national level. The poor working conditions that construction workers experience contrast sharply with the economic growth and prosperity that the construction industry and the city of Austin enjoy. Although Austin has one of the country's strongest housing markets and is a leader in promoting sustainable development through green building initiatives, industry leaders and policy-makers have failed to ensure safe, healthy, and equitable work environments for the construction workers building the city.

BUILDER & CONTRACTOR **PERSPECTIVES**



"We're not making a bit of money unless [our workforce] is good. If we don't have those field people [construction workers] producing good work we wouldn't be as busy as we are right now."

– STATE-LEVEL GENERAL CONTRACTOR BASED IN AUSTIN

Good for Workers, Good for Business

Building Austin researchers conducted 20 in-depth interviews with developers, homebuilders, general contractors, and subcontractors whose companies operated in Austin. These interviews provided insights into the workings of the construction industry and highlighted the most urgent concerns faced by companies ranging in size from local subcontractors to national developers. The interviews showed that builders and contractors recognized that the success of their businesses depended on the construction workforce, especially because a quality end product guaranteed them repeat business and continued success in the industry. Interviews with builders and developers revealed the following points:

- General contractors and builders recognized that they were responsible for ensuring quality workmanship, safe working conditions, and fair employment practices on the worksite.
- Construction companies acknowledged that violations of state and federal employment laws were common practice in the industry because many companies tried to cut costs in order to lower their operating costs or meet deadlines.
- Low-end construction companies who violated state and federal employment laws hurt good construction companies that played by the rules and ensured safe working conditions and fair pay.
- Even though contractors and builders recognized the value of their workers, many failed to invest in their workforce. General contractors often considered trainings the responsibility of subcontractors rather than partnering with subcontractors on safety and technical trainings.
- Worker productivity and safe working conditions were essential to delivering high quality workmanship. However, many of the common practices in the industry, such as hiring short-term labor, relying on long overtime hours, and rushing to meet deadlines resulted in high workforce turnover and injuries on the job.

Employer interviews provided insight into the strategies that construction companies used to ensure success in the industry as well as some of the challenges that they faced in meeting the needs of their workforce. Industry leaders reported that in the context of the economic crisis, many companies faced tightened expenditures and increased competition. Yet these leaders recognized that the companies that have historically invested in their workforces and maintained good contracting practices were more likely to weather economic hard times than businesses who cut corners at the expense of safety standards and their workforce.

This section describes the training, safety, and payment practices of construction companies in Austin. Industry leaders stressed the importance of investing in their workforce through technical trainings and safety trainings, while also acknowledging some of the challenges in maintaining a stable and well-trained workforce. A number of contractors recognized that it was difficult to compete with low-end companies who underbid them by taking short cuts on safety and training. Furthermore, nearly every company interviewed had experienced wage theft on their worksites, and general contractors and builders described the costs that they often incurred when labor abuses or safety violations

occurred on their sites. Finally, they presented a number of strategies for subcontracting for quality that they use to guarantee high quality workmanship and safe and fair workplace practices among their subcontractors. Builders and contractors perspectives detailed the needs of a growing and essential industry and demonstrated through best practices that what is good for workers is good for employers.

Weathering the Storm:
Coping with the Economic Downturn

Although the construction industry and housing markets in Austin have withstood the economic downturn better than most cities in the United States, new construction in Austin has slowed, and as a result, many construction businesses and developers were looking for ways to cut costs. Interviews revealed that some businesses were quick to lower standards for safety and labor practices in order to cut costs. Ironically, leaders in the industry also felt that companies that maintained high standards for employees and subcontractors and engaged in solid business practices were the companies most likely to thrive despite the downturn.

One national developer with several large projects in downtown Austin described the current economic situation: "We still feel fortunate relative to the rest of the country, because there is still demand out here." Most developers interviewed saw Austin as an important national market and have simply slowed down their project launch dates by six to eight months.

"In a contracting market… developers that we tend to work for… are increasingly pressured to bring projects in for a certain number [price]. The values of safety, and supervision and past performance, although they're certainly important, they drop quite a bit compared to price."

– GENERAL CONTRACTOR OF FAMILY-OWNED BUSINESS

In residential construction, the number of new starts have decreased, but "Austin is probably the second healthiest home-building market in the country," according to a representative of a national homebuilder. He explained that because Texas never experienced the speculation that falsely inflated home prices in most of the country, Austin has not suffered the high rates of foreclosure seen in other places that previously experienced a housing boom. He added that Texas had the healthiest job market in the country with 42,000 new jobs at the state level in 2008. Since Austin remained in a much stronger position to recover, builders are hopeful that the residential industry would continue to be strong.

The slowdown has left the market with few new available construction projects, and a large pool of contractors competing for those projects. One national developer explained, "Whereas, a typical school that is under construction or under bid might have beforehand attracted 3 or 4 bidders, it might have 20 trying to bid on it now." This resulted in increased competition to secure bids. In a competitive market, many contractors attempt to secure work by bidding the lowest possible price to complete a project, even if it is unrealistic to adequately pay their workers or fully ensure safety on the job.

"In a contracting market… developers that we tend to work for… are increasingly pressured to bring projects in for a certain number [price]. The values of safety, and supervision and past performance, although they're certainly important, they drop quite a bit compared to price." – General Contractor of Family-owned Business

Some general contractors felt that the recession would cause construction companies to prioritize cost over all other factors. On the other hand, some developers viewed the economic downturn and resulting competition as a way to separate out the companies with good business practices from those with bad business practices.

"Frankly, there is going to be a certain degree of survival of the fittest going on here… Companies that have been the best positioned in terms of their personnel and their business model and how conservative they have been with respect to their overhead and so forth are going to be in a better position to survive this." – National Developer

Subcontracting Practices in the Construction Industry

"Probably 5% [of people on the worksite] are our people, and we subcontract probably 95% of the work."
– Texas general contractor

Contractors and builders hire subcontractors to perform a specialized portion of work on a construction project. The subcontractor is responsible for completing the work according to the specifications of the general contractor. The general contractor has considerable latitude in setting the standards for quality of work and the safety and employment practices used by the subcontractor.

Cutting Costs, Cutting Corners

"The more employees you have, the more overhead you have. You've gotta have health insurance. You've gotta pay social security, Maybe a 401(K)… If a general contractor cuts their overhead… and hires someone else to do that work… they can add it to the bottom line."
– General contractor based in Austin

Subcontracting allows companies to cut costs by lowering payroll expenses and by transferring responsibility for specialized technical training to subcontractors. Competitive bidding enables general contractors to select the lowest bid that meets their requirements for a job, although they may take into account other factors such as the subcontractor's safety record or financial security.

However, cost often becomes the primary consideration and a lower priority is placed on safety and employment practices of subcontractors. Low-end subcontractors often cut corners to lower their overhead costs. A representative of one family-owned contracting firm explained, "So, ABC [company] has got the great safety record… but we can't afford them, we've got to use XYZ [company]."

While a competitive bidding process solely based on price may drive down short-term costs for developers, the practice also has unintended consequences, creating a race-to-the-bottom among subcontractors who cut costs at the expense of their employees' safety and wages.

Transferring Risk, Dodging Responsibility

"The contract seeks to protect and indemnify the homebuilder in any way possible." – National homebuilder

Developers and builders use subcontracting to transfer certain legal responsibilities, such as guaranteeing quality of work, paying employees, and providing benefits. Despite the contract, when employment or safety violations occur on the worksite the general contractor or builder may be held liable. Builders and general contractors face legal consequences if they allow employment and safety abuses to take place on their worksites (see The Costs of Wage Theft on page 47). When builders and general contractors try to cut costs by going with the lowest bidder, they may be doing so at the expense of workers. By taking responsibility for standards on their worksite and partnering with subcontractors to invest in a healthy and skilled workforce, general contractors and developers minimize their risks for future problems that can be costly and bad for business.

This developer stated that with increased competition, construction companies with the best business model, not necessarily the ones that sought out the largest profit margins, will endure through the economic downturn. This opinion was echoed by a representative of a national homebuilder who stated, "Every builder's pared it down to their best contractors, they probably have a really good feel for exactly what's going on with those guys as far as do they take care of their business, are they good businessmen, do they do quality work."

The Cost of Not Investing in Workers

Employer interviews found that companies often attempted to cut costs by cutting back on training, sometimes

leading to unforeseen consequences. When companies do not provide adequate training, their workforce is less productive, with more common mistakes and injuries occurring. An untrained workforce may produce lower quality craftsmanship, which reflects upon the builders and developers whose names are on the project. National homebuilder KBHome's reputation has suffered due to poor workmanship by their subcontractors. In 2002, KBHome faced a class action lawsuit filed by homeowners in Texas who reported serious defects in the construction of their homes, ranging from failed foundations to plumbing leaks and mold contamination.[55] Such defects in construction may have resulted from failing to invest in adequate training for the workforce building KB homes. An untrained workforce can result in a lower quality product and may have subsequently tarnished KBHome's reputation as a leading homebuilder.

Union Contractors

Union employers play an important role in the commercial and publicly funded construction industry in Austin. They provide an important source of licensed and skilled workers on many construction sites throughout the city. In Austin, there are nine construction unions in operation, each with their own set of contractors who employ their members.

TABLE 15
Market Share of Unions in the Government, Commercial, and Residential Sectors of Austin, Texas, 2008

Union	Government Funded	Commercial	Residential
Electrical Workers	70%	30%	1%
Sheet Metal Workers	32%	19%	0%
Ironworkers	4%	12%	0%

Source: Based on self-reported data from IBEW 520, Sheet Metal Workers Local No.67, and Ironworkers Local No. 482

Table 15 indicates self-reported data on presence of unions in the public, commercial, and residential construction sectors. The data is for three of Austin's largest construction unions.

Contractors cited that they hired union members because unions "have higher skilled employees… because of the training programs [workers receive] through the unions." Surveyed unionized workers were twice as likely to receive OSHA safety trainings than their non-unionized counterparts. Concerns faced by non-unionized contractors such as low productivity and quality workmanship are addressed by unionized contractors who provide four year apprenticeship training programs and pay living wages, health insurance, and retirement benefits to members. Contractors who opted to hire unionized workers said their business benefited from unionized workers.

Union Employer Profile: Kenneth Tumlinson & Glenn Garrett (KST Electric)

KST Electric is a family owned construction business that was founded in 1994. Today KST Electric boasts annual sales of $75 million and has 525 full-time unionized electrical employees. Most recently they helped construct the University of Texas' Performing Arts Center.

Owner Kenneth Tumlinson and Director of Sales Glenn Garret attribute their success to their unionized workers, which according to them do construction work "better and faster," then their non-unionized counterparts.

At KST "we really push safety" says Kenneth Tumlinson. Unionized employees of KST receive monthly safety trainings, and are awarded with special bonuses for meeting safety regulations. KST also ensures that unsafe working conditions can easily be addressed by having an on-site safety director and operating a safety board where workers are invited to come address any workplace safety issues.

All KST employees receive a living wage, because according to Glenn Garret "qualified people deserve to make" a fair wage. All KST employees have medical insurance, workers' compensation, retirement plans, and vacation days. KST's investment in its workforce, has paid off, with annual sales growth averaging 20% since its founding.

Investing in Workers, Good for Business

"We're not making a bit of money unless [our workforce] is good. If we don't have those field people [construction workers] producing good work- 80% of our work is repeat business- we wouldn't be as busy as we are right now in this day and age." – State-level general contractor based in Austin

Interviews with general contractors and homebuilders revealed that construction companies recognized that their workforce was their biggest asset in building their reputation and guaranteeing repeat customers. Contractors and builders relied on their construction workforce to produce high-quality results, and when well-trained workers performed well, so did employers and builders. Quality craftsmanship helped ensure repeat business with developers and assisted in securing future projects.

However, only a few companies interviewed described strategies for how they developed the skills of their workforce and ensured their safety on the job. At times, the value placed on a qualified workforce seemed to come in direct conflict with the emphasis on cutting costs in the industry.

> *"You constantly have turnover [in the industry] and constantly need to do training."*
>
> – FLOORING SUBCONTRACTOR BASED IN AUSTIN

Rather than investing in training, most companies looked to hire workers that already had experience in the construction industry. Such practices did not take into account the fact that many construction workers were new to the trade, with new workers entering the growing industry. New workers require adequate training in safe workplace practices and technical skills development to hone their workmanship.

Some contractors and subcontractors prided themselves on working with the same work crews for 20 years and acknowledged that low turnover contributed significantly to the profitability of their company. A local flooring subcontractor described his workforce, "I don't have to do much of that [training] because my guys have been here for twenty years… you just don't see a lot of flooring stores in Austin with people who have been there for 20 years. You constantly have turnover [in the industry] and constantly need to do training." This flooring contractor worked closely with his regular subcontractors to train the workers, many of whom stayed on for many years.

Both workers and employers expressed concern that the structure of the construction industry provided few opportunities for advancement by working up from a laborer to a supervisory position. While workers can still be hired new and work their way up on a site, the promotion from laborer to supervisor or manager has become less frequent. One local general contractor explained, "Back fifteen years ago, you wouldn't talk to a Project Manager who had a Construction Science degree. You would talk to someone who started out working in the field and worked their way up." Today construction management positions are given to individuals with formal education, severely limiting the opportunities for advancement within the industry for most construction workers.

Workers can also advance in a company by moving up to more skilled trades as they benefit from training and on-the-job experience. When workers are provided with opportunities to advance they are better able to build a career, to develop stronger technical skills, and earn higher wages. One state-level contractor explained, "the longer people work here, the more they advance. The money we put into training and developing people is a considerable cost. But if we had constant turnover we would have to start over at day one every time." Employers benefit by developing a dependable and skilled workforce that builds the reputation of their company and earns them repeat customers.

The Cost of Workplace Injuries

"If somebody gets hurt, we're going to get sued... Everybody's going to get sued."
- State-level General Contractor, based in Austin

Workplace injuries are extremely common in the construction industry with survey results indicating that one in every five surveyed construction workers has been seriously injured on the job. Texas currently leads the nation with the number of workplace fatalities in construction.[56] Builders and developers acknowledged that in addition to the human cost of dangerous working conditions, worker injuries also affect the bottom line. Injured workers may cause company's insurance premiums to rise or require the employer to pay for medical care out of pocket if the company does not carry workers' compensation. Serious injuries may even result in work stoppages and lengthy legal battles or investigations by OSHA.

> *"If somebody gets hurt, we're going to get sued... Everybody's going to get sued."*
>
> – STATE-LEVEL GENERAL CONTRACTOR BASED IN AUSTIN

One national homebuilder explained the potential costs of OSHA violations, "They [national homebuilders] know the government could come in and they could fine them $100,000 on a jobsite." Another homebuilder described the low priority placed on safety training and precautions:

> *In this industry… as [larger] companies have cut back, its just a trickle down effect. People cut corners and that's when people really get hurt. You also have to remember that we're dealing with a lot of …[small subcontractors], most of them aren't making a lot of money, most of them are just flat-out contract labor. So they're not going to spend the money to be safe.*

When companies cut costs they often cut back on investing in safety. Companies who lower their safety standards to meet deadlines or to cut costs undermined businesses that invest in safe working conditions for their workforce.

American Constructors: Good, Safe Working Conditions Lead to Economic Success

American Constructors, Inc (ACI) is an Austin-based general contracting firm that was founded in 1982. They have an annual sales volume of $140 million a year and specialize in building schools and other public buildings. ACI prides itself on their reputation for excellence resulting in 80% of their work being for repeat clients.

American Constructors has approximately 65 salaried personnel and 110 hourly tradesmen. Every one of their workers is full time and receives various levels of benefits. Benefits include insurance, paid vacation, 401K, tuition reimbursement and others. Benefits improve as workers stay with the company, serving as an incentive for them to stay on. According to Gary Keil, the Director of Business Development, when they hire a new worker to their company, they intend for them to stay on with the company for as many years as possible. Keil also explains that they pay competitive salaries in order to recruit and retain good people on all levels. He explains, "if they are proven performers and stable, we want to keep them on. We have to make sure they don't go across the street [to earn more]. $1-2 per hour makes a big difference." ACI attributes their success to their highly qualified workforce, that benefits from continuous technical and safety training.

In addition to strong core values and good benefits, ensuring safe practices among their workers is a serious priority and commitment for American Constructors. "We're serious about safety. Safety is not going to be successful unless its supported from the top down." says Gary Keil.

American's success is directly related to the quality of their people. It is extremely important to them that they provide the best working conditions and benefits as possible in return for the employees' commitment and dedication.

Safe and Healthy Workers, Good for Business

"A safe and clean work environment also means that the work will likely be performed more efficiently and with higher quality." - Austin-based Custom Homebuilder

A number of general contractors indicated that their companies placed a strong emphasis on safety on the worksite. They listed practices such as ensuring that all of their superintendents were OSHA trained and certified, conducting weekly safety meetings or requiring their subcontractors to conduct weekly meetings, hiring a safety director, and providing a safety manual. But while these standards may have existed on the books, they were not always the reality on the construction site. As one national homebuilder acknowledged, "there's a smattering of good safety practices on [residential] sites… so when the safety inspector shows up the guys are wearing hard hats, but there's a variety of participation in [safety practices]."

> *"A safe and clean work environment also means that the work will likely be performed more efficiently and with higher quality."*
>
> – CUSTOM HOMEBUILDER BASED IN AUSTIN

Most injuries are preventable with adequate training; the OSHA website describes the long-term pay-offs that result from investing in workers' safety trainings:

> *Training in the proper performance of a job is time and money well spent, and the employer might regard it as an investment rather than an expense. An effective program of safety and health training for workers can result in fewer injuries and illnesses, better morale, and lower insurance premiums, among other benefits.*[57]

While some general contractors interviewed believed that the safety needs of the general workforce were the responsibility of their subcontractors, many others recognized that the safety practices of their subcontractors were their top priority. One state-level general contractor explained that they saw safety as an investment: "On any type of bid, somebody could be $20-30,000 low[er than other bids]. But if they're historically unsafe, we tell the owner, 'We want to spend the extra $30,000 and go to the next one.'" This general contractor explained that settling for lower quality and lower standards will cost the business in the end: "Well, you're going to pay for it now or later."

General contractors set the safety culture of the worksite: if they emphasize safety precautions, their subcontractors will follow their lead. One Austin-based general contractor described how they also look out for the employees of their subcontractors, providing them safety gear as needed, or following up to make sure any injured worker receives the care they need.

The Cost of Wage Theft

"When subcontractors do not pay their employees, it often results in very poor quality workmanship." - Austin general contractor

Wage theft is a frequent practice that is used by low-end subcontractors to recover losses or lower their operating costs. The practice is so common that nearly all builders and general contractors interviewed had experienced wage theft on their worksites. General contractors described numerous setbacks and financial losses they suffered when they had to handle cases of wage theft on their worksites. One contractor, quoted above, recognized the connection between poor employment practices and quality of workmanship in their subcontractors, demonstrating that everyone lost out when workers were not paid. Some builders also had workers walk off a job when subcontractors did not pay them, delaying project completion and costing the general contractor money.

> *"When subcontractors do not pay their employees, it often results in very poor quality workmanship."*
>
> – GENERAL CONTRACTOR BASED IN AUSTIN

In addition to poor quality workmanship and time wasted resolving wage theft cases, many contractors recognized that wage theft was bad for business because

unpaid employees had 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 debt for unpaid wages to the property and makes the owner liable for the bill. For builders and general contractors, the lien is a burden for their client because it can hinder the sale of new property or hold up funding for potential buyers. When liens came into play, general contractors quickly became involved, making sure workers are paid for their work. A state-level general contractor described such a situation:

> *[We would say] 'we're going to hold all payments… [the subcontractor is] going to show us where all the money is going… we're going to pay him [the worker] directly… so we step in and clean it up… the reason being [that] we're legally liable here. So the owner has a lien on his property he comes to us for satisfaction… because we have the contract with him.*

General contractors can also be held liable for wage theft if they are determined to be a joint-employer under federal employment law. As a joint-employer, the general contractor is equally responsible for ensuring that workers are paid in accordance with all state and federal laws (see Belfor Group USA box).[58] If general contractors turn a blind eye when workers inform them they have not been paid by the subcontractor, they are opening themselves up for legal problems such as property liens and lawsuits, increased labor costs to foot the bill for wage theft cases, and a bad reputation in the public for allowing abuses to go unchecked on the worksite.

Wage theft not only hurts the contractors who hire low-end subcontractors that engage in these illegal practices, but also good companies that abide by the law. Companies who abide by the law suffer when unscrupulous companies underbid them for competitive contracts.

General Contractor Ordered to Pay Subcontractor's Workers: Xavier vs. Belfor Group USA

Employees of subcontractors of Belfor USA, a major disaster relief and reconstruction firm, worked to restore services to Tulane Hospital and Tulane University in the aftermath of Hurricane Katrina. They sometimes worked seven days a week, 12 hours a day and were not paid overtime wages they were owed. The workers filed a lawsuit against Belfor as jointly responsible for unpaid overtime wages. The courts found that the general contractor was a joint-employer as defined by federal employment law and ordered them to pay $22,500.00 in back wages owed to the workers.[59]

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 take place. By setting strong standards for subcontractors and making sure they live up to those standards contractors can avoid such legal issues.

Corporate Responsibility, Good for Business

"We [the general contractor] are in charge of everything, everybody that's subcontracted for us. We're responsible for them [workers] safety-wise, quality of work they do, everything." - State Level General Contractor

General contractors and homebuilders reported that they feel the best way to avoid issues like wage theft was to make careful decisions in selecting their subcontractors. To ensure that workers receive their fair pay, contractors carefully review the financial condition of the companies bidding on their contracts. One general contractor described their vetting process for selecting a subcontractor, "Once we complete a review that ranges from bonding, financial, completing timely work, workforce capabilities, we allow them to participate in the bidding process. We consider labor practices on every project."

Developers believe general contractors can do more to ensure that labor abuses do not take place on their worksites, both in deciding with whom they contract and monitoring those subcontractors' practices on the job. "Industry practices could dictate the general contractor receive certified payroll from each subcontractor," explained a general contractor.[xii]

[xii] By requiring a subcontractor to provide certified payroll, the general contractor can ensure that all workers have received their pay as promised.

Builders who hire subcontractors that cut corners on safety and working conditions, are undercutting good construction companies that invest in their workers and guarantee safe working conditions. When bad businesses underbid good businesses it becomes more difficult for good businesses to compete without also lowering their standards, resulting in the race to the bottom scenario that is all too common in construction.

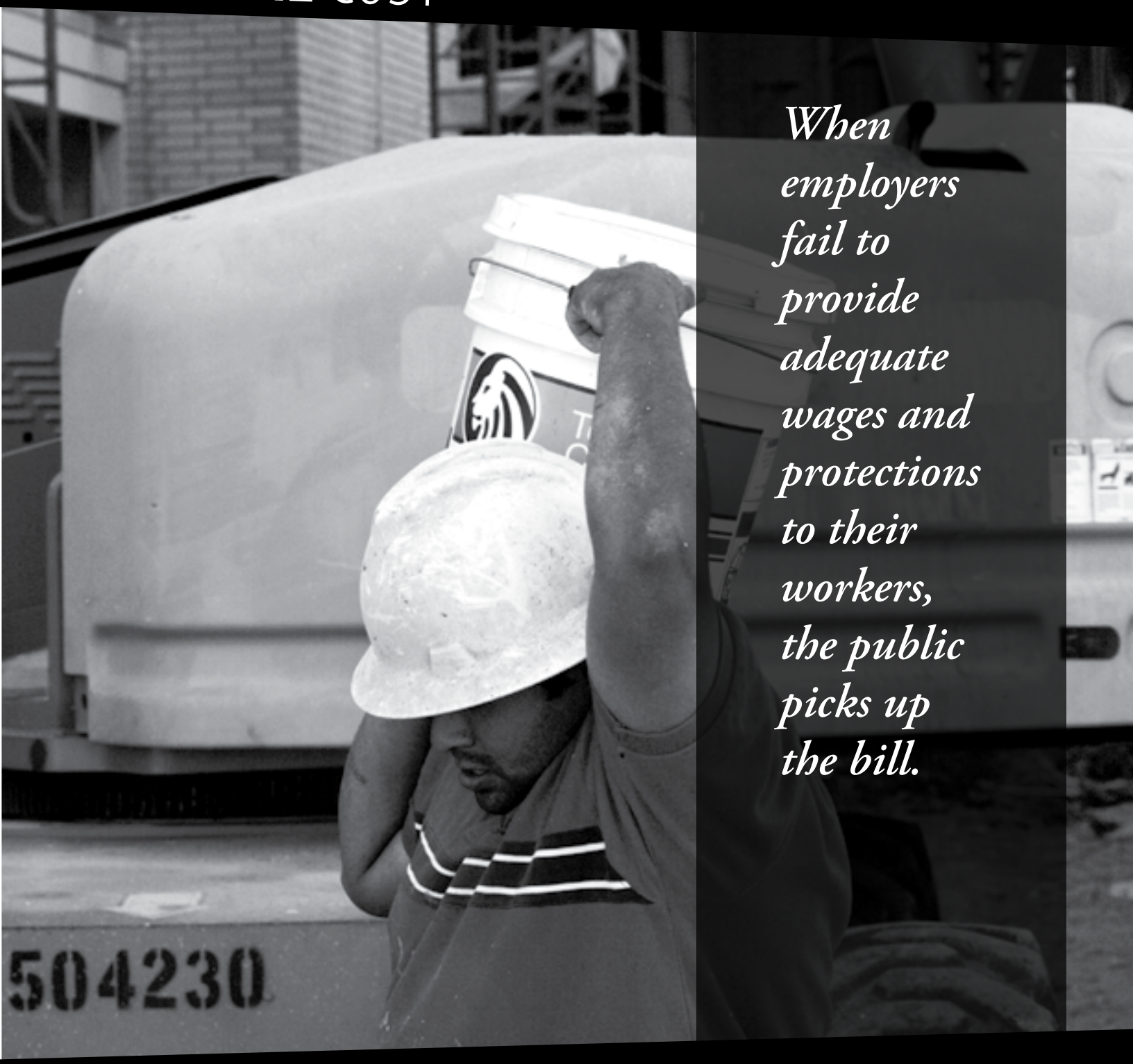
By deciding which subcontractors to work with and establishing expectations for their subcontractors, the general contractor or builder sets the standard for the entire project and guarantees that their reputation for safe, ethical business practices will be upheld.

Conclusion

Allowing workplace abuses and unsafe working conditions to occur on construction worksites can be costly for general contractors and builders. Findings indicated that when developers and general contractors fail to budget for safety, they allow illegal and unsafe workplace conditions to flourish on their worksites. Thus, the responsibility lies with everyone in the contracting chain to uphold standards. If the general contractor or builder prioritize contracts with the lowest bidder, regardless of working conditions, they send a strong signal to subcontractors that lower standards are acceptable, and in fact, expected.

When contractors and developers set a high standard, their subcontractors follow their example and take care of their workers. By ensuring safe and fair jobs and investing in their workforce through training and benefits, construction companies can strengthen the industry and develop the skilled workforce that they identify as essential to maintaining the financial health of their companies. In the end, what is better for workers is better for business.

SOCIAL COST



When employers fail to provide adequate wages and protections to their workers, the public picks up the bill.

SOCIAL

Poor and illegal working conditions, inadequate safety protection, and few employment benefits have implications that range far beyond the individual workers who suffer them. Substandard working conditions in the construction industry have a direct impact on the local economy, taxpayers, charity organizations, and hospitals. On the other hand, responsible employers help create necessary and good jobs; additionally, they also have a positive impact on the local communities in which they operate. Unfortunately, *Building Austin* researchers found many employers break the rules, thus undercutting good construction businesses. Employers who attempt to cut costs by engaging in poor and illegal workplace practices do so at the expense of the public. This section highlights the social costs of these practices. *Building Austin* researchers found:

- When workers are not paid for their work, millions of dollars are lost to the local economy each year, resulting in lower sales for local businesses, and decreased sales tax revenue.
- Workers who earned low-wages and experienced wage theft were increasingly forced to rely on local charities and government assistance to make ends meet. Nearly half of surveyed construction workers were unable to meet their basic needs.
- Millions of dollars in federal taxes and state unemployment insurance taxes are lost each year by employers misclassifying construction workers as independent contractors.
- Hospitals are often forced to absorb the cost of treating injured construction workers who are denied workers' compensation coverage by their employers.

Wage Theft: Hurting the Local Economy

During the 2009 economic downturn, the government encouraged consumers to continue spending on goods and services to stimulate the economy, prevent further job loss, and a continued slump in the economy. Wage theft prevents workers from spending money on goods and services, resulting in adverse effects on the local economy as a whole. According to *Building Austin's* survey data, most of Austin's construction workers earned $10 an hour. Assuming that a construction worker put in 40 hours a week for two weeks, the wage theft of one construction worker's check can result in the loss of $800. Without $800 workers may not be able to pay their rent, pay their utility bills, or pay for groceries. Consequently, an adverse pattern begins in which the businesses that were accustomed to construction workers' patronage experience lower sales and a reduction in those businesses' incomes and spending power as well.

Furthermore, wage theft decreases sales tax revenue for the local and state government. Because Texas has no state income tax, state and local governments depend heavily on revenues from sales tax to provide their public services. Workers Defense Project investigates $6,739,200 claims in lost wages annually, and this could mean $555,000 in sales tax revenue at a time when the City of Austin faces a $20 million budget deficit.[xiii] Since this estimation represents a small percentage of actual wage theft cases in Austin's construction industry, the real impact of wage theft on the local economy is much greater.

[xiii] Wage theft dollar estimate was arrived at by multiplying the total amount of wage theft claims received in March 2008 by 12. Sales tax revenue was calculated by multiplying wage theft dollars by 8.25%.

Working Families Pay the Price

Due to the fact that the vast majority of surveyed construction workers earned poverty and low hourly wages, many were unable to cover basic living costs. For example, 35% of workers stated that they did not have enough money to pay for their groceries (see Table 16). Furthermore, 41% of workers lacked sufficient funds to pay for their utilities and 38% were unable to pay their rent or mortgage. Almost half of workers stated they did not make enough to support their family with their earnings even though 71% of workers were the primary providers for their household.

TABLE 16

Hardships Experienced in 2007 by 312 Construction Workers	Percent of Workers
Did not have enough money to pay for groceries	35%
Did not have enough money to pay for public utility bills	41%
Did not have enough money to support his/her family	47%
Did not have enough money to receive needed medical care	41%
Did not have enough money to pay rent or mortgage	38%
Was evicted as result of inability to pay rent or mortgage	12% *

Source: Building Austin, Building Injustice survey data
*Of workers that responded that they did not have enough money to pay rent or mortgage.

The hardships resulting from low wages increase the dependence on charities and government programs to make ends meet. Many construction workers must turn to food banks, housing and child care subsidies, and tax rebates for low-income people. The demand for these programs increases tax dollars spent on these programs and decreases public resources available to others in need. Employers who pay poverty level wages and do not ensure the economic security of their workforce adversely affect the local community where they operate their business.

Unhealthy Workers, Unhealthy Communities

Under Texas workers' compensation law, injured workers are legally entitled to receive lifetime medical treatment related to the injury and to receive compensation for lost wages.[60] However, Texas is the *only* state in the country that allows any employer to opt out of workers' compensation coverage and only 45% of surveyed workers reported that they were covered by workers' compensation coverage. This failed policy has forced public hospitals, the City of Austin, health care providers, and construction workers to shoulder much of the burden of covering medical costs for work-related injuries. Twenty percent of those surveyed who had been injured on the job reported that their employer refused to pay their medical bills.

Due to the fact that contractors are not legally required to carry compensation coverage and many choose not to, contractors are often ill-prepared to cover the costs resulting from a serious workplace injury on their worksite. Additionally, 76% of construction workers do not have any medical insurance. Without employer-based health insurance, most workers and their families go without preventative medical care due to the high costs of purchasing coverage out of pocket ($942 a month or 58% of a construction workers' monthly income).[xiv] Without access to medical care, construction workers and their families turn to hospital emergency rooms when care becomes absolutely necessary. Emergency room care is much more expensive than preventative care and the high costs are usually paid by the hospital or through public subsidies.[61]

Injured workers who are not covered by workers' compensation or medical insurance are often stuck with thousands of dollars of medical bills and unable to find the long-term rehabilitative medical care that is necessary to return to work. Furthermore, *Building Austin* data indicates that 65% of construction workers earn low-wage or poverty-level

[xiv] See section on working conditions, page 20

Irresponsible Employer Forces Taxpayers to Pick up the Tab

Pedro Hernandez is a roofer by trade. In January 2007, he was hired by an Austin contractor to do roofing work on several homes in East Austin. While removing old roofing tiles, Pedro tripped and fell from the roof. His employer had not provided him with a harness or helmet that he was legally required to use. He was knocked unconscious and when he woke up in the hospital he had suffered serious injuries to his back and neck. Pedro suffered debilitating headaches, shooting pains in his legs and back, and could barely walk for several months after the accident. He was unable to work for four months, and when he finally could work again he could only take on light jobs and work in a limited capacity.

Pedro's employer did not have workers' compensation. At first Pedro was stuck with nearly $8,000 in doctors bills, but when it became clear he would not be able to pay it back, Brackenridge Hospital covered the expenses. Unable to afford the ongoing care and physical therapy he desperately needed, Pedro applied for the Medical Assistance Program (MAP) run by the City of Austin. The MAP program provides health coverage for low-income individuals and gives them access to the community health clinic network. Through the city's health clinics Pedro was able to get basic medical attention at a low cost, although it fell short of the specialized physical therapy he needed to fully recover.

Meanwhile, Pedro was unable to work and had to depend on social safety nets like food banks, shelters, and the generosity of his friends and family to survive. Thousands of public dollars went towards Pedro's emergency room bill and ongoing medical care. Thousands more made it possible for him to survive the hard months while he recovered from his injury. If Pedro's employer had workers' compensation, Pedro would have been taken care of and received the medical care he needed to get back to work more quickly. When employers fail to provide adequate protections and benefits to their workers, the public is forced pick up the bill.

wages, leaving them unable to pay for the costs associated with a serious injury. The end result of such a policy falls squarely on the families of construction workers, who are forced to face unplanned economic hardships. These injured workers increasingly rely on charity organizations or government programs to make ends meet. For some, a serious injury can result in the inability to pay for basic needs such as food, housing, utilities, and can even result in homelessness. Furthermore, untreated injuries can lead to life-long disability.

Bad for Workers, Bad for Tax Payers

Misclassification occurs when employers issue workers a 1099 tax form used only for independent contractors, instead of a legally required employee W-2 form, or by paying an employee in cash or personal check and not withholding any taxes. By illegally misclassifying their workers as independent contractors, Texas employers save 9% to 15% on payroll costs.[62] Survey data found that 38% of Austin construction workers were misclassified as independent contractors. Misclassification strips workers of their legal rights to overtime pay, unemployment and health insurance, and shifts the tax burden from the employer to the worker.

Building Austin researchers estimated that *at least* $8,618,869 in federal taxes and state unemployment taxes will be lost this year due to misclassification of Austin construction workers in vertical construction, just one sector of the industry.[xv] Furthermore, the Texas Workforce Commission's 2008 audit of selected companies revealed that the construction industry had more misclassified workers and lost tax dollars than any other industry in Texas.[63]

The loss in unemployment taxes has a profound impact on Texas; it is estimated that by October 1, 2009, the state

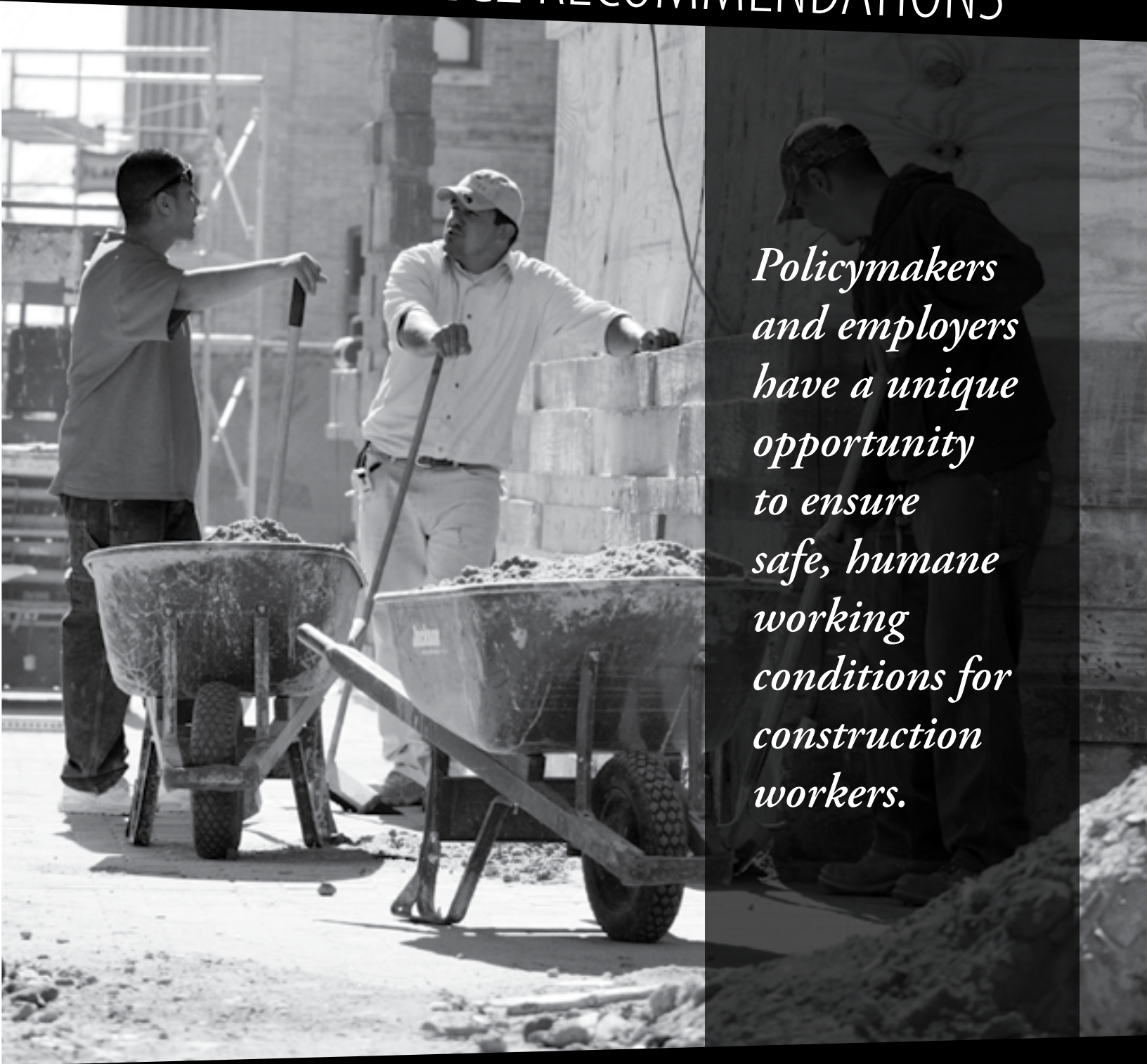
[xv] Since 38% of surveyed workers were misclassified, researchers estimated that 3,512 workers, or 38% of 9,243 vertical construction workers, were misclassified in the vertical construction sector of the industry. After multiplying the number of misclassified workers by the average construction worker wage of $13.11 by 40 hours a week by 52 weeks per year, researchers reached $95,765,216 in total wages for misclassified workers. Since employers save 9% on payroll by misclassifying workers, researchers multiplied the total wage amount by 9%, resulting in $8,618,869.

will be running a deficit of nearly $750,000,000 in its unemployment compensation trust.[64] The deficit will possibly leave thousands without unemployment benefits. Similar studies in California have found that the misclassification of all workers costs $7 billion in tax revenue each year.[65] Due to the fact that construction is one of the top ten largest industries in Texas, high rates of misclassification in the industry leads to tens of millions, if not hundreds of millions, of dollars lost in federal tax and state unemployment tax revenue each year.

Conclusion

The *Building Austin* study reveals that adverse working conditions have a direct social cost, draining needed tax revenue, over-stretching limited hospital resources, and forcing low-wage workers to depend heavily on public charities and government support to make ends meet. While more research is needed on this subject, it is clear that employers who attempt to cut costs by engaging in poor and illegal workplace practices do so at the expense of the individual worker and the public.

BEST PRACTICE RECOMMENDATIONS



Policymakers and employers have a unique opportunity to ensure safe, humane working conditions for construction workers.

The *Building Austin* report is one of the country's most extensive studies ever conducted on the construction industry. The data gathered from this study paints a picture of an industry vital to the City of Austin and to the state of Texas, yet this industry is rife with abuse. Though construction workers have strengthened Austin's economy and contributed considerably to its growth over the years, employers have failed to reward them for their honest work; Texas is ranked the most deadly place to work in construction in the country, and Austin workers suffer disproportionately high rates of wage theft and sub-poverty level wages. Industry leaders have not ensured economic security and safe working conditions for their construction workforce. Policymakers have failed to guarantee basic protections for construction workers. Moreover, these failed policies have also hurt good construction companies that play by the rules and invest in their workforce to make their business profitable.

Workers Defense Project recommends a series of best practices that can be implemented by industry leaders and policymakers to improve working conditions and ensure continued economic prosperity in an industry so important to Austin, Texas, and the country.

Policymakers, The Opportunity to Make a Difference

Policymakers at the local, state, and federal level have the ability to make important inroads to ensure safe, fair, and equitable working conditions for construction workers. At each level they can pass innovative policies to improve working conditions, reward good business practices, and strictly enforce workplace rights:

***Ensure Safe Working Conditions**:* Policymakers must do more to decrease the unnecessarily high number of deaths in the Texas construction industry. With regular safety trainings and proper safety equipment, injury and death on the job can be prevented. Health and safety regulations must be enforced, and government regulators should partner with workers' rights organizations, unions, and good construction businesses to carry out targeted investigations at construction sites. Additionally, policymakers must ensure *all* workers have access to workers' compensation coverage, medical care, rest breaks, and drinking water at work.

Ensure Honest Pay for Honest Work: Policymakers should ensure strict enforcement against wage theft. Additionally, they should reward good contractors who play by the rules and invest in local communities by paying living wages, providing medical insurance, paid sick days, pension and vacation benefits to its workers. Investigative agencies should perform targeted enforcement of wage and hour violations in the construction industry and partner with workers' rights organizations, unions, and good businesses.

Green Jobs, Good Jobs: As policymakers push for increased investment in green building, it is also vital to ensure that these are good jobs. Good jobs pay living wages, provide good benefits, and ensure safe working environments. Access to these good jobs must also be secured for more vulnerable worker populations such as women, people of color, and immigrants. Policymakers must ensure that green jobs are sustainable for the environment, workers, and their families that depend on them.

Protect Workers' Rights: Policymakers should address the problem of misclassification of workers in the construction industry, which strips workers of their rights and drains needed revenue from tax coffers. Policymakers can protect workers rights by enacting policies that ensure that employers properly classify their workers.

Give Workers the Right to Choose: Federal policymakers should pass the Employee Free Choice Act, giving workers the right to improve working conditions and address poor and illegal workplace practices. The Employee Free Choice Act gives construction workers the right to join a union, improve working conditions, and not fear retaliation from bad employers for doing so.

Employers, General Contractors, and Developers: Building a Path to a New Future

Employers, general contractors, and developers have a unique opportunity to ensure safe and humane working conditions for their workforce. These industry leaders can develop profitable business models that invest in workers and local communities, taking corporate responsibility to a new level. General contractors and developers have a particularly important role to play as industry trendsetters by ensuring safe and humane working conditions on their worksites.

***Invest in Workforce Development*:** Builders and contractors should invest in workforce development to make their businesses profitable and benefit construction workers. By working to provide proper safety training and technical skills development of all workers on a project, builders and contractors ensure quality finished projects for clients and safe and dignified working conditions for workers. Builders and contractors should collaborate with their subcontractors on workforce development to create fair and safe working environments.

Prioritize Safety: Builders and contractors should provide paid monthly health and safety trainings for construction workers. Builders and contractors should ensure all workers receive proper safety equipment, rest breaks, and clean drinking water. They should create an anonymous system for workers to address safety concerns with their direct employer, general contractor, and developer without fear of retaliation.

Subcontract for Quality: When general contractors and developers hire subcontractors they should take into account working conditions, including safety, breaks, wages, and benefits. General contractors should ensure safe and dignified working conditions on their worksites and address any employment rights violations by using a bidding system that gives preferential status to subcontractors that demonstrate a track record in providing fair working conditions. For developers and general contractors, the bottom line must also include the human cost.

If you would like to learn more about how you can help build a better Austin, visit **www.buildaustin.org** for more information about how to get involved.

APPENDIX

Survey Demographics

A total of 312 surveys were conducted with construction workers, face-to-face on construction sites where they worked in Austin, Texas. Table 17 outlines the demographics of the Building Austin, Building Injustice survey sample. Researchers pulled on Census Bureau data to ensure that the race and ethnic breakdown of the survey sample was similar to the race and ethnic breakdown reported by the American Community Survey (ACS), 2006. While Building Austin researchers surveyed a higher percentage of Latino workers than reflected in the ACS, researchers believed this percentage accurately reflects the increase in the number of Latinos working in the industry from 2006 to 2008.

TABLE 17
Demographic Characteristics of
Building Austin, Building Injustice Survey Sample

Race/Ethnicity	**Percent of Sample**
Latino	83%
White	12%
African-American	2%
Native American	1%
Asian	0%
Identified with more than one race/ethnicity	2%
Sex	
Male	100%
Female	<1% (1 worker)
Age	
16-19	2%
20-29	47%
30-39	27%
40-49	13%
50-59	7%
60+	1%
Preferred not to answer	3%
Highest Degree/Level of School Completed	
None	7%
Elementary School	26%
Middle School	28%
High School Diploma	26%
Vocational Degree or Certificate	8%
College Degree or higher	4%
Preferred not to answer	1%
Place of Birth	
Foreign Born	79%
U.S. Born	19%
No answer, missing data	2%
Sample Size (number)	312

ENDNOTES

1 Jane Bennet Clark,"2008 Best Cities, Austin: No. 6," Kiplinger Magazine, July 2008. http://www.kiplinger.com/features/archives/2008/05/2008-best-cities-austin.html, Accessed 30 March 2009.

2 "Raleigh and Austin are Fastest-Growing Metro Areas," U.S. Census Bureau News, 19 March 2009, http://www.census.gov/Press-Release/www/releases/archives/population/013426.html, Accessed 30 March 2009).

3 Kiplinger Magazine, July 2008; Thompson, Boyce. "The Healthiest Housing Markets for 2009." Builder Magazine. February 17, 2009. http://www.builderonline.com/local-markets/the-healthiest-housing-markets-for-2009.aspx. (03-30-09).

4 Quarterly Census of Employment and Wages for Third Quarter 2008, Texas Workforce Commission.

5 Howard Witt, "Austin's Green Ambitions," The Seattle Times. 5 October 2007, http://seattletimes.nwsource.com/html/nationworld/2003926617_greenaustin05.html. Accessed 30 March 2009.

6 Baylor, Don. "State of Working Texas 2007," Center for Public Policy Priorities Policy Page, No. 300 (September 2007), 5.

7 Quarterly Employment and Wage Data for Third Quarter 2008, Texas Workforce Commission.

8 Quarterly Census of Employment and Wages, Produced by the Texas Workforce Commission's LMCI Department on 16 April 2009.

9 Texas Workforce Commission. http://www.tracer2.com/

10 U.S. Bureau of Economic Analysis, http://www.bea.gov/regional/rims/brfdesc.cfm, EMSI.

11 Builder Magazine, 17 February 2009; "Annual Estimates of the Population of Metropolitan and Micropolitan Statistical Areas: April 1, 2000 to July 1, 2008 (CBSA-EST2008-01)" (CSV), United States Census Bureau, Population Division, 10 July 2008, http://www.census.gov/popest/metro/CBSA-est2008-annual.html, Accessed on 18 May 2009.

12 ibid. Statistic refers to Austin and Chicago metropolitan areas.

13 "Austin New Home Construction Down 34% in 2008" Austin Business Journal, 31 December 2008, http://austin.bizjournals.com/austin/stories/2008/12/29/daily30.html, Accessed on 30 March 2009.; Builder Magazine, February 17, 2009.

14 Quarterly Census of Wage and Employment Data, Third Quarter 2008, Texas Workforce Commission.

15 Interview with Executive of National Homebuilder, Conducted on 3 March 2009.

16 Austin Business Journal, 31 December 2008.

17 Ibid.

18 Joel Kotkin, "Austin's Secrets for Economic Success," Forbes Magazine, 12 May 2009, http://www.forbes.com/2009/05/11/best-cities-jobs-employment-opinions-columnists-austin-texas.html, Accessed 20 May 2009.

19 "The Smart Growth Initiative," City of Austin, http://www.ci.austin.tx.us/smartgrowth, Accessed 30 April 2009.

20 Quarterly Census of Employment and Wages, Produced by the Texas Workforce Commission's LMCI Department on 16 April 2009.

21 Ibid.

22 Ibid.

23 EMSI, Data run by Capital Area Council of Governments (CAPCOG) on 6 May 2009.

24 Ibid.

25 For welders, cutters, solderers, braziers, painters (construction and maintenance), States with Highest Employment in Selected Occupations and their Median Wage, 2008, Bureau of Labor Statistics.

26 Baylor, 2007, 5.

27 "Population by Race and Ethnicity," Greater Austin Chamber of Commerce, http://www.austin-chamber.org/DoBusiness/GreaterAustinProfile/population.html#table4. Accessed 15 March 2009.

28 Quarterly Employment and Wages, Third Quarter 2008, Texas Workforce Commission.

29 Ibid.

30 Ibid.

31 Texas States Penal Code, http://t102.tlc.state.tx.us/statutes/pe.toc.htm, Accessed 12 May 2009.

32 Davis Bacon and Related Acts," United States Department of Labor, http://www.dol.gov/compliance/guide/dbra.htm, Accessed 6 May 2009.

33 Ibid.

34 "Davis-Bacon Poster," U.S. Department of Labor – Employment Standards Administration – Wage and Hour Division, http://www.dol.gov/esa/whd/regs/compliance/posters/davis.htm, Accessed 6 May 2009.

35 City of Austin, Contract, Land and Management Department, Public Information Act Request, "Public Information Act Request on Prevailing Wage Enforcement," 27 May 2009.

36 Census of Fatal Occupational Injuries, 2007, U.S. Department of Labor, Bureau of Labor Statistics, in cooperation with state and federal agencies.

37 Ibid. This number was calculated by dividing 365 days in a year by the 142 fatalities recorded in 2007.

[38] Ibid.

[39] Texas Administrative Code Title 28, 110.1 and 110.101. So-called "non-subscribers" to workers compensation are also required to report to the state annually if they opt out of workers compensation coverage. However, Open Records Requests to the Workers Compensation Division found that "noncompliance is widespread" (Cooper, Allen, White paper, 1/31/07).

[40] National Academy of Social Insurance, U.S. Bureau of Economic Analysis, 2003.

[41] A.E. Dembe, J.B. Erickson, R.G. Delbos, and S.M. Banks, "The impact of overtime and long work hours on occupational injuries and illnesses: new evidence from the United States," Occupational and Environmental Medicine 62 (2005), 588-597.

[42] "Very Hot Early September 2000 Weather," National Weather Service, http://www.srh.noaa.gov/ewx/html/wxevent/2000_2001/sep2wx.htm, Accessed on 19 March 2009.

[43] National Institute for Occupational Safety and Health & Center for Disease Control, "Working in Hot Environments," NIOSH Publication 86-112 (April 1986).

[44] Ibid.

[45] Interview with Elizabeth Todd, Acting Director U.S. Department of Labor Public Affairs Region 6. Conducted on 1 May 2009.

[46] George Davis, "Top 10 OSHA Fines for Small Companies," Safety Service Company, 23 April 2008, http://www.safetyservicescompany.com/blog/top-10-osha-gines-for-small-companies, Accessed on 14 May 2009.

[47] Alexandra Berzon, "Plan would weigh construction bidders' safety along with price: Track records of those who do business with county would be reviewed if commissioner has her way," Las Vegas Sun. March 27, 2009.

[48] Interview with Laura Moskowitz, National Employment Law Project staff attorney. Conducted on 1 May 2009.

[49] "Department of Labor: Wage and Hour Division's Complaint Intake and Investigative Processes Leave Low Wage Workers Vulnerable to Wage Theft," Testimony by Gregory D. Ktuz, Managing Director Forensic Audits and Special Investigations and Jonath T. Meyer, Assistant Director Forensic Audits and Special Investigations United States Government Accountability Office, before the Committee on Education and Labor, House of Representatives, March, 25, 2009.

[50] AFL-CIO, "Death on the Job: The Toll of Neglect," AFL-CIO Publication (2008).

[51] Julien Ross, "A Fair Day's Pay: The Problem of Unpaid Workers in Central Texas," Texas Hispanic Journal of Law & Policy, Vol. 10:117,154.

[52] Texas Workforce Commission. "Labor Law Statistical Report: April 2009." Information provided by Robert Stewart, Labor Law Attorney in interview conducted 20 May 2009.

[53] Interview with Robert Stewart, Labor Law Attorney, Texas Workforce Commission, Conducted on 20 May 2009.

[54] Texas Workforce Commission, Open Records Department. Public Information Act Request, "Texas Public Information Act Request: Fines Levied by TWC." June 3, 2009.

[55] "KBHome Class Action," KBHome Class Action, http://www.kbhome-classaction.com, Accessed 15 May 2009.

[56] Census of Fatal Occupational Injuries, 2007, U.S. Department of Labor, Bureau of Labor Statistics, in cooperation with state and federal agencies.

[57] Alvarez, Maureen, OSHA Training Guidelines. Created April 30, 2001. OSHA website, accessed 5/05/09. http://www.osh.net/articles/archive/osh_basics_2001_april30.htm.

[58] Under the Fair Labor Standards Act an entity "employs" and individual if they "suffer or permit [that individual] to work." 29 USC §203 (g). The courts use an "economic reality test" to determine if the entity functions as the individual's employer.

[59] WestLaw, Valdir Xavier et al. v. Belfor USA Group, Inc. Civil Action Nos. 06-491, 06-7084, United States District Court, E.D. Louisiana, 23 September 2008.

[60] Texas Administrative Code, Title 28, Chapter 42-43.

[61] Giffin, Robert. Report Brief: The Future of Emergency Care in the United States Health System. Institute of Medicine. June 2006.

[62] Interview with Laura Moskowitz, National Employment Law Project Interview Staff Attorney, Conducted on 1 May 2009.

[63] 2008 Misclassified Workers Audit Info by NAICS Code, Texas Workforce Commission.

[64] Public meeting Texas Workforce Commission, Transcript of Proceedings before the Texas Workforce Commission, 10 February 2009.

[65] 2008 Misclassified Workers Audit Info by NAICS Code, Texas Workforce Commission.

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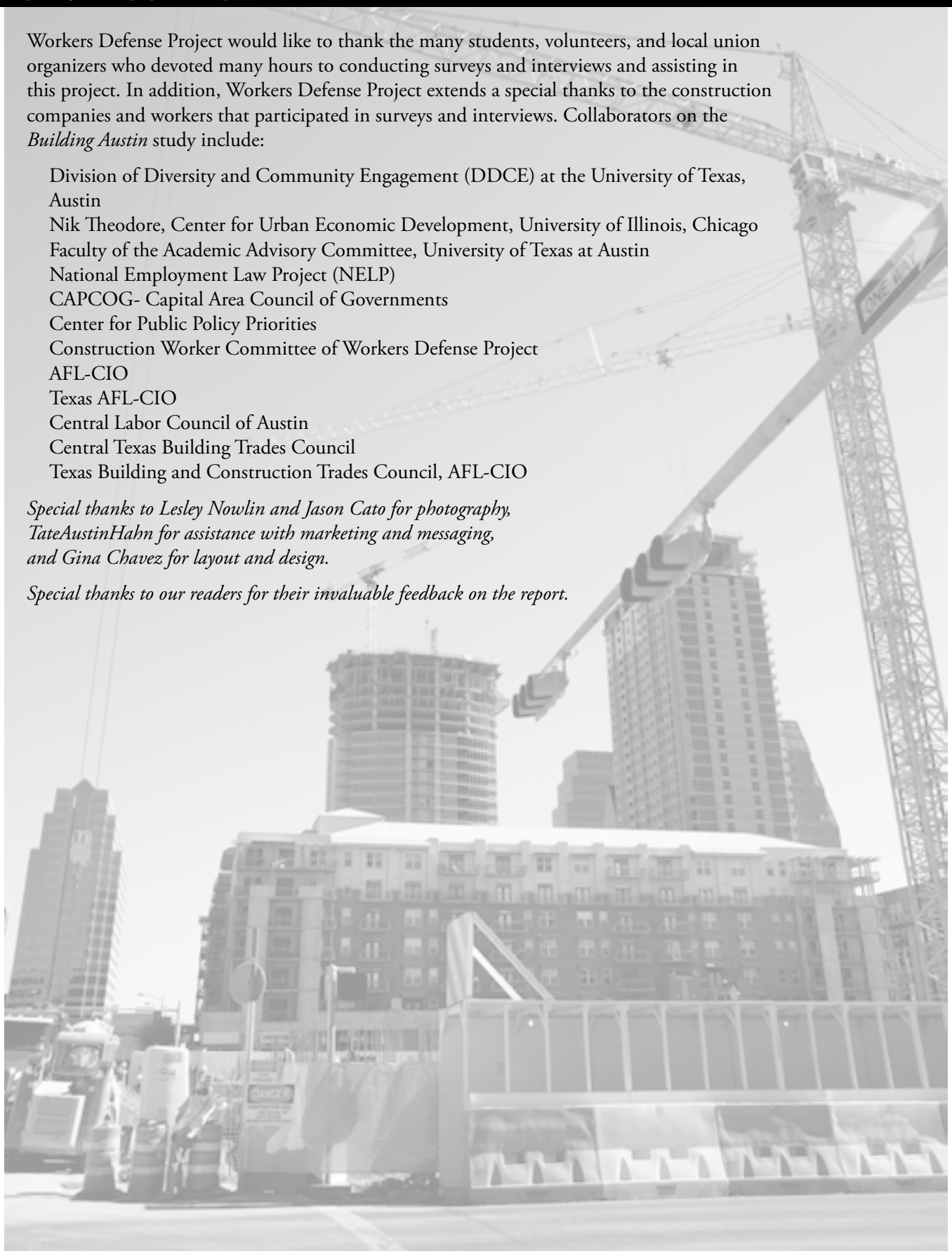

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