

**U. S. DEPARTMENT OF LABOR
OFFICE OF INSPECTOR GENERAL
OFFICE OF AUDIT**

**Evaluating the
Status of Occupational Safety and Health
Coverage of State and
Local Government Workers
in Federal OSHA States**

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ACRONYMS/ABBREVIATIONS

BLS	Bureau of Labor Statistics
OSH Act	Occupational Safety and Health Act of 1970
OSHA	Occupational Safety and Health Administration

EXECUTIVE SUMMARY

Results in Brief

The Occupational Safety and Health (OSH) Act covers all private sector workers. However, the Act excludes state and local government workers in 29 states/territories which have not been approved to operate a State Plan occupational safety and health program. Our audit of the safety and health coverage provided to state and local government workers in these 29 states/territories found that while some states have stepped in and initiated adequate public sector safety and health protections, other states either have no program or the programs they developed lacked important elements.

Additionally, we found that limited data is available to assess the performance of public sector safety and health programs. We recommend that the Occupational Safety and Health Administration (OSHA) take a more active role in assisting states improve their public sector safety and health programs, and collect more public sector workplace injuries and illness data.

Findings and Recommendations

We conducted an audit of these 29 states to determine whether they have provided workplace safety and health protections for their public employees. Where such protections were provided, we assessed the scope and depth of these programs.

We found that 12 of the 29 states (41 percent) had enacted legislation, provided appropriate staffing and developed administrative policies addressing all critical elements of an OSHA public sector program. (See Objectives, Scope and Methodology section.)

The remaining 17 states (59 percent) lacked some important elements of an adequate public sector safety and health program, including 2 states – Alabama and Delaware – which had no program. Specifically, we found that:

- ! Three states had no authority for an OSH program either through their state legislature or through their governors' executive orders.
- ! Six states had failed to establish OSH standards equivalent to provisions of Section 18(b) of the OSH Act.
- ! Twelve states had no methods for compelling compliance with OSH standards, or the methods in place were inadequate.
- ! Eleven states had no review system for contested cases, or the review system in place was deficient.

! Six states had inadequate staffing.

Additionally, we found limited data was available to evaluate the workplace injury and illness rates for public sector workplaces in the Federal OSHA states. For example, Federal OSHA states are not required to supply nonfatal occupational injury and illness data on their workers for the Bureau of Labor Statistics (BLS) survey. Although a few Federal OSHA states voluntarily supplied the data, only State Plan states have agreed to supply this information. Furthermore, none of the 17 Federal OSHA states where we found deficient public sector programs supplied nonfatal workplace injury and illness statistics to BLS for public sector workers.

Because our analysis of BLS data (composed of data on State Plan states and a few Federal OSHA states that report voluntarily) indicates public sector workers face the same or even greater overall risk of workplace injury and illness when compared to the private sector, we believe more and better accident and injury data is needed.

Conclusion

We believe actions are needed at the National level to promote equitable workplace safety and health protections to **all workers**, as stated in the preamble to the OSH Act, whether they toil in the private or the public sectors. Exhibit D provides a summary analysis of the program elements for states with deficient programs.

Recommendations

In light of our findings, those state programs lacking the most basic protections, and those states missing important program elements, should be assisted and encouraged to adopt the necessary state legislation and policies to establish a program to adequately protect the health and safety of their public workers.

We recommend the Assistant Secretary consider the following options for improving the National occupational safety and health program:

- S seek amendment to the OSH Act to specifically provide coverage for all public sector workers;
- S as funding permits, encourage other states to seek Section 18(b) status for public employee only plans, as is the case with New York and Connecticut; and
- S establish a clearinghouse to publicize among the states the most ideal public sector workplace protection program features.

We also recommend that efforts be initiated for a data collection system so that adequate information is available to evaluate the progress and effectiveness of public sector workplace protection programs. We believe “lost workday case rates” should be part of the information gathered.

Agency Response and Audit Conclusions

OSHA generally agreed with our conclusions and recommendations, but stated that because of program funding limitations, and a lack of authority over state programs, there is little the Agency can do beyond what is currently being done.

We agree that OSHA legislation and program funding are outside the Agency’s control, and that Federal, as well as state budgetary constraints have clearly limited the Agency’s ability to assist in providing for safe and healthful workplace protections for state and local government workers. However, OSHA responded to our recommendations by citing only their current practices and activities, and said little about modifications or enhancements to these practices to address our audit findings. The Agency did not speak to initiating new actions, or actions different from those currently in force to implement our recommendations. We believe that more can be done to improve public sector workplace safety and health protections.

OSHA’s agreement with our findings and conclusions has resolved the recommendations. However, we cannot close our recommendations without evidence of more concrete measures and/or redirected efforts using available resources to improve state and local government worker occupational safety and health programs.

BACKGROUND

As stated in Section 1 of the Occupational Safety and Health (OSH) Act of 1970 (Public Law 91 - 596), the purpose of the Act is:

*“To assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act; **by assisting and encouraging the States in their efforts to assure safe and healthful working conditions**; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes.”* [Emphasis added.]

Section 2(b) of the Act states that it is the purpose and policy of Congress “. . . *to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.*” [Emphasis added.]

Not all workers are covered by the OSH Act

The protections of the Act are extended to all private sector workers. However, the specific requirements of the Act have created a patchwork of coverage for workers in the public sector. Some of these workers are covered by the Act while others are not.

All working men and women in the **private sector** are protected by either the Federal Occupational Safety and Health Administration (OSHA) program, or by those states which have established State Plans under the provisions of Section 18(b) of the Act. However, because the definition of an employer in Section 3 of the Act specifically excludes: “. . . *the United States or any State or political subdivision of a State . . .*,” **their** workers are not provided the Act’s protections. As a result, while all private sector workers are protected under provisions of the Act, all public sector workers are not. Only Section 18(b) State Plan states must provide OSH protections for public sector workers.

In approving a State plan, OSHA attests to the structural completeness of the state’s program in terms of: legislative authority, standard setting, enforcement and appeals procedures, public employee protection, number of qualified personnel, and training and education. Each State Plan state agrees to provide an occupational safety and health program that is as effective as the Federal OSHA (enforcement) program for employees in the private sector.

In an April 29, 1998 meeting of the Workforce Protections Subcommittee of the Committee on Education and the Workforce, the Assistant Secretary for Occupational Safety and Health called upon Congress to expand OSHA coverage to public sector employees. A bill is currently before Congress, H.R. 776, which would extend Federal OSHA coverage to employees of states and political subdivisions.

Federal Employee OSH Coverage

Federal Government employees are covered under Section 19, which describes Federal Agency Safety Programs and Responsibilities. These provisions are augmented by Executive Order 12196, dated February 26, 1980, which established Occupational Safety and Health Programs for Federal Employees.

This Executive Order directed each agency head to furnish employees a workplace free from recognized hazards that are causing or are likely to cause death or serious physical harm. The Federal Employee Occupational Safety and Health Program holds the head of each agency responsible for complying with all standards and prompt abatement of unsafe or unhealthful working conditions, but does not provide monetary sanctions to compel compliance.

At a September 15, 1999 meeting of the Federal Advisory Committee on Occupational Safety and Health, the Assistant Secretary for Occupational Safety and Health announced plans to take steps to counter the 160,000 new reported illnesses and injuries and the \$2 billion in workers' compensation payments each year in Federal workplaces. Moreover, the President has endorsed the "Federal Worker 2000" effort which will establish goals to reduce the overall occurrence of injuries, the occurrence of serious injuries, and the rate of lost production days.

OBJECTIVES, SCOPE AND METHODOLOGY

Objectives

Our audit objectives were to determine:

- ! whether any of the 29 states and U.S. Territories within the Federal OSHA jurisdiction have provided workplace safety and health protection for their public employees; and
- ! the scope and depth of states' public employee programs where they existed.

Scope and Methodology

The focus of our audit addresses the coverage of state and local government employees, exclusive of the Federal sector. Our audit fieldwork began January 1998 and was completed July 1999. In order to accomplish our audit objectives, we reviewed information and documentation for state public employee programs for the 29 Federal OSHA jurisdiction states. We also analyzed comparative injury and illness information for the 25 State Plan states.

Specifically, we conducted extensive interviews with state occupational safety and health (OSH) officials, reviewed state legislation and OSH program policies, evaluated the states' OSH program infrastructure, gathered workers' compensation claims information and workforce data, and examined other related documentation needed to draw conclusions on the adequacy of the states' programs. We also made limited inquiries with state program officials regarding OSH programs, if any, that were established by political jurisdictions at substate levels for local government workers.

Evaluation of the public employee workplace safety and health infrastructure

We determined the structural completeness of the states' public employee programs by evaluating each state's program against the basic program elements outlined in 29 CFR 1956 for public employee plans, which is an enforcement program. We also applied the general provisions of Part 1960, elements for Federal Employee Occupational Safety and Health Programs, which is a nonenforcement program. We did not consider a state's OSH program structurally deficient simply for failing to provide for the assessment and collection of fines and penalties. Other basic elements must also have been lacking.

The basic elements we applied as standards included:

- S legislative authority
- S standards and variances
- S enforcement
 - C inspection procedures
 - C complaint procedures
 - C nondiscrimination procedures
 - C methods for compelling compliance (excluding monetary penalties)
 - C review system for contested cases
 - C employee access to information
 - C inspection scheduling system
 - C voluntary compliance program
- S record keeping and reports
- S staffing

During the first stage of our examination, we determined that 12 states had in place the staffing and legislation which contained the basic elements for a viable OSH program based on the standards of 29 CFR 1956. We did not test the 12 states beyond this stage, but proceeded to examine the remaining 17 states which lacked the necessary legislation and/or program provisions.

Review of workers' compensation and BLS data

For selected Federal OSH jurisdiction states, we obtained and examined workers' compensation data on claims, coverage, and benefits paid to public sector claimants for Fiscal Years 1995, 1996, and 1997. South Dakota was not fully cooperative with our requests for information, and stated they did not wish to participate in our review.

We also examined available BLS statistical data for calendar years 1995, 1996, and 1997 for Federal OSH jurisdiction states and State Plan states. We noted that although nonfatal occupational injury and illness incidence rates were **listed** in the BLS tables for all 25 State Plan States, those rates were **not listed** in those tables for 25 of the 29 Federal OSH jurisdiction states, and, therefore, those incidence rates could be examined for only 4 of the Federal OSH states.

Our audit was conducted in accordance with Government Auditing Standards issued by the Comptroller General of the United States.

FINDINGS AND RECOMMENDATIONS

1. Many States in the Federal OSHA Jurisdiction Lack Important Occupational Safety and Health Protections for Public Sector Workers

The Nation's occupational safety and health program is intended to ensure **all** workers safe and healthful working conditions. However, the program is fragmented with critical shortcomings with respect to protecting public sector workers (defined as state and local government employees). Of particular concern is the lack of comprehensive coverage and inadequate standards for protecting public sector workers. Many states have not stepped in and initiated programs to adequately fill the public sector exclusions of the Occupational Safety and Health (OSH) Act.

The occupational safety and health protection program for **public sector workers** is generally divided into two areas of coverage:

- S** structured State Plan coverage with comprehensive standards under provisions of Section 18(b) of the OSH Act (25 states fall under this coverage); and
- S** assorted safety and health programs individually tailored and enacted by states with wide variations of coverage and protections. (This group comprises the 29 Federal OSHA jurisdiction states.)

Except for special provisions under Section 18(b) of the OSH Act, which provide for the establishment of State Plan programs, the Act excludes coverage of public sector employees. Therefore, only states that apply and qualify for State Plan status are required to cover public employees in their OSH plans.

The remaining states that are part of the Federal OSHA jurisdiction program are left to develop their own OSH programs for their public sector workers. The result is a hodgepodge system that leaves large numbers of public sector workers with widely disparate degrees of workplace safety and health protections.

We gathered information about safety and health programs to evaluate whether states in the Federal OSHA jurisdiction had established worker protections similar to those afforded other public sector workers in State Plan states. We used as the basis for our comparison the standards applicable to the State Plan states, and the general provisions of the Federal OSH protection program.

We found only 12 of the 29 states (41 percent) have adopted legislation, provided staffing and administrative policies addressing all critical elements of an OSH program similar to Section 18(b) standards.¹ (See Exhibit E for a listing of the 12 states.)

The remaining 17 states (59 percent) were the focus of our review. (See Exhibit D.) These states lacked some important elements of an adequate OSH program, and 2 states - Alabama and Delaware - had no program. Specifically we found that:

- ! Three states had no legislative authority for an OSH program either through their state legislatures or through their governors' executive order.
- ! Six states had failed to establish OSH standards equivalent to provisions of Section 18(b) of the OSH Act.
- ! Twelve states had no methods for compelling compliance with OSH standards, or the methods in place were inadequate.
- ! Eleven states had no review system for contested cases, or the system in place was deficient.
- ! Six states had inadequate staffing.

States administered a variety of programs which they described as voluntary compliance, voluntary protection, assistance, consultation, or enforcement programs. These programs differed widely in their design, standards, focus, staffing and degree of coverage. Exhibit D provides a summary analysis of the states' public sector programs based on Section 18(b) standard elements.

States with No Recognizable Public Sector Occupational Safety and Health Program

Two states, Alabama and Delaware, had no recognizable occupational safety and health programs for public sector workers at either the state or local government level. These states had no OSH legislation enacted nor Governors' Executive orders establishing a program comparable to the standards, or providing the protections equivalent to the provisions of Section 18(b) of the OSH Act.

¹ Our determination was based on a review of the states' OSH legislation and their program policies. However, we did not test the states' implementation or effectiveness of their programs.

**Examples of Other States Lacking Standards or Adequate Staff
In the South and West**

Louisiana and North Dakota established risk management programs to control their public workers' exposure to on-the-job safety and health hazards and reduce workers' compensation and other insurance costs. These programs focus on safety inspections with little health coverage. Louisiana and North Dakota have not adopted OSHA or National standards nor have they hired adequately trained health professionals.

Although Mississippi performs public sector safety and health inspections, there is no legislative authority, no standards have been adopted, complaint procedures have not been established, and public employees are not protected from retaliation for whistle blowing. Mississippi described its public sector coverage as a voluntary protection program. Mississippi has no statutes designed specifically to protect public sector employees that complain of workplace hazards.

Georgia limits protection for its public sector workers to administering a Hazardous Chemicals Protection and Right-to-Know Rule. The State does not provide protection for other safety hazards. The legislation was enacted as an enforcement program but is administered as a consultative and educational program due to a shortage of staff. The Health Section has a director, but the director has no staff.

Examples of Other States with Public Sector Impediments

In New England

Although the Massachusetts State legislature adopted 30 General Industry Standards into its regulations, most of those standards have not been updated since 1989. Moreover, these standards apply to employers in the private sector and political subdivisions, but exempt state agencies. The enforcement program in this State appears to be strong because criminal proceedings are sought for safety standard violations. However, state employees are not protected like their counterparts in the private sector and local governments.

In the East

Pennsylvania has a complaint driven inspection program. However, if a facility has been issued an occupancy permit and the complaint received does not pertain to fire safety, the Commonwealth does not generally conduct an inspection. The Commonwealth also does not have whistleblower protections for individuals who report workplace safety and health hazards, which is very important in a complaint driven operation.

In the Midwest

Nebraska conducts targeted inspections. The inspections are based on an experience modification factor computed from the past 3-year loss history on injuries and the amount of workers' compensation payments. State departments have blanket coverage, and each department is given the same experience modification factor based on a combined average of all state departments' incidence of injuries and accidents. As a result, state departments are rarely inspected, even though state departments such as Corrections and Transportation may have a relatively high incidence of injuries and accidents.

Appalachia

The West Virginia State Legislature passed a public sector enforcement program, but the legislature provides no funding. Enforcement activities have been limited to funding from the division's general revenue account when surplus funds permit. Because of this limitation, program activities have been limited to serious hazard situations and complaints of a serious nature. Very little has been done in an attempt to prevent job-related accidents.

2. Analysis of Workplace Injury and Illness Rates in Public and Private Sectors Indicates Significant Public Sector Vulnerability

Our analysis of BLS data indicates the public sector poses the same or even greater overall risk of workplace injury and illness as the private sector. Although many public sector jobs are administrative in nature, and may not appear to carry the same degree of hazard as private sector manufacturing and construction jobs, each state has a wide variety of jobs that present workplace risks unique to the workers' duties, responsibilities, and environment. These jobs range from public health workers, to corrections officers, to vehicle mechanics, to wildlife and fishery workers. For example, many public health jobs expose workers to health hazards in hospitals, clinics and related laboratories. Law enforcement and public safety jobs (e.g., police, fire, transportation and public works departments) expose workers to risks in combating crime, putting out fires, transporting the public, and maintaining public services, roads and highways.

BLS publishes annual statistics on workplace injuries and illnesses based on survey data obtained from the states. To gain perspective on how public sector workplace injuries and illnesses stacked up against the private sector, we analyzed BLS tables showing nonfatal occupational injury and illness incidence rates with "lost workday cases" for calendar years 1995, 1996, and 1997. We picked this statistic because it provides a broad measure of the impact of injuries and illnesses on the workforce.

The information represents the rate at which workers were away from their jobs due to occupational injury and illness for each 100 full-time workers.

Despite limited data available on Federal OSHA states, the BLS statistics show that, overall, public sector workers are experiencing lost workdays equivalent to or higher than private sector workers. Only four Federal OSHA states provided **both** public and private sectors “lost workday case” injury and illness data. We found that in most instances, when comparable data were available for these four states, the public sector lost workdays case rates equaled or was higher than the private sector. See Table 1 below.

Table 1

**Nonfatal Occupational Injury and Illness Incidence Rates
Per 100 Full-Time Workers
Lost Workday Case Rates in Private and Public Sectors**

<u>States</u>	Calendar Year 1995		Calendar Year 1996		Calendar Year 1997	
	<u>Private Sector</u>	<u>Public Sector</u>	<u>Private Sector</u>	<u>Public Sector</u>	<u>Private Sector</u>	<u>Public Sector</u>
Maine	2.9	2.6	2.5	2.4	2.2	2.1
New Jersey	2.4	<u>5.3</u>	2.1	<u>5.2</u>	2.2	<u>4.7</u>
Wisconsin	3.4	<u>3.4</u>	3.0	<u>3.2</u>	2.8	<u>2.8</u>
Guam	2.4	1.6	2.8	-	2.2	<u>3.2</u>

Bolded and underlined numbers indicate the public sector worker’s injury and illness rate equals or exceeds the rate for the private sector.

- Data not available

Source: BLS Survey of Nonfatal Occupational Injury and Illness Incidence Rates

Since this data provides only a glimpse of the complete picture for all the states, we also obtained BLS survey data on “lost workdays case rates” for the 25 State Plan states. BLS information was available for 21 of 25 State Plan states. In 11 of these, the public sector had lost workdays case rates equal to or higher than the private sector for at least 2 of the 3 years we examined. (See Exhibit B.)

Since only four Federal OSHA states provided nonfatal injury and illness data for both public and private sectors workers, it is not possible to reasonably compare their results with the results of the 21 State Plan states that supplied the injury and illness data. Additional data is certainly necessary to reasonably evaluate whether State Plan states, with their additional workplace safety and health standards and protections, are making an impact on worker injuries and illnesses in comparison with Federal OSHA states. (See Finding 4.)

However, the available data indicates that the public sector workplace is just as vulnerable as the private sector workplace in the incidence of injuries and illnesses.

3. Nine States Do Not Provide Workplace Safety and Health Protections to Local Government Workers

In addition to the many state workers who lack occupational safety and health coverage in Federal OSHA states, there are many local government workers in these same states who also lack coverage. There are approximately 5.7 million local government workers in the 29 Federal OSHA jurisdiction states. We found that nine states, while providing some workplace safety and health coverage to the state workers,² do not provide such coverage to local level government employees. Based on our interviews with state officials, these nine states employ approximately 2.3 million local government workers, and represent about 40 percent of local government employees in the Federal OSHA states. Table 2 shows the approximate local government employment levels in each state.³

Table 2

States That Do Not Provide Safety and Health Protection for Local Government Employees

	No. of Local Gov't Employees
Alabama	186,000
Colorado	179,000
Delaware	20,000

² Alabama and Delaware had no OSH programs, therefore, not even state workers received coverage.

³ Although not listed, we found no indication that South Dakota's risk management program provided any OSH protection to local level government employees. The State declined to participate fully in our review.

Georgia⁴	327,000
Louisiana	205,000
Mississippi	128,000
Missouri	229,000
Texas	937,000
West Virginia	<u>72,000</u>

Total **2,283,000**

Although the scope of our work did not include contacts with each local county or municipality, our interviews with state program officials disclosed that no OSH coverage was provided by the state to local government workers in these nine states, and officials were unaware of any such OSH coverage established at the local level.

Clearly, the cost of establishing such a program would appear too burdensome for local government to manage. Our consensus is that if the state did not offer OSH coverage, the coverage was not provided by local government.

As in our other comparisons, we examined BLS data to discern how state worker injury and illness rates compared to local government rates. Once again, data for the Federal OSHA states were limited, with only four states reporting nonfatal injury and illness rates separately for state and local government workers. We compared the data for these four states. (See Table 3.)

The data disclosed that local government workers appear to be experiencing workplace injury and illness incidence rates on a par with, or even higher than state workers. As shown in Table 3 below, in three of the four states where comparable information was available, local government workers had a higher lost workday case rate than state workers.

Table 3

**Nonfatal Occupational Injury and Illness Incidence Rates
Per 100 Full-Time Workers
Lost Workday Case Rates in State and Local Governments**

	Calendar Year 1995	Calendar Year 1996	Calendar Year 1997
<u>State</u>	<u>State</u> <u>Local</u>	<u>State</u> <u>Local</u>	<u>State</u> <u>Local</u>

⁴ Georgia provides health protection, but no safety protection for local government workers.

Maine	1.5	3.1	1.3	2.9	2.2	2.1
New Jersey	5.2	5.3	4.7	5.4	4.3	4.9
Wisconsin	2.5	3.7	2.0	3.6	1.8	3.1
Guam	-	1.6	-	-	-	3.2

Bolded numbers indicate the local government worker’s injury and illness rate exceeds the rate for state government workers.

We performed a similar analysis using available BLS data for 25 State Plan states. Once again, this second analysis showed that local government workers are experiencing significant occupational injury and illness rates when compared to state workers. (See Exhibit C.)

4. More Data Are Needed to Evaluate Public Sector Workplace Illnesses and Injuries

Our audit found there is little information readily available to evaluate regarding injuries and illnesses in the public workplace for the Federal OSHA states. For example, we observed that all states, both State Plan and Federal OSHA states, have agreed to supply **fatal occupational injury and illness** data for the BLS survey for private sector, state, and local government workers. However, there are no such cooperative agreements with all the states to supply **nonfatal injury and illness** data to BLS on all workers. A few Federal OSHA states supply the nonfatal injury and illness data voluntarily, but only State Plan states are required to provide this information. None of the 17 Federal OSHA states where we found deficient public sector programs supplied nonfatal workplace injury and illness statistics to BLS for public sector workers.

We view the nonfatal injury and illness incidence rates as more revealing and relevant than the fatal rates, since it provides a broader basis for evaluating the impact of workplace hazards. Many workplace hazards do not cause fatalities, but are nevertheless responsible for serious injuries and illnesses causing numerous lost workdays. The lack of such information for Federal OSHA states hampers the ability of administrators, oversight agencies, and the Congress to make informed decisions regarding possible changes in the Nation’s occupational safety and health policies.

Although states individually maintain certain workers compensation information which provides some insight into the extent of workplace injuries and illnesses, it is difficult to evaluate and compare this data among states because of varying data definitions, and different data collection methodologies. In fact, we found no uniform requirements for all the states governing the collection and reporting of information needed to effectively evaluate the impact of injuries and illnesses in the public workplace.

As a consequence, program administrators must rely on incomplete data to draw conclusions and formulate policies. In order to ascertain and evaluate whether changes in the OSH program are necessary, much more information must be made available.

Conclusions

There are significant disparities among the states in the levels of OSH protections provided to public sector workers within the Federal OSHA jurisdiction states. Although 12 states in our review appear to have provided the legislation, staffing, and administrative policies for a public sector OSH program containing the elements comparable to State Plan states, many states fall far short of this level of protection. We found significant lapses in the scope, depth, and degree of coverage. We also identified 9 of 29 states that do not extend their OSH protections to local government workers, and two of these states have no OSH program for any of their public sector workers.

The trends presented in our analysis provide some insight into the public versus private sectors comparative occupational injury and illness incidence rates. Such factors as the size of the states' workforce, varying work conditions, type and composition of the states' labor force, and others make it difficult to compare private sector to public sector, and one state to another. However, we believe the trends presented for several states cannot be dismissed. Based on our analysis of the information available, the public sector workplace is equally or even more hazardous in terms of injury and illness rates resulting in lost workdays than the private sector.

According to a 1989 Rand Corporation study, work force injuries cost American business \$83 billion annually. Public sector workplace injuries and illnesses are certainly a representative part of the cost of government business, with injury and illness rates comparable to the private sector. Although several states we examined have established risk control offices, and other various programs to control costs of workplace injuries and illnesses in the public sector, these efforts are only part of the solution. These programs do not provide the kind of comprehensive safeguards afforded other state and local government workers, which enhance workplace safety and healthful workplace conditions.

We believe actions are needed at the National level to promote equitable workplace safety and health protections for all workers, as stated in the preamble to the OSH Act, whether they toil in the private or public sectors. Exhibit D provides a summary analysis of the program elements for states with deficient programs. This information is provided to give OSHA a better perspective, and to assist the states' efforts in providing occupational safety and health protections for their workers and local government.

Recommendations

In light of our findings, those state programs lacking the most basic protections, and those states missing important program elements, should be assisted and encouraged to adopt the necessary state legislation and policies to establish a program to adequately protect the health and safety of their public workers.

We recommend the Assistant Secretary consider the following options as a means for improving the National occupational safety and health program:

- S seek amendment to the OSH Act to specifically provide coverage for all public sector workers;
- S as funding permits, encourage other states to seek Section 18(b) status for public employee only plans, as is the case with New York and Connecticut; and
- S establish a clearinghouse to publicize among the states the most ideal public sector workplace protection program features.

We also recommend that a data collection system be established, either through enhancements in the currently administrated BLS survey methods, or through additional cooperative efforts with the states, so that adequate information is available to evaluate the progress and effectiveness of public sector workplace protection programs. We believe “lost workday case rates” based on nonfatal occupational injury and illness incidence rates for public sector workers should be part of the information gathered.

Agency Response

OSHA generally agreed with our conclusions and recommendations, but stated that because of program funding limitations, and a lack of authority over state programs, there is little the Agency can do beyond what is currently being done. OSHA also provided some specific comments addressing clarifications, and/or additional supplementary information the Agency would like to see included in the report.

The synopsis below is OSHA’s response (*shown in italics*) to OIG’s recommendations. The complete Agency response is included as Exhibit F.

Recommendation: **In light of our findings, those state programs lacking the most basic protections, and those states missing important program elements, should be assisted and encouraged to adopt the necessary state legislation and policies to establish a program to adequately protect the health and safety of their public workers.**

Response: *Absent authority for direct Federal coverage, States wishing to provide occupational safety and health protection to both State and local government employees are eligible for up to 50% Federal funding of their effort if they meet the State Plan approval criteria. Since there is no OSHA jurisdiction, States without formal State plans are still free to*

provide protection to their governmental workers in any manner they see fit. It is indeed gratifying to note that many of the 29 jurisdictions you surveyed are voluntarily providing some level of worker protection. However, we are very concerned that your use of the word “acceptable” to describe the programs in 12 States that may not fully meet or even come close to meeting the State plan approval requirements is inappropriate. Although there may be some awareness and some formal attention directed to the hazards these workers face in such States, the word “acceptable” gives an impression that the programs are better than they may in fact be.

Recommendation: **Seek amendment to the OSH Act to specifically provide coverage for all public sector workers .**

Response: *We have and will continue to support amendment to the Act to extend Federal coverage to State and local government workers. Such legislative amendment would allow OSHA to provide Federal coverage to those workers not already covered by approved State Plans and might encourage other States to seek plan approval in lieu of Federal enforcement.*

Recommendation: **As funding permits, encourage other States to seek Section 18(b) status for public employee plans, as is the case with New York and Connecticut.**

Response: *OSHA will work with any State seeking formal State plan approval to develop its program to the point of approvability, but is unable to officially approve such plans until additional funding is made available in OSHA’s State plan grant budget line item sufficient to support 50% of the “costs required to be incurred” by such a new State plan. As you are aware, OSHA has been working with the State of New Jersey to develop an approvable Public Employee Only State plan. Although requested in the President’s FY 2000 budget, funding was not made available for New Jersey this year. Inclusion of the request in the President’s FY 2001 budget will be given careful consideration as the balancing of budgetary priorities makes the appropriation of a substantial amount of additional Federal funds for new Public Employee Only State plans difficult. Further, States pursuing this option must enact the necessary enabling legislation, develop their programs, and allocate the required 50% State matching funds to their program. OSHA will continue to encourage States to consider developing Public Employee Only State plans with the*

attendant State commitment of resources, but must temper its encouragement with recognition of the current unavailability of additional Federal matching funds.

Recommendation: **Establish a clearinghouse to publicize among the States the most ideal public sector workplace protection program features.**

Response: *OSHA's regulations at 29 CFR 1956 define the workplace protection program features deemed necessary and appropriate for OSHA approval of a Public Employee Only State Plan. The 25 States and territories with currently approved plans all have public employee efforts that meet these criteria in various ways. Information about these programs is available to some extent on OSHA's website (www.OSHA.gov) with links to each of the current State Program's websites. State Program officials, individually and through their organization, the Occupational Safety and Health State Plan Association (OSHSPA), frequently consult with States considering means of increasing public sector protection and will continue to do so. OSHA also has extensive information on workplace hazards, applicable standards, and compliance methods available on its website. Much of this information has equal applicability to the private and public sectors and is a good source of information for the non-State plan States and employees in those States. We believe this serves much the same function as a clearinghouse.*

OSHA's Regional Offices already work with many of the non-State Plan States informally to respond to questions and provide any technical assistance possible, and will continue to do so. There are several innovative partnerships between the Regions and State agencies to address workplace hazards in the private sector that serve to increase attention to similar hazards in the public sector. Training classes at the OSHA Training Institute in Des Plaines, Illinois, and at the twelve (12) Education Centers authorized by OSHA throughout the nation are open to these non-Plan State programs on a space-available basis for training of both affected staff and program administrators.

Recommendation: **A data collection system should be established, either through enhancements in the currently administered BLS survey methods, or through additional cooperative efforts with the states, so that adequate information is available to evaluate the progress and effectiveness of public sector workplace protection programs. OIG believes "lost workday case rates" based on nonfatal occupational injury and illness**

incidence rates for public sector workers should be part of the information gathered.

Response: Your final suggestion that OSHA initiate efforts for an expanded data collection system to provide adequate, uniform information on public sector workplace injuries and illnesses in non-plan States and to assess the effectiveness of established programs, would require the appropriation of additional funds for the Bureau of Labor Statistics (BLS), voluntary State participation, and 50% State funding. If the Act were amended to extend Federal coverage to State and local government workers, funding to support a parallel expansion of the BLS survey would need to be considered part of its implementation costs.

Audit Conclusions:

We agree that OSHA legislation and program funding are outside the Agency's control, and that Federal, as well as state budgetary constraints have clearly limited the Agency's ability to assist in providing for safe and healthful workplace protections for state and local government workers. However, OSHA responded to our recommendations by citing only their current practices and activities, and said little about modifications or enhancements to these practices to address our audit findings. The Agency did not speak to initiating new actions, or actions different from those currently in force to implement our recommendations. We believe that more can be done to improve public sector workplace safety and health protections.

For instance, OSHA's response does not describe any specific additional actions to assist and encourage those states cited in our report that lack an OSH program for state and local government workers, or states missing critical and basic OSH protections. We believe that present resources, in the form of redirected technical assistance, discretionary funds, and supplementary information, should be focused toward those states most in need. Such assistance could encourage such states to adopt the necessary state legislation and policies to establish a program to adequately protect the health and safety of their public workers.

One option proposed in our report was establishment of a clearinghouse to publicize among states the most ideal public sector workplace protection programs. This would provide more focused information geared toward public sector coverage different from that currently available. Use of internet web communications, as mentioned in the Agency response, is also an effective method to ensure the widest possible distribution of such information. We encourage such use along with responsible followup measures. To be effective, the information must be geared toward public sector programs, and not be simply generic information. Furthermore, an increased knowledge of specific aspects of state OSH

public sector programs and distribution of this information within Federal OSHA and among all states is clearly necessary.

We are encouraged by “OSHA’s willingness to explore additional options, in conjunction with the Congress and the States, for providing public sector worker protection.” We continue to believe that additional data collection efforts capturing such information as “lost workday case rates” based on nonfatal occupational injury and illness incidence rates should be pursued as an option.

OSHA’s agreement with our findings and conclusions has resolved the recommendations. However, we cannot close our recommendations without evidence of more concrete measures and/or redirected efforts using available resources to improve state and local government worker occupational safety and health programs.

In response to OSHA’s comments, we adjusted this final report to clarify our acceptable listing of states by footnoting Exhibit E, and providing other references to our Objectives, Scope and Methodology report section. We also clarified our description of the OSH public sector program in West Virginia to eliminate any misconceptions. We felt no other report changes were necessary.

EXHIBIT A

Listing of Federal OSHA Jurisdiction and State Plan States

Federal OSHA Jurisdiction States	State Plan States
Alabama	Alaska
Arkansas	Arizona
Colorado	California
Delaware	Connecticut *
Florida	Hawaii
Georgia	Indiana
Idaho	Iowa
Illinois	Kentucky
Kansas	Maryland
Louisiana	Michigan
Maine	Minnesota
Massachusetts	Nevada
Mississippi	New Mexico
Missouri	New York *
Montana	North Carolina
Nebraska	Oregon
New Hampshire	South Carolina
New Jersey	Tennessee
North Dakota	Utah
Ohio	Vermont
Oklahoma	Virginia
Pennsylvania	Washington
Rhode Island	Wyoming
South Dakota	Puerto Rico
Texas	Virgin Islands
West Virginia	
Wisconsin	
Washington, D.C.	
Guam	

* State Plan state in public sector only

EXHIBIT B

**Nonfatal Occupational Injury and Illness Incidence Rates Per 100 Full-Time Workers
Lost Workday Case Rates in *Private and Public Sectors*
State Plan States**

	1995		1996		1997	
State	Private Sector	Public Sector	Private Sector	Public Sector	Private Sector	Public Sector
Alaska	3.7	2.5	3.6	2.6	3.5	2.8
Arizona	-	-	2.0	<u>2.0</u>	1.8	<u>1.8</u>
California	2.4	<u>4.2</u>	2.1	<u>3.6</u>	2.1	<u>3.2</u>
Connecticut	2.6	<u>5.0</u>	2.5	<u>4.9</u>	2.2	<u>4.3</u>
Hawaii	3.8	<u>3.8</u>	3.3	<u>3.6</u>	3.3	<u>3.9</u>
Indiana	3.3	2.4	2.6	2.2	2.4	1.9
Kentucky	3.2	2.8	-	-	2.8	2.4
Maryland	2.6	<u>4.0</u>	2.1	<u>3.5</u>	2.0	<u>3.1</u>
Michigan	2.8	2.5	2.4	<u>2.6</u>	2.1	<u>2.5</u>
Minnesota	2.3	<u>2.5</u>	2.2	1.8	2.0	1.9
Nevada	3.0	2.6	2.3	<u>2.4</u>	2.2	2.0
New Mexico	2.5	<u>2.6</u>	2.3	<u>2.5</u>	2.1	<u>2.2</u>
New York	2.3	<u>5.9</u>	2.2	<u>6.4</u>	2.0	<u>5.9</u>
North Carolina	2.0	1.7	-	-	1.7	1.5
Oregon	2.9	2.8	2.6	2.1	2.3	1.9
Tennessee	2.8	2.5	-	-	2.2	<u>2.5</u>
Utah	2.3	1.6	2.2	1.4	2.1	1.8
Virginia	2.3	<u>2.9</u>	1.9	<u>2.5</u>	1.9	<u>2.6</u>
Washington	3.4	2.8	3.1	2.8	3.2	3.1
Puerto Rico	3.3	<u>5.5</u>	3.5	<u>6.2</u>	3.5	<u>6.6</u>
Virgin Islands	1.2	<u>1.4</u>	1.3	<u>2.0</u>	1.0	<u>1.6</u>

- No data available

Underlined and **bold** indicates the public sector workplace injury and illness rates are the same or higher than the rates in the private sector. Iowa, South Carolina, Vermont, and Wyoming are excluded because at least 2 years of BLS data were unavailable for these states.

Source: BLS Survey of Occupational injuries and illnesses in cooperation with participating agencies.

EXHIBIT C

Nonfatal Occupational Injury and Illness Incidence Rates Per 100 Full-Time Workers
 Lost Workday Case Rates in *State and Local Governments*
 State Plan States

	1995		1996		1997	
State	State Govt	Local Govt	State Govt	Local Govt	State Govt	Local Govt
Alaska	2.1	<u>2.8</u>	2.5	<u>2.7</u>	2.7	<u>2.9</u>
Arizona	-	-	1.8	<u>2.0</u>	1.8	<u>1.8</u>
California	3.0	4.6	2.6	3.8	2.8	3.4
Connecticut	4.6	<u>5.3</u>	4.7	<u>4.9</u>	3.8	4.6
Hawaii	2.5	<u>8.2</u>	2.5	6.8	2.7	<u>7.7</u>
Indiana	2.4	<u>2.4</u>	1.9	<u>2.3</u>	2.1	1.8
Kentucky	2.6	<u>2.9</u>	-	-	2.0	<u>2.7</u>
Maryland	3.3	4.5	2.7	3.9	2.6	3.4
Michigan	1.8	<u>2.8</u>	1.8	<u>2.9</u>	1.7	<u>3.0</u>
Minnesota	1.9	<u>2.7</u>	1.5	<u>1.9</u>	1.4	<u>2.1</u>
Nevada	1.5	<u>3.1</u>	1.5	<u>2.9</u>	1.3	<u>2.3</u>
New York	5.9	<u>5.9</u>	5.1	6.8	5.5	<u>6.1</u>
North Carolina	1.5	<u>1.8</u>	-	-	1.2	<u>1.6</u>
Tennessee	1.3	<u>3.1</u>	-	-	2.3	<u>2.6</u>
Utah	1.5	<u>1.6</u>	1.4	1.3	1.2	<u>2.2</u>
Virginia	2.8	<u>3.0</u>	2.7	2.4	2.8	2.5
Washington	1.7	<u>3.3</u>	2.1	<u>3.2</u>	2.7	<u>3.3</u>
Puerto Rico	5.1	<u>7.4</u>	5.8	<u>7.6</u>	6.3	<u>7.7</u>

Underlined and **bold** indicates the local government lost workday case rate is the same or higher than the state government rate.

Iowa, New Mexico, Oregon, South Carolina, Vermont, Wyoming and Virgin Island are excluded because these states did not provide the state and local government lost workday case rate for at least 2 of the 3 years covered in our review.

EXHIBIT D

Summary of States' Public Sector OSH Program Elements

States	Program Elements					
	Legislative Authority	Standards and Variances	Enforcement and Appeals Procedures			
			1) Inspection Procedures	2) Complaint Procedures	3) Non-Discrimination Protection	4) Methods for Compelling Compliance
Alabama *	No	No	No	No	No	No
Colorado	Executive Order	Yes	Yes	Yes	Yes	No
Delaware *	No	No	No	No	No	No
Georgia	Yes	No Health Stds - Adopt own Safety Stds	Yes	Yes	Safety Section Only	Health Section Only
Idaho	Yes	Own Stds	Yes	Yes	No	Yes
Louisiana	Yes	No	Yes	No	No	No
Massachusetts	Yes	Own Stds	Yes	Yes	Yes	No
Mississippi	No	No	Yes	No	No	No
Missouri	Executive Order	Yes	No	No	No	Yes
Montana	Yes	Yes	Yes	Yes	No	Yes
Nebraska	Yes	Yes	Yes	Yes	Yes	No
North Dakota	Yes	No	Yes	Yes	No	Safety Section Only
Pennsylvania	Yes	Own Stds	Yes	Yes	No	Yes
South Dakota	Yes	(3)	Yes	Yes	(3)	(3)
Texas	Yes	Yes	Yes	No	Yes	No
West Virginia	Yes	Yes	Yes	Yes	Yes	No

Washington, DC	Yes	Yes	Yes	Yes	Yes	No
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Summary of State's Public Sector OSH Program Elements

States	Program Elements (continued)					
	Enforcement and Appeals Procedures				Record Keeping and Reporting Requirement	Staffing
	5) Review System For Contested Cases	6) Employee Access to Information	7) Inspection Scheduling System	8) Voluntary Compliance Program		
Alabama *	No	No	No	No	No	No
Colorado	No	Yes	Yes	Yes	Yes	Yes
Delaware *	No	No	No	No	No	No
Georgia	Health Section Only	Yes	No	Yes	Safety Section Only	No (1)
Idaho	Yes	Yes	No	Yes	Yes	Yes
Louisiana	No	Yes	No	Yes	Yes	No (2)
Massachusetts	No	Yes	Yes	Yes	Yes	Yes
Mississippi	No	Yes	Yes	Yes	Yes	Yes
Missouri	Yes	No	Yes	Yes	No	Yes
Montana	Yes	Yes	Yes	Yes	Yes	Yes
Nebraska	Yes	Yes	Yes	Yes	Yes	Yes
North Dakota	No	Yes	Yes	Yes	Yes	No (2)
Pennsylvania	Yes	Yes	Yes	Hazard Comm	Yes	Yes
South Dakota	(3)	Yes	(3)	(3)	(3)	(3)
Texas	No	Yes	Yes	Yes	Yes	Yes
West Virginia	No	Yes	Yes	Yes	Yes	No (4)
Washington, DC	No	Yes	Yes	Yes	Yes	Yes

1) The safety section has one program manager and one secretary.
There are no safety inspectors, and the health section has only a director with no staff.

4) Staff positions are funded by 10 of Consultation Grant.

2) No industrial hygienist program

* States with no public sector OSH

percent

3) South Dakota Risk Management Manual does not address this item.

**Listing of States with Acceptable¹ Public Sector OSH Legislation
and Program Elements**

Arkansas	New Jersey
Florida	Ohio
Illinois	Oklahoma
Kansas	Rhode Island
Maine	Wisconsin
New Hampshire	Guam

¹ These states were deemed acceptable in the context of our review as described in the Objectives, Scope and Methodology section of this report. However, it should not be implied that our determination constitutes acceptability for purposes of the U.S. Department of Labor, Occupational Safety and Health Administration.

EXHIBIT F

