

**Testimony of David Fillman, Executive Director, Council 13
American Federation of State, County and Municipal Employees (AFSCME) before
the Subcommittee on Workforce Protections
Committee on Education and Labor
U.S. House of Representatives on
“Workplace Safety: Why Do Millions of Workers Remain
Without OSHA Coverage?”
May 24, 2007**

Thank you. My name is David Fillman, and I am the Executive Director of Council 13 of the American Federation of State, County and Municipal Employees. I am honored to represent more than 65,000 public employees in the Commonwealth of Pennsylvania today. And as an International Vice President with AFSCME, I speak for more than 1.4 million public employees nationwide, who are employed by states and their counties, townships, boroughs, cities, and school districts, as well as private and public non-profit health and human service facilities.

Our membership is extremely diverse, and is made up of hard-working members who provide vital public services to the citizens of Pennsylvania, in the areas of transportation, health care, public safety, public works, water and wastewater treatment, corrections, and education, just to name a few.

But despite their various backgrounds, our members have two things in common. Number one, they confront serious and even life-threatening dangers on the job each and every day. Second, they are not covered by our nation’s most basic workplace safety protections required by the Occupational Safety and Health Act (OSHA). Let me repeat the second point because so few people, including too many elected officials at the national, state, and local levels, even realize that millions of public employees across this country are not covered by OSHA.

The Occupational Safety and Health Act was passed in 1970 to provide American workers with safe workplaces. But there was a catch. The law excluded state and local government workers. Today, more than 35 years later, only 21 states have exercised their option to operate their own state OSHA programs. Three other states, New York, Connecticut and New Jersey, have a federally approved plan for their public workers, and responsibility for the private sector falls under the federal OSHA laws.

That means that 26 states do not have a federally approved program in place to cover workplace safety for public employees. That translates to more than 8 million public sector workers. There are a handful of states, such as Illinois and Wisconsin, which have state laws that provide similar protection to their public workers, but which are not federally approved programs.

In a few minutes, you will hear from Mrs. Casey Jones, who lost her husband. Mr. Jones' employer was not required to follow OSHA rules that could have prevented his death. And even more tragically, the state law that was enacted in 1982 to assist employers to make their workplaces safe, had been repealed by Governor Jeb Bush and the Florida legislature in 1999.

Public employees in the other Gulf Coast states of Louisiana, Alabama, Mississippi, and Texas also work without OSHA protection. That means that the public workers who responded to hurricanes Katrina and Rita – men and women who performed selfless acts of heroism – were not entitled to any workplace safety protections whatsoever, during the disasters, in their aftermath, or while they continue to rebuild those devastated regions.

I do not have to look any further than where I live to explain what the lack of OSHA coverage means. Neither the Commonwealth of Pennsylvania nor local governments are required to follow OSHA standards. For example, workers who must go into a deep trench to repair a water main break or for some other reason do so without their employers having to follow specific procedures or use equipment to prevent the trench from collapsing. When public employees perform the same job just across the border to the east in New York or New Jersey, or to the south in Maryland, their public employers are required by their state OSHA laws to take precautions to prevent their workers from being buried alive. This situation is not fair, and it is not right. Having the right to a safe job should not depend on the state in which public employees work.

Having OSHA coverage for all public employees is not just an issue of fairness; it is a matter of life and death. With the exception of a few occupations such as law enforcement or firefighters, the general public and their elected officials have little or no idea about the dangers faced by state and local government workers. At the beginning of 2006, a great deal of attention was paid, and rightfully so, to the Sago mine disaster that

killed 12 miners. By contrast, public employees are usually killed one at a time, and with little, if any, public notice. According to a U.S. Bureau of Labor Statistics (BLS) Report entitled *Fatal Occupational Injuries to Government Workers, 1992-2001*, 6,455, workers at the federal, state and local levels lost their lives on the job. About half of these fatalities (3,227) occurred in local government, while 1,224 state government workers died on the job during this period. According to the most recent BLS data available, in 2005 another 520 government workers died, of which 107 were state and 300 were local government workers.

The statistics are important to show the scope of the problem, but we must remember that each number is a worker who has died and suffered, and left loved ones behind to cope with the loss. AFSCME members, like other public employees, have died under horrible and gruesome circumstances such as suffocating in a confined space, being fatally assaulted by patients in mental health facilities or by inmates in prisons, or developing cancer from exposure to asbestos. I also want to make you aware of the many workers who have died across the country while maintaining our nation's roads and highways. More than 100 employees of the Commonwealth of Pennsylvania alone, members that I represent here today, lost their lives while working on the state's highways. Highway work is the most dangerous work in the Commonwealth, which I learned as a young employee of PennDOT, the Pennsylvania Department of Transportation.

Public awareness campaigns have helped to make highway work safer by educating drivers to slow down and drive more carefully in work zones. But to this day, no enforceable workplace safety law exists for that highly dangerous occupation – or for the other public service occupations throughout Pennsylvania.

Fatalities are but the tip of the iceberg. Hundreds of thousands of public employees are injured or made ill at work each year. For some types of hazards, such as workplace violence, public employees are at much higher risk than private sector employees. According to a 2005 BLS study, 32 percent of all state government workplaces and 15 percent of local governments reported some form of violence within the preceding 12 months of the survey, as compared to five percent for private industry.

I came here to describe why OSHA coverage for all public employees is so important. However, before I end my remarks, I also feel compelled to say that we deserve coverage that translates into real safety and health protection for our members, and all other workers in this country. For the past six years, OSHA has failed miserably to meet its mandate to protect workers. Enforcement of OSHA rules has taken a back seat to voluntary compliance and alliances with companies and trade associations. OSHA has failed to issue new and needed standards. It even withdrew its proposed tuberculosis rule, and now public health officials are warning us about a super drug resistant strain of TB that has emerged. OSHA just recently denied AFSCME's petition for an emergency standard for pandemic influenza preparedness, stating they could not take action because no human pandemic influenza virus exists at this time. OSHA should know that the time to prepare for a crisis is before it occurs and compel employers, if necessary, to take action in advance of emergency, not during or after a catastrophe has happened.

Some state OSHA programs have tried to address part of the massive void left by federal OSHA. Within the past couple of years, New York State passed a workplace violence prevention law, Washington State passed a safe patient handling bill, and California issued a standard to protect workers from exposure to heat. Federal OSHA should be addressing these and many other hazards.

In conclusion, I submit to the members of this Committee that our nation's failure to provide the most basic rights to a safe workplace for over 8 million working people – the people who protect and serve the citizens of this nation, even in its darkest hours – is an outrageous injustice.

To correct this injustice it is imperative that you, in this room, support prompt and decisive legislative action. Thank you.