

Timber's fallen: Enforcement of forest labor laws spotty, lacks bite

by Emily Green (/users/emily-green) | 11 Feb 2016

PART II | Companies face few inspections, mild consequences despite actions that lead to serious injury or death



[A Lomakatsi Restoration Project employee thins for fuels reduction in the Ashland Watershed.](#)

[Photo courtesy of Lomakatsi Restoration Project](#)

http://news.streetroots.org/sites/default/files/styles/article_image_full/public/Forestry1_WEB.jpg?itok=KfiSBjYr

This is Part II of [a three-part series \(http://news.streetroots.org/archive?f%5B0%5D=im_field_tags%3A5293\)](#) on the working conditions and treatment of Oregon's immigrant forestry workers.

It was raining on the November morning 25-year-old Teodoro Ponce-Leon bled to death in the mountains northeast of Brookings.

Before sunrise, a van had delivered him and other Latino immigrant forestry workers, some in the U.S. from Mexico on guest-worker visas, to a remote jobsite in the Chetco River Drainage in Southwest Oregon.

By 8:45 a.m., he was dead, leaving behind a wife and child in Medford, according to Curry County Sheriff's Office reports.

The circumstances around Ponce-Leon's death in 2011, and the ensuing investigation, illustrate the dangers facing many of the thousands of Latin American immigrants working in Oregon's forests. It also serves as an example of how little their employers are held accountable for actions that can contribute to serious injury and death.

At the time of the accident, Ponce-Leon was alone; about 300 yards up a steep ravine cutting the limbs off downed oak trees for later burning. A state investigation determined the chainsaw he was using likely kicked back, resulting in a deep laceration across his lower right jaw and neck, which severed his aorta.

His supervisor found him unconscious and told investigators the young father died in his arms moments after he had propped him up and tried to stop the bleeding by putting his fingers in the cut across his neck.

His death came just five days into a new job working for a subcontractor that was hired to stop the spread of disease among oak trees on Bureau of Land Management property.

Ponce-Leon hadn't signed any paperwork – his employer didn't even know his last name, telling inspectors it was Ponce-Villasenor.

He was wielding a Stihl MS 460 chainsaw – but he wasn't provided with the saw's instructions, which warn it's capable of severe kickbacks capable of causing fatal injury.

State investigation records show Ponce-Leon hadn't received any training – on the chainsaw, safety or otherwise – since he'd been hired on Nov. 18.

The absence of thorough training among many reforestation workers performing laborious and often dangerous tasks in Oregon's forests each year is a primary concern of advocates fighting for better working conditions on their behalf.

Contracts and complaints

Reforestation workers are often employed by contractors to perform the work that keeps timber companies and government land management agencies compliant with healthy forest laws.

They thin trees to combat wildfires, plant saplings after commercial logging clears the land and apply toxic herbicides and pesticides.

Research conducted by the [Northwest Forest Worker Center](http://www.nwforestworkers.org/) (<http://www.nwforestworkers.org/>) out of its Medford office indicates many workers don't have adequate training or safety gear, and that they are often subject to abuses such as working under pressure to move dangerously fast for long hours without rest breaks, fear of retaliation for reporting injuries and wage theft.

Much of their work is taxpayer-funded, occurring under government contracts on public lands, such as in Ponce-Leon's case.

During a Feb. 5 [Environmental Justice Task Force](http://www.oregon.gov/gov/policy/environment/environmental_justice/Pages/default.aspx) (http://www.oregon.gov/gov/policy/environment/environmental_justice/Pages/default.aspx) meeting in Salem, top state industry regulators, Oregon Occupational Safety and Health Division Administrator Michael Wood and Bureau of Labor and Industry Administrator Brad Avakain, joined an ongoing discussion on issues facing forestry and farmworkers that was brought to policymakers by advocates and workers. They were there to provide the task force with insight into what their agencies do.

They both explained while it's not their job to determine whether someone is in the country legally, it is their responsibility to ensure that all people employed in the state are treated lawfully.

But fear of retaliation makes proving some cases in forests and on farms a challenge, they agreed. Their agencies often rely on employee cooperation when they are building a case and on complaints from workers to point them in the direction of employers who are breaking the law.

While [OSHA \(http://www.osha.org/\)](http://www.osha.org/) inspects for safety and health violations, [BOLI \(http://www.oregon.gov/boli/Pages/index.aspx\)](http://www.oregon.gov/boli/Pages/index.aspx) enforces wage and hour violations, such as wage theft and denied rest breaks. While about 73 percent of reforestation worksite inspections by OSHA are unrelated to a complaint or injury, BOLI's enforcement is almost entirely complaint driven.

Avakian told the task force that about 15 years ago, BOLI had 14 staff dedicated to farm labor. They were out in the fields and labor housing, building relationships with immigrant farmworkers.

“We really had boots on the ground in respect to seeing what the conditions were like for workers,” he said. “Through budget cuts that occurred a decade ago – we really have one person (dedicated to farms) for the entire state of Oregon right now.”

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He said he needs workers to report abuses to BOLI so he can file a Commissioner's Complaint, which would launch a civil rights investigation, but it's employer specific.

BOLI received 64 wage claims from the reforestation sector between 2010 and 2015 – and 111 allegations of wage violations other than unpaid wages, such as failure to provide meal and rest periods. During that same period, however, there were only three retaliation cases filed with BOLI.

Violations and penalties

The state OSHA inspector who investigated Ponce-Leon's death determined it could have resulted from a chainsaw kickback caused by any one of a number of incomplete cuts on limbs, brush and trees in his work area.

He noted other employees on the jobsite weren't cutting trees safely either, and the supervisor hadn't seemed to notice or take any corrective action.

Ultimately, OSHA cited Ponce-Leon's employer, Cutting Edge Forestry Inc., for five violations at the conclusion of its investigation. Two were for not training him, which likely contributed to his death.

This month in Salem, legislators are determining whether to increase the state's damages cap of \$500,000 in wrongful-death lawsuits.

Cutting Edge Forestry got off easy. There was no lawsuit against it, and it was charged \$510 in fines.

“Our penalties are the lowest penalties for a first-time violation in the country,” said OSHA Administrator Michael Wood. “That’s sort of a trade-off against our high enforcement presence.”

He said jobsites are more likely to be inspected in Oregon than in any other state, with 3 percent of all jobsites inspected each year.

Jeff Nelson owns Cutting Edge Forestry, which was subcontracted with his brother Scott Nelson’s company, Summitt Forests Inc., on the project Ponce-Leon was working on when he died. Workers for both companies were onsite that day.

In his field notes, the OSHA inspector indicated none of the workers on site were familiar with Division 7 rules, the state laws governing safe forestry activities.

Summitt Forests was also fined for violations related to Ponce-Leon’s training, but also for violations cited for its employees’ failure to fall trees safely at the same site, for a total of \$1,035 in penalties.

According to InsideGov, Summitt Forests has won government contracts worth \$82.7 million since 2000, and Cutting Edge’s government contracts during the same period were worth \$24.6 million.

In 2013, Ponce-Leon’s family filed a wrongful death suit against Summitt Forests and one of its managers. A Curry County Circuit Court judge ruled in favor of Summitt Forests on the grounds workers compensation provides a remedy. The case now sits in Oregon Court of Appeals where a three-judge panel will issue a decision sometime this year.

Advocates working on behalf of reforestation workers, as well as current and former forestry workers, told Street Roots they think government penalties issued to contractors who break the law are too low and equate to a slap on the wrist.

Wood said the size of the employer is one of the biggest factors in determining the size of OSHA’s fine.

“Our penalties are designed to motivate employers, and it takes a lower penalty to motivate a mom and pop operation than it does a larger corporation. We would look at the severity of the potential outcomes and we’d look at the probability of injury. We also would take into account the employer’s good faith effort to comply,” he said.

OSHA Statewide Safety Enforcement Manger Gary Beck explained fines are predetermined by administrative rules, and if the employer has less than 25 employees, penalties can be reduced by 60 percent.

But some contractors pay their employees under the table, so it isn’t always clear how many employees they have.

Wood said while many of the fines may start low, they increase steeply when there is a repeat violation.



A Lomakatsi employee thins trees with a chainsaw in the Ashland Watershed.

Photo courtesy of Lomakatsi Restoration Project

Street Roots reviewed all OSHA inspections of reforestation worksites and sawmills, another forestry sector that employs many immigrant workers, that were conducted over the past five years.

Among all the inspections, there were only three examples of repeat violations cited: two at Eugene-based Goshen Inc.'s Junction City sawmill and one at Goshen Forest Products LLC in Eugene.

In 2010, OSHA fined Goshen Inc.'s sawmill \$275 when an inspector observed employees failing to properly shut down equipment before performing repairs. In 2013, it was fined less, \$240, for what was categorized as a repeat of this violation. The other repeat violation, for failing to have safeguards to protect workers from hazardous machinery, went up from \$100 in 2010 to \$240 in 2013.

At Goshen Forest Products, a fine for failing to protect workers from sprocket wheels and chains went up from \$125 in 2009 to \$600 in 2011.

Over the past five years, 5 percent of the state's [284 reforestation employers listed with Oregon Employment Department](https://www.qualityinfo.org/bi-empdb/?at=1&t1=41~410100000~false~false~true~115310~~~115310~~~~~6~false~~~e) ([https://www.qualityinfo.org/bi-empdb/?](https://www.qualityinfo.org/bi-empdb/?at=1&t1=41~410100000~false~false~true~115310~~~115310~~~~~6~false~~~e)

[at=1&t1=41~410100000~false~false~true~115310~~~115310~~~~~6~false~~~e](https://www.qualityinfo.org/bi-empdb/?at=1&t1=41~410100000~false~false~true~115310~~~115310~~~~~6~false~~~e)) were inspected each year.

Some of the inspections were not of active worksites, but of the company's office and equipment storage.

The median fine for a category-serious violation, which is violation that could result in a serious injury, was \$100 among reforestation contractors. For sawmills, the median of 325 citations for "serious" violations was \$150. In some cases, fines were withdrawn after an appeal.

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Violations cited ranged from the employers' failure to produce documentation of safety and hazardous chemical training and first aid certification to inadequate protective gear, observed dangerous behavior, missing safeguards on machinery – which in some cases had cost a worker a serious injury that led to the inspection – and unsafe transportation when carting workers to jobsites all over the state.

OSHA's Beck said the biggest challenge in regulating the reforestation industry is finding the remote worksites in the middle of the forest.

But it's gotten easier since the U.S. Forest Service began posting [a public list of its active worksites \(http://www.fs.usda.gov/detail/r6/workingtogether/contracting/?cid=STELPRDB5397842\)](http://www.fs.usda.gov/detail/r6/workingtogether/contracting/?cid=STELPRDB5397842) in Region 6 national forests in 2011. This information sharing stemmed from meetings of federal and state government agencies and advocates that have been held twice a year since 2009 in an effort to find ways to more effectively protect forestry workers.

Carl Wilmsen, director of Northwest Forest Worker Center, said the other positive thing to come out of these meetings was increased oversight by the U.S. Department of Labor.

“When Jeff Genkos was the regional director for the Wage and Hour Division in Portland, he actually took this issue to heart and did delegate to his staff to start doing inspections of forestry contractors, and they did quite a few,” he said, adding that attention from the federal Labor Department has waned since Genkos' departure.

Since 2004, the Department of Labor has closed 19 investigations of wage theft at reforestation contractors in Oregon. Two familiar names were among those investigated: Summitt Forests and Cutting Edge Forestry.

Wage and hour investigations found both had violated multiple labor laws, including overtime pay. At the conclusion the investigations, Cutting Edge Forestry agreed to pay 26 employees \$2,000 in back wages, and Summitt Forests agreed to pay 233 employees \$29,000 in back wages.



A reforestation worker carries a piece of wood away from a controlled burn on private forest land that's part of the Collaboration Conservation Partnership Initiative across Southern Oregon and Northern California.

Photo courtesy of Lomakatsi Restoration Project

Throughout the investigation, OSHA had no direct contact with Ponce-Leon's family. A letter was sent to his next of kin – in English, with his name misspelled and to a faulty address.

Neither Cutting Edge Forestry nor Summitt Forests responded to interview requests from Street Roots.

Inspections

Wilmsen said that for years, Northwest Forest Worker Center has argued to the U.S. Forest Service that it should stop doing business with contractors that abuse their employees.

"They have the authority to enforce the provisions of their own contracts, because it is written into the contracts that the contractors are required to comply with all relevant labor laws," he said.

Street Roots asked the Bureau of Land Management what action it took after Ponce-Leon died on its property, likely due to the negligence of Cutting Edge Forestry, which was cited for violations related to his death. BLM spokesperson Maria Thi Mai said when contractors are found in violation of the law, it is noted and is taken into consideration on future deals.

The year following Ponce-Leon's death in 2011, [Cutting Edge Forestry won twice as many contracts \(http://government-contractors.insidegov.com/l/385177/Cutting-Edge-Forestry-in\)](http://government-contractors.insidegov.com/l/385177/Cutting-Edge-Forestry-in) under the U.S. Department of the Interior, which houses BLM, and also increased the number of contracts won under the U.S. Department of Agriculture, which houses the Forest Service, according to InsideGov.

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It didn't visit Summitt Forests again either until an injury prompted an investigation in 2015 – earning the contractor another fine – this time \$250 for not taking 21-year-old Juan Estaban Encamacion, who had cut through his boot and left big toe with a chainsaw, to the nearest medical facility one hour away in Lakeview. Instead, because the crew had completed the job, the foreman took him on a four-hour ride to Medford before getting him medical attention.

Beck said both companies had provided proof that they'd corrected their behavior after Ponce-Leon's death, so no follow-up investigations were warranted.

"We can't just arbitrarily go out there," he said. "They've got to show up on our scheduling list."

Each year, OSHA has a programmed list of 50 logging and reforestation operators it can inspect. If a contractor isn't on the list, it can't be subjected to an inspection unless there's a death, serious injury, complaint or referral. The list is primarily composed of logging

companies, with about 10 to 20 reforestation contractors each year over the past five years.

But there is a major flaw in the way OSHA determines its annual list. One of the major factors in determining who gets inspected is the number of disabling workers' compensation claims that have been filed. But the agency is well aware that fear of retaliation in the industry is widespread, and that many workers are discouraged – under fear of losing their job or of being deported – from filing such a claim at all.

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This might be why two reforestation operators that have reputations for treating their workers well have, combined, shown up on OSHA's inspection list six times between 2011 and 2015.

Violation history is also calculated into OSHA's scheduling determination, Beck said.

But neither Cutting Edge Forestry nor Summitt Forests has popped up on the list since Ponce-Leon's death.

In April 2013, while thinning trees for the U.S. Forest Service in the Fremont-Winema National Forest near Klamath Falls, Juan Garibay was struck in the back and shoulders by a falling 81-foot tree, breaking his neck. His co-worker was not following the basic two-tree-length rule of forestry, meaning workers should be two tree lengths apart when felling trees.

The site supervisor watched the whole thing happen from 15 feet away but did nothing to stop it, according to state reports. The OSHA inspector discovered the company safety policy was, "Be careful and take care of each other," rather than following adequate procedures. He also discovered the employer knew about the two-tree-length rule. Fremont Forest Systems Inc. was cited for three violations. It received a 60 percent reduction in penalties due to its size, bringing its fine to \$6,100, the largest fine issued in a single investigation between 2011 and 2015.

Fremont Forest Systems didn't come up on the inspection list in the years following its violations either.

Lomakatsi Restoration Project is a reforestation nonprofit out of Ashland that prides itself on paying its workers well, training them properly, and serving as an example of how the industry should be operating.

According to data compiled for Street Roots by the Oregon Department of Consumer and Business Services, Lomakatsi had less than half the number of workers' compensation claims between 2000 and 2011 than both Summitt Forests and Cutting Edge Forestry, and a good track record with OSHA. But Lomakatsi popped up on OSHA's annual inspection list three times during the past five years.

When asked to name another company that follows Oregon's labor laws and treats its workers well, Lomakatsi director Mark Bey named Grayback Forestry Inc., which also popped up on OSHA's annual inspection list three out of the past five years, although Grayback Forestry had a significant number of workers' compensation claims. Both were inspected three times. Both passed twice, and neither was cited for violations warranting monetary fines when it was cited.

"There has always been a certain percent that does everything right, and a whole bunch that don't," said Grayback owner Michael Wheeler. He said lately it's starting to feel like it was in the late 1980s again – with many contractors choosing to flat-out ignore labor laws.

Research conducted by the Northwest Forest Worker Center has indicated widespread abuse and dangerous working conditions in the industry in the region. Many of the state's 284 contractors have never been inspected.

Contact Street Roots reporter Emily Green at emily@streetroots.org (<mailto:emily@streetroots.org>).

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The series

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